Statement of Sara Kendall, Interim Executive Director

Subcommittee on Energy and Mineral Resources
Hearing Examining the Biden Administration's Record on Federal Coal Leasing

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Chairman Stauber, Ranking Member Ocasio-Cortez, thank you for the opportunity to testify. My name is Sara Kendall and I am the Interim Executive Director of the Western Organization of Resource Councils (WORC). WORC is a regional network of nine grassroots community organizations in seven states in the northern Rockies and Great Plains that include 19,935 members and 39 local chapters.

For more than fifty years, our network's work on coal has been grounded in our long-standing commitment to representing people in western coalfield communities. Our mission includes protecting water resources and clean air, family farms and ranches, and providing community members with the information and tools necessary to raise an effective voice in the decisions that impact their lives.

The first organizations in our network were formed in the early 1970s, when ranchers who owned private land over federal and state coal deposits needed to protect their homes, livelihoods and private property rights from proposed strip mines. We have worked since then to address the environmental, health and economic impacts of mining, transporting and burning coal.

Many of our members' livelihoods depend on clean air and water, native soils and vegetation, and lands that remain intact and productive, but decisions regarding how our nation leases federal coal resources have significant consequences for all Americans.

The federal government owns about 88 billion tons of recoverable coal, or about one-third of all U.S. coal reserves and nearly ten percent of the world's known reserves of coal. More than 45% of the U.S.'s annual coal production comes from federal coal, with the vast majority being produced from the Powder River Basin of Wyoming and Montana, where 77% of the mineral estate is federally owned, and 84% of the federal mineral estate is overlain by privately owned, deeded surface. The BLM administers 283 coal leases constituting almost eight billion tons of recoverable coal reserves. These existing leases will sustain coal production for at least twenty years, and likely decades longer.

Federal coal fuels power plants across the country, and accounts for 13 percent of all U.S. greenhouse gas emissions. Continuing to lease coal from public lands is fundamentally incompatible with the urgent action required to combat climate change at the scale and pace required by the problem. The effects of climate change observed to date and projected to occur in the future include more frequent and intense heat waves, more and/or severe wildfires, degraded air quality, more heavy downpours and flooding, increased drought, greater sea-level rise, more intense storms, spread of invasive species, harm to water resources, harm to agriculture, and harm to wildlife and ecosystems. Virtually every natural system in our region and the world is already being impacted by global climate change. These impacts will continue to become more and more severe unless the use of coal is dramatically curtailed.

In addition to climate change impacts, federal coal leasing and subsequent mining creates significant – and in many cases irreversible – impacts to air and water resources, wildlife habitat, and ecosystems in the areas where mining occurs. Impacts include:

- Groundwater depletion, surface water depletion and degradation: Coal mining has caused complete dewatering of aquifers formerly used for drinking water and livestock watering, and physical and chemical changes to surface waters.

- Delayed or lack of reclamation resulting in lands not being returned to productive former uses: Just 17% of mined lands in Wyoming and 20% in Montana have met regulatory requirements for reclamation, re-vegetation and aquifer restoration and been fully released from bond.

- Degraded air quality: Powder River Basin mines routinely cause violations of the 24-hour standard for particulate matter and emit significant amounts of toxic air pollution, contributing to regional haze and higher ozone levels. Orange noxious clouds of nitrous oxides have been found as far as 11 miles from mine boundaries.

- Private property rights: BLM has exchanged federal coal out from under private landowners, who then lose their right to surface owner consent before leasing.

- Multiple rail transportation issues: Traffic delays cut off roads and clog traffic, and each train car can lose 500 pounds of coal dust en route, increasing exposure to toxic heavy metals and rates of asthma, especially in children.

The Biden Administration's record on federal coal leasing is yet to be determined. One of the President's earliest actions was to sign an executive order pausing further leasing of federal oil and gas, but coal was conspicuously excluded from the pause. The pause was reinstated by the U.S. District Court for the District of Montana in August of 2022, and in April, BLM initiated a court-ordered environmental review of the pause. Thus far, the agency is simply doing what the courts have told them they must do to comply with the law. In 2021 BLM initiated a notice of intent to review the federal coal program and accepted comments regarding the scope and content, but it is not clear what the process is, and when or even whether that review will be completed. Our organization is deeply concerned that none of the problems that prompted the federal coal leasing moratorium in 2016 have been addressed.

