

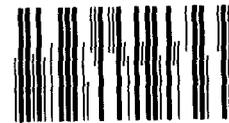
GAO

Report to the Chairman, Committee on
Interior and Insular Affairs, House of
Representatives

February 1987

MINERAL RESOURCES

Interior Has Improved Its Administration of Coal Exchanges



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Resources, Community, and
Economic Development Division

B-214727

February 17, 1987

The Honorable Morris K. Udall
Chairman, Committee on Interior
and Insular Affairs
House of Representatives

This report is in response to your request of July 18, 1985, and subsequent discussions with your office that we evaluate the Department of the Interior's procedures for administering the trade or exchange of federal coal lands, interest, or leases for privately owned property interests. Specifically, you requested that we determine whether Interior's procedures ensure that (1) only coal of equal value is exchanged, (2) environmental values are protected, (3) the exchanges are in the public interest, and (4) potentially competitive coal lands are not exchanged. As agreed with your office, our review was concerned with whether Interior has—and follows—procedures to further these objectives. We did not review the adequacy of the procedures.

Briefly, we found that Interior has developed written procedures to determine whether coal lands, interests, or leases are of equal value and that most of these were followed in the exchanges we reviewed. Interior also followed its procedures to ensure that environmental values are protected. Although Interior has developed explicit, agencywide criteria for determining whether some types of exchanges are in the public interest, it has not done so for all exchanges. Further, Interior does not have a policy that requires it to determine whether an exchange involves lands in which other companies have expressed an interest in leasing.

Background, Scope, and Methodology

Interior's Bureau of Land Management (BLM) conducts two types of coal exchanges—fee and lease. In fee exchanges, the federal government trades its ownership of lands or mineral interests for privately held lands or interests. The government has entered into fee exchanges, authorized by the Federal Land Policy and Management Act of 1976 (FLPMA), to acquire private lands in wilderness areas and national parks and to consolidate coal lands into larger units that are more economical to mine. In lease exchanges, companies trade existing federal coal leases in one area for new coal leases elsewhere. Generally, lease exchanges are individually authorized by the Congress as exceptions to the Federal Coal Leasing Amendments Act of 1976, which requires that coal leases be awarded only by competitive bidding. The Surface Mining Control

and Reclamation Act of 1977 also authorizes both fee and lease exchanges as a means of compensating owners or lessees of lands that are closed to mining to protect water supply systems and farming. Whether fee or lease, all coal exchanges must be of equal value and in the public interest.

As the manager of public lands, BLM is responsible for administering coal exchanges. Once a company or individual submits a proposal to the responsible BLM state office, the office makes a preliminary determination as to whether the exchange would be in the public interest, publishes a notice of its determination, and invites public comments. The state office then evaluates the environmental consequences of the exchange and alternatives to it, a process in which it again seeks public input. If the office decides to proceed with the exchange, it appraises the exchange properties to determine their value and, if necessary, makes adjustments to make them of equal value. After public hearings and comment, the BLM state director makes the final decision on whether to proceed with an exchange.

In previous reports, we examined the administration of coal exchange proposals and recommended that Interior develop guidelines to measure whether the public interest was served and equal value was obtained in exchanges. We also recommended that it adopt standards for the data required to evaluate an exchange proposal.

As agreed with your office, we examined seven exchanges of coal lands, interests, or leases that were pending at the time of your request. Four of these were fee exchange proposals—three in Wyoming and one in New Mexico—and the other three were lease exchanges in Wyoming and Montana. At the time of our review, BLM had published preliminary determinations that all seven exchanges were in the public interest and had prepared environmental assessments and appraisal reports for five of the exchange proposals. We reviewed each of these documents as well as BLM instructional and informational memorandums and other policy and procedural guidance. We also reviewed legislation authorizing coal exchanges and BLM's implementing regulations. In addition, we interviewed officials of the BLM state, district, and area offices in Wyoming, Montana, and New Mexico who were responsible for evaluating the exchanges, as well as appropriate headquarters officials.

BLM Developed and Followed Procedures for Determining Equal Value

In response to recommendations by a congressionally mandated commission, Interior developed guidelines for determining the value of coal lands, interests, or leases involved in an exchange, and for the most part, these were followed in the cases we examined. Where the guidelines were not strictly followed, it nevertheless appeared that BLM staff had complied with them in substance. For example, BLM staff did not always prepare separate reports containing the geologic, engineering, and economic data used to support the appraisals, as required by the guidelines. However, we found that the required data were either incorporated into the appraisal reports or were available in BLM files.

BLM Followed Established Procedures for Assessing Environmental Effects

BLM's process for evaluating exchanges includes detailed procedures for assessing environmental effects, and these procedures were followed in the exchanges for which environmental assessments had been prepared. As required by BLM regulations, BLM evaluated the federal lands being considered for exchange as part of its overall land use planning process and found them to be suitable for mining. To satisfy the National Environmental Policy Act, BLM conducted environmental assessments for five of the exchanges, concluding that the exchanges would not significantly affect the environment. Work on the other two assessments had not been completed as of September 1986. As part of its evaluations, BLM provided opportunities for public participation and comment.

BLM Has Public Interest Criteria for Fee Exchanges but Not for Lease Exchanges

FLPMA (for fee exchanges) and BLM regulations (for lease exchanges) require that they be in the public interest. Although BLM has developed criteria for making this determination for fee exchanges, it has not done so for lease exchanges. For fee exchanges, BLM had developed a list of 12 policy objectives or criteria to be considered in determining whether the exchange serves the public interest. (See app IV, p. 22.) In the four fee exchanges we reviewed, BLM applied these criteria in a reasonable manner to determine whether the public interest would be served by the exchange. In June 1986, BLM revised its policy, expanding its list of policy objectives to 14 and strengthening the overall policy by imposing specific new requirements on BLM field officials.

For lease exchanges, however, BLM does not have any explicit, agency-wide criteria by which to measure public interest. A BLM headquarters official responsible for solid minerals leasing told us that neither the Congress nor any parties affected by an exchange had expressed a need for such criteria. Therefore, BLM did not perceive a need for specific criteria. In the one lease exchange that we reviewed for which BLM made a

public interest determination, the responsible staff person identified six conditions about this exchange that he believed made the exchange in the public interest. Although he considered certain of the criteria for fee exchanges, he based his determination on his knowledge of the public benefits associated with the exchange. This ad hoc method of defining public interest, based on one person's understanding, does not ensure that all exchanges are treated consistently and is potentially less reliable than a determination based on explicit criteria and procedures.

