

STATEMENT OF
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BEFORE THE

COMMITTEE ON NATURAL RESOURCES
ENERGY AND MINERALS SUBCOMMITTEE
U.S. HOUSE OF REPRESENTATIVES

FOR THE
HEARING ON:
“THE FUTURE OF THE FEDERAL COAL PROGRAM”

JULY 11, 2019

Mr. Chairman and Members of the Subcommittee, thank you for inviting me to testify on the future of the federal coal program.

Today I appear before you as a public citizen in my personal capacity, having had the incredible opportunity to serve my country as the former Deputy Assistant Secretary for Land and Minerals Management (ASLM) at the Department of the Interior (DOI). My time at DOI allowed me to work in partnership with coal executives and stakeholders across the spectrum to navigate historic bankruptcies and the collapse of an integral industry financial assurance tool, self-bonds. It was in working together that we did our best to address the human impact of market forces on our energy dependence; families pivoting from an industry whose role in America simply changed forever. The reality of market forces shaping the new value of coal in our country led our Administration, under President Obama, to take action to protect American citizens. We believed deeply that we were charged to help the American people pivot despite our nation’s new reliance on more competitive sources of fuel.

My testimony will focus on two areas, first is the impact of insufficient bonding and reclamation on our federal lands and the second will outline the human impact of the future of federal coal with respect to assisting transitioning communities.

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) established the Office of Surface Mining Reclamation and Enforcement (OSMRE) for two essential purposes: 1) to ensure coal mine operational standards that protect citizens and the environment which restores the land to productive use following the mining and 2) the implementation of the Abandoned Mine Land (AML) program designed to

address hazards and environmental degradation as a result of mining from two centuries prior. In regulating active coal mines and reclaiming abandoned mine lands, SMCRA established OSMRE in order to create accountability in ensuring consistency among state regulatory programs and to fund state regulatory and reclamation efforts. States are incredibly empowered through the current construct as they permit and regulate 97% of the nation's coal production.

Self-bonds are a mechanism enabling the coal industry to operate with the protection of a subsidy that allows coal companies to self-insure the environmental costs of mine reclamation instead of setting aside the actual cash or collateral to cover these costs. Federal law, SMCRA, requires coal companies to be responsible for spent mines, ordinarily covered using cash, surety bonds or other financing to cover the future cleanup costs. On August 5, 2016 the former Director of OSMRE, Joseph Pizarchik, issued a policy advisory on self-bonding advising state regulators and OSMRE staff on how to implement existing law in order to protect the public and the environment. Of the three self-bonding advisories outlined, today I want to highlight number two which ought to be updated and implemented. Self-Bonding Advisory #2 specified that state regulatory authorities should "not accept new or additional self-bonds...until coal production and consumption market conditions reach equilibrium...not likely to occur until at least 2021." The future of the federal coal program should take into account this advisory and extend this date to reflect continuing market shifts.

Between 2015-2016 alone five coal companies filed for bankruptcy (Alpha Natural Resources, Arch Coal, Patriot Coal, Peabody, and Walter Energy). Of those five, three were the largest coal producing companies in the country, Alpha Natural Resources, Arch Coal, and Peabody Energy Corporation. These three companies alone had a combined \$2.2 billion in self-bonding liabilities when they each filed for bankruptcy over a 13-month span. In 2015, when Alpha Natural Resources filed for Chapter 11 bankruptcy, roughly \$19 million in ad valorem taxes (a tax on the property value of the mineral lease) remained unpaid. Alpha left Wyoming and spun off two Powder River Basin mines-Belle Ayr and Eagle Butte. These two mines were held under Contura, a company formed out of Alpha's bankruptcy, which according to filings held by the Securities and Exchange Commission, holds bonds totaling \$237 million in reclamation costs for both mines.

