

DEPARTMENT of the INTERIOR

news release

OFFICE OF THE SECRETARY

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MORTON ANNOUNCES DECISION ON NORTHERN CHEYENNE COAL LANDS

Secretary of the Interior Rogers C. B. Morton today announced an encompassing decision on the controversy involving leases and exploratory permits for coal development on the Northern Cheyenne Indian reservation in Montana.

The Northern Cheyenne Tribe petitioned the Secretary in January 1974 to withdraw the Department's approval of leases and exploratory permits for strip mining of coal on about 214,000 acres of the 433,740 acre reservation.

The decision announced by the Secretary today grants the petition in part; denies it in part; refers some questions to the Department's Office of Hearings and Appeals; and holds some decisions in abeyance.

As an alternative, the decision allows the Tribe to sue the coal companies involved with the support of the Secretary on any and all issues, or with the support of the Secretary to request the Justice Department to bring suit in the name of the Northern Cheyenne against the coal companies on the issues.

Secretary Morton said the decision was a necessarily complex resolution of the issues presented in the Tribe's petition.

"Although many of the allegations of invalidity were similar, each of the three coal sales and each of the leases and permits involved different circumstances and issues," he said.

"My decision, therefore, does not grant or deny the petition as a whole, nor can it be the final disposition of all the issues raised by the Tribe. Rather, I believe it establishes the essential framework for an eventual determination which will be equitable."

Various requests by companies holding coal exploratory permits on the reservation to go to lease on some of these permits and to renew some permits are also pending before the Department. The decision announced today also deals with these requests.

The text of the decision is attached.

(more)

TEXT OF DECISION ON NORTHERN CHEYENNE PETITION

I have before me a petition by the Northern Cheyenne Tribe to rescind this Department's approval of various leases and permits for coal mining on the Northern Cheyenne Reservation. Also pending before officials of the Department are various requests by the permittees to go to lease on certain of these permits and to renew certain other permits. This decision announces the Department's disposition of the Tribe's petition and the permittees' requests.

After careful research and consideration it has been determined that:

FIRST SALE

Bids were opened on July 13, 1966. On August 19, 1966, a two-year exploration permit was granted to the sole bidder, Peabody Coal Company for 96,829.95 acres. On August 13, 1968, a two-year extension was approved for that permit. On December 30, 1970, I approved six leases consisting of 16,035.05 acres, or 17% of the total permitted acreage. The remaining acreage reverted to its original status prior to the exploration permit.

With respect to lease number 14-20-2057-897 for 12,946.07 acres, there is no clear evidence that there was an explicit waiver of the limitation provided in 25 CFR § 171.9. Therefore, I direct Peabody Coal Company and the Northern Cheyenne Tribe to conform this lease to 2,560 acres or less, or clearly to demonstrate the need to waive this limitation.

As to this lease, as well as the other five leases, I have determined that the required approval of the Peabody Mining Plan is a significant Federal action which would substantially affect the environment; therefore, no further administrative action will be taken until the Department has completed an Environmental Impact Statement and I have made a determination that further action should be taken.

All other requests in the petition pertaining to the first sale are hereby denied.

My decision as to this first sale thus grants the Tribe's petition in part and denies it in part, and holds in abeyance all further approvals required by this Department.

SECOND SALE

On December 15, 1969, a two-year exploration permit was granted to the sole bidder, Peabody Coal Company, for 55,398.99 acres. On December 13, 1971, a two-year extension was approved, to become effective on December 15, 1971. On December 3, 1973, Peabody Coal Company requested to go to lease on 25,160 acres, approximately 45% of the permitted acreage. The remaining acreage reverted to its original status prior to the exploration permit. No administrative action will be taken until (1) Peabody Coal and the Tribe modify this request to conform to the

acreage limitation of 25 CFR § 171.9, or clearly to demonstrate the need to waive this limitation; and (2) until an Environmental Impact Statement has been completed by the Department.

Since there is some question as to whether or not a technical examination has been done as provided in 25 CFR § 177.4, I am reserving my decision on this question and as an aid to my continuing investigation of this issue, I am asking the BIA Area Director in Billings to submit to me within 60 days a full written report summarizing his findings as to each of the separate matters required to be explored by the regulations.

