

Congress of the United States
Washington, DC 20515

February 10, 2015

The Honorable Sally Jewell
Secretary
U.S. Department of Interior
1849 C Street NW
Washington, DC 20240

Subject: Consolidated Federal Oil and Gas and Federal and Indian Coal Valuation Reform
(ONRR-2012-0004 (1012-AA13))

Dear Secretary Jewell:

We are writing to request the Department of the Interior provide a 60-day extension of the comment period for the "Consolidated Federal Oil and Gas and Federal and Indian Coal Valuation Reform."

The complexity of this proposed rule requires additional time for impacted parties to review the changes and provide the informed comments necessary to developing a sensible policy for states, Indian tribes, taxpayers, producers, energy customers and others. Our states and Indian tribes in particular depend heavily on the sale of federal coal, oil and gas within their borders, using royalties and other payments to pay for education, infrastructure and other public services. It is imperative that states and Indian tribes have adequate time to analyze the impact of the rule on these revenues and the health of their economies.

Thank you for your attention to this matter and we look forward to a timely response.

Sincerely,



STEVE DAINES
United States Senator



CYNTHIA LUMMIS
Member of Congress



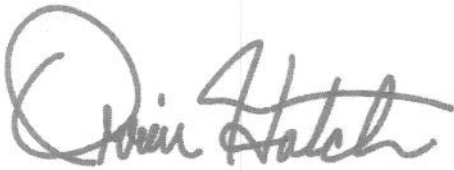
JOHN BARRASSO, M.D.
United States Senator



RYAN ZINKE
Member of Congress

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ORRIN HATCH
United States Senator



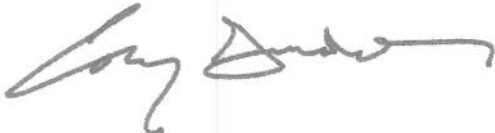
CHRIS STEWART
Member of Congress



MIKE ENZI
United States Senator



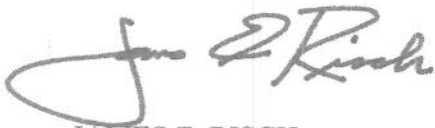
JASON CHAFFETZ
Member of Congress



CORY GARDNER
United States Senator



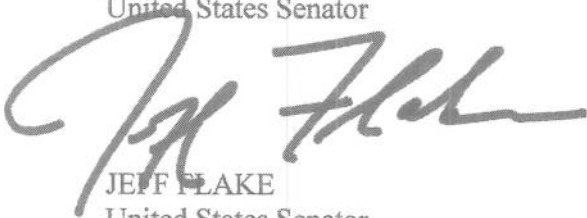
SCOTT TIPTON
Member of Congress



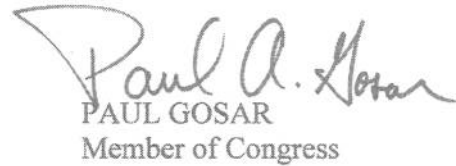
JAMES E. RISCH
United States Senator



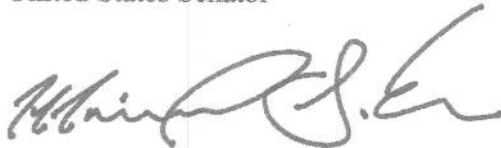
DOUG LAMBORN
Member of Congress



JEFF FLAKE
United States Senator



PAUL GOSAR
Member of Congress



MIKE LEE
United States Senator



Howarth, Robert <robert_howarth@ios.doi.gov>

Fwd: Letter from Senators and House Members

1 message

Giles, Ayesha <ayesha_r_giles@ios.doi.gov>
To: Robert Howarth <robert_howarth@ios.doi.gov>

Wed, Feb 11, 2015 at 11:11 AM

Rob,

Please enter the attached inquiry into DTS.

Ayesha

----- Forwarded message -----

From: **Marino, Meghan (Daines)** <Meghan_Marino@daines.senate.gov>
Date: Wed, Feb 11, 2015 at 10:27 AM
Subject: Letter from Senators and House Members
To: "Ayesha_r_giles@ios.doi.gov" <Ayesha_r_giles@ios.doi.gov>

Hi Ayesha,

Thanks for chatting. Please find attached letter from my boss as well as several other Senators and House Members.

Please let me know if your office has any questions. Would like to connect with the appropriate staffer about this issue at some point soon.

Thank you,

Meghan Marino

Office of Senator Steve Daines (MT)

ONRR Comment Extension Request.2.10.2015.pdf
2130K



United States Department of the Interior

OFFICE OF NATURAL RESOURCES REVENUE

Washington, DC 20240

FEB 20 2015

The Honorable Paul Gosar
House of Representatives
Washington, DC 20551

Dear Representative Gosar:

Thank you for your letter dated February 10, 2015, regarding the Department of the Interior's Federal Oil and Gas and Federal and Indian Coal Valuation proposed rule. In your letter, you requested that we extend the public comment period to allow you to carefully evaluate the proposed rule and provide feedback to the Department.

The Office of Natural Resources Revenue (ONRR) has extended the public comment period on the proposed rule for an additional 60 days. On February 12, 2015, ONRR published a notice in the *Federal Register* to announce the extension of the comment period.

The United States Congress is an important partner in ONRR's efforts to collect every dollar due and ensure a fair return for the use of the public's valuable natural resources. I appreciate your interest in this rulemaking and look forward to receiving your comments.

Sincerely,

Gregory J. Gould
Director

Similar letter sent to:

Senator Steve Daines
Senator John Barrasso, M.D.
Senator Orrin Hatch
Senator Mike Enzi
Senator Cory Gardner
Senator James E. Risch
Senator Jeff Lake
Senator Mike Lee
Representative Cynthia Lummis
Representative Ryan Zinke
Representative Chris Stewart
Representative Jason Chaffetz
Representative Scott Tipton
Representative Doug Lamborn



United States Department of the Interior

OFFICE OF NATURAL RESOURCES REVENUE

Washington, DC 20240

The Honorable Doug Lamborn
House of Representatives
Washington, DC 20551

FEB 20 2015

Dear Representative Lamborn:

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Representative Ryan Zinke
Representative Chris Stewart
Representative Jason Chaffetz
Representative Scott Tipton
Representative Paul Gosar



United States Department of the Interior

OFFICE OF NATURAL RESOURCES REVENUE

Washington, DC 20240

FEB 20 2015

The Honorable Scott Tipton
House of Representatives
Washington, DC 20551

Dear Representative Tipton:

Thank you for your letter dated February 10, 2015, regarding the Department of the Interior's Federal Oil and Gas and Federal and Indian Coal Valuation proposed rule. In your letter, you requested that we extend the public comment period to allow you to carefully evaluate the proposed rule and provide feedback to the Department.

