

UNITES STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240
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To: All State Directors
From: Assistant Director, Minerals, Realty and Resource Protection
Subject: Policy on Conflicts between Coal Bed Methane (CBM) and Coal Development

Issue:

Conflicts between federal oil and gas and federal coal lessees have historically involved oil and gas resources contained in reservoirs much deeper than the coal. When faced with this type of conflict, the lessees have still been able to develop both resources without significant loss of either resource. However, because of the recent interest in CBM development, we are faced with a new conflict involving oil and gas lessees who produce or want to produce CBM from coal that is expected to be surface-mined by a coal lessee. In this situation, if the coal is surface-mined before the CBM is extracted, the CBM is vented. Conversely, the viability of the coal resource is dependent on systematic development within compulsory diligence requirements, and coal resources may be lost if development of the CBM resource significantly delays coal mining.

A development conflict between coal and CBM could prevent the maximum recovery of either resource. Therefore, the Bureau's policy is to optimize the recovery of both resources and ensure the public receives a reasonable return. If the lessees recover the resources in an optimally cooperative way, they will be able to recover more of the resources than if they produce each resource without regard for the other. Therefore, BLM's policy will be to encourage agreements between lessees or use BLM authority to minimize loss of publicly-owned resources. This IM establishes BLM's policy to optimize benefits to the public and establish procedures to address CBM and surface-mined coal development conflicts.

Policy/Action:

To the greatest extent possible, BLM will work to achieve three principal goals in resolving development conflicts between coal lessees and oil and gas lessees. The three goals are:

BEFORE THE
OIL CONSERVATION DIVISION
Case No. 12734 Exhibit No. A-9
Submitted By:
Richardson Operating Company
Hearing Date: November 11, 2001

- Protect the rights of each lessee under the terms of its lease, the Mineral Leasing Act and the implementing regulations, including those concerning conservation of natural resources.
- Optimize the recovery of both resources
- Optimize the return to the public while protecting public safety and the environment and minimizing impacts on local communities.

Implementation:

The BLM will achieve these policy goals either by facilitating an agreement between the lessees or by exercising authorities provided in the leases and regulations, as described below. This policy will not diminish the Secretary's authority to manage the public lands in accordance with all appropriate statutes.

- The BLM's preferred action is to encourage and assist coal lessees and oil and gas lessees in their efforts to reach an accommodation agreement independently which will achieve the goals of this policy. The BLM should facilitate and support the lessees' efforts to reach such an agreement. If both lessees request it, BLM will "review" the accommodation agreement to ensure it complies with lease terms, regulations, and this policy. The BLM will notify the lessees if the accommodation agreement conflicts with lease terms or regulations.

Alternatively, the parties to the accommodation agreement may request BLM "approval" of the agreement. The BLM may approve a cooperative development agreement between the lessees if the agreement ensures conservation of the resources and is in the public interest. The Regional or Field Solicitor should review the agreement before approval.

- Even though BLM may review or approve an accommodation agreement, BLM retains the right to take any additional action described below to ensure optimum recovery of the resources.
- Where BLM determines that an imminent loss of some or all of the CBM resource may occur as a result of conflicts between CBM and coal production, the BLM will consider requests from oil and gas lessees for royalty reductions to encourage the greatest ultimate recovery and to conserve the resources.
- If the conflicting lessees cannot reach an agreement or the agreement conflicts with BLM's policy objectives, BLM may use all pertinent lease terms and regulations to optimize recovery of both resources. Federal laws, regulations and lease terms applicable to federal mineral development provide authority to the Secretary, upon determination that it is in the public interest, to regulate the development of leased resources, to conserve natural resources, to encourage the greatest ultimate recovery, and to protect the

interests of the United States. Sections 17 and 39 of Mineral Leasing Act give BLM authority to require cooperative development and suspend operations of oil and gas lessees, respectively. Lease provisions and regulations allow BLM to direct the rate of oil and gas development (43 CFR 3162.2, Sec. 4 of the standard oil and gas lease form, and certain provisions of the model unit agreement). For coal, BLM has the authority to suspend lease operations (Sec. 39 and 43 CFR 3483.3), to ensure Maximum Economic Recovery (MER) (43 CFR 3484.1(b)(1)) through approval of a Resource Recovery and Protection Plan (R2P2) (43 CFR 3482), and to order immediate cessation of mining operations for non-compliance with the regulations or lease terms (43 CFR 3486.3). These laws and regulations give BLM the authority to carry out this policy through approval of lease development activities and enforcement of lease terms.

Use of Lease Provisions and Regulations:

We cannot develop guidance that can explicitly address every situation. Therefore, BLM must be flexible when addressing unforeseen situations. The BLM personnel are expected to use appropriate judgment when applying this policy. To optimize resource development, BLM may:

- Direct rates of CBM exploration and development to maximize CBM gas production prior to coal development, consistent with existing regulations and lease terms;
- Use its lease and regulatory authority over conventional oil, gas or CBM development, as appropriate, to:
 - ▶ Direct rates of production,
 - ▶ Issue orders to produce or plug wells that are not producing in paying quantities. Leases without production in paying quantities may be terminated if the existing wells are not returned to production in paying quantities, and
 - ▶ Issue suspensions and orders to plug and abandon producing wells as mining approaches;
- Use regulatory authority to grant CBM royalty rate reductions to promote the greatest ultimate recovery and conserve the CBM resource;
- Make assessments for any avoidable loss of resource, if the lessee does not timely develop CBM in advance of mining, where it is economically feasible to do so;
- Direct the coal lessee to analyze all possible mining plans to allow optimum recovery of CBM and deeper hydrocarbons, as part of the R2P2 approval;
- Make assessments for avoidably bypassed coal when provided for by a stipulation in the lease; and

- Suspend the coal lease or coal operations to allow optimum recovery of CBM.

The BLM will also consider financial impacts to the Federal Government when deciding if any of the actions outlined above are in the public interest. The BLM may consider an offer from a lessee to indemnify the Federal Government from claims by the conflicting lessee before taking any of the actions described above.

Alternatives for Future Leasing:

To the greatest extent possible, every new coal or oil and gas lease should contain reasonable stipulations that will facilitate resolution of future development conflicts. These stipulations should:

- Clarify that the lessee's right to develop its minerals may be junior to existing development rights for other minerals on the same lands;
- Require that BLM approve all operations or agreements that would impair the recovery of other mineral resources;
- Require that the resource be produced, to the greatest extent possible, in a manner which facilitates the optimal recovery of all resources;
- Indemnify the Federal Government against liability for interference with mineral production from a conflicting lease.

Signed by:
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