COALEX STATE INQUIRY REPORT – 154
January 1990

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TOPIC: STATE PERMITTING ON FEDERAL LANDS

INQUIRY: What caselaw, preambles, etc. are available which discuss a state's right to issue permits for coal mining operations which were conducted on federal lands prior to the approval of the state SMCRA regulatory program?

SEARCH RESULTS: Research was conducted using the COALEX Library and other public materials available in LEXIS. No federal or state cases were identified which address the specific issue of this inquiry. However, a related, Supreme Court, case was identified which ruled on the federal pre-emption of a state's permitting authority with regard to mining limestone on federal lands. Also discussed below is a Court of Appeals case which rules on the applicability of SMCRA to underground mining operations located on federal lands and three relevant decisions from Interior's Office of Hearings and Appeals (OHA). The Federal Register preambles included discuss state and federal responsibilities for permitting on federal land. Copies of the items listed below are attached.

FEDERAL CASE LAW

CALIFORNIA COASTAL COMM., et al. v GRANITE ROCK CO., 480 US 572 (1987).

"This case presents the question whether Forest Service regulations, federal land use statutes and regulations or the Coastal Zone Management Act of 1972...pre-empt the California Coastal Commission's imposition of a permit requirement on operation of an unpatented mining claim in a national forest."

In reversing the Court of Appeals, the Court ruled that "It is impossible to divine from [the regulations indicated above], which expressly contemplate coincident compliance with state law as well as with federal law, an intention to pre-empt all state regulation of unpatented mining claims in national forests."

RAMEX MINING CORP., GABRIEL ENERGY CORP., & THE STEARNS CO., INTERVENOR, v WATT, 753 F2d 521 (6th Cir 1985), cert. denied 106 S Ct 271 (1985).

In each of these two cases a coal mining company proposed to mine coal under the surface of land owned and maintained by the federal government as forest land. The mining companies claimed a valid royalty lease of the mineral estate. Each mining company sought a declaratory judgment that they were entitled to mine coal under the federal lands. The Court of Appeals affirmed the District Court's ruling that (1) the proposals "to mine beneath federal national forest lands, with the conceded attendant effects on the surface of those lands, fits" the definition of surface mining in the Act; and (2) the "takings claim was not ripe for adjudication" since OSM had not yet ruled on the questions of plaintiffs' "valid existing rights".

OHA DECISIONS

GABRIEL ENERGY CORP. v OSM, 105 IBLA 53, IBLA 86-1422 (1988).

OSM believed that Gabriel Energy's permit, issued by the State of Kentucky, was "inadequate authority" for mining in the Daniel Boone National Forest. Gabriel Energy voluntarily discontinued its operations pending a meeting with OSM, which was "memorialized" in writing, and instituted proceedings in the U.S. District Court. When the court rejected their claim for relief, Gabriel Energy appealed (see the case above). While the Court of Appeals litigation was pending, a Notice of Violation (NOV) and, subsequently, a Cessation Order (CO) were issued.

The Board reversed the ALJ's decision and vacated the CO stating that it did not want to penalize Gabriel Energy "for entering into the agreement with OSMRE to suspend operations pending litigation of the Federal permit dispute". OSM was "bound by the terms of the agreement made with the operator and may not issue [an NOV] for conditions created by the agreement itself."

NATURAL RESOURCES DEFENSE COUNCIL, INC. v OSM, WEST ELK COAL CO., INTERVENOR, 94 IBLA 269, IBLA 83-757 (IBSMA 81-83) (1986, amends 1985 decision).

West Elk contended that the Board no longer had jurisdiction over the mine in question and that the "Federal permit upon which this case [was] premised [was] moot due to the cooperative agreement" between DOI and State of Colorado: at the time of the original permit issuance both a federal and a state permit were necessary, with the cooperative agreement in force, only a state permit was necessary to mine. The Board ruled that a "cooperative agreement does not vest the state with complete control over mining on Federal lands." The state is responsible for "approving or disapproving the mining permit, but the Secretary retains authority to approve or disapprove the operation and reclamation plan component of the application."

MID-MOUNTAIN MINING, INC. v OSM, 92 IBLA 4, IBLA 86-52 (1986).

Mid-Mountain conducted surface mining operations on private lands under a Kentucky state program permit. The state permit included an adjacent area which was owned by the United States. OSM issued a CO for mining on federal lands without a valid permit (there was no cooperative agreement between DOI and Kentucky). The Board reversed an ALJ decision which had granted Mid-Mountain temporary relief from the CO, ruling that the applicant had acknowledged "that he conducted surface mining operations on Federal lands without a Federal

permit", a condition which could cause "significant, imminent environmental harm to land, air, or water resources."

FEDERAL REGISTER NOTICES

42 FR 62639 (DECEMBER 13, 1977). Final rules. Initial Regulatory Program. [Excerpts]

710.3 Authority. "(b) The Secretary is also authorized to regulate surface coal mining and reclamation operations on Federal Lands by the Mineral Leasing Act of February 25, 1920, as amended, (30 USC 181-287) and the Mineral Leasing Act for Acquired Lands (30 USC 351-359) and on Indian lands by various Indian land acts. Additional regulations under these Acts are in 30 CFR Part 211, 43 CFR Part 3041 and 25 CFR Part 177."

45 FR 77003 (NOVEMBER 21, 1980). Final rule. Conditional approval of the Permanent Program Submission from Arkansas. [Excerpt]

"The [US Geological Survey] recommended that Arkansas include in its program procedures for processing proposed mine plans or permits that include Federal lands. Such processing procedures need not be included in the state plan because: (1) in States without a cooperative agreement with the Department of the Interior, the Secretary has sole responsibility for review and approval of permit applications on Federal lands. and (2) in States with a cooperative agreement, the Secretary has joint responsibility with the State."

47 FR 25092 (JUNE 9, 1982). Proposed rule. Federal Lands Program.

"The proposed rule would more clearly delineate the roles of the Federal government and the States in the regulation of surface coal mining and reclamation operations on Federal lands. Under the proposed rule, States would be able to assume greater responsibility for administering the requirements of [SMCRA] while new provisions would be added to set the requirements for review and approval of mining plans by the Secretary."

48 FR 6912 (FEBRUARY 16, 1983). Final rules. Federal Lands Program.

(See description above.)

ATTACHMENTS

A. CALIFORNIA COASTAL COMM., et al. v GRANITE ROCK CO., 480 US 572 (1987).
B. RAMEX MINING CORP., GABRIEL ENERGY CORP., & THE STEARNS CO., INTERVENOR, v WATT, 753 F2d 521 (6th Cir 1985), cert. denied 106 S Ct 271 (1985).
C. GABRIEL ENERGY CORP. v OSM, 105 IBLA 53, IBLA 86-1422 (1988).
D. NATURAL RESOURCES DEFENSE COUNCIL, INC. v OSM, WEST ELK COAL CO., INTERVENOR, 94 IBLA 269, IBLA 83-757 (IBSMA 81-83) (1986, amends 1985 decision).
E. MID-MOUNTAIN MINING, INC. v OSM, 92 IBLA 4, IBLA 86-52 (1986).

F. 42 FR 62639 (DECEMBER 13, 1977). Final rules. Initial Regulatory Program. [Excerpts]
G. 45 FR 77003 (NOVEMBER 21, 1980). Final rule. Conditional approval of the Permanent Program Submission from Arkansas. [Excerpt]
H. 47 FR 25092 (JUNE 9, 1982). Proposed rule. Federal Lands Program.
I. 48 FR 6912 (FEBRUARY 16, 1983). Final rules. Federal Lands Program.