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Representative Chris Stewart
Representative Jason Chaffetz
Representative Doug Lamborn
Representative Paul Gosar



United States Department of the Interior

OFFICE OF NATURAL RESOURCES REVENUE

Washington, DC 20240

The Honorable Jason Chaffetz
House of Representatives
Washington, DC 20551

FEB 20 2015

Dear Representative Chaffetz:

Thank you for your letter dated February 10, 2015, regarding the Department of the Interior's Federal Oil and Gas and Federal and Indian Coal Valuation proposed rule. In your letter, you requested that we extend the public comment period to allow you to carefully evaluate the proposed rule and provide feedback to the Department.

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Representative Paul Gosar



United States Department of the Interior

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Washington, DC 20240

The Honorable Chris Stewart
House of Representatives
Washington, DC 20551

FEB 20 2015

Dear Representative Stewart:

Thank you for your letter dated February 10, 2015, regarding the Department of the Interior's Federal Oil and Gas and Federal and Indian Coal Valuation proposed rule. In your letter, you requested that we extend the public comment period to allow you to carefully evaluate the proposed rule and provide feedback to the Department.

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Representative Paul Gosar



United States Department of the Interior

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Washington, DC 20240

The Honorable Ryan Zinke
House of Representatives
Washington, DC 20551

FEB 20 2015

Dear Representative Zinke:

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Representative Paul Gosar



United States Department of the Interior

OFFICE OF NATURAL RESOURCES REVENUE

Washington, DC 20240

FEB 20 2015

The Honorable Cynthia Lummis
House of Representatives
Washington, DC 20551

Dear Representative Lummis:

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Representative Paul Gosar



United States Department of the Interior

OFFICE OF NATURAL RESOURCES REVENUE

Washington, DC 20240

The Honorable Mike Lee
United States Senate
Washington, DC 20510

FEB 20 2015

Dear Senator Lee:

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United States Department of the Interior

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Washington, DC 20240

The Honorable Jeff Lake
United States Senate
Washington, DC 20510

FEB 20 2015

Dear Senator Lake:

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Representative Paul Gosar



United States Department of the Interior

OFFICE OF NATURAL RESOURCES REVENUE

Washington, DC 20240

The Honorable James E. Risch
United States Senate
Washington, DC 20510

FEB 20 2015

Dear Senator Risch:

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Representative Paul Gosar



United States Department of the Interior

OFFICE OF NATURAL RESOURCES REVENUE

Washington, DC 20240

The Honorable Cory Gardner
United States Senate
Washington, DC 20510

FEB 20 2015

Dear Senator Gardner:

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Representative Paul Gosar



United States Department of the Interior

OFFICE OF NATURAL RESOURCES REVENUE

Washington, DC 20240

The Honorable Mike Enzi
United States Senate
Washington, DC 20510

FEB 20 2015

Dear Senator Enzi:

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United States Department of the Interior

OFFICE OF NATURAL RESOURCES REVENUE

Washington, DC 20240

FEB 20 2015

The Honorable Orrin Hatch
United States Senate
Washington, DC 20510

Dear Senator Hatch:

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United States Department of the Interior

OFFICE OF NATURAL RESOURCES REVENUE

Washington, DC 20240

The Honorable John Barrasso, M.D.
United States Senate
Washington, DC 20510

FEB 20 2015

Dear Senator Barrasso:

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PAUL A. GOSAR, D.D.S.
FOURTH DISTRICT, ARIZONA

504 CANNON HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-2315

122 N. CORTEZ STREET, SUITE #104
PRESCOTT, AZ 86301
(928) 445-1683

270 E. HUNT HIGHWAY, SUITE #12
SAN TAN VALLEY, AZ 85143
(480) 882-2697

220 N. 4TH STREET
KINGMAN, AZ 86401
(928) 445-1683

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Congress of the United States
House of Representatives
Washington, DC 20515-0301

**COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM**

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VICE CHAIRMAN, ENERGY POLICY,
HEALTH CARE AND ENTITLEMENTS
NATIONAL SECURITY
ECONOMIC GROWTH, JOB CREATION,
AND REGULATORY AFFAIRS

**COMMITTEE ON
NATURAL RESOURCES**

SUBCOMMITTEES
ENERGY AND MINERALS
INDIAN AND ALASKA NATIVE AFFAIRS
WATER AND POWER

February 18, 2015

The Honorable Barack Obama
President
The White House
1600 Pennsylvania Avenue N.W.
Washington, D.C. 20500

Dear President Obama:

We write to you today to express deep concern and to ask that you not use an Executive Order to declare the Grand Canyon Watershed a National Monument. We request that any designation pursued be done so in a way that includes public input and seeks congressional approval. Efforts in managing this pristine area of pride for our nation are currently being handled appropriately and locking up 1.7 million acres would be a step backwards.

Arizona is blessed with some of the most beautiful and unique landscapes on Earth. From the saguaro-studded hills of the Sonoran Desert to the snowcapped ridges of the San Francisco Peaks and the awe-inspiring chasms of the Grand Canyon, recreational enjoyment of Arizona's diverse landscapes is deeply ingrained into the culture and daily lives of Arizona residents and visitors from around the world. For generations, Arizonans have enjoyed responsible, multiple-use recreation on these public lands, and have been active participants in conserving this amazing public resource.

At a time when the National Park Service, which is one of the federal agencies responsible for managing our national monuments, is already struggling with an annual budget shortfall, why would we burden them with new responsibilities? Due to budget strains, many parks are reducing access and limiting staff to handle current shortfalls. The NPS maintenance backlog alone is currently at \$12 billion and rising. We would ask that no new designation be placed on our lands until obligations to maintain our current parks are met.

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The Arizona Game and Fish Commission continues to voice its concerns regarding such a designation. The Commission, a constitutionally-mandated group of citizen volunteers, has already considered the alternatives and voted in 2012 to oppose creation of the monument.

We agree with the Commission, which stated that changing the management objectives of this large swath of land would negatively “impact public access, recreation, grazing, and the ability of the commission to manage wildlife.” The Arizona Game and Fish Commission also accurately pointed out that nearly 50 percent of all land in Arizona is already under federal management and that “more than 77 percent of Arizona’s lands are restricted from public access and recreation...” Furthermore, the Commission noted that more than 10 million acres in Arizona is already managed as some form of wilderness, and that the state already has more designated wilderness acreage than 47 other states. Furthermore, Arizona already has more national monuments than any other state with a total number of 18.

