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A NEW PROGRAM FOR THE MANAGEMENT OF FEDERAL COAL RESERVES

GUY R. MARTIN*

I. INTRODUCTION

Over the past decades, few federal resource responsibilities have been carried out so inconsistently, and with so little success, as the management of federally-owned coal. Coal is America's most abundant fossil fuel. Four hundred and forty billion tons, about equally distributed between states east and west of the Mississippi River, are considered recoverable reserves under present or foreseeable economic conditions.1

Of those western reserves, about forty percent are owned by the United States government. Of the remaining western coal owned by private parties, Indian tribes, and state governments, another twenty percent cannot be developed economically except in conjunction with development of federally-owned coal. In some parts of the West, this dependence by owners of nonfederal coal on development plans of the federal government is almost total. Land and mineral ownership in such areas is in a checkerboard pattern, resulting from distribution of federal lands to homesteaders, railroads, state governments, Civil War veterans, and


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others when the American West was settled in the 19th century.

To further complicate matters, the lands under which most federally-owned coal is found are frequently of vital importance to developers of other minerals or to ranchers and farmers. These lands also provide for the sustenance of wildlife and may be a source of recreational enjoyment. In addition, the operation of homesteading and other settlement laws has sometimes resulted in the federal government's retention of mineral rights under surface lands that subsequently became private property.

At the beginning of the last decade, the Department of the Interior's managerial decisions concerning federally-owned coal in the western states were of local or regional interest, but had little impact from a national resource management perspective. As late as 1970, more than ninety percent of the coal produced in the United States came from mines east of the Mississippi. Of the 603 million tons produced nationwide that year, only 7.4 million tons were from federal reserves.

In 1980, however, more than twenty-seven percent of the coal produced in the United States will come from the West. The 236 million tons to be mined in the West in 1980 will represent a nine percent increase over 1979 production and a forty-four percent increase over the 1977 western production figures. The National Coal Association estimates that western production will reach 305 million tons by 1983 and will continue to increase throughout the decade, partly because within the next eight years over half (54.5%) of the new coal-fired electric power capacity will be from plants built west of the Mississippi.

Thus, western coal has clearly become a resource of national significance. Its utilization would allow substantial growth in electric power capacity to occur without increased consumption of oil and gas and would also contribute a substantial share of the raw material needed to manufacture synthetic oil and gas from coal. However, this major increase in the production and use of western coal could not have taken place in the managerial environ-

\[\text{National Coal Ass'n, } NCA \text{ Forecasts 776 Million Tons of Production in 1980, Coal News, Dec. 21, 1979, at 1, 3 (estimates of the NCA Economics Committee).}\]

COAL RESERVES

ment of a decade ago. The production increases that have occurred since 1977 and industry's ability to plan on additional development in the 1980's are the results of recent legislative, judicial, and internal policy activity which has profoundly influenced the manner in which the Department of the Interior manages federal coal resources.

The evolution has been based upon a series of progressive laws passed by Congress in recent years addressing federal public land management, environmental standards, and coal leasing specifically. The Federal Land Policy and Management Act of 1976 (FLPMA) created a broad new multiple-use charter for the Bureau of Land Management's (BLM) stewardship of public lands in the western United States and established a new policy of retention and management, rather than disposal, of the federal lands.

The Federal Coal Leasing Amendments Act of 1976 (FCLAA) terminated the Preference Right Lease Application system which had resulted in industry claims on about nine billion tons of federal coal. The new law mandated a system of competitive leasing, and it established new standards for public participation and federal-state coordination in leasing decisions. Other laws, including the National Environmental Policy Act of 1969 (NEPA), the Clean Air Act Amendments of 1977, the Endangered Species Act of 1973, and the Department of Energy Organization Act, also delineated new standards relating to coal devel-

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6 Prior to enactment of FCLAA, the basic statute governing federal coal leasing was the Mineral Leasing Act of 1920, ch. 85, § 2(b), 41 Stat. 438 (1920), 30 U.S.C. § 201(b) (1970), as amended. This Act allowed mining firms to prospect for and claim federal coal located outside of known deposits. The initial claim created a preferred position for the claimant, and a lease would ultimately issue upon sufficient evidence of the existence of the coal resource and the claimant's ability to develop it. This process was also known as the Preference Right Leasing System.
development and use, with specific implications for the management of federal coal reserves.

On May 23, 1977, President Carter outlined his basic plan for the development of a new federal coal leasing program to carry out such legislative mandates, stating that FLPMA and FCLAA "provide the Secretary of the Interior with the necessary authority to carry out environmentally sound, comprehensive planning for the public lands . . . in a manner that fully protects the public interest and respects the rights of private surface owners" and specifically directing the Secretary to "[m]anage the coal leasing program to assure that it can respond to reasonable production goals by leasing only those areas where mining is environmentally acceptable and compatible with other land uses."

During 1977, the President had also reversed the policy of prior administrations by giving his strong support to the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Signed into law on August 3, 1977, SMCRA directs the Office of Surface Mining Reclamation and Enforcement of the Department of the Interior and state surface mining reclamation agencies to enforce minimum reclamation standards whenever the mining of any coal, federal or non-federal, affects the surface of land.

This accumulation of new Congressional directives, spawned during a period of intensive review and controversy, reflected a strong reaction to a history of public lands mismanagement. Importantly, nowhere had the pattern of federal mismanagement been more apparent than in the area of coal leasing. Less than twenty federal coal leases per annum had been granted between 1920 and 1950, and it was not until 1960 that the grants exceeded forty per year. Between 1960 and 1970, however, the number rose dramatically, with a total of 325 leases being issued during that period, largely without government planning or recognition of actual demand for the product.

(Supp. I 1977)).


12 Id.


14 U.S. DEP'T OF THE INTERIOR, AUTOMATED COAL LEASE DATA SYSTEM.
By the end of that decade, over 700,000 acres of federal land had been leased, with a production potential of 250 million tons of coal per year. Despite this, production in 1970 actually totalled only 7.4 million tons. Much of this coal had been leased noncompetitively and had then been held for price speculation at public expense. Moreover, the leased properties were frequently in such proximity to other established land uses, such as ranching, farming, or recreation, that conflict was inevitable when exploitation of the mineral was attempted.¹⁵

Federal managers reacted by bringing coal leasing to a near standstill in 1971 with an informal self-imposed moratorium on federal coal leasing. This was followed by a formal moratorium ordered by Secretary of the Interior Rogers C.B. Morton in 1973. During the next four years, only thirteen coal actions were taken, to prevent mine closures or meet short-term production needs.¹⁶

It was obviously unacceptable to continue to manage federal coal on such a start-and-stop basis, so work on a long-term leasing program began shortly after the moratorium was instituted. The program, called the Energy Minerals Activity Recommendations System (EMARS),¹⁷ was proposed in 1975 and shortly became the subject of litigation and political controversy in the West. The EMARS program depended primarily on the coal industry's identification of specific lease tracts desired by individual coal companies. Under this system, BLM environmental studies and land use planning responded principally to these industry nominations. While state governments and the public were given opportunities to comment on nominations, the focus on tracts selected by industry diminished BLM's ability to consider alternative leasing areas, and therefore reduced the likelihood of leasing decisions that could satisfy coal industry needs with minimum conflict over other resources.