BLM Does Not Have a Policy to Consider Alternatives to Exchanging Potentially Competitive Lands

Although the federal coal leasing program is based on the principle of competition, BLM does not have a policy that requires it to consider alternative tracts before exchanging lands in which companies other than the exchange proponent have expressed an interest in leasing. Since 1976, the Federal Coal Leasing Amendments Act has required that all federal coal leases be awarded by competitive bidding, a requirement meant to ensure that the federal government receives a fair return for its coal. However, a coal exchange is an exception to this system of competition. BLM does not require its staff to consider whether other companies might be interested in leasing the federal lands selected for exchange and, if so, to identify alternative lands in which there is no known leasing interest.

Three of the exchanges we reviewed involved federal lands in which other companies had previously expressed interest. In two of the three cases, sensitive to public criticism about the anticompetitive nature of exchanges, the BLM state office tried to find other tracts that appeared to be less competitive than those being considered for exchange. However, these actions reflect the concerns of that particular BLM state office rather than an agencywide policy, and other state offices could act differently under the same circumstances.

Conclusions and Recommendations

Although BLM has established a number of procedures to improve its administration of coal exchanges, it has not developed criteria, such as those it uses to evaluate fee exchanges, for determining whether lease exchanges are in the public interest. In our view, such determinations should be based on established criteria rather than on judgments which, because they are ad hoc, may not be consistent and are potentially less reliable.

For both lease and fee exchanges, BLM does not have procedures to require that it identify alternatives when the lands selected by the

exchange proponent are known to be of interest to other companies. While the BLM state office considered the effects on competition in the exchanges we examined, we believe that an agencywide policy and procedures are needed to ensure that all BLM state offices consider the competitive nature of proposed exchange lands.

In our view, the adoption of these additional procedures would enhance an already improved program and avoid possible problems in future exchanges. Therefore, we recommend that the Secretary of the Interior

- develop formal criteria for determining whether a lease exchange is in the public interest and
- develop an agencywide policy and procedures for lease and fee exchanges that require all BLM state offices to determine whether other companies have expressed an interest in leasing the federal lands proposed for exchange and, if so, to consider alternative lands for exchange

Agency Comments

Interior generally agreed with our evaluation of and recommendations for improving its coal exchange program but offered some specific comments on our recommendations and other points. The Department said that during fiscal year 1987 it plans to develop criteria for determining whether lease exchanges are in the public interest, as we recommend

With regard to our second recommendation, Interior believes it already has a policy that requires it to consider alternatives to lands involved in a fee exchange, including competitive and cooperative leasing. However, this policy covers fee exchanges only, not lease exchanges. As to this fee exchange policy, Interior believes that its instruction to give "full consideration [to] alternatives to the exchange, including competitive and cooperative leasing," is equivalent to a requirement that it consider alternative coal lands when the proponent proposes that the federal government trade lands for which others have previously expressed leasing interest. This interpretation is not, in our view, implicit in Interior's policy and needs to be clearly stated.

Other comments and our responses are discussed in appendix VI.

This work was performed under the direction of Mr. Michael Gryszkowiec, Associate Director. Other major contributors are listed in appendix VII.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, copies will be sent to the Director, Office of Management and Budget; the Secretary of the Interior; other House and Senate committees and subcommittees with oversight and appropriation responsibilities for coal leasing; and other interested parties.

Sincerely yours,

A handwritten signature in black ink, appearing to read "J. Dexter Peach". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

J. Dexter Peach
Assistant Comptroller General

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Abbreviations

BLM	Bureau of Land Management
EMD	Energy and Minerals Division
FLPMA	Federal Land Policy and Management Act
GAO	General Accounting Office
NEPA	National Environmental Policy Act
RCED	Resources, Community, and Economic Development Division
RCT	Regional Coal Team
RET	Regional Evaluation Team

Background

Authorizaton and Purpose of Coal Exchanges

The federal government may enter into two types of coal exchanges. A fee exchange is an outright trade of federal lands or mineral interests for those held privately, while a lease exchange involves an exchange of an existing coal lease on federal lands for a new federal lease elsewhere.

The Federal Land Policy and Management Act of 1976 (FLPMA) (43 USC 1701, *et seq.*) is the general authority for fee exchanges. Section 206 of this act permits the Secretary of the Interior to undertake a fee exchange as long as it is in the public interest and the lands to be exchanged are in the same state and are of equal value. If they are not of equal value, BLM or the private owner may make an equalizing monetary payment of up to 25 percent of the total value of the federal lands or interests to be exchanged.

Interior has used its exchange authority to acquire private coal lands in wilderness areas and national parks so that these lands are preserved. It has also used this authority to consolidate federal coal lands into units that are more economical to mine in order to increase competition, revenues, and production. Coal ownership in the western states is often located in a checkerboard pattern, with federal coal lands interspersed among coal lands owned by railroad companies and other private interests. These tracts are generally too small to be mined efficiently but, when grouped with adjacent tracts, can form logical (economic) mining units.

Coal lands or leases may also be exchanged to compensate owners of lands that are closed to mining under the Surface Mining Control and Reclamation Act of 1977 (30 USC 1260). The act prohibits coal mining in western alluvial valley floors, or stream valleys, where it would interrupt farming or damage water supply systems. To provide relief to those who owned or leased such lands from the federal government before the Surface Mining Act was passed, Interior may exchange federal coal lands or leases.

Because the Federal Coal Leasing Amendments Act of 1976 requires that all coal leases be issued by competitive bidding, Interior does not have standing authority to exchange leases other than those authorized by the Surface Mining Act. However, the Congress has periodically enacted legislation authorizing lease exchanges for special purposes. For example, exchanges were authorized to compensate lessees whose coal development rights were taken by the routing of Interstate Highway I-90 in Wyoming. Exchanges were also authorized to protect archaeological, paleontological, and scenic values in the Bisti Wilderness Study

Area of New Mexico and to resolve a long-standing impasse over the development of coal on the Northern Cheyenne Indian Reservation in Montana.

