



**Testimony of
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before the
United States House of Representatives
Committee on Natural Resources
Energy and Mineral Resources Subcommittee**

***The Future of the Federal Coal Program
July 11, 2019***

Good morning Chairman Lowenthal, Ranking Member Gosar and members of the subcommittee. I am Hal Quinn, president and chief executive officer of the National Mining Association (NMA). NMA is the national trade association representing the producers of most of the nation's coal, metals, industrial and agricultural minerals; and, manufacturers of mining and mineral processing machinery, equipment and supplies. NMA members own, lease and produce coal on private, state and federal lands throughout the United States.

The federal coal program has been a national energy and economic success story. It provides hundreds of millions of dollars of federal, state and local revenue per year, while also providing a low cost, reliable source of energy for all Americans.

Unfortunately, in recent years, there have been misguided efforts to derail the program. The leasing moratorium announced in January 2016 by former Secretary of Interior Sally Jewell, for example, was based upon pretext and politics. None of the reasons she provided for taking such a drastic and disruptive action survive an encounter with the facts.

Federal Coal Leasing Program: An Economic Engine for the West and Beyond

The federal coal program has served as an economic engine driving growth and prosperity across the Western U.S. and the nation. The coal produced on federal lands serves as a source of affordable, reliable and resilient electricity supply throughout the country. Thirty-four states consume coal from federal lands to generate electricity and fuel industrial and commercial facilities. The jobs and revenues have lifted state and local economies across the West. The coal program has also driven substantial improvements in environmental performance of coal-fueled power plants with emission

rates for sulfur dioxide, nitrogen oxides and particulates decreasing by 93 percent since 1970.¹

Jobs, Wages & Economic Development

States where federal coal is produced have historically exceeded the job and wage growth experienced in the remainder of the United States. Since 1970, the coal basins with significant federal coal production experienced sharply higher employment growth, often 2.5 to 3 times the growth in the U.S.² Personal income growth far outpaced—often by twice—the growth of total U.S. personal income growth.³ For example, the employment growth in Campbell County, Wyoming was 460 percent while the personal income growth was 740 percent. Coal wages are 60 to 115 percent higher than the average industrial wages in western states with federal coal production.⁴

Beyond the mines, federal coal production has created and sustained tens of thousands of high-wage jobs in other sectors including transportation, construction, equipment manufacturing, mining services and power generation. Each coal job supports two to four additional jobs.⁵

The federal coal consumed in 34 states powers homes and commercial enterprises including factories, farms and technology centers. Twenty-three of those states enjoy reliable power at costs below the national average, allowing them to maintain their global competitiveness. In the West, coal-based electricity powered the build-out of urban centers from Denver to Phoenix, and the pumping, moving and treating of water for drinking, municipal, industrial and agricultural uses from California to Nebraska.⁶

Federal coal directly finances support for water supplies and irrigation projects in the West. Since 1920, 40 percent of federal revenues derived from federal coal leases (royalties, bonus bids and surface rentals) have been directed to the Bureau of Reclamation's Reclamation Fund. An increasing share of revenues for the Reclamation Fund is derived from natural resource revenues. The Congressional Research Service estimates that 74 percent of the \$1.8 billion average *annual* Reclamation Fund receipts are from natural resource production, with 95 percent of those revenues originating from

¹ EIA, *Electric Power Monthly* (Feb. 2018); U.S. EPA, *National Emissions Inventory, Air Pollutant Emission Trends Data 1970-2016*.

² Bureau of Economic Analysis, *Regional Economic Accounts 2015*

³ Bureau of Labor Statistics, *Quarterly Census of Employment and Wages 2016*.

⁴ National Mining Association, *Annual Coal Mining Wages v. All Industries 2018*. Available at https://nma.org/wp-content/uploads/2018/06/annual_coal_mining_wages_18.pdf

⁵ National Mining Association, *The Economic Contributions of U.S. Mining*, Table 5-Coal Mining Employment by State (Sept. 2018). Available at: https://nma.org/wp-content/uploads/2016/09/Economic_Contributions_of_Mining_2017_Update.pdf.