In 2016, the announcement by then-Secretary Jewell that the Department of the Interior would conduct a complete review of the federal coal program and pause leasing while the review occurred was made in response to calls from citizens from across the country, including many from the coalfield communities of Wyoming and Montana. WORC supported the programmatic review and the pause on leasing then, and we continue to.

The Department of Interior's (DOI) federal sale of publicly-owned coal has been plagued by scandal from its earliest days. There is a decades-long history of a deeply flawed program that has mismanaged taxpayer-owned resources and cost local, state, and federal governments billions of dollars in potential revenue.[1]

In 2012, the Institute for Energy Economics and Financial Analysis estimated that taxpayers lost $28.9 billion in revenue from coal leases over 30 years as a result of the BLM failing to get fair market value for coal mined from public lands.[2] The IEEFA report, coupled with inquiries from members of Congress, led to audits of the federal coal leasing program by the DOI Office of Inspector General[3] and the Government Accountability Office[4] that exposed flaws in DOI's coal valuation methodology and called DOI practices outdated. Based on confidential information reviewed by GAO, Senator Markey estimated in 2014 that recent coal leases could potentially have yielded an additional $200 million in revenue.[5]

The last major revision of the federal coal program occurred more than four decades ago. Energy markets have changed dramatically since then, and our understanding of the environmental and social effects of coal leasing and mining has greatly improved.

Domestic coal demand and production have generally been declining since 2008, in large part because coal had lost its competitive edge over natural gas and now renewables. Yet, in 2016 coal companies were proposing to increase the rate of leasing significantly — by over four billion tons — despite declines in domestic market and production, and more than 20 years of reserves already leased. Their plan was to increase exports of federal coal, primarily to Asian markets, where energy prices are significantly higher and profits greater, even with

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1 /https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=1463&context=faculty-articles

2 https://ieefa.org/articles/ieefa-report-almost-30-billion-revenues-lost-taxpayers-great-giveaway-federally-owned-coal

3 https://legacy-assets.eenews.net/open_files/assets/2013/06/11/document_pm_01.pdf

4 https://www.gao.gov/products/gao-14-140

5 https://www.markey.senate.gov/news/press-releases/markey-report-on-public-coal-leasing-shows-taxpayers-losing-money

transportation costs — a plan that seemed at odds with the interests of the American people, since federal coal prices were set low during the energy crisis of the 1970s, and remained low in the name of affordable energy and national security. Scaling up exports for coal industry profit would effectively send taxpayer-subsidized energy supplies to our overseas competitors and continue the mining and burning of our most carbon-intensive energy source just as the U.S. was attempting to regulate emissions at home.

BLM has a limited role in setting leasing levels because it decertified coal production regions, eliminating the agency's role in setting leasing levels and designing leasing tracts, and instituted a "lease by application" system in 1992. The LBA system supplanted the competitive bidding system envisioned by Congress. It improperly skews the valuation of lease tracts, garners significantly reduced bids, and shrouds crucial information in secrecy. The Inspector General of the Department of Interior found that more than 80 percent of leases in the Powder River Basin over the last 20 years had only one bidder. This is because individual companies play a large role in delineating the tracts for leasing – a process that results in tracts that do not generate competitive bids, which is the best mechanism for ensuring fair market value and fair return for federal coal. And, the LBA system does not have a mechanism for BLM to consider whether leasing publicly owned coal to foreign markets at artificially low prices is in the public interest.

National energy markets are undergoing fundamental changes as energy generating resources other than coal become more competitive for electricity production and as the world works to combat climate change and reduce all associated environmental harms. The federal coal leasing framework needs to acknowledge these changes and equitably address the true and broad array of challenges driven by the mining and burning of coal. Heavily subsidized federal coal leasing artificially distorts electrical power markets; reduces royalty payments to federal, state and local governments; accelerates climate change; and negatively affects a range of critical ecological resources.

A programmatic review is an important step to ensure taxpayers receive a fair return for the leasing and mining of public coal and that the Bureau of Land Management's systems appropriately minimize environmental impacts.

