

July 14, 2016

Senators Call On Secretary Jewell to Lift Moratorium on Coal Leasing

White House report has prejudiced the outcome of the Interior Department's review of the federal coal program

WASHINGTON, D.C. – Today, U.S. Senators John Barrasso (R-WY), Roy Blunt (R-MO), Shelley Moore Capito (R-WV), Steve Daines (R-MT), Mike Enzi (R-WY), Cory Gardner (R-CO), Orrin Hatch (R-UT), John Hoeven (R-ND) and Mike Lee (R-UT) sent a [letter](#) to Interior Secretary Sally Jewell calling on the Department of the Interior (DOI) to suspend its review of the federal coal program and its moratorium on new coal-lease sales.

In the letter, the senators express concern over a recent [report](#) titled, “The Economics of Coal Leasing on Federal Lands: Ensuring a Fair Return to Taxpayers,” published by the President’s Council of Economic Advisers on June 22, 2016.

The senators explain that by publishing this report, the White House has short-circuited DOI’s ongoing review of the coal program in violation of the National Environmental Policy Act (NEPA). Under federal law, environmental reviews “shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.”

“The Council of Economic Advisers’ report has effectively turned BLM’s review of the federal coal program into a pre-baked cake. The Council is an arm of the Executive Office of the President. Its Chairman serves as the President’s chief economist, is a Member of the Cabinet, and plays a lead role in setting administration policy. Its report shows that the White House has already decided that the federal coal program does not provide a fair return to the public or adequately account for externalities and to increase coal royalty

payments.[4] To ensure the PEIS does not justify decisions already made, we ask that you immediately suspend development of the PEIS and the leasing moratorium for the remainder of the administration. A failure to do so will only make the PEIS and decisions purportedly based on it vulnerable to legal challenges,” wrote the senators.

Full text of the letter below:

July 14, 2016

The Honorable Sally Jewell
Secretary of the Interior
U.S. Department of the Interior
1849 C Street, NW, Room 5665
Washington, D.C. 20240

Dear Secretary Jewell:

We write to express our serious concerns about the [report](#) entitled, “The Economics of Coal Leasing on Federal Lands: Ensuring a Fair Return to Taxpayers,” published by the President’s Council of Economic Advisers on June 22, 2016. This report purports to answer the principal questions that are the subject of the Bureau of Land Management’s (BLM) ongoing review of the federal coal program under the National Environmental Policy Act (NEPA). In doing so, the Executive Office of the President has compromised the integrity and prejudiced the outcome of BLM’s review process in violation of NEPA. We, therefore, ask that you suspend BLM’s review process and associated moratorium on new coal leases for the remainder of the administration.

On January 15, 2016, you signed [Secretarial Order 3338](#), which authorized BLM to conduct a programmatic environmental impact statement (PEIS) on the federal coal program under NEPA. The order states that the PEIS should address a number of questions, including:

“whether the bonus bids, rents, and royalties received under the Federal coal program are successfully securing a fair return to the American public for Federal coal, and, if not, what adjustments could be made to provide such compensation...

“whether the BLM estimates of fair market value for purposes of establishing minimum bids successfully substitute for competition in the bidding process, and if not, how to better estimate fair market value [and]...

“whether the current Federal coal leasing program adequately accounts for

externalities related to Federal coal production, including environmental and social impacts.”

To begin answering these and other questions, BLM held six public meetings between May 17th and June 28th and has solicited written comments from the public through July 28th. BLM has estimated that it will take three years to complete the PEIS. In the meantime, Order 3338 prohibits BLM from issuing new federal coal leases for thermal (steam) coal.

On June 22nd, the President’s Council of Economic Advisers, an agency within the Executive Office of the President, issued its report which claims to answer the principal questions that you set forth in Order 3338. For example, the report states that:

“A review of the coal leasing program indicates that the program has been structured in a way that misaligns incentives going back decades, resulting in a distorted coal market with an artificially low price for most Federal coal and unnecessarily low government revenue from the leasing program.”

The report goes on to say that: “A review of [the federal coal program’s] features finds that they have not fostered an efficient, competitive system that provides a fair return to taxpayers.” As to the question of whether raising coal royalty rates would hurt revenue, it says: “the answer to this is unambiguous: increasing coal royalty payments for Federal leases could bring in substantially greater revenue for States and the Federal government.” The report also addresses “externalities related to Federal coal production” and concludes that “[t]he resulting climate and health impacts are either not internalized in the price of coal at all, or are imperfectly internalized.”

Under NEPA, federal agencies must prepare an environmental impact statement (EIS) prior to taking any “major Federal actions significantly affecting the quality of the human environment.” Major federal actions would include any meaningful changes to the federal coal program. The Council on Environmental Quality’s regulations require, among other things, that an EIS “shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.” Federal courts have said the same. For example, the Ninth Circuit Court of Appeals has stated that “the comprehensive ‘hard look’...required by [NEPA] must be timely, and it must be taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made.”

The Council of Economic Advisers' report has effectively turned BLM's review of the federal coal program into a pre-baked cake. The Council is an arm of the Executive Office of the President. Its Chairman serves as the President's chief economist, is a Member of the Cabinet, and plays a lead role in setting administration policy. Its report shows that the White House has already decided that the federal coal program does not provide a fair return to the public or adequately account for externalities and to increase coal royalty payments. To ensure the PEIS does not justify decisions already made, we ask that you immediately suspend development of the PEIS and the leasing moratorium for the remainder of the administration. A failure to do so will only make the PEIS and decisions purportedly based on it vulnerable to legal challenges.

Thank you for your consideration and we look forward to your prompt response.

[1] 42 U.S.C. § 4332(c).

[2] 40 C.F.R. 1502.2(g) (emphasis added).

[3] *Metcalf v. Daley*, 214 F.3d 1135, 1142 (9th Cir. 2000) (emphasis added).

[4] Others have read the Council of Economic Advisers' report in a similar manner. On June 22, 2016, Senator Ed Markey (D-MA) issued the following [statement](#): "Today's White House report shows that taxpayers truly are giving away this public coal at rock bottom prices and are losing out on billions of dollars a year. The Interior Department has the power to increase royalty rates on public coal without Congressional action. It should take immediate action to significantly raise rates on coal mining on public lands before the end of this administration to ensure that taxpayers stop getting shortchanged and that the climate impacts of burning any public coal are taken into account."

###