⁶ In the Western U.S., water services account for a significant fraction of electricity use—roughly 25 percent of all industrial consumption of electricity in the West. Tidwell, Moreland, Zemlick, *The Geographic Footprint of Electricity Use for Water Services in the Western U.S.*, *Environ. Sci. Technol.* 2014, 48, 15, 8897-8904.

federal coal, oil and gas production in Wyoming (50%), New Mexico, Utah, Colorado, Montana and North Dakota.⁷

Revenues for Federal, State and Local Governments

Revenues from federal royalties, bonus bids and surface rentals are split between the federal and state governments. Between 2006 and 2016, federal royalties, bonus bids and rentals exceeded \$1 billion *annually*.⁸ As a result, more than \$500 million has been distributed annually among eight federal coal producing states.

Operations producing federal coal also pay a range of state and local taxes. The scope and amount will vary by state, but they include severance or production taxes, sales taxes, real property taxes, personal property taxes (equipment) and employment taxes. In Wyoming, state coal tax revenue approximated \$480 million in 2017.⁹ These revenues, combined with the state share of federal coal revenues, support education, school capital construction, highways, county and city capital projects and other general budget purposes.

A Leasing Moratorium Based on Pretext and Politics

By any objective measure, the federal coal program has been an energy and economic success for the country. Secretary Jewell's 2016 coal leasing moratorium was stunning for its lack of evidence to support such drastic action. Between 2009 and 2016, both Secretary Jewell and her predecessor, Secretary Ken Salazar, rejected repeatedly the requests and reasoning by organizations urging the termination of federal coal leasing.¹⁰ During the same period, the courts, on multiple occasions, rejected as unpersuasive the reasons advanced by these groups for a leasing moratorium.¹¹

⁷ Congressional Research Service, *The Reclamation Fund* (In Focus) (May 21, 2019). Available at <https://fas.org/sgp/crs/misc/IF10042.pdf>.

⁸ Office of Natural Resources Revenue, Federal Revenue Data. Available at <https://revenue.data.doi.gov/explore/revenue/>

⁹ Wyoming Mining Association, Wyoming Coal Information Committee (2018).

¹⁰ A petition requesting drastic changes in the leasing system and imposition of a carbon tax on coal leases was rejected in 2011. Letter from BLM Director to WildEarth Guardians, Jan. 28, 2011. Three years later, a request to suspend new lease sales was denied. Letter from BLM Director to Senator Edward Markey, Aug. 14, 2014. The Secretary has repeatedly rejected claims that coal lease sales lacked a comprehensive consideration of potential environmental impacts. *Powder River Basin Resource Council I*, 183 IBLA 119 (2010); *Powder River Basin Resource Council II*, 183 IBLA 83 (2012); *Powder River Basin Resource Council III*, 183 IBLA 242 (2013).

¹¹ *WildEarth Guardians v. Salazar*, 783 F. Supp.2d 61 (D.D.C. 2011) (Mineral Leasing Act does not require DOI to abandon lease-by-application process and proceed under the former regional coal sales system); *WildEarth Guardians v. Jewell*, 880 F.Supp.2d 77 (D.D.C. 2012) *aff'd* 738 F.3d 298 (D.C. Cir. 2013) (DOI adequately considered climate and other impacts from leasing decisions—characterized objections as last-ditch, kitchen-sink attempts at unjustified obstructionism); *Western Org. of Res. Councils v. Jewell*, 124 F. Supp. 3d 7 (D.D.C. 2015) *aff'd* *Western Org. of Res. Councils v. Zinke*, No. 15-5294 (D.C. Cir. June 19, 2018) (Secretary of Interior under no obligation to supplement programmatic EIS).

History of Requests for a Leasing Moratorium

The six-year history preceding the Secretary's Jewell's leasing moratorium reveals the pretextual nature of the decision. On multiple occasions, organizations subscribing to the "Keep It in the Ground" campaign requested Secretary Salazar and Secretary Jewell to impose leasing moratoriums, change royalty rates, restrict coal exports and levy carbon taxes.¹² Their requests were more emotional than informed. While they claimed the coal leasing program failed to deliver fair market value, paradoxically, they urged actions that would result in the recovery of lower or no value from our nation's vast coal resources. For sound reasons, these requests were denied until 2016.

