

Scoping Comments

Coal Leasing Programmatic Environmental Impact Statement

Bureau of Land Management

Hearing May 17, 2016, Casper, Wyoming

I wish to thank the Bureau of Land Management, Department of the Interior for allowing me to present comments on the federal coal leasing program on behalf of the Western Organization of Resource Councils, Northern Plains Resource Council and myself as a citizen affected by the coal leasing program. I ranch north of Shepherd, Montana, and the north end of my ranch is being undermined for coal thanks to a coal for land trade 25 years ago and my neighbors will be undermined thanks to a federal coal lease.

I first became aware of federal coal reservations under our ranch in 1970. It was a terrible shock. The coal industry was well known even then for leaving a mess wherever it had operated both environmentally and in the lives of its workers.

The current coal leasing procedures were established under the Nixon administration, revised somewhat under Reagan, and have not been seriously examined since then. Time, expediency, and bureaucratic passivity have undermined whatever protections of the public interest that existed in those procedures. The largest bulk of leases in recent years have been let with no competitive bids with mines stocking up on mining stocks sufficient to last for several years in advance.

Now is a good time for BLM to stop and take an assessment of its procedures. The coal industry is in a great state of flux now, and a re-examination of BLM's procedures to determine how it wants its federal coal reserves handled for future use can help the coal industry determine its future.

As a surface owner over federal coal, I, too, am concerned about the future of coal leasing. I have had a federal coal trade or lease hanging over my head for 25 years. Only one seam will be mined, but there are a number of less lucrative seams. BLM refused to do a seam specific lease in our area. Is the coal lease effective until the last thin seam is removed or until the mine gets the one it says it wants? When does the lease expire? Does it release my land when every last section in the lease is mined or is it as the coal is removed section by section? Surface owner consent, hard fought in SMCRA, is compromised by coal trades or coal for land trades. Are owners of grazing rights on federal lands compensated for the loss of the rights and the income they represent?

In point of fact, if strip mining is the proposed method of removal, the surface owner in that case really should not expect to either get his land back within his lifetime or even see it with bond released for successful reclamation. Successful reclamation, of course, includes success with water, something that has been very elusive, and something BLM has not wanted to consider when it proposed land for leasing and mining. Montana will have something resembling its previous surface, but Wyoming may have immense holes in the ground, either dry pits or slowly filling versions of Butte's Berkley Pit.

I believe BLM could have had quite a bit of control on how mine plans were laid out even before leasing the coal reserve, so that reclamation could have proceeded in a much more contemporaneous manner with mining. When many of these mine plans were presented to Montana and Wyoming, there was a sense of hysteria in the air to catch the money on the fly. Thoughts of planning for reclamation were as elusive as butterflies.

Some of the mine plans when regarded from a more sober time show disregard of when reclamation would take place---in some cases many years. I do not know how those plans met the standard of contemporaneous reclamation. The states were overwhelmed and over impressed by guys in suits with slide rules and calculators.

With the bankruptcies currently floating through the coal industry, BLM may be getting some of the biggest holes in the world back into its possession. It will be a cold day determining multiple use for some of the pits.

I have heard that in the initial euphoria of the coal companies negotiating contracts with utilities who would burn the coal, that the cost of reclamation was figured on a per ton basis and charged to the utilities. Did the coal companies take the money and run, not applying it to the intended cost? Does coal sold overseas also have reclamation costs also factored into the price?

When BLM decides to lease coal in an area, all other uses of the area are overshadowed. Coal does not tolerate other industries coming into its immediate area. Colstrip has a fair sized population for Eastern Montana, but it has the most minimal business infrastructure possible for a town that size. Its population is terrorized right now because of the fear for the viability of the power plant and mine. What will they do? They may be in as tough a situation as the homesteaders stranded on the prairie. BLM has a responsibility to the people who come in to mine the coal. Opening mining in an area should not be done lightly.