Coal Exchange Administration

Interior's Bureau of Land Management (BLM) is responsible for evaluating coal exchange proposals and executing exchange agreements. The exchange process begins when a lessee or other party submits a proposal to the BLM state or district office describing in general terms the properties to be exchanged. The BLM state director must then make a preliminary determination that the exchange would be in the public interest, publish this finding in the Federal Register, and invite public comment. The state office then undertakes an environmental assessment to determine if any significant environmental impacts are likely to result from the exchange, and also considers alternatives to the exchange as proposed. The availability of a draft assessment is announced in a Federal Register notice soliciting public comments. If significant impacts are indicated, an environmental impact statement must be prepared. If not, BLM develops an appraisal of the value of both the federal and private coal properties or leases. As an alternative, however, BLM may review the exchange proponents' appraisal of the private lands. On the basis of the appraisal report, BLM determines whether a payment is necessary to equalize the value of the two properties, or whether either property should be redelineated to achieve equal value. Finally, after public hearings and comment, the BLM state director decides whether to proceed with an exchange.

Coal Exchanges to Date

Since 1979, Interior has evaluated 21 exchange proposals, of which it approved 6 and rejected 8; 7 were being evaluated or awaiting a final determination at the time of our review. In previous reviews, we examined Interior's administration of three of these earlier coal exchange proposals: the exchange of rights to leases held by the Utah Power and Light Company; a fee exchange proposed by the Meridian Land and Mineral Company in Montana; and a lease exchange involving the Duck Nest Creek federal coal tract in Wyoming.¹ In each review, we found problems with Interior's evaluations of the exchange proposals, largely because of the lack of procedural guidelines and standards. To

¹How Interior Should Handle Congressionally Authorized Federal Coal Lease Exchanges (EMD-81-87, Aug 6, 1981), Coal Exchange Management Continues to Need Attention (GAO/RCED-83-58, Mar 7, 1983), Analysis of the Department of the Interior's Administration of the Duck Nest Creek Coal Lease Exchange (GAO/RCED-85-103, April 4, 1985)

correct these problems we recommended that Interior develop (1) guidelines for measuring public benefit and equal value for coal lands suitable for exchanges, (2) standards for data required for an evaluation, (3) criteria for use of economic evaluation methods and for developing coal reserve estimates, and (4) procedures defining Interior's responsibilities and how they are to be discharged.

Objectives, Scope, and Methodology

As agreed with the office of the Chairman, House Committee on Interior and Insular Affairs, we reviewed BLM's administration of the coal exchange proposals pending at the time of his request. The Chairman was specifically concerned with whether BLM has procedures to ensure that (1) only coal of equal value is exchanged, (2) environmental values are protected, (3) exchanges are clearly in the public interest, and (4) potentially competitive coal lands are not exchanged.

The purpose of our review was to determine whether BLM has—and follows—procedures to further these objectives. We did not review the adequacy of these procedures. We examined statutes authorizing coal exchanges and relating to the Chairman's concerns. We also identified applicable BLM procedures and regulations, instructional and information memorandums, and other legal, policy, and procedural guidance. We interviewed BLM headquarters and field officials to confirm which procedures applied to each concern and to document how they were supposed to be implemented, what internal controls governed how they would be implemented, and how and why the procedures were actually implemented. We also examined how BLM conducted its evaluations when it did not have procedures, or did not follow them.

We reviewed the extensive files of both internal and public documents generated throughout the exchange evaluation process. Because the evaluation of exchanges is a highly public process, concerns of affected parties in industry, the environmental community, and state and local government are well documented in the public record. We therefore assumed that an analysis of public comments and BLM's responses would provide sufficient information on the exchange evaluation process and did not seek additional information from parties affected by the exchanges.

To determine whether BLM followed procedures for valuing coal lands proposed for exchange, we compared actions taken by BLM with the requirements of its Guide to Federal Coal Property Appraisal. These guidelines provide procedural guidance to responsible officials and field

technical staff on how to appraise coal property. Where we found discrepancies between BLM's appraisal practices and procedures, we traced the actions taken back to the underlying BLM data and analyses. Similarly, in instances where public or internal BLM records disclosed concerns about any aspect of an appraisal, we traced the actions taken by BLM back to supporting data and/or analyses. We did not evaluate the accuracy of BLM's appraisals, or whether BLM procedures ensured that equal value was derived

To determine if exchanges included federal coal lands that companies had expressed interest in leasing, we reviewed industry expressions of leasing interest, BLM tract delineation reports, and rankings of tract development potential

To determine if environmental values were being considered, we compared actions taken by BLM with the requirements of its regulations that implement the land use planning requirements of the Federal Land Policy and Management Act and the environmental impact analysis requirements of the National Environmental Policy Act.

To determine how BLM considers whether exchanges are in the public interest, we reviewed BLM records and files for data and/or analyses documenting how the public interest was considered in each exchange. In addition, we interviewed responsible technical and managerial BLM officials to confirm the results of our review

The seven proposals we examined were those under consideration by Interior as of August 1985; they are described in table I.1. At the time of our review, BLM had not completed the environmental assessments for the Whitney Benefits and J-Y Ranch exchanges. Appraisal reports were prepared for six of the seven exchanges; however, those for the McKinley County, Chevron/Consol, and Whitney Benefits exchanges were being revised during our review. The J-Y Ranch exchange had not progressed to the point where an appraisal should have been prepared. We did not evaluate the Whitney Benefits appraisal because it is being guided by the Department of Justice in connection with litigation in the U.S. District Court for the District of Wyoming and in the Court of Claims

Our review was conducted at Interior Department and BLM headquarters offices in Washington, D.C., and at BLM state, district, and area offices in Wyoming, Montana, and New Mexico from August 1985 to September

1986 We conducted the review in accordance with generally accepted government auditing standards

Table I.1: Coal Exchange Proposals Under Consideration by Interior as of August 1985^a