Last week, on July 2nd two new coal mines in Wyoming closed sending 700 workers home on Monday afternoon indefinitely. This latest bankruptcy filing, by Blackjewel LLC, occurred when the bank rejected a \$20 million dollar financing request. This rejection meant operations could no longer continue during bankruptcy proceedings on Eagle Butte and Belle Ayr, the fourth and sixth largest producing coal mines in our country respectively. Court documents reveal that Blackjewel's liabilities total at least \$500 million, roughly \$6 million of which are owed to employees. Employees seeking to cash their checks at banks were unsuccessful and referred to the sheriff's office. A day later, on July 3rd a federal judge approved interim emergency funding of \$5 million on the condition that Blackjewel's CEO

resign. This funding will exclusively support firefighting personnel, security, and emergency expenses. Without this funding it is unclear how local officials would deal with the fire at the abandoned mine on Blackjewel's property as local firefighters are ill equipped to address coal fires on coal mines-American citizens deserve protection from these exposures.

The existing self-bonding rules require mining companies to provide surety or collateral bonds once the company becomes ineligible to self-bond. A state's ability to implement the law in partnership with OSMRE illustrates opportunities to modernize the rules. During my time at DOI, OSMRE was maintaining a self-bonding spreadsheet reflecting the amount of self-bonds by state. In determining the future of the federal coal program, I would encourage this committee to work with OSMRE to produce this updated spreadsheet in order to more fully understand which states and mine operators have made progress in order to ensure that coal mines are appropriately bonded and identify where the public and the environment remain at risk as a result of insufficient self-bonding.

Wyoming provides guidance on self-bonding as their Environmental Quality Council approved limits to accessing self-bonds, reducing the state's liability in the event that a mining company becomes insolvent and unable to uphold their reclamation obligations. By evaluating credit ratings, state regulators are able to better assess the financial health of a mining company thereby reducing reclamation liability risk. While I applaud Wyoming's leadership, this ought to be the national standard. OSMRE and the states need to modernize their self-bonding rules. We need every state to fully implement the 2016 advisory to address these insolvencies.

SMCRA requires reclamation to proceed concurrently with the actual coal mining but does not specifically define "concurrent reclamation," granting states tremendous discretion. SMCRA also provides that portions of the reclamation bond can be released in phases as the mine operator reclaims the land and applies for bond release. Phase 1 bond release can occur once the mine operator completes backfilling, regrading and drainage control of a specific area. After successful revegetation of the regarded area, more bond funds can be released at Phase 2. The final amount of bond can be released once the mine operator has successfully completed all reclamation and revegetation requirements for a ten year period in the semi-arid west and five years elsewhere. However, the law does not require the mining company to apply for bond release. Some mining companies have not diligently completed reclamation and applied for bond release. For example, as recently as 2014 approximately 174,000 acres were disturbed in Wyoming but just over 10,000 acres had been reclaimed and all bond released, since the enactment of SMCRA in 1977. Congress should closely examine how states have exercised their discretion regarding "concurrent reclamation" and provide a clear definition that prohibits abuse. Congress should also require mine operators to timely complete reclamation and revegetation and apply for final bond release. These simple steps would significantly reduce the risks to taxpayers and surface landowners at no additional cost to industry.

American families and municipalities were, and remain, in desperate need of retooling their skillsets in order to provide for their families and remain solvent. The drafting of the Revitalizing the Economy of Coal Communities by Leveraging Local Activities and Investing More Act, the RECLAIM Act, was a measure designed to address this need. Our development of this legislation, in partnership with and introduced by Republican Congressman Rogers of Kentucky and more recently Democratic Congressman Cartwright of Pennsylvania, seeks to take into account the human factor of our shift in dependence from coal to other forms of energy. It acknowledges the opportunity to support rural communities across our country by promoting economic revitalization. Thank you for your leadership in advancing this important effort. I'd like to use this opportunity to offer other areas to empower Americans for your consideration.

According to the American Council for an Energy-Efficient Economy, ACEEE's, July 2018 study on The High Cost of Energy in Rural America, "rural poverty and unemployment underscore the need for affordable energy. Approximately 41% of households in rural areas have incomes below 200% of the federal poverty level, or \$49,200 for a family of four in 2017." The study concluded that "Americans living in rural areas spend a disproportionately high share of their income on energy bills...Rural low-income households are even worse off, shouldering a median energy burden almost three times greater than the burden faced by their higher-income counterparts." A real investment in energy efficiency as part of this transition must be included in evaluating the future of our federal coal program.