The major litigation challenging the EMARS program, Natu-

¹⁶ Office of Coal Leasing, Planning and Coordination, U.S. Dep't of the Interior, Program Description, Federal Coal Management Program (Jan. 8, 1980).
ral Resources Defense Council v. Hughes, was filed in October of 1975 by environmental and agricultural interests and was pending when President Carter issued his May 1977 Environmental Message which contained his coal directives to Secretary of the Interior Cecil D. Andrus. This litigation ultimately prevented any leasing at all under EMARS and added to the overall history of coal leasing mismanagement and conflict inherited by the Carter Administration.

These federal leasing actions that occurred between 1960 and 1971 had left a legacy of 17 billion tons of leased coal reserves, often in the areas where development would be inconsistent with the economic or environmental standards of the new laws mentioned above. Additional claims created by pending Preference Right Lease Applications brought the total to more than 27 billion tons of federal coal leased or claimed. Any new federal coal management system would have to make provision for these prior rights, claims, and development plans.

Prior to 1977, few federal coal leases had been issued for six years; the departmental leasing structure was largely inactive; the political atmosphere in western leasing areas was hostile to the existing program and distrustful of federal management; and the 1975 attempt at a long-term coal management program appeared incapable of being sustained legally.18

Although the decision of the federal district court in the Hughes case, enjoining almost all new leasing, did not occur until September 27, 1977, many knowledgeable observers were not surprised either about the weaknesses of the program or of its supporting environmental impact statement.20 In fact, the De-

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20 Id.

18 The district court ruled that the EIS was inadequate and enjoined most all new leasing. In particular, the court found the following:
1) The Department’s draft EIS failed to describe the program adequately and thus violated NEPA’s requirement for public participation;
2) The EIS failed to discuss all reasonable alternatives adequately;

II. DEVELOPMENT OF THE NEW COAL MANAGEMENT PROGRAM

On May 24, 1977, Secretary Andrus assigned the Assistant Secretary for Land and Water Resources the responsibility to lead the department-wide effort to carry out the President's directives on coal management. Responsible departmental officials were instructed that:

The President has made clear his belief that coal must be the fuel which makes possible a reduction in the U.S. economy's energy-related uses of oil and gas. . . . The President has also stressed that projected increases in production can and must take place without increasing the damage caused by traditional coal mining and burning practices.21

The plan for developing a new coal management program included a review of the existing energy situation and the various policy and program options related to coal. It also involved the preparation of a major programmatic environmental impact statement, many analytical studies, a formidable decision document for the Secretary, and a complex set of regulations for the program finally adopted. At best, it would be nearly two years before a new leasing program could begin. During the interim, there would be a continuing demand for short-term leases and coal mine approvals, actions which were severely restricted by the court order in Natural Resources Defense Council v. Hughes.22

Prior to beginning development of the new program, the Department made a policy decision not to seek changes in the laws controlling coal leasing. The Department felt that the existing le-

3) Although the program was changed between the draft and the final EIS, no adequate explanation was given for the change, nor was the impact of the change explained; and
4) The EIS had failed to consider adequately the need for new coal leasing.


gal framework was excellent and that the successful establishment of a new program appeared much more likely to occur in a stable environment, without a subsidiary debate in Congress over still another change in the direction of leasing federal coal lands.

After considerable thought, the Department adopted a similar policy regarding the Hughes case and ultimately negotiated a settlement which set dependable standards for the issuance of "short-term" leases until a new long-term program could be established. Execution of short-term actions under the settlement

33 The Solicitor for the Department of the Interior at that time had the following comments:

After the court order was entered, we estimated that of the more than 100 requests for new coal leases pending before the Department, no more than five or six would meet the court's criteria. Believing that the court's restrictions on new leasing were unnecessarily restrictive, but knowing that an appeal could take precious time, we filed an appeal but simultaneously pursued a negotiated settlement to this aspect of the dispute.

Our settlement position was formed only after a careful review of pending applications for new leases, to identify which applications either could not or should not wait to be issued until after the new programmatic EIS was completed. That review convinced us that, because of the large amount of federal coal under lease and the extensive availability of private coal, the court correctly concluded that renewed federal leasing on a large scale was not immediately necessary.

There were, however, several individual situations where a federal coal lease was then, or would soon be, needed. Our negotiations successfully obtained standards that cover nearly all important pending situations. We reached agreement with the plaintiffs on the settlement on February 27, 1978, and after several delays, the District Court approved it on June 14, 1978.

The essential element of the settlement is that it allows much more leasing than would have been permitted under the court's original order. Approximately 35 leases containing 250-300 million tons of coal, at an increase in annual production of nearly 20 million tons, might eventually be issued under the proposed settlement. [U.S. DEP'T OF THE INTERIOR, "Press Release" (February 25, 1978).] Specifically, the proposed settlement allows leases to be issued for mines which were operating on September 27, 1977, for up to eight times the annual production existing on that date. It also allows leases to be issued in the so-called bypass situation, when federal coal must be leased and mined in a particular time sequence or else it becomes too expensive either environmentally or economically to mine in the future.
was given a high and separate priority for Department managers, and the result was not only a good political atmosphere for developing the long-term program, but the regular issuance of leases for which there was a pressing need. As an incidental benefit, after years of inaction the Department learned how to lease coal again.24

In this atmosphere, development of the long-term program proceeded along three separate tracks. The first track was to develop information concerning federal coal resources and to determine the coal production likely to occur under existing programs. Initial priority went to collection of basic information about the extent and status of coal resources owned by the federal government, which in the past had been a source of great difficulty for

In addition, it allows: issuance of certain specified leases; 20 noncompetitive lease applications to be fully processed; some lease exchanges; and issuance of leases for demonstration projects.

The settlement will enable us to clear the small backlog of important lease applications that has developed over the past five years. It frees us to give maximum attention to devising a sound new program.

Krulitz, supra note 20, at 143-44.

24 The solutions for short-term coal management problems emphasized strategies that freed the Department's pending non-leasing actions from the legal problems of the EMARS leasing program. After a study of pending coal developments throughout the West, the Secretary on October 27, 1977 eliminated the analysis of EMARS' competitive leasing proposals from all of the regional coal environmental impact statements. In each region, the Secretary directed that the analysis be completed for the mine plans, short-term (emergency) lease proposals, and preference right lease applications which would, if approved, result in early production of coal. The Secretary's decision meant that those coal industry development proposals most likely to result in the quickest production of more federal coal were not affected by the federal court's decision prohibiting the Department from taking "any action" to implement the EMARS program. By cleansing the regional environmental analyses of EMARS-related studies, the regional statements proceeded with no legal interference, and the Department was able to consider, on schedule, actions affecting 25 companies, 28 mines, and an estimated 1.8 billion tons of coal.