Exchange (proponent)	Authority	Exchange type	State	Terms
Teton Valley Ranch (Wilson family)	Federal Land Policy and Management Act of 1976—Section 206	Fee	Wyoming	The federal government acquired 354 privately owned acres in the National Elk Refuge in exchange for federal coal lands in a checkerboard area adjacent to a mine operated by the Rocky Mountain Energy Company, which would lease the land from the Wilson family
J Y Ranch (Laurance Rockefeller)	Federal Land Policy and Management Act of 1976—Section 206	Fee	Wyoming	The federal government would obtain a scenic easement across a 900-acre segment of a ranch owned by Laurance Rockefeller in Grand Teton National Park in exchange for federal coal lands of equal value elsewhere in Wyoming
McKinley County (Santa Fe Pacific Railroad)	Federal Land Policy and Management Act of 1976—Section 206	Fee	New Mexico	The federal government would obtain 6,280 acres of coal land and mineral rights under 4,893 acres in Chaco Culture National Historic Park in exchange for about 4,830 acres of federal coal lands in a checkerboard area adjacent to a mine owned by the Santa Fe Pacific Railroad
Whitney Benefits (Peter Kiewit Sons)	Surface Mining Control and Reclamation Act of 1977—Section 510	Fee	Wyoming	The federal government would obtain 1,326 acres of privately owned alluvial valley floor lands in the Tongue River Valley in Wyoming in exchange for federal coal of equal value elsewhere in Wyoming
Thundercloud (Kerr-McGee Corporation)	Public Law 95-554	Lease	Wyoming	The federal government acquired a coal lease held by the Kerr-McGee Coal Corporation on federal lands affected by the routing of Interstate Highway I-90 in Wyoming in exchange for a lease next to the company's operating mine in another area of the state
Greenleaf-Miller (Peabody Coal Company)	Public Law 96-401	Lease with bidding rights	Montana	The federal government issued a new coal lease as settlement for cancelled leases, permits, and rights to lease on lands within the Northern Cheyenne Indian Reservation in Montana
CK Ranch (Chevron/Consol)	Public Law 96-401	Lease with bidding rights	Montana	The federal government will issue new coal leases as settlement for cancelled leases, permits, and rights to lease on lands within the Northern Cheyenne Indian Reservation in Montana

^aSince August 1985, Interior has completed the Teton Valley Ranch, Kerr McGee, and Peabody exchanges

Coal Valuation Procedures

BLM Guidelines

In July 1985 BLM published its Guide to Federal Coal Property Appraisal and instructed that it be used by BLM staff and officials responsible for determining the value of federal coal. The guide was developed in response to the recommendations of the Commission on Fair Market Value Policy for Federal Coal Leasing, appointed by Interior at the direction of the Congress in 1983 to study the federal coal program and consider ways in which to ensure that fair market value is received for federal coal leases. In addition to recommending the kinds of information to be considered in determining market value, the Commission recommended that Interior develop methods and procedures for conducting appraisals that are “unassailable not only in fact but in public appearance as well.” Accordingly, the Commission advocated that Interior develop guidelines to promote uniformity among field office appraisals and open its procedures to public inspection.

The appraisal guide developed by Interior was meant to reflect these recommendations. Its stated intent is to “encourage consistent and replicable application of standard appraisal procedures” and to promote a uniform approach to federal coal property appraisal, including those properties involved in exchanges for which equal value determinations must be made. The guide was sent to BLM state offices in draft form in November 1984 and was used in preparing the five exchange appraisal reports that had been completed at the time of our review.

According to the guide, the coal property appraisals are to be prepared by a regional evaluation team (RET), composed of BLM staff, who report to a BLM deputy state director. In preparing its appraisal, the RET relies on geologic and engineering information furnished by the district and area office geologist and mining engineer. The data, which are necessary for determining the quantity, quality, and minability of the coal, are to be reviewed by the RET, which must certify that the data are adequate to support the valuation of the federal coal property being appraised. The data are also to be reviewed by a council of BLM geologic and engineering experts appointed by the BLM state director and the regional coal team to make sure the data meet regional standards of data adequacy.² The RET then organizes the data into a geologic and engineering data report that contains a statement certifying the accuracy and adequacy of the data

²The regional coal team, which is comprised of BLM state directors and state governors or representatives, guides coal activity planning within a federal coal production region and makes recommendations on leasing to the Secretary of the Interior.

BLM Complied With Its Appraisal Guide

In the five exchanges for which appraisal reports were completed, we found that, for the most part, the RETS had followed the appraisal guidelines. While the staff did not follow the approach specified in the guide for assuring geologic data adequacy and publishing supporting data and assumptions, we believe that BLM staff complied with the guidelines in substance.

Geologic Data Adequacy Review

Two RETS were responsible for preparing the five appraisals that had been completed at the time of our review. the Southwest RET in New Mexico, which evaluated the McKinley exchange, and the Northwest RET in Wyoming, which evaluated the Peabody, Chevron/Consol, Kerr-McGee, and Teton Valley Ranch exchanges

We found that in preparing these appraisals, the RETS reviewed the geologic data but BLM did not convene the recommended review councils, nor had it developed standards for measuring whether the data were adequate. However, the geologic data were reviewed within BLM's field organization. For example, immediate supervisors of the field geologists who analyzed the data, staff at BLM district and state offices, and the Deputy State Director for Minerals reviewed and found the geologic data adequate for the McKinley County exchange in New Mexico. The reviewers were knowledgeable about the geology of the area and used their professional judgment to assess the adequacy of the data for estimating coal quantity and quality. In all five exchanges, BLM field officials judged that the geologic data were sufficient for valuation purposes.

BLM has begun to develop regional geologic data adequacy standards for the Powder River Basin and Green River-Hams Fork regions in Colorado, Wyoming, and Montana, two of the six federal coal regions, as a part of the Department's efforts to improve the coal leasing program. Draft standards for the Powder River Basin were developed by a task force from BLM's Wyoming state office. As of September 1986, draft standards had not yet been developed for the Green River-Hams Fork region, but according to the regional coordinator, BLM hoped to obtain regional coal team approval of its approach to developing data adequacy standards for this region by the spring of 1987.

Geologic and Economic Data
Reports

The appraisal guide requires that the RETs prepare two separate reports that form the data base for estimating the value of the coal property. The geologic and engineering data report is to include, among other things, the geologic characteristics of the property—the amount of earth overlying the coal, for example, and the type and quality of the coal—and the resulting costs of mining it. The economic data report is to include general regional economic data, including mining cost and coal price projections; specific tract data, such as the potential markets for the produced coal; and economic data on comparable tracts. Noting that not all the specific data outlined in the guide are necessary, the guide nevertheless states that there must be enough data developed to adequately support the estimated value and to provide the rationale for the use of the data.

We found that both of these required reports were prepared only for the Teton Valley Ranch appraisal. However, in the four other exchange appraisals, the RETs included part of the required information in the appraisal reports and had the rest assembled in files. The Southwest RET, for example, prepared a separate geologic data report for the McKinley exchange proposal but included the required engineering and economic data in a section of the appraisal report. According to the Deputy State Director for Minerals and the RET leader, these sections of the report met the guidelines' substantive requirements for supporting data.