Nothing changed between 2009 and 2016 to justify Secretary Jewell's abrupt about-face. The reasoning found in the Secretarial Order is simply a pretext to disguise the motivations to deliver "Keep It in the Ground" advocates a symbolic, but expensive, gift before the administration departed from office.

Secretary Jewell's Reasons vs. Experience under the Coal Program

Secretary Jewell's reasons for the moratorium are drawn from the same previously discredited menu of claims advanced unsuccessfully by organizations for six years. Each of the claims fails upon contact with facts and experience under the coal leasing program.¹³

Fair Return to the Public

The suggestion that federal coal royalty rates do not provide a fair return cannot be squared with the substantially higher government take from federal coal as compared to private coal. Royalty rates for federal coal (12.5% surface coal; 8% underground coal) are 30 percent to 65 percent higher than the prevailing rates for private coal in the East. Moreover, federal coal lessees pay bonus bids and surface rentals, financial features rarely found in private coal leasing transactions. Between 2003 and 2014 coal companies paid \$13.8 billion in federal royalties, bonus bids and surface rentals. The revenues paid in 2014 were twice the level of 2003; bonus bids increased substantially (700 percent in the Powder River Basin); royalty revenue rose 88 percent despite only a 2 percent increase in coal prices; and revenue per acre under lease increased 40 percent.

Federal coal carries more than its fair share. A ton of Powder River Coal selling for \$12 bears \$4.52 in federal, state and local taxes, fees and royalties. In other words, 38 cents of every dollar in coal sales goes to the government.

¹² See Letter from Wild Earth Guardians, Nov. 23, 2009; Letter from WildEarth Guardians, Greenpeace, Climate Solutions et al., April 15, 2013; Letter from WildEarth Guardians, Greenpeace et al., July 18, 2013; Letter from WildEarth Guardians, Greenpeace et. al., Dec. 22, 2015.

¹³ A full examination of the reasons proffered for imposing the coal leasing moratorium are found in *Federal Coal Leasing Moratorium: An Examination of the Reasons Driving a Disruptive Policy* (National Mining Association & Norwest Corporation July 28, 2016).

Paying on the Market Value of Coal Produced

Another myth created and perpetuated to support the leasing moratorium is a claim the coal producers do not pay the royalty on the basis of the market value of the coal sold. For example, the Center of American Progress (CAP) claimed that “because royalties are assessed on the sale price of coal at the first point of sale—which is usually at the mine mouth—[the sales price] does not reflect the market price.”¹⁴ In support of this proposition, CAP and others created artificial constructs that equate the market value for royalties to the total delivered costs of coal to customers.

To begin with, the Mineral Leasing Act fixes the royalty to the value of coal, oil and gas *at the mine or well*. CAP and others¹⁵ deceptively attempt to include in the sales price the costs paid by end users to railroads for delivery of the coal. Rail transportation costs are a significant fraction of the total cost to utilities or other customers—and on average comprise more than 46 percent of the delivered cost.¹⁶ The transportation arrangements and costs are not part of the coal sale between the coal producer and utility. The transportation costs are paid to the railroads by the utilities.

Essentially, CAP and others would have the royalty applied to two separate transactions among three separate parties: (1) the sale of coal to the utility by the coal producer; and (2) the transportation services provided by the railroad to the utility. The coal producer only receives proceeds from the sale of coal. Extending the royalty to the transportation services is not a production royalty—rather it is a federal tax levied on coal production and separate transportation and logistics services.