The results of the short-term leasing program have fully justified the decision to pursue it. Besides the shelving of political controversy over short-term leases which would have adversely affected the development of the new long-term program, many leases have been issued in justifiable cases during the interim. As of February 15, 1980, 26 leases have been issued, sold, or scheduled for sale since June 14, 1978, providing 204.5 million tons of coal to 20 separate companies.
both federal managers and the coal industry.\textsuperscript{25}

The second track was to review BLM's land use planning system, which included environmental protection standards and provisions for industry and public participation in its land planning decisions, and to organize and manage the BLM offices charged with the responsibility for making coal-related decisions. The option of designating lands "unsuitable" for coal development early in the planning process was studied and field-tested as a part of this task. While the basic concept of unsuitability was drawn from section 522 of SMCRA,\textsuperscript{28} the options developed by the Department for the leasing program provided additional criteria, statutory and otherwise,\textsuperscript{27} and were designed to provide an early screen for areas that should not advance in the planning process because the probable consequences of development would be so damaging that, ultimately, the area would likely not be leased. If the screen worked properly, the planning process would be relieved of an unnecessary burden; expectations or fears of certain areas being leased would be resolved early and openly; and enough coal areas would proceed through planning to fully meet identified demand.

To ensure such balance, elaborate field testing of the proposed unsuitability criteria was carried out. It involved ten areas in six states and covered approximately 55,176 acres. The results basically confirmed the usefulness of the concept but led to modification or elimination of some criteria and further study on others.\textsuperscript{28}

\textsuperscript{25}Tyner, Kalter & Wold, Western Coal: Promise or Problem (Aug. 1977) (Cornell University).

\textsuperscript{26}30 U.S.C. § 1272 (Supp. I 1977). That section describes certain lands, such as national parks and other protected areas, which may not be surface mined, and also requires state governments, as an element of their implementation of the federal law, to establish procedures for reviewing lands to determine which, if any, may not be suitable for mining. In addition, by petitioning the states (or the federal government for federal lands), citizens can initiate a process for determining whether surface mining is to be prohibited on lands specified in the petition. With the exception of the protected categories of land on which no mining may be conducted, the emphasis of these unsuitability determinations is on procedures rather than on criteria or standards.


\textsuperscript{28}U.S. DEP'T OF THE INTERIOR, 1 SECRETARIAL ISSUE DOCUMENT, FEDERAL COAL MANAGEMENT PROGRAM 1-69 (1979) (ISSUE PAPER 1) [hereinafter cited as
The third track was to revamp the leasing system into a process that could (1) identify mineral tracts of interest to the industry; (2) satisfy BLM's responsibility under NEPA and other laws; (3) anticipate the effect of leasing decisions on coal production goals; and (4) evaluate the economic effects associated with leasing decisions. Priority was given to the question that was perceived, by the Department as well as by industry and the public to be fundamentally important to the future of federal coal management: should leasing decisions arise from the basic BLM multiple-use resource management planning system, or should the initial triggering mechanism for subsequent planning and leasing be coal industry expressions of interest in particular federal coal lands?

This fundamental issue was resolved early in the policy review by Secretary Andrus, who decided that BLM's multiple-use planning system would be the foundation for future federal coal leasing.29 This change from the past coal leasing practices and from the coal leasing program proposed in 1975 appeared to serve best the intent of the new congressional mandates on public land management and to provide more open and balanced participation by all competing resource users and residents in potential coal leasing areas.

This decision provided the direction for a more detailed level of policy development, which began immediately. After an aggressive schedule for development of the new coal management program was approved by the Secretary,30 detailed planning was begun on an environmental impact statement which would satisfy the requirements of the National Environmental Policy Act of 1969.31

Overall, the development of this program was given the highest administrative priority of any work within the Department of the Interior, a fact which was reflected in budgets, personnel ac-

29 Office of the Secretary, U.S. Dep't of the Interior, Long-Term Coal Leasing Options Decision Sheet (Oct. 22, 1977).
30 Memorandum from the Assistant Secretary for Land and Water Resources, U.S. Dep't of the Interior, to the Associate Solicitor for Energy and Resources (Nov. 1, 1977) (and reply of same date).
tions, and the time allocations of top policymakers. Two important organizational changes were also made. At the policy level, a multiple-agency Office of Coal Leasing, Planning and Coordination was established, which reported directly to the Assistant Secretary for Land and Water Resources. Within BLM, a new Office of Coal Management was formed, which reported to the Director of BLM and centralized all BLM activities related to coal.

On a priority basis, issue papers, options, and recommendations were prepared, not only by Department experts, but also by those from other federal agencies, like the Departments of Energy and Justice, the U.S. Forest Service, state governments, and interstate organizations. During the process, eighteen major analyses and options documents were completed for departmental review and secretarial decision. During this important period of program development, the Department developed an open and active working relationship with state governments. This joint effort not only provided valuable technical expertise for future federal-state management coordination, but also eased the distrust of federal management created by earlier coal leasing programs.

The precedent set by the negotiations between the (Western Interstate Energy Board) Coal Committee and the Interior Department have enjoyed an unprecedented, open cooperation. This cooperative atmosphere is the result of the following conditions:

1. For one of the few times involving a major energy-related program, a federal agency has fully recognized that the affected states are not just another interest group but in fact must be partners in the development and implementation of the federal coal program if the program is to succeed.

2. Both the Interior Department and the states recognize that each party has primary interests and responsibilities, e.g., the states are primarily responsible for coping with the social and economic consequences of federal coal development while the federal government has primary responsibility for insuring a fair return to the federal treasury for federal coal development.

... The Interior Department opened its decisionmaking process to full state participation by providing the Coal Committee with drafts of all major policy options papers, seeking state comments before decisions were made, permitting states to participate in critical decision meetings on the environmental statement and the regulations, meeting with the Committee both in the West and in Washington, D.C., and seeking state participation on technical working groups. Coal Committee members responded in kind with candid assessments of the department's proposals and warning of pitfalls in the program, meeting Inte-
From these documents, the Secretary and Under Secretary of the Interior made over hundred decisions about individual issues in order to frame a preferred program and alternative programs to be analyzed in the environmental impact statement.

A draft environmental impact statement was published on December 15, 1978. In a special effort to promote better understanding and more informed public comment on such a complex program and comprehensive environmental impact statement, the Department held informational meetings in twelve cities to prepare industry, the public, and state and local governments for participation in the formal public hearings on the program and statement which followed. Ultimately, the draft environmental impact statement and attendant public meetings and hearings resulted in nearly 900 policy comments and more than 400 technical comments requiring consideration by the Department. The final environmental statement produced by these efforts was published in April 1979. It met with praise from the Environmental Protection Agency, and the general conclusion was that it was a legally sustainable document.33

The culmination of this effort was the preparation of an extensive Secretarial Issue Document34 and a series of secretarial decisions announced on June 4, 1979.35 The result is a federal coal management program with progressive and unprecedented features for analyses of state coal policies, participating in DOI technical and policy groups on short notice, working within the department's often unrealistically tight time schedule for action, suggesting and accepting compromise on state input procedures, and keeping state governors appraised of developments so that when the need arose for gubernatorial-secretarial discussion to break a deadlock, action would be speedy.