The Northwest RET, in its appraisals of the Kerr-McGee, Peabody, and Chevron/Consol exchanges, also did not prepare separate geologic and economic data reports. In the Kerr-McGee exchange, for example, the RET incorporated much of the required geologic and engineering data prepared by the district office into its appraisal reports. However, some of the economic data called for in the guidelines were not included in the appraisal reports—particularly data describing general and regional market conditions. The Northwest RET leader told us that the information was prepared, considered in developing appraisals, and available in the state office files. He acknowledged that he had not followed the guidelines precisely because the RET was short of staff and was facing a heavy work load at the time the exchange proposals were being evaluated. He believed, however, that the RET's appraisals complied with the guidelines in substance. He also said that the required reports will be prepared in support of the Chevron/Consol appraisal, which is currently under revision, as well as all future appraisals. In addition, the reports will include a statement certifying data accuracy and adequacy.

BLM's Washington office is taking steps to achieve more uniform compliance with the Bureau's appraisal guidance. According to the Chief of Minerals Policy and Program Coordination, in the future, RETs will no longer have as much discretion to depart from documentation guidelines. He told us that BLM plans to incorporate its coal property appraisal guide into its operating manual, which requires stricter compliance and gives managers less latitude in this area.

BLM Environmental Review Procedures

Statutory and Regulatory Requirements

Numerous laws assign BLM responsibility for ensuring that environmental values are considered in its management of the public lands. As a result, BLM has developed detailed environmental review procedures to be followed in its activities, including coal exchanges. For coal exchanges, BLM's principal environmental protection responsibilities are to

- develop and maintain land use plans, as required by the Federal Land Policy and Management Act of 1976 (FLPMA);
- determine whether federal coal lands are suitable for mining, according to standards set forth in the Surface Mining Control and Reclamation Act of 1977; and
- determine whether coal development in general, and the proposed exchange specifically, would have significant effects on the environment. If so, these impacts must be analyzed in a detailed statement that must also examine alternatives to the proposed action. These requirements are imposed by the National Environmental Policy Act of 1969 (NEPA).

According to BLM regulations, many of these requirements are to be satisfied during the land use planning process. This process begins with the identification, through an assessment of multiple use trade-offs, of areas with coal development potential. BLM managers then identify those areas that are unsuitable for mining, according to criteria established in the Surface Mining Act and further detailed in BLM regulations. In this way, national parks, historical areas, wilderness areas, wetlands, animal habitats, and other protected or sensitive lands are eliminated from further consideration for coal development unless, in some cases, it can be demonstrated that mining would have no adverse effect. The last stage in the screening process is to consult with surface owners whose lands overlie federal coal deposits. Coal lands found unsuitable during any phase of the land use screening process are generally not considered for an exchange unless a new analysis shows a change in circumstances.

BLM regulations require that coal lands proposed for exchange clear this screening process and have an approved land use plan, known either as a resource management plan or a management framework plan. This plan also contains the environmental impact statement required by NEPA, containing an environmental analysis and analyses of alternatives to the management actions considered in the plan.

To further satisfy NEPA requirements, BLM must conduct an environmental assessment to determine whether there would be significant

environmental impacts. If it appears that the exchange would significantly affect the environment, BLM must prepare a detailed impact analysis; otherwise, it may make a finding of no significant impact. As with all NEPA documents, the assessment must also evaluate the environmental effects of alternative actions, including no action.

**Public Involvement
Required**

For land use plans, environmental assessments, and other NEPA documents, BLM must provide opportunities for public involvement in identifying issues and evaluating the agency's analyses. Generally, BLM seeks comments through public meetings, hearings, and notices in the Federal Register and local media. Plans and environmental assessments or statements are first published in draft form to allow for public comment and revised if necessary to take into account new information or comments received during the public comment period. All substantive comments received must be addressed in the final document.

**BLM Prepared
Required
Environmental
Analyses**

Overall, we found that BLM regulations and guidelines lay out detailed procedures to ensure that environmental values are considered in coal exchanges, and that the agency followed its procedures in reviewing each of the seven exchange proposals we examined

For five of the seven exchanges, BLM had completed all required environmental evaluations. At the time of our review BLM had not conducted environmental assessments for the J-Y Ranch and Whitney Benefits exchanges because final selections had not been made. While two of the exchanges attracted many public comments, none were critical of BLM's evaluation process.

In the five exchanges that BLM evaluated—McKinley, Teton Valley Ranch, Peabody, Chevron/Consol, and Kerr-McGee—the selected federal coal lands were examined in a land use plan, a regional environmental impact statement, and an environmental assessment; each of the assessments contained a finding of no significant impact. Each document was first published in draft form, and opportunity was provided for public comment before BLM issued it in final form. BLM also invited public participation in identifying issues before the draft plan or assessment was prepared. BLM's request for public comments on the J-Y Ranch exchange proposal, for example, elicited considerable opposition. However, much of this opposition appeared to have been based on a newspaper account that overstated the value of the federal coal involved and gave the impression that the exchanges would not be of equal value

Other comments expressed concern that potentially competitive federal coal would be exchanged, rather than offered for sale, and that the federal lands to be exchanged included alluvial valley floors important for farming. On the positive side, a few of those submitting comments recognized the benefit of eliminating a major private land holding within Grand Teton National Park.

With the exception of the environmental assessment of the McKinley exchange, the other assessments drew little public comment. Most of the public comments on the environmental assessment of the McKinley exchange, however, were not concerned with environmental issues, although two commentors criticized the assessment for not looking at site-specific impacts of mining. In response, BLM noted that it had evaluated these impacts in a regional environmental impact statement and had included relevant portions in the final environmental assessment.

BLM identified potential environmental impacts during the course of the land use planning screening process, when some of the lands involved in the Peabody, Chevron/Consol, and Teton Valley Ranch exchanges were found to be unsuitable for mining. Some areas were eliminated from consideration for exchange. For others, BLM stipulated conditions that would have to be attached to new leases in order to mitigate mining impacts. In the proposed Whitney Benefits exchange, for example, BLM determined that it would not allow coal mining in a golden eagle habitat. For the Chevron/Consol exchange, the environmental assessment recommended that the new lease require the companies to prepare a mitigation plan to protect sage grouse and antelope wintering grounds during and after mining. The assessment of the Peabody exchange recommended that the lease contain stipulations to protect historic sites and wildlife habitat.