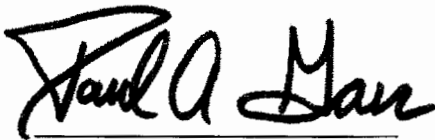
The nearly two million acres inside the Grand Canyon Watershed are already managed with great success through cooperation between federal and state agencies. We believe lands already managed by government for a diverse public do not need the additional layer of bureaucracy and restrictions that a National Monument designation would bring. Nor should these lands be closed to public access to natural resources and recreational opportunities. Because of their integral role in the everyday life of the American people, we strongly oppose any conversion of public lands in this area from multiple-use to more restrictive land use designations.

In addition to our opposition to locking these lands away from public access, we are also concerned that this decision may be made unilaterally as an Executive Order, devoid of any public input process or consultation with related state level agencies. A unilateral designation of the Grand Canyon Watershed as a National Monument would erode the extensive cooperation and success that federal and state agencies in Arizona have achieved to date. We urge you to respect and support the successful multiple-use of this land as currently executed.

The ability of the Arizonans to enjoy the responsible use of their public land must be respected. Again, we ask that you please refrain from any unilateral National Monument designation of the Grand Canyon Watershed.

Thank you for your consideration of this request and we would appreciate a timely response to this letter. Please feel free to contact Jeff Small in Rep. Gosar’s office at jeff.small@mail.house.gov regarding this matter.

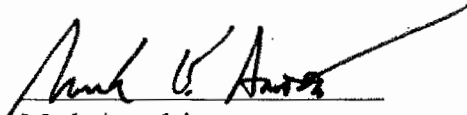
Sincerely,

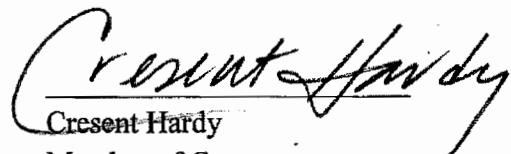


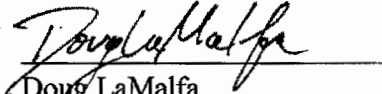
Paul A. Gosar, D.D.S.
Member of Congress

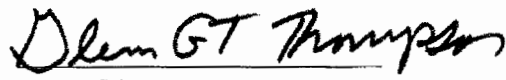



Cynthia Lummis
Member of Congress

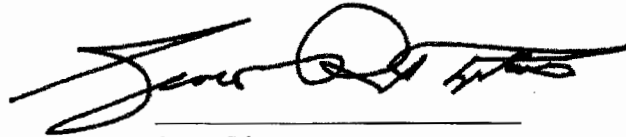

Mark Amodei
Member of Congress



Crescent Hardy
Member of Congress


Doug LaMalfa
Member of Congress

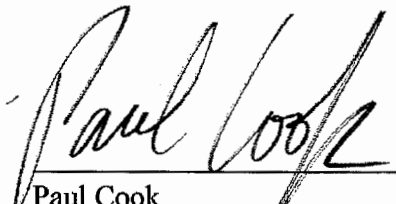

Glenn Thompson
Member of Congress

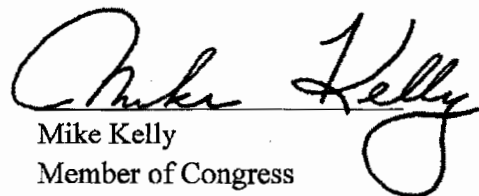

David Schweikert
Member of Congress



Scott Tipton
Member of Congress

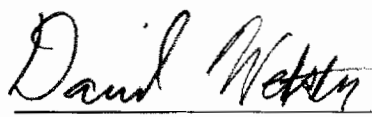

Bruce Westerman
Member of Congress


Ryan Zinke
Member of Congress


Paul Cook
Member of Congress

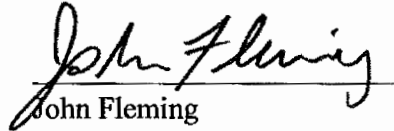

Mike Kelly
Member of Congress


Aumua Amata Coleman Radewagen
Member of Congress

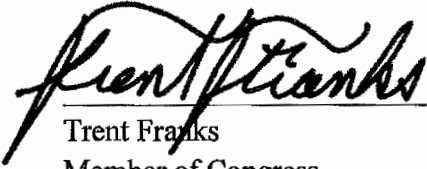

Daniel Webster
Member of Congress



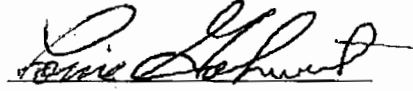
John Culberson
Member of Congress



John Fleming
Member of Congress



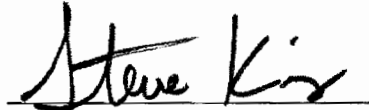
Trent Franks
Member of Congress



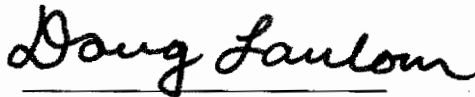
Louis Gohmert
Member of Congress



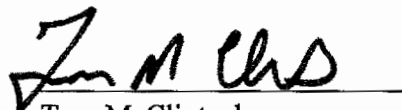
Bob Goodlatte
Member of Congress



Steve King
Member of Congress



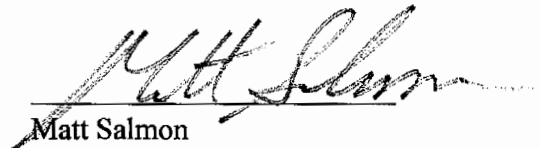
Doug Lamborn
Member of Congress



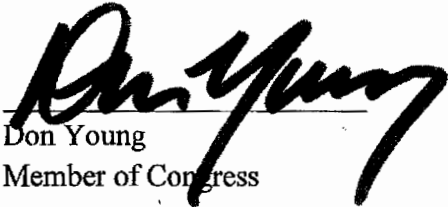
Tom McClintock
Member of Congress



Steve Pearce
Member of Congress



Matt Salmon
Member of Congress



Don Young
Member of Congress

CC: The Honorable Sally Jewell, Secretary of Interior



Howarth, Robert <robert_howarth@ios.doi.gov>

Fwd: FW: Letter from Rep. Gosar and 24 members of Congress

1 message

Harding, Stephenne <stephenne_harding@ios.doi.gov>

Thu, Feb 19, 2015 at 6:30 PM

To: Sarah Neimeyer <sarah_neimeyer@ios.doi.gov>, Robert Howarth <robert_howarth@ios.doi.gov>, Nicole Buffa <nikki_buffa@ios.doi.gov>, Jonathan Jarvis <Jon_Jarvis@nps.gov>, Israpom Pananon <israpom_pananon@ios.doi.gov>

Cc: Jeremy Bratt <jeremy_bratt@ios.doi.gov>

FYI—Opposed to the designation of the Grand Canyon Watershed as a National Monument.