*Western Interstate Energy Board, Annual Report 1978-79 (1979).*

33 "We believe that the preferred program represents a marked improvement in the development of a coal management program over previous efforts of the Department. In addition, the EIS itself sets an excellent example for others to follow in producing a quality analysis of a highly complex program of resources management." Letter from William N. Hedeman, Jr., Director, Office of Environmental Review, U.S. Environmental Protection Agency, to Guy R. Martin, Assistant Secretary for Land and Water Resources, U.S. Dep't of the Interior (May 1, 1979).

34 SID, COAL PROGRAM, supra note 28.

tures designed specifically to reverse the bleak history of past federal management and to respond to the growing energy demands of the future.

III. THE FEDERAL COAL MANAGEMENT PROGRAM

There are four major steps in the coal management program. The first step is BLM land use planning, where lands acceptable for coal leasing consideration will be identified in conjunction with other resource use decisions. Second, the Secretary selects leasing target levels for each of six western multi-state coal regions based upon goals prescribed by the Department of Energy. Third, coal activity planning is conducted, during which a schedule for coal lease sales in each coal region for the following four years is devised and analyzed in an environmental impact statement. Finally, the program sets out procedures for managing individual transactions.

A. Land Use Planning

The principal coal resource decision in land use planning is to determine where, from among the millions of acres of federal coal lands, increased coal production can be allowed to occur without unduly damaging agriculture, wildlife, recreation, or other resources and resource uses. These areas are identified by studying all federal coal lands and determining which are most suitable for coal development. Four planning elements, or screens, make up the basic process.

First, only a portion of the coal resources within a land use planning area will be high enough in quality or found in sufficient quantity to be economically feasible to mine at any time during the duration of the land use plan. Hence, the first step to be taken is identification of areas of high and moderate coal development potential, and only these areas are given further consideration for leasing. The major source of information for this step is prepared by the U.S. Geological Survey. However, the views of, and information supplied by, industry and other interested parties must also be considered in this identification process. Coal leasing will be restricted to Known Recoverable Coal Resource
Areas (KRCRA's) designated by the Geological Survey.\textsuperscript{38}

Second, some environmentally sensitive lands containing federal coal will not be considered for leasing if judged unsuitable. The twenty unsuitability criteria (e.g., bald and golden eagle nest sites) are to be applied to medium and high potential coal lands in the land use planning process to identify those areas with key features or resources, principally environmental, that make them unsuitable for all or certain methods of coal mining. Each of the twenty criteria is fully considered during the process. The responsible BLM official does not have discretion to refrain from applying any of the various unsuitability criteria, but does have authority to find exceptions in cases where coal production could proceed without damaging the features or resources protected by the unsuitability standards.

Prior to designating federal land unsuitable or adopting a land use plan that assesses land as unsuitable, the BLM and the Office of Surface Mining, Reclamation and Enforcement must prepare a detailed statement on (1) the potential coal resources of the areas, (2) the demand for coal resources, and (3) the impact of such designation on the environment, the economy, and the supply of coal.

Third, lands supporting resources or uses which are determined to be more important than coal production will not be leased. Although many major conflicts between coal and other resources will be addressed during the application of the unsuitability criteria, significant resource-balancing decisions will remain. These trade-offs will be weighed and resolved after application of the unsuitability criteria.

Fourth, where the federal government owns coal which underlies surface lands owned by ranchers or farmers, the coal will not be leased for surface mining without consent of the landowner. Where surface mining of federal coal would affect several landowners, leasing may not take place if these surface owners show a strong preference against coal development in the area.

\textsuperscript{38} A Known Recoverable Coal Resource Area (KRCRA) is an area which includes federal lands and which meets a minimum standard for recoverable coal deposits in accordance with accepted mining practices. The federal lands in a KRCRA are classified for coal leasing purposes. As of March 1978 approximately 18 million acres had been included in KRCRA's.
The local land manager determines each general area in which a significant number of qualified surface owners, as defined in section 714 of SMCRA, have expressed a preference against leasing. Where a significant number of qualified surface owners express a preference against surface mining of the coal, the Secretary will not lease that area unless there are no alternatives to meet the leasing targets. After completion of a land use plan in which a qualified surface owner's land is identified as acceptable for further consideration, the owner may file a written refusal to consent to leasing. This can result in the federal coal under that surface not being considered further for leasing during the life of the land use plan unless there is a change in surface ownership.

The land use plan that is published at the end of the land use planning process identifies the various public land resources and the mix of uses of those resources. Following application of each of the planning elements described above, the Department currently estimates that seventy-five percent of the medium and high potential coal areas will pass through the screening process and remain in the plan as areas acceptable for further consideration for coal leasing in the subsequent activity planning stage.

B. Activity Planning

The purpose of activity planning is to select, from the areas designated in the land use plan as acceptable for further consideration, a number of tracts sufficient to meet a regional leasing target (discussed in section C below). Two consecutive processes make up this stage of planning. The first stage involves tract delineation and industry expressions of interest. This expression of interest will take place in each of the different land use planning areas. The second stage involves tract ranking, selection, and scheduling, and will be conducted over an entire coal region encompassing many land use plan areas.

Federal/state regional coal teams have been established for each of the major multi-state coal regions. Each team consists of the BLM State Director and the Governor from each state within the region, or their representatives, and a chairperson appointed by the BLM Director. The team will (1) review all tract delineation

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tion and site-specific analysis work, (2) be responsible for the tract ranking, selection, and scheduling process, and (3) serve as the forum for federal/state coal management discussions. The ultimate authority for the selection and scheduling of tracts for lease sale, however, will reside in the Secretary.

1. **Tract Delineation and Industry Expression of Interest**

In delineating preliminary tracts, the following factors are among those considered by the respective coal teams: (1) expressions of interest from industry, (2) technical coal data, (3) marginal economic recovery calculations and logical mining units, (4) surface ownership, and (5) regional leasing targets and guidance from the regional coal teams.

Although preliminary tract delineation will be done by the land management agencies, the coal industry will be invited to submit expressions of interest, and those expressions will be a critical element in the decisions made by the coal teams on the delineation and subsequent ranking of tracts.

2. **Regional Tract Ranking, Selecting, and Scheduling**

The nation has been divided into large (usually multi-state) coal regions for the purpose of developing regional leasing targets. The Department of the Interior, in close cooperation with all involved surface management agencies and the affected state and local governments, will rank all delineated tracts within a coal region, as the need arises.