Competitive Coal Lease Sales

The suggestion that the public receives less than fair market value for coal leases issued under the lease-by-application (LBA) process is unsupported by experience. Since the inception of the LBA process, bonus bids steadily increased. Between 1990-2012, bonus bids for the Powder River Basin lease sales increased by 800 percent per ton of recoverable coal.¹⁷ These remarkable increases occurred despite only modest price increases for coal.¹⁸

Two methods exist for competitive lease sales: (1) regional coal sales; and (2) lease by application. Both are an open, public and competitive sealed-bid process. Both preclude issuing a lease if the highest bid does not meet or exceed BLM's pre-set fair market

¹⁴ Center for American Progress, *Modernizing the Federal Coal Program* (Dec. 9, 2014)

¹⁵ See, e.g., Headwaters Economics, *An Assessment of U.S. Federal Coal Royalties* (Jan. 2015).

¹⁶ EIA, Real Average Transportation and Delivered Cost of Coal., by Year and Primary Transportation Mode. Available at <https://www.eia.gov/coal/transportationrates/pdf/table1r.pdf>.

¹⁷ BLM, Successful Competitive Lease Sales Since 1990 (Powder River Basin). Available at <https://eplanning.blm.gov/epl-front-office/projects/nepa/64842/78271/88492/SuccSales080813.pdf>

¹⁸ Subbituminous coal prices increased by only 55 percent (1989-2011) and were actually below 1989 levels in real terms. Energy Information Administration, Annual Energy Review (Table 7.9 Coal Prices, 1949-2011 (Sept. 2012).

value for the tract. BLM uses multiple peer-reviewed and widely accepted methodologies for setting fair market value.

Secretary Jewell's moratorium order invokes two reports from the General Accountability Office (GAO)¹⁹ and Office of Inspector General (OIG)²⁰ as reasons for terminating leasing. However, neither report identified systemic flaws in the program. In fact, the recommendations in those reports were acted upon *prior* to the Secretarial Order imposing the moratorium.²¹ Further, DOI communicated to the Senate that nothing in the reports justifies a leasing moratorium.²²

The GAO report did not repudiate its prior finding that the LBA process can achieve the objectives of ensuring fair market value from leases.²³ It also recognized that the BLM Handbook and guidance follows generally accepted appraisal practices both in the U.S. and internationally. And it recognized that the diminished number of bidders for lease sales reflects the maturation of the development of the federal coal basins and consolidation of the industry structure over time.

A comparison of results under the LBA process and the regional coal sales process discloses that while neither differed remarkably in terms of the number of bidders per lease sale, the LBA process yielded higher returns and more orderly management of federal coal resources. Despite the praises from some corners for the regional coal sale process, only 18 percent of the leases offered under that system received multiple bidders.²⁴ Under the LBA process, coal leases have been sold at a more manageable and rational rate roughly matching reserve depletion at existing mines.²⁵

As a result, the federal coal program has yielded higher revenues with fewer leases. Before the LBA process was used, there were 565 coal leases covering 812,000 acres. By 2014, there were 308 leases covering only 474,000 acres. Despite fewer leases, production increased as did revenues to the federal government and states. In the decade of 2003-2014 alone, annual federal coal revenue more than doubled from less than \$600 million to almost \$1.3 billion.²⁶

The actual experience under the federal coal leasing program further unmask the pretext surrounding Secretary Jewell's reasoning for imposing the coal leasing moratorium. The root concern is not about competitive lease sales or receiving a fair return, but rather the success and resilience of an industry delivering a fair return and

¹⁹ GAO, COAL LEASING, GAO-14-140 (Dec. 2013).

²⁰ OIG, Coal Management Program Rep. No. CR-EV-BLM-0001-2012 (June 2013).

²¹ BLM Aug. 14, 2014 Letter to Senator Edward Markey.

²² BLM Director Letter to Senator Edward Markey, Aug. 14, 2014.

²³ See GAO, MINERAL RESOURCES, Federal Coal Leasing Program, GAO/RECD-94-10. p. 44 (Sept. 1994).

²⁴ See BLM Reply Brief in *Powder River Basin Resource Council*, 124 IBLA 83 (Sept. 15, 1992) (81.5% of lease tracts attracted either one or no bids from 1975-1990).

²⁵ See BLM Letter to WildEarth Guardians (Jan. 28, 2011).