—— Forwarded message ——

From: **Small, Jeff** <Jeff.Small@mail.house.gov>

Date: Thu, Feb 19, 2015 at 6:18 PM

Subject: FW: Letter from Rep. Gosar and 24 members of Congress

To: "stephenne_harding@ios.doi.gov" <stephenne_harding@ios.doi.gov>, "jeremy_bratt@ios.doi.gov" <jeremy_bratt@ios.doi.gov>

Hi Stephenne and Jeremy,

Hope you are both doing well.

Please see the attached letter that went out yesterday in the mail from Rep. Gosar and 24 of his colleagues to President Obama. Secretary Jewell was Cc'd on this letter. Wanted to send you all an electronic copy for your records as a result.

Thank you.

Sincerely,

Jeff Small

Legislative Director

Congressman Paul A. Gosar, D.D.S.

Arizona's 4th District

504 Cannon HOB | Washington, DC 20515

(202) 225-2315 main

jeff.small@mail.house.gov

Stephene Harding
Deputy Director
Congressional and Legislative Affairs
Department of the Interior
Stephene_Harding@ios.doi.gov
202-208-6174 (desk)
202-341-8080 (cell)

 **02182015 letter to President Obama regarding Grand Canyon National Monument potential listing.pdf**
247K

Congress of the United States

Washington, DC 20510

April 14, 2015

The Honorable Barack H. Obama
President of the United States
White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear President Obama:

We write to follow up on our April 15, 2014 letter regarding the future of the 1964 Columbia River Treaty (Treaty), and to express consternation with how the process has unfolded thus far. As you may recall, we asked you to make consideration of this issue a priority in our last letter, as this issue is of paramount importance to the entire Pacific Northwest. Now that the Interagency Policy Committee (IPC) has reviewed and analyzed the “Regional Recommendation for the Future of the Columbia River Treaty after 2024” (Recommendation), the United States government must come to an agreement on the parameters for negotiations with Canada. Given the 2024 deadline for certain aspects of the Treaty, we stress the importance of concluding the IPC process and urge you to initiate negotiations with Canada in 2015.

Treaty modernization and negotiations with Canada directly affect the economy, environment, and flood control needs of communities we represent in Washington, Oregon, Idaho, and Montana along over 1,200 miles of the Columbia River and its tributaries. The Columbia River Treaty has provided benefits to communities in the Columbia River basin on both sides of the border for over fifty years, particularly as the United States and Canada worked together to manage water storage capabilities, flood control, and power generation. However, we have now reached a critical juncture at which point either the United States or Canada can initiate significant changes to the Treaty, even including termination, with ten years notice to the other country. We also understand that while certain provisions related to flood control automatically expire in 2024, the majority of the Treaty’s provisions, including the outdated formula by which the United States compensates Canada for power coordination benefits, would continue indefinitely without action.

We know that your Administration, including staff from the National Security Council, the Council on Environmental Quality, the U.S. Army Corps of Engineers, and the Departments of State, Energy, the Interior, Commerce, and others have been working through the IPC to digest and analyze the details of the Recommendation since it was submitted on December 13, 2013 by the designated “U.S. Entity” – jointly the Bonneville Power Administration and the U.S. Army Corps of Engineers. This Recommendation outlines nine principles for a modernized Treaty, and reflects a multi-year effort to achieve regional consensus on complex river management issues among a diverse group of stakeholders throughout the Pacific Northwest. We appreciate the work that has been done by the IPC to understand the Recommendation, and we are united in the

belief that the Recommendation should be the basis for ensuring that cross-border management of the Columbia River better reflects the interests of the Pacific Northwest and the nation.

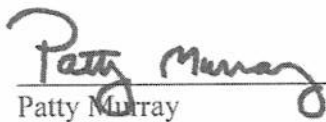
We recognize the magnitude of the Recommendation, but the Sovereign Review Team's work in the region yielded a consensus document that took into account the concerns of tribal nations, agricultural groups, power producers, environmental organizations, and users of the river for navigational and recreational purposes. Now that the IPC has reviewed the Recommendation, it is time for the United States government to finalize a negotiating approach and formally engage Canada.

We remain concerned about the pace of the IPC process, and the prioritization this matter is receiving within your Administration and the Department of State. To better understand the IPC process, and in response to questions from our constituents, we request a timeline for completing the IPC process and beginning negotiations with Canada in 2015, including mid-term deadlines and a schedule for conducting regular Congressional briefings to keep us apprised of your progress. Please also provide details on the decision making process for coming to a final resolution when IPC member positions might be in conflict or consensus cannot be reached.

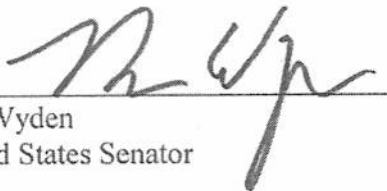
While we understand that many agencies are involved in the current process, we are hopeful that internal debate can be brought to an expeditious conclusion so the negotiation process can begin with Canada this year. We appreciate the willingness of agencies to remain in contact with the Pacific Northwest Congressional Delegation, and ask that your Administration provide our staffs a briefing in April 2015 on your progress. We also continue to encourage your Administration to be open to input from and engagement with concerned regional stakeholders, many of whom have valuable expertise in managing the Columbia River and played key roles in developing the Recommendation.

The Columbia River plays a critical role in the economy and culture of each of our states, and potential management changes initiated through the Treaty could have major impacts far into the future. We thank you for your consideration of our requests and we look forward to continued engagement with you on this issue of vital importance to our constituents.