BLM also has a responsibility to obtain the best price possible for the coal belonging to the public. It will need to look beyond the various flimsy corporate veils until it finds the first arm's length transaction between the mine operator and the coal buyer. When the coal was being set up for leasing here in the Bulls, the mine president came to the hearing and handed over an armload of financial records to BLM. I wondered which set of books they were. The justification for the lease price was kept totally secret, as were the means by which BLM

determined if the price was adequate. Somehow, that did not seem like the way for the public's business to be conducted.

I have looked a bit on line trying to find out about the provisions in coal leases between industry and private coal owners and found an organization of private coal owners which was most secretive. I have seen copies of some leases in the public files of Montana DEQ, and the tenor of the leases seemed like Sunday School boys trying to do business with the titans of industry. One of the things that stood out was the difficulty for the coal owner to determine just how much coal had been mined and how much coal had been sold. I would hope that BLM has had some smarter people working for them and that they are not standing in the Sunday School boy's place.

If it were not for the very low Montana severance tax on underground coal, Musselshell County, where most of the coal for Signal Peak is located, would receive nothing back from the Federal coal leasing, since Great Northern Properties, LLC and the Northern Cheyenne Tribe have latched onto the money produced from the federal coal in this area. Under ordinary circumstances, half the lease money would have been paid to the State of Montana, and half of that would have gone to Musselshell County. Today all of it goes to Houston and Lame Deer.

BLM should look at how much area will be drawn into a mining area. The old rules talk about logical mining units, but actually doing that has been short changed. The Bull Mountain mine has been permitted in fits and starts by both the State and BLM. The logical mining unit here is the whole coal reserve. The Billings Federal Judge told us that it was speculation that the other half of the coal reserve might be leased. Signal Peak has filed a prospecting permit for that half as of April 15, 2016. The Judge issued her ruling on March 31, 2016. The company has been talking about this for 15 years, and neither the Helena DEQ nor the MT BLM has wanted to believe that it could be serious. They have used checklist Environmental Assessments when full blown EISes were warranted. There has been desire to minimize the damage that can and will occur.

The easy profitable coal has been mined in the last 40 years at a much faster rate than was initially anticipated when leasing began in earnest back then. The funds to reclaim the mines should be available, but apparently they are not. Companies that had the best reputations are offering the states a few cents on the dollar for the reclamation costs incurred. Perhaps BLM should collect some costs to carry on reclamation at the end of the lease, since it appears that companies can swindle the states with impunity, and if the states decide not to attempt reclamation, BLM could wind up with the big holes in the ground and no recompense. BLM is already on the hook with its current leases.

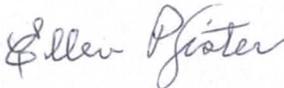
BLM should not grant any more coal leases until the reclamation is caught up on the leases that are outstanding. The mines across the West are far from the standard of contemporaneous. This one standard alone would raise a howl of outrage from the industry, but the outstanding question

is what has become of the money that should have been being spent on reclamation thus far? BLM needs to find out. I suspect it is not a pretty story.

This whole process from beginning to end is opaque financially, beginning with the financial viability of the proposed operation, At no point is the financial viability of the lessee's proposed operation seriously examined—not at leasing and not at permitting under OSM. How much of the federal coal will be mined and sold, and how much will be mined and put in a waste heap? When will the price be determined on the coal sold, and when will the arm's length buyer be found?

BLM has areas in its lease forms for additional provisions. There is lots of talk today about "private property rights". In some cases property owners have everything except the coal, but as holders of those rights from the federal government, we are treated as nothing more substantial than overburden. I believe the Federal Government has an equitable responsibility to see that our lands are reclaimed and not rendered unusable while and after federal mineral is developed. BLM has been unwilling to add equitable remedies to coal leases in the additional provisions sections. In the end it will be the people like me, Steve Charter and LJ Turner that will have to provide the support of our communities after coal development ceases for one reason or another.

Submitted by:



Ellen Pfister

P. O. Box 330

Shepherd, MT 59079