Public Interest Criteria

Requirement for Public Interest Determinations

According to its regulations, BLM must determine that fee and lease exchanges are in the public interest before it can proceed to execute an exchange agreement. For fee exchanges, this requirement is derived from Section 206 of FLPMA, which states that such exchanges must be in the public interest. Laws authorizing individual lease exchanges may also contain such a requirement

BLM Has Criteria for Fee Exchanges but Not for Lease Exchanges

Although BLM has developed explicit, agencywide criteria for making a public interest determination for fee exchanges, it has not done so for lease exchanges. In determining whether the four fee exchanges we reviewed were in the public interest, BLM field offices utilized the fee exchange policy established in September 1983. (See exhibit IV.1.) Contained in BLM's operations manual, the policy consisted of a list of 12 policy elements or objectives, one or more of which should be present in every exchange. This policy required that an exchange be denied if the proposal had an opposite effect to a policy objective. Among the policy elements were objectives such as consolidating federal or nonfederal coal holdings into logical mining units, meeting a resource protection or management need, and enhancing competition for federal minerals.

BLM revised its public interest policy for fee exchanges in June 1986. On the one hand, the revision gives BLM field officials greater flexibility in measuring whether an exchange proposal is consistent with BLM policy and thus in the public interest. On the other hand, however, the revised policy requires BLM field officials to (1) determine that a fee exchange provides a greater public benefit than competitive leasing or cooperative leasing alternatives; (2) obtain from exchange proponents evidence that all private surface owners of lands to be acquired by the United States consent to mining, (3) apply unsuitability criteria to lands to be acquired by the United States, except in an alluvial valley floor exchange; and (4) consult with the appropriate RCT for advice on the consistency of a proposed fee exchange with BLM's competitive coal leasing program within their region.

Appendix IV
Public Interest Criteria

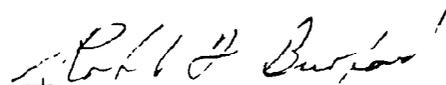
Exhibit IV.1

Bureau of Land Management
Fee Exchange Policy for Leasable
and Salable Minerals

The exchange of leasable and salable minerals is an important tool in achieving public interest Federal multiple use management and land protection goals. When considering an exchange, the manager must also consider the relative utility of competitive and cooperative leasing of leasable minerals, and sale of salable minerals, in their pre-exchange configuration. Although all of the following policy elements will seldom, if ever, be found in any one exchange proposal, one or more should be found in every proposal. Any proposal that would have an opposite effect to a policy element contained herein would not be considered to be in the public interest and must be denied at the earliest possible stage

An exchange of minerals is in the public interest if:

1. The exchange would consolidate Federal holdings into a logical mining unit(s).
2. The exchange would consolidate non-Federal holdings into a logical mining unit(s)
- 3 The exchange would serve a national resource management or protection need
4. The exchange would simplify jurisdiction and allow Federal land use planning efforts to be confined to an area in which the United States controls the mineral development.
- 5 The exchange would reunite Federal surface and subsurface estates.
6. The exchange would eliminate isolated tracts and checkerboard patterns of Federal minerals.
- 7 The exchange would achieve a management goal without using appropriated funds to pay for the resources needed by the United States
- 8 The exchange would meet needs of State and local people.
- 9 The non-Federal lands to be received in the exchange would serve the public better in public ownership than the minerals to be transferred in the exchange
- 10 The exchange would enhance competitive bidding for the Federal minerals.
- 11 The potential revenue from a lease or sale of the Federal minerals consolidated by the exchange would be greater than the potential revenue from a lease or sale of the minerals in Federal ownership prior to the exchange.
- 12 The exchange does not involve a transfer of a fee interest in Federal minerals for a less than fee interest (e g., conservation or scenic easements) in non-Federal lands. If a less than fee interest in non-Federal lands is all that is needed, a fee exchange shall be followed by a competitive bidding, or a modified competitive bidding, sale of the unneeded interests as the situation dictates


Director, Bureau of Land Management

9/26/83
Date

Source BLM Manual 2200

In the one lease exchange we reviewed that BLM considered its public interest regulations applied to—the Kerr-McGee exchange—BLM published its determination that the exchange was in the public interest.³ However, in this case, the determination was based not on a list of formal criteria but on a set of conditions that the state office’s coal program coordinator had identified as benefits of the exchange. Although the program coordinator considered certain of the criteria for fee exchanges, he based the public interest determination for the Kerr-McGee exchange on his understanding of the public benefits involved in this particular exchange, which included (1) meeting congressional intent, (2) enhancing federal revenues, (3) promoting coal development, (4) minimizing adverse environmental impacts, (5) assuring continued local economic development, and (6) providing adequate competition for adjacent federal coal lands.

According to BLM’s Assistant Director for Solid Leasable Minerals, neither the Congress nor any of the parties involved in coal lease exchanges has expressed concern about the absence of specific policy guidance on how public interest determinations should be made for coal lease exchanges. He said that if the issue had been raised, BLM would have responded to concerns and developed specific criteria.

Conclusions and Recommendation

Although the coal coordinator seems to have considered the more important aspects of public interest pertaining to this exchange, other reviews may not be as thorough. Some elements of the public interest, principally environmental protection and equal value, are reviewed under other procedures, but other aspects of an exchange—its effect on competitive bidding or on the government’s ability to lease surrounding coal lands, for example—could be overlooked if they are not considered at the time a public interest determination is made. A list of explicit, agencywide public interest criteria could thus serve as an important checklist, providing BLM and the public with standards by which to measure whether all aspects of the public interest have been taken into account.

While we are not critical of BLM’s finding regarding public interest in the Kerr-McGee exchange, we believe that the manner in which the decision

³Although BLM considers them as exchanges in other ways, it regards the Peabody and Chevron/Consol exchanges as settlements for cancelled leases and therefore did not believe it necessary to prepare public interest determinations for them

was reached could have been improved. In our view, such determinations should be based on established criteria rather than on judgments that, because they are ad hoc, may not be consistent and are potentially less reliable. Therefore, we recommend that the Secretary of the Interior develop formal criteria for determining whether a lease exchange is in the public interest.