Concurrently, regional environmental impact statements will be prepared which analyze both the site-specific and intraregional cumulative impacts of the proposed leasing actions. The statements will include analyses of mine plans, coal lease exchanges, regional leasing targets, and proposed selection of tracts to be leased as well as other federal coal management options. The statements will cover lease sales for a four-year period.

C. **Setting Regional Leasing Targets**

The Secretary's June 1979 decisions included decisions on regional leasing needs. Because circumstances determining the nation's need for coal may change, coal forecasts are often not precise enough to permit the competitive leasing component of the
coal management program to function continuously on the basis of a single assessment of leasing needs. Therefore, a periodic reassessment of coal needs has been incorporated as an integral part of the program. The reassessment of leasing needs will normally be conducted in a process which merges regional production goals established by the Department of Energy under section 303 of the Department of Energy Organization Act of 1977 with advice from state and local governments, the coal industry, and other interests to determine regional leasing targets. The regional leasing targets will then be consulted after tracts are selected by the regional coal teams to ensure that enough tracts are made available to meet target production levels.

D. Pre-Sale and Sale Procedures

From the time a tract is scheduled for sale at the conclusion of activity planning until a lease can be issued, a series of actions is required to meet various statutory and administrative requirements. These actions include consultation with affected states and Indian tribes, the certification of surface owner consent, a determination of fair market value on which to judge bids, and a pre-sale calculation of maximum economic recovery to fully inform bidders.

IV. IMPORTANT DIFFERENCES IN THE NEW PROGRAM

This brief summary of the new federal coal management program necessarily omits many features and details which are available in more complete statements concerning the program and the regulations governing it.8 However, full understanding of the program is not to be found by examination of its complex details, but is found in terms of its significant differences from past attempts at coal leasing by the federal government. These distinctions are complex and demanding on all parties. Yet, it is this group of new policies and procedures which is most likely to ensure success where previous leasing efforts have failed.

No departure from past policy and procedure is more fundamental or significant in this regard than the reliance of the new

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program on land use planning as the basic determinant of prospective coal leasing areas, rather than industry "nominations," which had uniformly been the trigger for leasing actions in the past. Under the new coal program, leasing will be a consequence of the same BLM resource management planning system which controls all other federal resources, uses, and interests.

By incorporating prospective coal development in the planning system, conflicts between coal development and other resource uses can be identified and resolved early by a mechanism that equally considers all important and legitimate interests in rational fashion, rather than by placing individual coal companies on one side and the other users, or "public" interests, which have traditionally competed with mining (e.g., grazing, farming, recreation, wildlife) on the other, as the old nominations systems did. Many differences can be resolved early in the new process, without conflict, but even those which require hard multiple-use choices later are settled in a more balanced and open program which tends to create trust and support for all uses, including coal development.

No other facet of the new program puts greater demand on the coal industry, because the companies must now acquire skill and power in a multiple-use planning system in which they have rarely before been required to participate. The expertise and advocacy of the coal industry is essential for the balanced multiple-use planning system to function properly. The companies must meet this challenge.

The second critical difference in the new program is the use of the "unsuitability criteria," near the beginning of the land use planning process, as a new and unique element designed to avoid last minute conflicts over specific lease sales. As previously discussed, after all coal of high and moderate development potential has been identified, a series of criteria for determining which lands are unsuitable for surface coal mining is applied. These criteria include many of those that would ultimately be applied by the state or federal regulatory agencies in the processing of applications for mining permits. No federal land will be passed through the land use planning stage for further consideration as

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39 SID, Coal Program, supra note 28.
surface mining property if it is determined that the land clearly would be found unsuitable during the mining permit approval process.

In addition to improving the efficiency of federal management by bringing focus to areas most likely to be leased, industry is served by the early identification of areas where development cannot occur (e.g., critical wildlife habitats), thus avoiding false starts costing both time and money. All parties gain a more accurate sense of the likelihood that a given area will progress all the way through tract delineation and lease sale to production.

The Department has made substantial effort, by way of the field testing described earlier and in the undertaking of other studies, to ensure that the unsuitability screen remains beneficial to the process of identification rather than unnecessarily eliminating coal which can and should be developed. The Department will continue to monitor the application of unsuitability criteria, and should it be shown that any of the criteria is excessively restrictive, the ability to modify it is reserved.

Another difference in the new program is its orientation toward achieving specific energy production goals. To accomplish this objective, the new program provides that federal coal reserves will be leased in amounts calculated to make a specific contribution to identified national energy objectives and regional coal production demands. Such a policy corrects a key shortcoming of the program, proposed in 1975, which neither supported nor limited coal leasing decisions in response to national or regional energy demands. In the new program, the Department of Energy and the Department of the Interior will solicit the coal industry in an attempt to obtain other information to formulate initial demand figures, which will then be open to public comment. A decision will then be made to lease the specific amounts of federal coal needed to meet the publicly developed energy objectives.

The theme of establishing specific and dependable leasing objectives is carried to the regional level by the setting of leasing targets to be accomplished over a four-year period. These multi-state, regional targets are to be covered by a single environmental impact statement covering all lease sales in the region over the

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40 Id.
four years. The limits imposed by setting specific objectives will prevent a repetition of the high ratio of leasing to production which existed in the 1960's and 1970's. Such limits will also ensure a fair return to the federal government for its coal by not overloading the market and, perhaps most importantly, will reduce state and local planning burdens by focusing attention on the areas most likely to be ultimately leased and developed.

This approach of setting *regional* leasing targets considers coal resources and the impact of their development as they occur naturally, rather than by the artificial boundaries of BLM District or state offices. For example, leasing which occurs in Montana may have its most profound impact in Wyoming. The new system will facilitate planning for such circumstances, as well as allowing coal leasing to occur wherever it serves the greatest need in the entire region, rather than considering each state alone. The four-year cycle for leasing lends predictability and planning efficiency to the entire process.

Two important policy shifts are among the most significant changes in the new program. Both policy changes relate to the formidable political opposition articulated by the western states, the agricultural and farming interests, and environmentalists to the 1975 proposed leasing program. It was felt that overcoming such opposition would be essential to the long-term success of the coal management program.

First, the program formulated by the Carter Administration supports and relies upon the series of congressional acts developed in the 1970's to guide coal leasing. Earlier administrations had taken an adversarial position on many of these laws, twice vetoing SMCRA and once vetoing FCLAA. Taking such positions while trying to establish a coal management program had proven to be administratively difficult, confusing to the public, and offensive to many western groups who felt that their interests were represented by such laws. The Administration's declaration that the program would be based entirely on the new laws provided a clear signal upon which the states and other interested parties could rely. Moreover, they were assured of a concentration on the development and implementation of the program itself, without the distraction or inefficiency of continued congressional conflict.