Sincerely,




Patty Murray
United States Senator



Ron Wyden
United States Senator



Peter DeFazio
Member of Congress



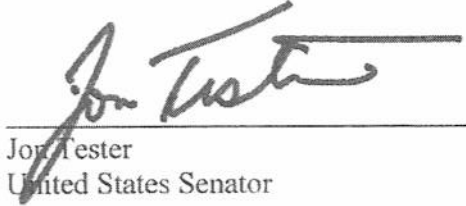
Greg Walden
Member of Congress



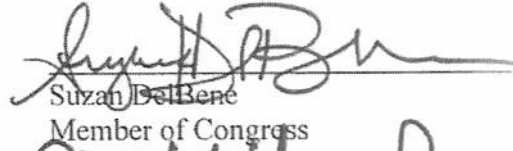
Maria Cantwell
United States Senator



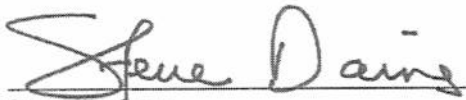
Rick Larsen
Member of Congress



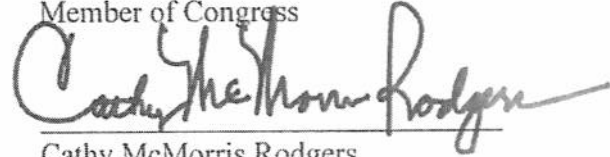
Jon Tester
United States Senator



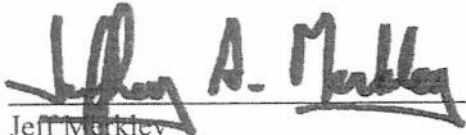
Suzan DelBene
Member of Congress



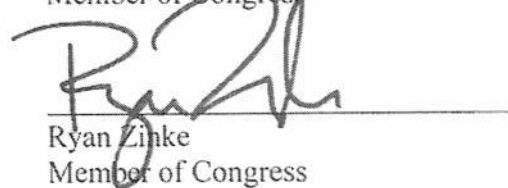
Steve Daines
United States Senator



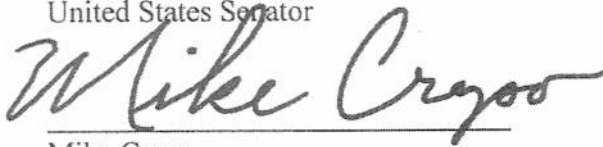
Cathy McMorris Rodgers
Member of Congress



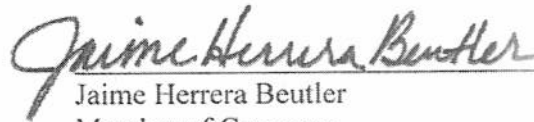
Jeff Merkley
United States Senator



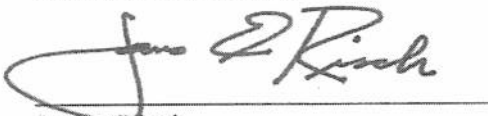
Ryan Zinke
Member of Congress



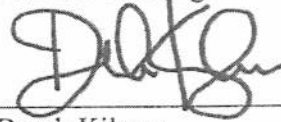
Mike Crapo
United States Senator



Jaime Herrera Beutler
Member of Congress



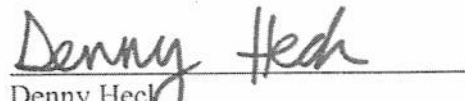
James Risch
United States Senator



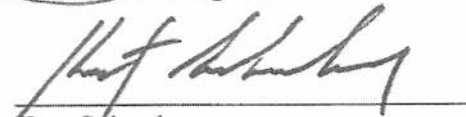
Derek Kilmer
Member of Congress



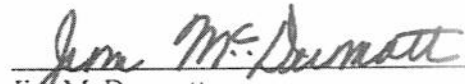
Dave Reichert
Member of Congress



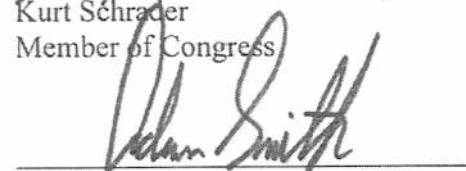
Denny Heck
Member of Congress




Kurt Schrader
Member of Congress



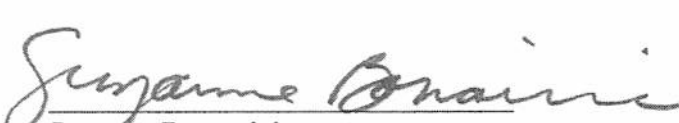
Jim McDermott
Member of Congress



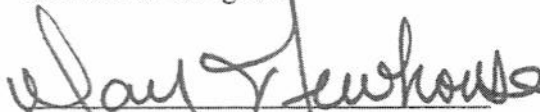
Adam Smith
Member of Congress

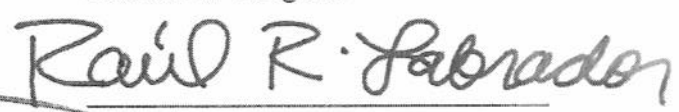


Earl Blumenauer
Member of Congress


Suzanne Bonamici
Member of Congress


Mike Simpson
Member of Congress


Dan Newhouse
Member of Congress


Raúl Labrador
Member of Congress

cc: The Honorable John Kerry, Secretary, U.S. Department of State
Mr. Brian Harris, Director for North American Affairs, National Security Council
Ms. Christy Goldfuss, Managing Director, Council on Environmental Quality
The Honorable Ernest Moniz, Secretary, U.S. Department of Energy
The Honorable Elizabeth Sherwood-Randall, Deputy Secretary, U.S. Department of Energy
The Honorable Elliot Mainzer, Administrator, Bonneville Power Administration
The Honorable John McHugh, Secretary, U.S. Department of the Army
The Honorable Jo-Ellen Darcy, Assistant Secretary of the Army (Civil Works), U.S.
Department of the Army
Brigadier General John Kem, Commander, Northwest Division, U.S. Army Corps of
Engineers
The Honorable Sally Jewell, Secretary, U.S. Department of the Interior
The Honorable Michael Connor, Deputy Secretary, U.S. Department of the Interior
The Honorable Penny Pritzker, Secretary, U.S. Department of Commerce
The Honorable Kathryn Sullivan, Administrator, National Oceanic & Atmospheric
Administration



Howarth, Robert <robert_howarth@ios.doi.gov>

Fwd: Columbia River Treaty Letter

1 message

Bratt, Jeremy <jeremy_bratt@ios.doi.gov>

Wed, Apr 15, 2015 at 9:30 AM

To: Lori Faeth <lori_faeth@ios.doi.gov>, Elizabeth Klein <Elizabeth_klein@ios.doi.gov>

Cc: Stephenne Harding <stephenne_harding@ios.doi.gov>, Robert Howarth <robert_howarth@ios.doi.gov>

Lori,

FYI on this letter sent by 2 dozen Members from the Pacific Northwest/Idaho to the President regarding the Columbia River Treaty.

Jeremy

----- Forwarded message -----

From: **Sperling, Anna (Murray)** <Anna_Sperling@murray.senate.gov>

Date: Tue, Apr 14, 2015 at 7:03 PM

Subject: Columbia River Treaty Letter

To: "Harding, Stephenne (stephenne_harding@ios.doi.gov)" <stephenne_harding@ios.doi.gov>, "jeremy_bratt@ios.doi.gov" <jeremy_bratt@ios.doi.gov>

Stephenne and Jeremy,

Secretary Jewell and Deputy Secretary Connor were cc'd on a letter to President Obama on the Columbia River Treaty. The Pacific Northwest Congressional Delegation – all 26 members from Washington, Oregon, Idaho, and Montana – respectfully urge the Administration to conclude the Interagency Policy Committee process by coming to an agreement on the parameters for negotiations with Canada and to initiate negotiations with Canada in 2015. The members request a timeline for completing the IPC process and beginning negotiations, regular briefings, and details on the decision making process when IPC member positions may be in conflict or consensus cannot be reached.