All other requests in the petition pertaining to the second sale are hereby denied.

My decision as to the second sale thus grants the Tribe's petition in part, denies it in part, and holds one issue in abeyance for further decision. It denies Peabody's request to go to lease without prejudice to that request being modified by Peabody and the Tribe, but provides that final Department action on any such request will be held in abeyance until completion of an Environmental Impact Statement.

THIRD SALE

On May 21, 1971, four bidders were granted two-year exploration permits on eight tracts consisting of 172,291.89 acres. There was a total of 12 bidders. Leases have been requested on three tracts by one bidder, but as with the second sale leases requested by Peabody, no administrative action will be taken on this request until it is modified by the permittee and the Tribe to conform to the acreage limitation provided in 25 CFR § 171.9 or a clear demonstration of the need to waive this limitation is made. Permits renewals have been requested for an additional two years on the five remaining tracts. No action will be taken concerning the request to go to lease or renewals of the permits until an Environmental Impact Statement is completed.

It has been alleged that two of the successful bidders involving four tracts violated 25 USC 396a and 25 CFR § 171.2, § 171.3(a), § 171.5, § 171.7 and § 171.26 (bidding for speculative purposes by unqualified persons) and 25 CFR § 171.26 (unlawful assignment). I am herewith referring these two issues to the Office of Hearings and Appeals for findings of fact and conclusions of law, with instructions to determine these issues in an expeditious manner. The Solicitor's Office will participate in this hearing to represent the trust responsibilities of the Department. The Northern Cheyenne Tribe may, if it wishes, be a party to this proceeding.

Since there is also some question as to whether or not a technical examination has been done as provided in 25 CFR § 177.4 as to these permits, I am reserving my decision on this question and -- as with the second sale permits -- I am asking the BIA Area Director in Billings to submit to me within 60 days a full written report summarizing his findings as to each of the separate matters required to be explored by the regulations.

The Tribe has also claimed that the permits and leases are invalid because there is no adequate bond provided as required by 25 CFR § 171.6 and § 171.8. While I do not believe that this deficiency merits cancelling my approval of these permits, I will ensure that prior to any further operations, the permittees and lessees shall post a bond that is fully adequate to cover the maximum anticipated costs of reclamation after exploration or mining.

All other requests in the petition pertaining to the third sale are hereby denied.

My decision as to this third sale thus grants the Tribe's petition in part, denies it in part, and holds portions of the petition for further decision. My decision denies the request of one permittee to go to lease without prejudice to that request being modified by the permittee and the Tribe, and provides that any further action by the Department, including permit renewals, will be held in abeyance until completion of an Environmental Impact Statement.

My decisions herein set out do not preclude the Northern Cheyenne Tribe from bringing their own lawsuit against the coal companies to test the validity of these permits and leases. Alternatively, the Tribe may request the Justice Department under 25 USC § 175 to bring a suit in the name of the Northern Cheyenne Tribe. I will support them in either request.

As trustee I take cognizance of my responsibility to preserve the environment culture of the Northern Cheyenne Tribe and will not subvert these interests to anyone's desires to develop the natural resources on that Reservation.

The Tribe's petition presents extraordinary circumstances. Among other things, the Tribe has expended substantial sums of money in preparing and presenting the petition to me. The petition charges that officials of the Department have violated Departmental regulations in approving these permits and leases. Because of many of the unresolved allegations by the Tribe of Departmental laxity, I have decided that, to the fullest extent possible, outside sources will be used to prepare the Environmental Impact Statement or Statements. Furthermore, the Tribe and the coal companies may be assured that the terms and conditions upon which mineral development may proceed on the Northern Cheyenne Reservation will require their joint agreement and support prior to any further approval by me. Also, to the fullest extent permitted by my statutory authority, I will defray the expenses to be subsequently borne by the Tribe for attorney's fees and other costs in the administrative proceeding I have directed to take place and in any litigation it now wishes to commence against the companies.

Finally, to better fulfill my future trust responsibility to assure the protection of Indian culture and environmental interests as well as to allow maximum development of Indian natural resources, I have asked the Solicitor to rewrite (within 90 days) the present Parts 171 and 177 of Title 25, CFR to correct their present ambiguities. I have directed the BIA to adhere strictly to the implementation of its regulations.

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