During BLM's year-long scoping process in 2016, the agency received many hours of public testimony and hundreds of thousands of comments in support of updating the federal coal program from a broad spectrum of Americans, including ranchers, hunters and public lands recreationists, small business owners, conservationists, academics and economists, and climate activists. BLM's scoping report (vol. I, vol. II) focused on these problems and identified a variety of policy solutions.

Priority areas where the Administration can take action that would benefit American taxpayers, protect our climate and public lands include:

- Reinstate the pause on federal coal leasing, and restart the programmatic review of the federal coal program.
- The Department of Interior has a legal duty to ensure that leasing is in the "public interest," and should develop new rules and management criteria by which leasing and mining of federal coal resources is evaluated under this mandate, including protection of land, water, air, wildlife, taxpayers, and the global climate.
- Consider policy options that help to plan and manage the decline of federal coal leasing and development in an orderly, structured way that provides time, space, and opportunity for a just and equitable transition for workers, communities, and coal-dependent state economies;
- Address the legacy issues of decades of federal coal mining, including ensuring that reclamation bonds are adequate and leased areas are reclaimed in a complete and timely way before new leases are offered;
- End subsidies on federal coal production by implementing new fiscal policies, such as increasing royalty and rental rates, as well as discontinuing royalty rate reductions.
- Deny requests for additional coal mine royalty rate reductions. Numerous requests for royalty rate reductions are currently pending before BLM, including some for the largest mines reliant on federal coal in Wyoming's Powder River Basin. The Federal Coal Leasing Amendments Act of 1976 and implementing regulations amended the Mineral Leasing Act to require a royalty rate of not less than a 12.5% royalty rate on the sale of coal from surface mines, and not less than 8% for coal from underground mines. However, in 2013 the Government Accountability Office found that actual rates are far lower in many states due to royalty rate reductions: 12.2% in Wyoming, 11.6% in Montana, 11.6% in Utah, and 5.6% in Colorado.[6]

The leasing pause was designed to provide time for the government to review the program and institute needed changes before new leasing occurred. It was not designed to limit the mining of federal coal, and did not limit leasing. It is the historic market downturn that is limiting leasing.

When Secretary Jewell issued her order, companies had proposed leases for over 2.9 billion tons of federal coal, even though enough coal was already under lease to continue production at

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[6] https://www.gao.gov/products/gao-14-140

current levels for 20 years. Fourteen leases were not covered by the pause, totaling 1.003 billion tons, and the leasing pause allows for emergency leasing if supplies run short. More than 85% of the coal identified in BLM's 2017 pending lease list is located in the Powder River Basin of Wyoming and Montana. Since the publication of that list, coal companies have withdrawn lease applications for 55% of the tonnage in the Basin, as demonstrated in the table below, and paused applications for more than one-third. Less than 1% has been sold, and just 8.16% is actively pending.

Status of Federal Coal Lease Applications in the Powder River Basin, 2017-2020		
Status	*Tons (million)*	*Percent of Total*
Withdrawn	1,384.8	55.08%
Paused	908.6	36.14%
Pending	205.1	8.16%
Sold	15.8	0.63%
Total	*2,514.3*	*100.0%*
Source: BLM database LR2000, BLM pending lease list, WORC calculations.		

The economic headwinds facing the coal industry are the result of competition from less expensive energy sources, depleted coal reserves that are more expensive to mine, growing consumer and business demand for cleaner sources of energy, and a carbon-constrained world.

Numerous communities, including tribal communities, are already feeling the economic impacts of coal retirements even after having borne the brunt of air and water pollution from mining and burning coal for decades. The federal government must ensure timely cleanup of coal pollution and provide local jobs and economic diversification for these communities. The Inflation Reduction Act unlocked significant federal investments to assist "energy communities" in these ways. The Administration must now partner with communities to ensure these investments are realized in ways that provide durable benefits to impacted individuals, families, and communities.

Coal communities deserve policies that take advantage of the coal regions' existing assets; ensure the strongest possible standards for reclamation bonds; focus on creating new, sustainable, and diverse local economies; recognize mine reclamation as an economic opportunity; and preserve the benefits and respect that coal miners and their families have earned over generations of hard work powering our country.