The letter has been transmitted to the President, but we wanted to make sure Secretary Jewell and Deputy Secretary Connor received a copy as well.

If you have any questions, feel free to give me a call at 202-224-2884.

Best,


Anna

Anna K. Sperling

Legislative Assistant

U.S. Senator Patty Murray

202-224-2621 phone

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1341K



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUL 09 2015

The Honorable Ryan Zinke
U.S. House of Representatives
Washington, DC 20515

Dear Representative Zinke:

Thank you for your letter dated April 21, 2015, to Attorney General Eric Holder and Secretary of Interior Sally Jewell, supporting the Blackfeet Indian Tribe (Tribe) in its effort to secure Federal legislation that would authorize and approve the 2009 Montana Blackfeet Water Rights Compact. Secretary Jewell has asked me, as Chair of the Working Group on Indian Water Settlements, to respond to your letter.

As you noted, the House Committee on Natural Resources (Committee) supports the longstanding policy of the United States that disputes, regarding Indian water rights, should be resolved through negotiated settlement rather than through litigation. In a letter dated February 26, 2015, the Committee presented a new process for consideration of such settlements in the U.S. Congress. The Departments of the Interior and Justice intend to work with the Committee as indicated in the enclosed letter dated May 19, 2015, to Chairman Bishop from me and Peter J. Kadzik, Assistant Attorney General for Legislation Affairs with the Department of Justice.

Blackfeet water rights settlement legislation, S. 1125, is now pending in the Senate. The Department of the Interior is currently engaged with the Tribe and the State of Montana in an effort to resolve Federal concerns with S. 1125, and has devoted substantial resources during the past several years to work with the Tribe and the State to develop a Blackfeet water rights settlement that this Administration can support. We appreciate commitment to support passage of a Blackfeet water settlement in Congress and look forward to working with you on this and other Indian water rights settlements before Congress.

Sincerely,

Alletta D. Belin

Enclosure



MAY 19 2015



The Honorable Rob Bishop
Chairman, Committee on Natural Resources
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letter dated February 26, 2015, describing the process that the Natural Resources Committee intends to follow when considering future Indian water-rights settlements during the 114th Congress.

The Department of the Interior and the Department of Justice appreciate your support of the longstanding policy of the United States that disputes regarding Indian water rights should be resolved through negotiated settlement rather than through litigation. This Administration has made the Federal Government's commitment to addressing the water needs of Native American communities through Indian water-rights settlements a high priority. Over the past 6 years, with the Administration's support, Congress has enacted 6 complete water settlements that resolved well over a century of litigation and bitter disputes involving 9 Indian tribes. It is encouraging that the Committee is willing to consider and potentially support Indian water settlements, consistent with the Federal trust responsibility to American Indians and with Federal policy promoting Indian self-determination and economic self-sufficiency. Given the likelihood that drought conditions across the West will intensify conflict over water supplies, the importance to both Indian tribes and their non-Indian neighbors of resolving Indian water-rights claims continues to grow.

We understand and appreciate your personal commitment to introduce only settlement legislation that the Administration supports. We are happy to assist by forwarding settlements that we support, along with proposed authorizing legislation, to the Committee. We note that this transmittal does not, of course, change the nature of such settlements. They remain collaborative efforts that reflect Administration input rather than proposals that are predominantly the work of the Administration.

The Administration's policy of support for negotiations is premised on a set of general principles embodied in the *Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims* (55 FR 9223, March 12, 1990) (*Criteria and Procedures*), including that the United States participate in water settlements consistent with its responsibilities as trustee to Indians; that Indian tribes receive equivalent benefits for rights which they, and the United States as trustee, may release as part of a settlement; that Indian tribes should realize value from confirmed water rights resulting from a settlement; and that settlements are to contain appropriate cost-sharing proportionate to the benefits received by all parties benefiting from the settlement.

Your letter asks that we provide views on whether a particular settlement reflects an overall benefit to the taxpayers when balanced against the potential costs and consequences of continued uncertainty and litigation. Although these factors can be difficult to quantify, we have considered and will continue consider them in our review of settlements in accordance with the *Criteria and Procedures*. The *Criteria and Procedures* recognize that water-rights settlements address a wide variety of claims, including not only quantification of reserved Indian water rights but also all outstanding water claims in a basin and potential claims by tribes against the United States or by tribes and the United States against third parties. 55 FR 9223 (Criteria 1, 3). This includes consideration of the potential costs to all parties—Federal and non-Federal, tribal and non-tribal—in a manner that reflects “[a]ll tangible and intangible costs.” 55 FR 9223-24 (Criteria 5, 8, 12); see also 55 FR 9224 (cost estimates should consider “the risk to all parties from any aspect of the claim and all pending litigation without a settlement”) (*C & P Procedures* Phase II 1.a). The *Criteria and Procedures* further recognize that settlement negotiations should be “conducive to long-term harmony and cooperation among all interested parties through respect for the sovereignty of the States and tribes in their respective jurisdictions” and that settlements should “promote economic efficiency on reservations and tribal self-sufficiency.” 55 FR 9223 (Criteria 7, 10). As a result, the costs and consequences of litigation to Federal and non-Federal parties are not generally susceptible to simple quantification.

We understand that the Committee would like the Department of Justice to be available to testify on any water-rights settlement legislation that the Committee is considering. As you know, any testimony provided by a Department of the Interior official or other Administration official reflects the views of the entire Administration and not merely those of the witness or the Department on whose behalf the witness is testifying. In addition, there are significant legal and policy constraints on the Department of Justice’s ability to discuss non-public aspects of pending or potential litigation. Steering clear of these constraints presents challenges. Subject to those constraints, and assuming adequate notice is provided, the Department of Justice will work with the Committee to address the Committee’s interests in future water-rights settlements, but we cannot commit in advance to accepting any specific hearing invitation.

Finally, we note that the Committee has asked that both a proposed settlement and the legislative text needed to implement it be fully approved by all parties and submitted to the relevant court before being transmitted to the Committee. We will work with all parties to accommodate these requests, but note that this is a change from existing procedure and there may be circumstances in which it is difficult or impossible to comply fully with these requests. For example, such action may not accord with court rules or procedural orders in a particular case. Moreover, courts generally do not issue advisory opinions regarding settlements, and it may be counter-productive or otherwise problematic to submit the proposed settlement and legislative text to a court in some cases.