Procedures for Considering Effects on Competition

Competition in the Federal Coal Program

Under the Mineral Lands Leasing Act, as amended by the Federal Coal Leasing Amendments Act of 1976, federal coal can be leased only on a competitive basis. According to the House and Senate reports accompanying the 1976 legislation, the public had been insufficiently compensated for its coal resources, and the award of leases by competitive bidding was viewed as a way to help assure that the federal government received fair market value for public resources.

An exchange is an exception to the principle of competition underlying the federal coal program, because it allows a company to acquire federal coal without going through a competitive bidding process. But while an exchange may be exempt from the usual rules of competition, it need not lessen overall competition for federal coal by taking away from the leasing program those lands that are most likely to attract competing bids, as indicated by companies' expressions of interest

BLM's Consideration of Competition

BLM does not have a policy or procedures that require it to determine whether an exchange involves lands for which other companies expressed a leasing interest during BLM's preparation for lease sales. Among the seven exchanges that we examined, competition was not an issue in four cases because the federal lands were either in checkerboard areas or locations that allowed them to be mined economically only by the companies proposing exchange. The Teton Valley Ranch and McKinley exchange proposals, for example, involved the exchange of lands in checkerboard areas that are of interest only to the companies with adjacent mining operations. For the two Northern Cheyenne exchanges—Peabody and Chevron/Consol—the authorizing legislation required that the new leases be on lands adjacent to the companies' existing operations and economically minable only by those companies

In the three other exchanges—Kerr-McGee, Whitney Benefits, and J-Y Ranch—the exchange proponents selected portions of federal land for which other companies had previously expressed interest in leasing. For the Kerr-McGee and Whitney Benefits exchanges, the BLM Wyoming state office, in reaction to public criticism, considered alternative tracts in which there was little or no leasing interest. The state office believes that in the J-Y Ranch exchange, the proponent himself will propose alternatives. In a memorandum sent to the BLM Director while the BLM Wyoming state office was evaluating several exchange proposals, the state director reported that his office was encountering numerous allegations that the exchanges were anticompetitive, noting that coal exchanges were perceived as a means to circumvent the leasing process.

Kerr-McGee Exchange

Unlike the Peabody and Chevron/Consol lease exchanges, the legislation authorizing the Kerr-McGee lease exchange did not require the company to select tracts which it alone could mine economically. Instead, in exchange for leases it held near Interstate Highway I-90 in Wyoming, Kerr-McGee selected lands within the Thundercloud tract, an area rich in coal and one in which two other companies had indicated an interest in either exploring or leasing. The lands selected by Kerr-McGee were also next to a mine operated by the Anaconda Minerals Company. Anaconda protested the exchange, arguing that removing the selected lands from the Thundercloud tract would reduce interest in leasing the remainder. In addition, since the exchange tract also bordered Anaconda's mine, it was particularly desirable to Anaconda because of the ease with which it could be incorporated into its existing operation

BLM considered several alternative tracts suggested by Anaconda. According to the environmental assessment report on the exchange, however, BLM could not evaluate each alternative because it lacked the geologic data necessary to determine the value of the coal within the tract boundaries of each alternative. To address Anaconda's criticism that the Thundercloud tract was made less competitive by the exchange, BLM added other lands to the tract and improved its access to rail transportation

Whitney Benefits and J-Y Ranch Exchanges

In the Whitney Benefits exchange, BLM Wyoming state office officials also offered alternatives, lands in which there was not as much interest in leasing as those selected by the exchange proponent. As originally proposed, the exchange involved a trade of privately owned coal within alluvial valley floor lands for certain federal coal lands within the Ash Creek tract in Wyoming. Because the selected federal lands are next to an inactive mine owned by another company, BLM took into account the possibility that the mine owner might eventually wish to resume operations. BLM offered the exchange proponent lands in another tract that the proponent alone had expressed interest in leasing in 1982, but the offer was rejected.

The federal lands selected in the J-Y Ranch exchange include the western half of the lands delineated as the Youngs Creek tract, a tract in which another company has a potential interest, and a portion of the Ash Creek tract discussed above. In this case, however, BLM has not offered alternative lands because it believes that the exchange proponent will propose alternatives rather than undertake the costs of the

additional drilling that BLM has required so that it can appraise the value of the selected lands in Youngs Creek.

Conclusions and Recommendation

Even though coal exchanges are the exception to the requirements for competition that otherwise pertain to federal coal development, BLM can try to avoid exchanging lands that are likely to attract bidding competition. The three exchange proposals that we reviewed were publicly criticized for involving potentially competitive lands. Although not required by its regulations, BLM's Wyoming state office reacted to criticism by attempting—in two of the three cases—to find alternatives in which there was little or no leasing interest.

We believe that it should not be up to each BLM state office to decide, on a case-by-case basis, whether to consider alternative lands if an exchange proponent proposes that the federal government trade lands in which others have an interest in leasing. We recognize that it may not always be possible to find suitable alternatives, but we believe that as an agencywide policy, BLM should consider the alternative lands available before it proceeds to exchange lands for which there might otherwise be competition.

Therefore, we recommend that the Secretary of the Interior develop an agencywide policy and procedures for lease and fee exchanges that would require all BLM state offices to determine whether other companies have expressed an interest in leasing the federal lands proposed for exchange and, if so, to consider alternatives.

Comments From the Department of the Interior

Note GAO comments supplementing those in the report text appear at the end of this appendix



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 17 1986

Mr. J. Dexter Peach
Assistant Comptroller General
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Peach:

Thank you for the opportunity to provide comments on the draft of the proposed report, "Interior Has Improved Its Administration of Coal Exchanges," GAO/RCED-87-53. The Department of the Interior is pleased that GAO has reported favorably on our efforts to introduce consistency into a program area, fee coal and coal lease exchanges, that in the past has seemed to certain members of the public and the Congress to be inconsistently managed.

The draft report makes two recommendations, and we will respond to them in order. In addition, the draft contains several points which we believe should be reconsidered or corrected, and a discussion of these points follows our response to your recommendations.

Recommendation 1.

"The Secretary of the Interior should develop formal criteria for determining whether a lease exchange is in the public interest."

This fiscal year (1987) the Department of the Interior proposes to develop draft criteria to determine whether or not specific coal lease exchanges are in the public interest. In the past we have been reluctant to develop such criteria for several reasons: (1) lease exchanges must be authorized by statute, and the criteria for determining their merits are usually statute-specific; and (2) Congressional direction to the Secretary to consider a specific lease exchange can be understood to mean that the exchange is in the public interest, or otherwise Congress would not have authorized (and, in at least one case, directed) the Secretary to make the exchange.