Equally important, the new program has devoted itself, both in its development and implementation, to public participation
and a thoroughly open decisionmaking process. From early in the development of the program, state governments were offered, and they accepted, an unprecedented, extensive role in policy formulation. The results, both in program content and state support, are in striking contrast to earlier federal coal leasing attempts.41

State governments will continue to participate fully as actual program decisions are made on where and how much federal coal should be leased. The basic mechanism for such participation is the regional coal team. This innovative concept gives the state a voice at the field decisionmaking level by which it can express its views, thus guaranteeing to the states an input to the Secretary on every leasing decision. Such participation by governors and local government officials in federal leasing decisions minimizes criticism that federal leasing is insensitive to local social and economic questions, assures maximum possible local and state support for leasing decisions, and reduces conflict between individual mining companies and local officials.

Public and industry participation has been carefully planned as well. All those wishing to take part will have access to the data they need in order to evaluate land use planning and activity planning efforts properly. At each step of the decision process published documentation will be available for public review and comment. One of the most consistent public complaints about prior programs had been the failure of the Department to fully document interim data analyses and managerial actions which led to the final leasing decisions.

Taken together, these differences in the current coal leasing program have had a dramatic effect not only on the content of the program, but also on its public acceptance and political support. Implementation of the program is actively proceeding, and while the program is not free of legal problems, it is remarkably free of broad institutional challenges. The nature of the legal, administrative, and political problems which must still be overcome is the

41 See, e.g., Letter from Governor Scott Matheson, Governor of the State of Utah, to Secretary Cecil D. Andrus (March 4, 1979).
subject of the remainder of this article.

V. Legal Issues Affecting Implementation of the Program

The new federal coal management program remains free of the sort of debilitating litigation which immobilized past federal coal leasing efforts and which is virtually endemic to modern federal energy programs. The basic legal issues faced by the coal program were exhaustively set out by Interior Solicitor Leo M. Krulitz in a paper he presented to the Rocky Mountain Mineral Institute in July 1978.42 Since then, substantial progress in resolving the legal conflicts presented by the program has been made, and the current legal issues raised are of a narrower and less threatening nature to the successful renewal of major federal coal leasing activity. Those issues which bear significantly on the basic establishment of the new program are discussed below.

First, the injunction issued by the United States District Court for the District of Columbia in Natural Resources Defense Counsel v. Hughes43 is no longer in effect. When the Secretary made his program decisions on June 4, 1979, that injunction dissolved by its own terms. Since then, the Department has not been enjoined from issuing, or taking any steps toward issuing, new competitive federal coal leases. There is no current litigation challenging the adequacy of the Department’s environmental impact statement on the new program, and the Department does not expect such a suit to be filed. The only pending “programmatic” litigation that is related to coal consists of two suits, to be heard in the spring of 1980, which challenge those portions of the new program’s regulations44 that are chiefly derived from SMCRA.

In National Coal Association v. Andrus,45 plaintiffs challenge the regulations which allow exchanges under SMCRA of federal coal lands and federal coal leases for private lands and federal leases in alluvial valley floors. They also challenge the regulations

42 Krulitz, supra note 20.
establishing the unsuitability criteria, also promulgated under the authority of SMCRA. The suit did not request injunctive relief against the Department to prevent it from continuing to implement the federal coal management program in the interim.

In its decision, the District Court upheld the adequacy of the rulemaking record and struck no body blow to the concepts under which the federal lands review is being conducted. It did strike aspects of the criteria on floodplains (the burden of proof to show likelihood of damages) and municipal watersheds (the concurrence of the local governing body). More importantly, it directed the inclusion of the exemptions provided by the unsuitability provisions of SMCRA to the wildlife criteria, some of which the Department had regarded as mandatory criteria allowing no exemptions.

The District Court thus held that section 522 of SMCRA amended the Endangered Species Act with respect to surface coal mining operations. This and several other holdings are now on appeal to the Court of Appeals for the District of Columbia Circuit. Several other adverse holdings were not appealed, and the Department will soon propose changes in the unsuitability rules to respond to these chiefly technical deficiencies in the current rules. The decision, if sustained on appeal, would also serve to free additional lands from being assessed as unsuitable for some or all kinds of surface mining operations, and would allow those lands to be considered acceptable for consideration for leasing in the Department’s activity planning under the new program. The District Court also might exempt some existing leases from the adverse application of the unsuitability criteria.

Another problem confronting the Department as it implements the new leasing program is the potential rights to coal leases created by the 176 preference right lease applications (PRLA’s) now pending. In his initial decisions on the overall program, the Secretary directed that all pending PRLA’s would be adjudicated in conjunction with the ongoing land use planning processes in the areas where the applications were filed. The

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45. 43 C.F.R. §§ 3461.0-3 to 3461.6 (1979).
deadline for rejection or issuance of a lease was to be December 4, 1984. Several court actions have affected the viability of this directive.

On November 9, 1979, the Court of Appeals for the District of Columbia Circuit decided the case of Natural Resources Defense Council, Inc. v. Berklund, the generic challenge to the manner in which the Department of the Interior adjudicates and issues preference right coal leases. The court of appeals affirmed the decision of the district court, which had held that the Department's 1976 regulations, defining the term "commercial quantities" of coal for purposes of determining a lease applicant's qualification for a lease, stated the lawful and proper statutory test. The court of appeals also affirmed the district court's holding concerning the manner in which the Department's obligations to comply with NEPA are to be coordinated with the adjudication of PRLA's. Because the Department had based its regulations for the adjudication of PRLA's on the ruling of the district court, these regulations will not have to be revised in any way in order to conform with the decision of the court of appeals.

In addition, on June 15, 1979, the United States District Court for the District of Utah decided the case of Utah International, Inc. v. Andrus, in which plaintiff sought a court order compelling the Department to issue a preference right coal lease. In that case, action on plaintiff's PRLA had been suspended by the general moratorium on coal leasing activities imposed in 1971 and made formal in 1973. Relying on Natural Resources Defense Council v. Berklund, and finding that the Department's delay in adjudicating the lease application had not been unreasonable, the district court held that plaintiff's PRLA was subject

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49 43 CFR §§ 3430.0-1 to .7 (1979).
51 Memorandum from Assistant Secretary to Secretary (Feb. 8, 1973) (approved Feb. 13, 1973).
to the Department's 1976 "commercial quantities" regulations and that plaintiff's suit was premature and required dismissal for failure to exhaust administrative remedies. The administrative remedy in this situation was adjudication of plaintiff's right to a lease under the 1976 regulations.\textsuperscript{64}

As a result of the Berklund and Utah International decisions, the Department is proceeding to carry out the Secretary's directive on PRLA's. The United States Geological Survey is now evaluating "initial showings" submitted in response to the requirements of those 1976 regulations,\textsuperscript{65} and the BLM is scheduling actions on the environmental studies necessary to adjudicate the potential rights to leases.

The third class of legal issues arising in implementation of the new coal management program involves the enforcement of the diligence obligations applicable to leases issued before enactment of the FCLAA. In brief, the regulations require all holders of existing leases to achieve diligent development by producing two and one-half percent of the lease reserves (or logical mining unit reserves) by June 1, 1986. The lessee also has the obligation to continue production of one percent of the lease (or logical mining unit) reserves in each lease year following achievement of diligent development.