Time has shown, again and again, that Indian water-rights settlements minimize conflict and help create conditions that improve water-resources management by providing certainty, which in turn promotes economic development, improves relationships, and encourages collaboration

The Honorable Rob Bishop
May 19, 2015

among neighboring communities. We, and our teams, look forward to working with you and the Committee to attain our common goal of achieving fiscally responsible settlements that benefit Indian tribes, the settling parties, and all American taxpayers.

Sincerely,



Alletta D. Belin
Chair, Working Group on
Indian Water Settlements
Department of the Interior



Peter J. Kadzik
Assistant Attorney General
for Legislative Affairs
Department of Justice

cc: The Honorable Raul Grijalva

Congress of the United States
House of Representatives
Washington, DC 20515-2600

April 21, 2015

The Honorable Eric Holder
Attorney General
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

The Honorable Sally Jewell
Secretary
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Mr. Attorney General and Madame Secretary:

As you are well aware, Indian water rights legislation involving American taxpayer dollars have not moved recently through Congress because of disagreements over the levels of funding, federal liability, and interpretations of earmark rules. Unfortunately, these well-intentioned bills are stalled and often become token legislation. This has created uncertainty for many parties, including some Tribes, affected states, and local citizens.

The House Committee on Natural Resources, led by Chairman Rob Bishop, has offered a practical solution to help this process move forward and bring some Indian water rights matters to a much-needed conclusion. Similar to the process regarding the Administration's approval of U.S. Army Corps of Engineers projects embodied under the "Water Resources Reform and Development Act of 2014" (P.L. 113-121), your Departments have the capacity to certify and approve water rights compacts and settlements, resolve budgetary disputes within those settlements, and negotiate any extenuating legal uncertainties in a manner that benefits Tribes, affected states, and localities and taxpayers. Under this process, your Departments would submit the certifications and final documents prior to introduction and movement of legislation in the House of Representatives. I strongly support this approach as a means to expedite the process, particularly for the Blackfoot Tribe's Water Compact. Our Tribes and Montanans deserve a government that proactively works towards a solution rather than continuing the status quo.

The Montana Legislature approved the Blackfoot Water Compact in 2009 after 20 years of negotiations. Though bipartisan bills have been introduced each Congress since 2010, there has been little movement or signs of real progression. The tribe has waited long enough. I strongly urge both Departments, under your guidance and leadership, to swiftly work with the Blackfoot Tribe to thoroughly examine their proposal, determine federal costs, and negotiate a final

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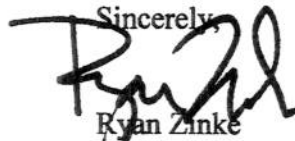
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OFFICE OF THE
EXECUTIVE SECRETARY

settlement. The Committee has laid out reasonable expectations in the attached letter to propel this process forward and I encourage you to work expeditiously to reach a resolution. Once a final deal is reached and Chairman Bishop has introduced the legislation, I will fight to see its passage in Congress.

I look forward to working with you to move Montana's settlements forward. Thank you for your assistance and prompt consideration of this request.

Sincerely,

Ryan Zinke
Member of Congress

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515
February 26, 2015

The Honorable Eric Holder
Attorney General
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Sally Jewell
Secretary
Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Mr. Attorney General and Madame Secretary:

The House Natural Resources Committee (Committee) has primary authorizing jurisdiction over the legislative resolution of Indian water rights claims within the House of Representatives. Additionally, given the longstanding policy of the United States that disputes regarding Indian water rights should be resolved through negotiated settlement rather than through litigation, both of your Departments play key roles in negotiating and developing settlements regarding these claims before they are ever considered by Congress.

The Committee recognizes that settlements to these matters are generally preferable to ~~protracted litigation~~, which does little to provide water supply and financial certainty for settling and other parties. Importantly, settlements, if crafted correctly, can also provide relief to the United States from burdensome legal obligations and benefit all American taxpayers. The Committee recognizes that the Executive branch is charged with implementing existing Indian water rights settlement criteria and procedures designed to meet these goals.¹

¹ Department of the Interior Working Group on Indian Water Settlements for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims, Federal Register, Vol. 55, No. 48, March 12, 1990.

The Honorable Eric Holder
The Honorable Sally Jewell
February 26, 2015
Page 2

Due to the direct linkage between your efforts in negotiating the proposed resolution of these claims and our responsibility in enacting such proposals both for the benefit of the United States interests and to help Tribal and non-tribal parties, it is important that we work together to facilitate Congressional consideration when you have reached resolution.

Due to growing federal debt and increased budgetary pressures from existing Indian water rights settlements, it is important that the proposed settlements, their proposed legislation and the federal costs associated with them be fiscally responsible and justified in order to protect the American taxpayer and future Tribal needs.

As Chairman of the Committee, I write this letter to inform you of the process that the Committee intends to follow when considering future Indian water rights settlements during this Congress and to inform you of the assistance the Committee will need from you and your designees in order to proceed forward.

Given the role your Departments have in negotiating each proposed settlement, to help expedite the Committee's consideration of proposed legislation enacting such settlement that is fiscally responsible, your departments – in concurrence with the Office of Management and Budget – must also play a significant and initial role in certifying and explaining the Administration's support of the financial aspects of legislation codifying such settlement to the Committee. Put simply, your Departments must convey support for and forward the settlements and the proposed authorizing legislation, specifically including federal spending levels, before any Committee consideration takes place.

To that end:

1. I anticipate each of you will provide a statement to the Committee affirming that each proposed settlement resolution transmitted by your Department adheres to the current criteria and procedures.

2. I ask that your Departments specifically affirm to the Committee that a settlement meets Criteria 4² and 5(a) and (b)³ to ensure that the American taxpayer is deriving benefits from any such settlement prior to Committee consideration. Related to such determination, both Departments will be expected to affirm that a particular settlement represents a net benefit to the American taxpayer as compared to the consequences and costs of not settling litigation, and specifically support the federal financial authorization included in the proposed legislative text.
3. For settlement legislation to be considered, the Attorney General or his/her designee must have conveyed to a court and all settling parties have agreed, in writing, to the settlement pending a legislative resolution before it is forwarded to the Committee for it to be considered.
4. Both Departments and the settling parties must have approved, in writing, the legislative text needed to codify the settlement before it is transmitted to the Committee and have provided that proposed text to the relevant court.
5. Based on precedent⁴, the Committee requests that the Department of Justice consent to being available to testify if any legislative text is considered by the Committee related to such proposals.