²⁶ National Mining Association/Norwest Corporation, *Federal Coal Leasing Moratorium: An Examination of the Reasons Driving a Disruptive Policy* p.2-17 (July 28, 2016).

affordable energy despite the burdens of above-market royalty rates, high bonus bids and a protracted process for securing leases.

Environmental Review of Lease Sales and Mining Permits

The environmental impacts from coal leasing and coal mining on federal lands is subject to multiple—and often redundant—stages of environmental analysis before leasing and before mining. These state and federal reviews evaluate all relevant impacts to air, water, land, wildlife habitat and potential greenhouse gas emissions. These multiple reviews include:

- Land Use Planning
 - The Bureau of Land Management conducts, in cooperation with other federal and state agencies, a rigorous land use planning process to review the public lands for potential coal leasing incorporating the considerations set forth by statute in the Federal Land Policy Management Act (FLPMA), the Federal Coal Leasing Act Amendments (FCLAA) and the Surface Mining Control and Reclamation Act (SMCRA). These considerations include multiple use, sustained yield, protection of critical environmental areas and the application of specific unsuitability criteria. The purpose of the coal screening stage of the land use planning process is to identify those federal lands that are acceptable for further consideration for coal leasing and development. No other resource on federal lands is subjected to such a far ranging and in-depth assessment for determining which lands should remain open for use or leasing.
- NEPA Analysis Prior to Coal Lease Sale
 - When DOI accepts for consideration a lease application, it begins an analysis under the National Environment Policy Act (NEPA) of potential environmental impacts of the proposed leasing action, including “reasonably foreseeable” direct, indirect, and cumulative impacts of leasing coal. Each EIS evaluates a full range of environmental considerations including: quantity and quality of water resources; aquifer drawdown; impacts on streams and alluvial valley floors, air quality and associated effects on health and visibility; wildlife; endangered species; other land uses; reclamation of disturbed lands; and potential greenhouse gas emissions.
- Mine Plan Review
 - A lessee must receive approval of a MLA mining plan by DOI that ensures the maximum economic recovery of the coal resource. This review is accompanied by another environmental analysis under NEPA.
- Mining Permits
 - A state SMCRA permit application must be submitted and approved which includes a detailed operation and reclamation plan, monitoring, mitigation

and reclamation requirements. Mining operations must also receive permits related to air and water quality under state corollaries to the Clean Air Act and Clean Water Act.

In terms of environmental performance, the Department of Interior's latest oversight reports for state programs under SMCRA show that in the six western federal coal producing states, all coal operations are free of any off-site impacts.

The reviews are comprehensive and leave no gaps. However, the combination of multiple and often redundant environmental analysis results in a protracted and inefficient process. The lease sale process alone often spans six to seven years. Ironically, these delays deny the public of the time value of money from bonus bids, royalties and surface rentals. Notably, the Secretary never mentioned anything about improving the efficiency of the program in her Secretarial Order.

Conclusion

The federal coal program has been an enormous success by providing a secure supply of energy to generate affordable and reliable electricity, powering economic growth and job creation throughout the nation, improving the emissions performance of the electricity generation fleet and delivering above-market returns to the public.

The leasing moratorium imposed by Secretary Jewell rests upon pretext to hide the real motivations to advance market distorting policies designed to make coal production more expensive, less competitive and yield lower revenues. The reasons offered for the moratorium are devoid of any real evidence, lack any analytical rigor and are simply a collection of the contrived claims both she and her predecessor previously rejected.

If the Secretary really believed that certain issues with the program deserved further evaluation, nothing prevented her from proceeding to do so *without* imposing the drastic measure of halting coal leasing. And, this is what is so puzzling, to say the least, about a recent court ruling that the Department of Interior was obligated to conduct a NEPA analysis before Secretary Zinke's order lifting the moratorium. It seems backwards. Following the court's reasoning, if any action was subject to NEPA, it would be Secretary Jewell's decision to halt leasing. The moratorium order was the classic leap first and promise to look later at the consequences. On the other hand, Secretary Zinke's order merely ceased what Secretary Jewell characterized as a wholly voluntary programmatic review which, as all the evidence demonstrates, is unjustified and unnecessary.