In Mobil Oil Co. v. Andrus,\textsuperscript{66} plaintiff argues that these 1976 regulations are inapplicable to its lease, which was issued in 1971, and that the lease itself gives Mobil the election whether to produce or not in any given lease year until its lease would be subject to readjustment in 1991. These issues are of substantial importance to enforcement of the diligence regulations on pre-1976 leases because of the large number of leases issued on the same lease form as Mobil's lease. These leases, chiefly issued between 1964 and the imposition of the leasing moratorium in mid-1971, contain a substantial share of the lease reserves not embraced in

\textsuperscript{64} The district court's decision was fully consistent with the decision of the Court of Appeals for the District of Columbia Circuit in Kerr-McGee Corp. v. Andrus, 574 F.2d 637 (D.C. Cir. 1978), cert. denied, 99 S. Ct. 217 (1978), in which the court of appeals dismissed for failure to exhaust administrative remedies a phosphate preference right lease applicant's suit to compel issuance of leases.

\textsuperscript{65} 43 C.F.R. § 3521.1-1(b) (1978), recodified at 43 C.F.R. § 3430.2-1 (1979).

\textsuperscript{66} No. C-79-110 (D. Wyo., filed April 25, 1979).
any mine plan and, as such, could have a substantial effect on the levels of new leasing needed to reach the specified production levels. The *Mobil* case itself was settled, however, prior to decision in the District Court. Mobil qualified for and received a grant of a five-year extension to the regulatory period for the achievement of diligent development as provided for in the Department's May 1976 diligence regulations, discussed further below.

Even as Mobil was filing its lawsuit, the Department was investigating ways to assure that all holders of pre-1976 leases understood the 1976 regulations and its intent to enforce them. In 1977, the United States Geological Survey informed these lessees of the estimated tonnage of coal existing in the lease or logical mining unit, and thus by implication the tonnage of coal that would have to be produced to meet the diligent development and continued operation obligations. Even then, the Department knew that many lessees either did not understand the obligations or felt that the regulations might not apply to them. In the June 4, 1979 program decisions, the Secretary concluded that all doubt about the lessees' intent to observe the diligence obligations should be resolved before enforcement of those regulations began in 1986 on non-producing leases. He directed the Department to contact all lessees and request them to agree to revisions of the leases. The revisions would remove any potentially inconsistent lease production obligations and substitute for them the express incorporation of the regulatory diligence requirements.

Those holding leases containing the largest share of lease reserves not in mine plans will be the first contacted. The leases involved in this effort, together with the other leases issued at the same time for which there are already approved mine plans, will cover ninety-six percent of the recoverable lease reserves.

Numerous other legal issues exist as well, including those regarding the adjustment of terms of existing leases, the exchange of existing leases (not in alluvial valley floors) for other federal coal lands, and the many legal implications of section 714 of SM-CRA\(^\text{561}\) relating to the leasing of federal coal where the surface is privately owned. Although important, none of the legal issues in

these areas substantially affects the general implementation of the new leasing program.

VI. IMPLEMENTATION OF THE FEDERAL COAL MANAGEMENT PROGRAM

Implementation of the new federal coal management program must be accomplished in the presence of several acknowledged difficulties. These include: the complex nature of the program itself; the legal problems previously summarized; the demands on federal land managers, industry, the states, and the public of an extremely tight schedule for the early sales in the program; the reliance, for early sales, on land use plans which are admittedly less adequate than others which will follow; the uncertainty created by the possibility that the Congress might again seek to change the basic laws governing coal management; and the ever present risk that the coalition of interests now supporting and diligently working on the program will begin to develop conflicts. Fortunately, the vital signs regarding these possible problem areas are almost all encouraging, and the prognosis is very good as of June, 1980.

Actual implementation of the program began on the same date that the Secretary announced his program decisions, June 4, 1979. At that time, competitive lease sale dates were announced in four separate regions:

<table>
<thead>
<tr>
<th>Region</th>
<th>Sale Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Green River-Hams Fork</td>
<td>January 1981</td>
</tr>
<tr>
<td>Southern Appalachian</td>
<td>June 1981</td>
</tr>
<tr>
<td>Uinta-Southwestern Utah</td>
<td>July 1981</td>
</tr>
<tr>
<td>Powder River</td>
<td>April 1982</td>
</tr>
</tbody>
</table>

These sales obviously offer the first demonstration and test of the new program, and as of December, 1980 each sale was on schedule. The progress reflects some managerial problems inherent in the tight schedule, however. In all but the Powder River region, the coal lands being considered are confined to those that successfully cleared the Department's field testing of the unsuitability criteria completed while the injunction in Natural Resources Defense Council v. Hughes was in effect. These areas are of limited geographical extent. Additional planning amendments
will be required in the Green River-Hams Fork and Uinta-Southwestern Utah regions before the majority of coal lands in those regions can be considered in the activity planning phase of the program.

Leasing targets are being developed in each region based on the best information available, and public comment will be solicited in each case to refine the targets to the greatest extent practicable. The targets, and their status in the process as of December 1980, are: Green River-Hams Fork, 450 million tons (final target adopted by Secretary); Uinta-Southwestern Utah, 322 million tons (approved by the regional coal team); Southern Appalachian, 105 million tons; Powder River, 776 million tons (tentative target set by the Secretary on June 4, 1979). The Department of the Interior has begun intensive processing of the outstanding PRLA's in these regions, but it may be a year or two before the amount of coal to be recovered under them and the timing of its production can be reasonably estimated.  

During development of the leasing targets for the Southern Appalachian and Uinta-Southwestern Utah regions, it became apparent that the Department of Energy production goals for the regions were not as realistic as had been anticipated. Problems in the assumptions used in the modeling, and differences between the boundaries of the regions used by the Department of Energy for setting production goals for all federal and non-federal coal and the regions used by the Department of the Interior for setting leasing targets for federal coal, have caused more emphasis to be placed on the leasing target analyses of the regional coal teams than was originally planned. The two Departments have been studying these problems, and future runs of the energy models of the Department of Energy should produce more useful estimates for the final sale decisions.

The first three regional efforts will result in the leasing of

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67 There are 26 PRLA's containing 297 million tons of recoverable reserves in the Green River-Hams Fork Region, 30 PRLA's containing 475 million tons recoverable reserves in the Uinta-Southwestern Utah region, and 60 PRLA's containing 2,350 million tons of recoverable reserves in the Powder River region. Processing of the PRLA's is scheduled for completion by 1984.

substantial tonnages of coal and will give the Department of the Interior the operational experience necessary to judge the program, spot any inherent flaws, and take corrective actions. It is expected that far more coal lands than are needed for sale will be available for activity planning as the result of new planning amendments started after adoption of the program; that a new generation of more sophisticated production goals will be available for setting the leasing targets; and that more will be known about the potential effects of PRLA’s than is now the case.