Our future federal coal program ought to establish a program to improve the energy efficiency of every home, business and building in coal country. A focus on energy efficiency would provide skilled jobs to many former coal miners enabling them to stay in the homes and communities that they know while also providing easily transferable skillsets that are the future of our energy economy across the country. The direct and indirect jobs producing and supplying energy efficiency materials create new industries while reducing heating and cooling costs for these residents.

When a mine shuts down most of the land is often unused grassland, typically retrofitted for grazing, fish and wildlife; the remainder is forested and undeveloped or residential and used for recreation or other economic activities. Reforestation creates an incredible opportunity for coal country. The reforestation opportunity is over one million acres in Appalachia alone. Reforestation can reactivate previously forested land with valuable renewable forests or restoring the native forest. Unfortunately today the common practice is to mine and re-vegetate with low value monoculture non-native grasses, which allows more water pollution to leave the site. OSMRE has worked with academia and industry to identify best practices for reforesting former coal mines. I would ask that in considering the future of the federal coal program, you look at the Forest Reclamation Approach developed by the Appalachian Region Reforestation Initiative and Green Forests Work. In addition to job creation, reforestation directly addresses the amount of pollution escaping

from the mines while restoring productive forestry and native habitat with its hunting and recreation opportunities.

Another economic development opportunity for coal country's transition lies in applying a 21st century approach to water pollution discharges from abandoned coal mines. Pennsylvania alone has invested approximately \$100 million in building over 330 passive treatment systems. These clean water infrastructure systems improve hundreds of miles of waterways and annually remove toxins and metals from American streams and rivers. Unfortunately, this remains a neglected part of our country's infrastructure as throughout the country these systems are managed by volunteers and states with inadequate funding. Appropriating funding to OSMRE would create well-paying, permanent jobs in coal country to maintain and rehabilitate these clean water infrastructure passive treatment systems without diverting limited abandoned mine land funds that are used to eliminate dangerous abandoned coal mines.

In April of this year, the Federal Energy Regulatory Commission's (FERC) Energy Infrastructure Update outlined how for the first time in history how renewable sources of energy make up a larger portion of the United States' energy capacity than coal. It noted that coal's capacity decreased by 1.49 percentage points since 2018 and currently accounts for only 21.55% of the U.S. generating capacity. This is our new normal. Coal companies are failing to navigate the falling demand in China and cheap natural gas. The current federal coal program does not adequately assess how we better manage our coal resources reflective of the true costs imposed on the environment or us, the taxpayers.

In weighing the future of the federal coal program, we must take notice of how other industries that enable our coal production are planning for the future. Chubb Limited, the world's largest publicly traded property and casualty insurance company, announced a new policy on coal underwriting and investment last week. Under the new policy, they will not underwrite new risks for companies generating more than 30% of their revenues from thermal coal mining. The policy extends to restrictions on underwriting risks for new plant construction and operation as well as utilities and investments, all with the same 30% target. Moreover, Chubb plays an integral role as a reinsurance provider which many coal companies rely upon. Chubb Chairman and CEO Evan Greenberg stated, "the transition to a low-carbon economy involves planning and action by policymakers, investors, businesses and citizens alike." The future of our federal coal program must account for the impact of other industries that are preparing for a transition to a low-carbon economy.

The future of work in America is an evolving discussion as we watch the role of technology in our society scale, and a shift in our energy resource dependence move away from coal to natural gas and renewable energy. Our fellow citizens ought to be given the dignity of career options that provide longevity as opposed to deeper investments in an uncompetitive resource that comes at great environmental and health costs. Moreover, this problem does not rest on the doorstep of rural America

exclusively as the ecosystem impacts of coal are broad and diverse. Both rural and urban citizens are vulnerable to the impacts of coal mining from pollution, health and economic development opportunities. A futuristic federal coal program would take a holistic approach to addressing the true human impacts of coal mining by fully accounting for these impacts through a study, policy reforms and funding.

The opportunity before us is to set the stage for the future of our federal coal program. I sincerely hope that it will account for the human impact, diverse policy solutions and financial assurance tools that keep communities solvent. We must properly value the actual cost of coal today in our society and provide citizens with new skillsets for an American energy infrastructure that will generate reliable energy while competing with market forces for generations to come.

Thank you for your time and consideration today.