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“Don’t Go Near the Water” (Coal Leasing on Public Lands)

Harrison Loesch

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OUTLINE

"DON'T GO NEAR THE WATER"
(COAL LEASING ON PUBLIC LANDS)

BY

HARRISON LOESCH
VICE PRESIDENT, GOVERNMENT RELATIONS
PEABODY COAL COMPANY

FEDERAL LANDS, LAWS AND
POLICIES AND THE DEVELOPMENT
OF NATURAL RESOURCES

THE UNIVERSITY OF COLORADO SCHOOL OF LAW

- I. Introduction
- II. Ancient History
 - A. pre-1920
 - B. the Mineral Leasing Act of 1920
(reference to preceding lecture)
 - 1. specific application to coal
 - C. the preference right lease application (PRLA) system
 - 1. the explosion of the 1960's -- reasons:
 - a. early forecast of oil shortage
 - b. the legacy of WW II -- synfuels
- III. 1969-1970 Situation
 - A. growing environmental concern: the National Environmental Policy Act (NEPA)
 - B. the work of and backlash from the Public Land Law Review Commission (PLLRC)
 - C. the effect on attitude and function of the Bureau of Land Management (BLM)
 - 1. formerly a regulatory and dispository agency
 - 2. the Udall philosophy: the "sweet swap" controversy and subsequent policy change
 - 3. qualifications for director -- Rasmussen
 - D. Hickel Regime
 - 1. Departmental gear-up for NEPA
 - a. the environmental impact statement (EIS) process
 - b. Departmental controversy on application of NEPA to leasing -- impact on coal -- uncertainties

E. the leasing moratorium

1. 1970 BLM study
2. Morton's accession
3. the true (you never heard this before) genesis of the moratorium
(informal -- Assistant Secretary level -- internal Departmental disagreement)
4. the Aspinall defeat; John Saylor-Mo Udall influence and direction change in the House Committee; Morton's political feel
5. the 1972 Government Accounting Office (GAO) study
6. Departmental study papers -- BLM policy planning
7. post-1972 election "little Saturday night massacre"
8. the formal moratorium -- February 1973
9. development of new leasing policy: Energy Minerals Allocation Recommendation System (EMARS I)
 - a. the 1974 draft programmatic EIS -- reaction
 - b. Energy Minerals Activity Recommendation System (EMARS II) -- final 1975 EIS
 - c. NRDC v. Hughes [454 Fed. Supp. 148]

IV. Federal Coal Leasing Amendments Act (FCLAA) of 1976
[30 USC 181]

- A. Congressional background -- Senator Lee Metcalf
- B. S. 391 -- its passage, veto, and override
- C. provisions:
 1. competitive bidding [§2]

2. fair market value (FMV) [\$2]
 - a. 12 1/2% minimum royalty [\$7]
 - b. sequestration for public bodies [\$2]
3. abolition of PRLA's (subject to valid existing rights) [\$4]
4. lease consolidation -- logical mining units (LMU's) [\$5]
5. diligent development and continuous operations [\$3]
 - a. 10-year cancellation [\$6]
 - b. mine all reserves in 40 years [\$5]
6. acreage limitations [\$11]
7. 50% deferred bonus bidding [\$2]
8. lands leased must be included in a comprehensive land use plan (LUP) [\$3]
9. the LUP process [\$3]
 - a. consultation with state and local officials
 - b. public hearing
 - c. data on quantity of reserve and recoverability factor
 - d. separate public hearing on the effect of a lease on the environment and community services and its economic impacts
10. increase in states' share of proceeds [\$9]
11. Office of Technology Assessment (OTA) study of current leases [\$10]
12. maximum economic recovery (MER) [\$3]
13. provisions for exploration license [\$4]
 - a. 2 years -- reasonable fee -- separate for each state [\$4]

- b. conditions [§4]
 - c. prohibition of land disturbance [§4]
 - d. requirement for provision of data -- confidentiality [§4]
 - e. penalties [§4]
- 14. operation and reclamation plan (mine plan) -- time -- approval [§6]
 - 15. Federal Exploratory Program [§7]
 - 16. requirement for OTA study [§10]
 - 17. antitrust provisions [§15]

V. Significant Litigation and Second Guesses

- A. Sierra Club v. Kleppe [427 U.S. 390, 1976]
- B. NRDC v. Hughes [supra]
- C. NRDC v. Berklund [454 Fed. Supp. 925]
- D. the 1978 Act [P.L. 95-554]

VI. Conclusion

- A. Congressional intent
- B. Department of the Interior interpretation