Beyond the first set of regional lease sales, which the Department of the Interior regards as a “start-up” phase of the long-term program, a different set of factors will influence the success of federal coal management. While enough coal can be made available during this start-up period to satisfy the production needs of the nation for the late 1980’s without compromising the integrity of the system, a new generation of land use plans for the western coal areas, prepared to meet the full standards of the Federal Land Policy and Management Act of 1976 and other recent enactments involving natural resources, will begin to reach completion in 1984. Until then the BLM will be amending existing land use plans to bring them up to the minimum applicable standards.

The Department of the Interior is dedicated to making enough coal available to meet the nation’s coal development needs and has scheduled planning which will enable federal resources to serve any demands that arise during the start-up period. The concerns of individual companies for specific tract locations and for the timing of sales are much more intricate problems for the new competitive leasing system. Many companies have been acquiring rights appendant to western coal over the past years. These rights include fee surface ownership or surface leases over federal minerals, control of access routes surrounding federal coal, and alternate sections of private coal acquired from railroads in areas where federal lands and private interests are arranged in a checkerboard pattern. Each company wants the federal minerals associated with its other rights offered as soon as possible so that it may compete for the available contracts. While this may be a reasonable business strategy on the company’s part, it often either conflicts with the legitimate interests of other resource users or creates inequitable competitive advantages. Because the goal of the Department is to offer the best
coal, preferably coal for which there will be competition and minimal environmental impact, the conflict is clear. Constant pressure to lease new areas is to be expected, whether or not there is enough coal already leased in any area to meet actual end use demand. Those persons following the progress of the new program should distinguish between industry-wide requirements for leased reserves calculated to meet national energy needs and the desires of individual companies for immediate leasing of tracts over which they have a bidding edge.

The resolution of such differences depends on the degree to which coal companies will help supply and analyze coal reserve information early in the process and subsequently advocate the use of specific lands for coal development as multiple-use decisions are made. While the Department realizes that certain information of commercial value, particularly private drill records and contract terms, must remain confidential, all other useful coal resource information must be provided and discussed openly along with information from other competing resource users.

At present, many interests are more skilled and experienced in the federal land use planning process than the coal industry. This gap must be closed for the program to succeed, and fortunately, indications of industry response have been favorable. The Department has sponsored numerous workshops to promote understanding of the planning process used by BLM, and industry participation was strong.

In the predominantly agricultural western economy, where water supplies are limited and the potential for socio-economic disruption is significant, coal development is often viewed as a serious threat to the interests of other resource users. The people living in the West legitimately seek assurance that leasing decisions incorporate proper consideration of resource trade-offs, that potential environmental and socio-economic impacts be identified, and that all voices have a chance to be heard. Although most westerners are clearly willing to see the energy resources of the region developed for the good of the nation, they deserve to be assured that their sacrifices are necessary, scaled to the real need, and not disproportionate compared with those of the rest of the nation.

The active participation of governors or their representatives on each regional coal team provides a major assurance that local
concerns, particularly those social and economic in nature, receive proper attention. Much of the success of the new coal management program will turn on the maintenance of this working relationship. Although it is not expected that the federal and state interests will always coincide, joint participation should minimize the possibility that disagreements will become acute.

Three technical issues relating to implementation of the program are of special importance to its success. These are: the long-range effect of unsuitability criteria on the availability of federal coal, the determination of the minimum acceptable payment which will be required for federal coal leases, and the potential for political controversy which could develop in 1986 when diligent development requirements come due for all leases issued prior to August 4, 1976.

A. Unsuitability Criteria

As earlier discussed, the unsuitability criteria were adopted by the Secretary on the basis of field tests performed in areas covered by existing BLM land use plans. On the average, less than ten percent of each area reviewed was eliminated under the criteria, and those who were concerned that the criteria might disqualify an unacceptably high proportion of coal from further consideration were somewhat mollified. Still, because uncertainties remain, the Department must closely monitor the balance between availability of adequate federal coal and protection of the environment. Until there is more widespread managerial experience with the criteria, the representativeness of the test areas that were used will be indeterminable. In his June 4, 1979 decision the Secretary eliminated some of the draft criteria, modified others to tighten them, and called for development of three new criteria. The new criteria concerning air quality, wetlands, and sole source aquifers have been drafted and are being field tested at this time. On all of these counts, the Department sees a critical need to continue monitoring the implications of the unsuitability criteria and to continue to view them as perfectible rather than final.

B. Fair Market Value

The minimum payment accepted from industry for federal leases has been a source of controversy for many years. In the
early 1970's there were allegations that the federal government had been giving away its coal resources. The FCLAA set the minimum royalty rate for surface mineable coal at twelve and one-half percent. This was a substantial increase over the older lease royalty rates and was higher than the prevailing private rates. In addition, the Act required the Department of the Interior to offer no lease for less than its fair market value.

Because the expanse of federal reserves and their locational advantages place the government in a powerful market position, the Department of the Interior has been the price setter for western coal. The Department has found itself in the center of a controversy as to whether its prime responsibility is to maximize the return to the Treasury or to exert a downward pressure on current and future coal prices in the West. A series of studies on this issue was completed in May 1980. As a result a new fair market value policy designed to steer a course between maximizing economic rent and satisfying legal obligations has been instituted.

C. Diligent Development of Federal Coal Leases

Diligent development provisions of the FCLAA require the achievement of timely coal production under federal coal leases. Leases issued subsequent to August 4, 1986 allow ten years from the date of lease issuance for the achievement of diligent development. Congress clearly intended to prevent companies from holding federal coal leases for speculative purposes and, as previously described, the Department intends to enforce the provisions. Analysis of non-productive federal leases reveals that a great many areas are not covered by mine plans on file, and thus have little realistic chance of being diligently developed by June 1, 1986. Some among the 300 federal coal lessees who have failed to file mine plans may have serious intentions of coal development but nonetheless will risk lease cancellation should they fail to commence production by 1986.

As currently written, the federal coal management regulations give the Secretary of the Interior authority to extend the diligent development period under limited circumstances. The Department is preparing guidelines that will provide a more objective basis for the Secretary's determination whether to grant an extension to the diligent development period under the discretionary provisions of the regulations. The policy will encourage
production from existing lease extensions where additional time is needed to complete development, incorporate environmental review standards, and threaten cancellation of those leases on which no attempt to conduct active mining operations has been made. By spearheading an analysis of issues likely to emerge between now and 1986 regarding the adjudication of existing leases, the Department hopes to provide lessees with a clear indication of how they can expect the Secretary to respond to the question of diligence extensions at a later time.

The Secretary will be facing a series of difficult choices between now and the June 1, 1986 date when most existing federal coal leases will be required to have achieved diligent development. Whatever the specific outcome of policy analysis currently under formulation in the Department, the overriding objectives will be twofold: to encourage rational coal development on federal lands and to prevent speculation at the public’s expense. Insofar as these conflicting goals can be resolved, the Department will play an important role in the nation’s overall commitment toward using coal as a means of decreasing our dependence on foreign energy supplies.