Designing criteria under these circumstances remains difficult. A set of guidelines will not assure consistency of exchange program administration because the objectives of exchanges vary from one authorizing statute to another. Notwithstanding these factors, the Department will draft public interest guidelines for the coal lease exchange program.

See comment 1

Recommendation 2.

"The Secretary should develop agency-wide policy and procedures for lease and fee exchanges that require all Bureau of Land Management (BLM) State Offices to determine whether other companies have expressed an interest in leasing the Federal lands proposed for exchange, and if so, to consider alternative lands for exchange."

See comment 2

The BLM does, as a matter of policy, consider alternatives to the fee exchange of potentially competitive Federal coal. This policy is found at item 14(a) of BLM's June 18, 1986, "Fee Exchange Policy for Leasable and Salable Minerals." That policy provides the following public interest test for fee coal exchanges:

(a) the Authorized Officer, after full consideration of alternatives to the exchange, including competitive and cooperative leasing, makes a determination that the exchange provides the greatest public benefit.

The word "full" in this policy element requires that alternative coal be considered when the Federal coal in a proposed fee exchange has competitive leasing interest.

The Federal-State Coal Advisory Board Charter and the individual regional coal team charters contain specific reference to the responsibility of these bodies to review fee coal and coal lease exchange proposals to determine the impact of exchanges on competitive leasing and to advise the authorized officers of their findings. This provides a direct link between the coal exchange process and the competitive leasing process and addresses GAO's concerns on this issue.

Specific points.

Now on p 9
See comment 3

1. Page 11 -- Correct the title of the Bureau of Land Management's organic act, i.e., the Federal Land Policy and Management Act.

Now on p 16
See comment 3

2. Page 21 -- There are currently six Federal coal production regions, not seven.

Now on p 16
See comment 4

3. Page 21 -- There was no review council at the time of the exchange described to convene. Review councils were made part of the regional coal activity planning process by the Secretary of the Interior's February 21, 1986, decisions on the Federal coal management program. Procedures relating to the review council were not issued, even on an interim basis, until May 1986, after assessments for the exchange were completed. Furthermore, review councils were adopted specifically for regional coal leasing activities. While they may be used for other coal management activities at the discretion of the Bureau officials involved, there are no present plans to require their use in coal exchanges. The same BLM employees who would constitute review councils are available to officials to review data for coal exchanges without the group's having to be designated a review council.

Appendix VI
Comments From the Department of
the Interior

3

Now on p 16
See comment 5

4. Pages 21 and 22 -- The Bureau did not adopt the concept of data adequacy standards until February 1986, when the Secretary directed the Bureau to develop data adequacy standards for regional coal activity planning and for lease-by-application actions. While data adequacy standards can be developed and applied to coal exchanges, the Department still must assess each exchange proposal to determine the appropriate level of data needed for evaluation.

Now on p 19
See comment 3

5. Page 24 -- The multiple use tradeoff/assessment screen is omitted from the description of the land use planning screens.

Now on p 19
See comment 3

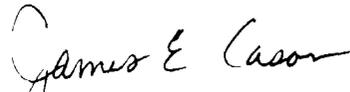
6. Page 25 -- Use of the word "unsuitable" in describing the surface owner consultation screen is misleading in terms of the program's terminology. Use of the phrase "not acceptable for further consideration for coal leasing" is more appropriate.

Now on pp 4 and 26
See comment 6

7. Pages 6 and 34 -- Expressions of leasing interest are specific to the regional coal activity planning process. While no procedures (outside of public participation opportunities) exist for an "expressions" process for exchanges, it is possible to develop these procedures. Our experience indicates, however, that exchange proponents usually have in mind specific tracts of land that they would like to receive in exchange for the lands that they are relinquishing and are not receptive to accepting alternatives.

Please contact us if we can be of further assistance.

Sincerely,



Deputy Assistant Secretary for
Land and Minerals Management

The following are GAO's comments on the Department of the Interior's letter dated December 17, 1986.

GAO Comments

1. We are pleased to note that Interior is proposing to follow our recommendations and develop criteria for determining whether a lease exchange is in the public interest. While we recognize Interior's concern about the difficulties in developing such criteria, we note in our report that Interior already has regulations that require such a determination. Furthermore, while the Congress' authorization of a lease exchange may imply that it is in the public interest, the authorizing legislation does not identify the federal lands to be exchanged. Consequently, Interior must find each particular exchange to be in the public interest.
2. Although Interior states that it has a policy to consider alternatives to exchanges involving potentially competitive federal coal, this policy covers fee exchanges only, not lease exchanges. As to this fee exchange policy, Interior believes that its instruction to give "full consideration [to alternatives to the exchange, including competitive and cooperative leasing]" is equivalent to a requirement that it consider alternative coal lands when the proponent proposes that the federal government trade lands for which others have previously expressed leasing interest. This interpretation is not, in our view, implicit in Interior's policy and needs to be clearly stated.
3. Clarifications or corrections have been made to the text of the report.
4. Interior appears to be restating our finding that, coal appraisal guidelines notwithstanding, review councils had not been convened (or formed) to review the adequacy of the geologic data used in determining the value of the coal exchange properties. We question why Interior has no plans at present to require the use of review councils in coal exchanges since these review councils are one of several features, that according to Interior's coal appraisal guidelines, are to "encourage consistent and replicable application of standard appraisal procedures."
5. Our report notes that BLM began to develop data adequacy standards as part of its efforts to improve its coal leasing program, an effort which began at least a year before the Secretary's directive. While we agree that each exchange proposal must be separately evaluated, we also believe that regional data adequacy standards not only can be but should be applied to all coal activities, including exchanges, as Interior's appraisal guidelines require. It is precisely because the amount of data

available in an exchange proposal may vary that standards are necessary so that one may judge whether the amount available is sufficient according to an objective measure.

6. It was not our intent to have Interior develop new procedures, but only to make use of those expressions of interest now obtained during the coal activity planning process; we have amended the text to clarify this point. We are concerned, however, with Interior's apparent skepticism about finding acceptable alternatives to exchange proponents' selections. While the company proposing the exchange may prefer its original selection, Interior is still obliged to seek an exchange that serves the public's interest, not merely the proponent's, and to reject an exchange if an acceptable alternative cannot be found.

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