² Criteria 4, as included in Federal Register, Vol. 55, No. 48, March 12, 1990 states: "The total cost of a settlement to all parties should not exceed the value of the existing claims as calculated by the Federal Government."

³ Criteria 5(a) and (b), as included in Federal Register, Vol. 55, No. 48, March 12, 1990 state: "Federal contributions to a settlement should not exceed the sum of the following two elements: a. First, calculable legal exposure – litigation costs and judgment obligations if the case is lost; Federal and non-Federal exposure should be calculated on a present value basis taking into account the size of the claim, value of the water, timing of the award, likelihood of loss. b) Second, additional costs related to Federal trust or programmatic responsibilities (assuming the U.S. obligation as trustee can be compared to existing precedence.) – Federal contributions relating to programmatic responsibilities should be justified as to why such contributions cannot be funded through the normal budget process."

⁴ Testimony of Mr. Peter Steenland, Appellate Section Chief, Department of Justice, before the Joint Hearing on S.2259 before the Subcommittee on Water and Power of the Senate Committee on Energy and Natural Resources and the Senate Committee on Indian Affairs, S. Hrg. 103-943, Aug. 4, 1994.

The Honorable Eric Holder
The Honorable Sally Jewell
February 26, 2015
Page 4

6. Both Departments must list the legal claims being settled in any document transmitting legislative text; and
7. Such settlements and proposed legislation shall not include financial authorizations for claims already settled by Congress or claims that have no legal basis.

The actions of your Departments, as outlined above, will play a very critical role in expediting the Committee's consideration of these important settlement efforts. If your Departments follow this process -- starting with settlement legislation being proposed and supported by the Administration -- it is my intent to then introduce the settlement legislation at the Administration's request and consider such legislation in the Committee at the appropriate time. In conclusion, it is my intent that your actions prior to Committee consideration will determine whether negotiated settlements proceed in the legislative process.

I look forward to working with you to help achieve fiscally responsible settlements that help federally recognized tribes, other settling parties and the American taxpayer.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob Bishop", with a long horizontal flourish extending to the right.

Rob Bishop
Chairman

cc: The Honorable Raul Grijalva

Congress of the United States
Washington, DC 20515

July 2, 2015

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

Subject: Consolidated Federal Oil and Gas and Federal and Indian Coal Valuation Reform (ONRR-2012-0004).

Dear Secretary Jewell:

We write to express our concerns regarding your Department's proposed rule changing the valuation of federal and Indian coal.

Current federal coal valuation rules have provided stable and significant tax and royalty revenue to state, tribal, and federal governments. Any proposed changes to the royalty policy should be geared towards maintaining a fair return for the taxpayer. Yet your Department has offered no meaningful justification for the changes that you are now proposing.

This lack of justification is problematic as the proposal is unnecessarily complex, lacking clarity and creating an uncertain regulatory environment. The proposal grants the Office of Natural Resources Revenues (ONRR) new latitude to deem sales, potentially disallow costs, and use the "default" rule to assert arbitrary values for royalty purposes. These broad new authorities come without clear or transparent guidelines for regulators and regulated parties alike, setting the stage for inconsistent valuation and protracted litigation.

The foggy and arbitrary regulatory environment created by this rule could jeopardize affordable and reliable energy production, American jobs, and crucial revenue for state, federal, and tribal governments. As such, we request that you withdraw the rule to allow your Department to undertake further study, as well as a more thorough and effective consultation with states, tribes, local governments and other stakeholders.

Thank you for your attention to this matter and we look forward to a timely response.

Sincerely,



Cynthia M. Lummis
United States Representative



Ryan K. Zinke
United States Representative



Rob Bishop
United States Representative



Doug Lamborn
United States Representative



Jason Chaffetz
United States Representative



Chris Stewart
United States Representative



Mia B. Love
United States Representative



Paul A. Gosar
United States Representative



Scott R. Tipton
United States Representative



Steve Pearce
United States Representative



Ken Buck
United States Representative



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

The Honorable Cynthia M. Lummis
United States House of Representatives
Washington, DC 20515

JUL 24 2015

Dear Representative Lummis:

Thank you for your letter dated July 2, 2015, regarding the Department of the Interior's (Department) Consolidated Federal Oil and Gas and Federal and Indian Coal Valuation proposed rule. In your letter, you expressed concerns regarding the proposed changes to Federal and Indian coal valuation that you believe will result in adverse consequences for segments of the American public.

The current coal valuation regulations took effect in 1989. In the years since, the industry and the marketplace changed dramatically. Regulatory changes are long overdue and urgently needed to better align our regulatory framework with a 21st century marketplace. As proposed, the valuation regulations benefit both industry and the American public. The proposed regulations offer greater clarity and consistency in product valuation, reduce industry-reporting costs, and provide early certainty that companies paid and the Department collected every dollar due for the use of our Nation's valuable natural resources.

While we appreciate that there are many complexities in this proposed rule, an assessment of the rulemaking process reveals a deliberate and careful approach to soliciting stakeholder input. Consultation and public engagement started in May 2011, when the Office of Natural Resources Revenue (ONRR) published an Advanced Notice of Proposed Rulemaking in the *Federal Register* to obtain input from the public and the regulated industry. Coupled with this early stakeholder engagement, the Department believes that the most recent 120-day comment period provided an adequate window of time for stakeholder review. When the comment period closed on May 8, 2015, ONRR began the intensive process of categorizing, reviewing, and analyzing the input from over 300 commenters and over 190,000 petition signatories. Once ONRR completes the analysis, the Department will decide on a path forward.

The United States Senate is an important partner in the Department's efforts to collect every dollar due and ensure a fair return for the use of the public's valuable natural resources. I appreciate your interest in the proposed rule and am committed to working with you throughout the process as we determine the best path forward.

I am sending similar letters to the cosigners of your letter.

Sincerely,

Kristen J. Sarri
Principal Deputy Assistant Secretary
Policy, Management and Budget



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

The Honorable Ryan K. Zinke
United States House of Representatives **JUL 24 2015**
Washington, DC 20515

Dear Representative Zinke:

Thank you for your letter dated July 2, 2015, regarding the Department of the Interior's (Department) Consolidated Federal Oil and Gas and Federal and Indian Coal Valuation proposed rule. In your letter, you expressed concerns regarding the proposed changes to Federal and Indian coal valuation that you believe will result in adverse consequences for segments of the American public.

The current coal valuation regulations took effect in 1989. In the years since, the industry and the marketplace changed dramatically. Regulatory changes are long overdue and urgently needed to better align our regulatory framework with a 21st century marketplace. As proposed, the valuation regulations benefit both industry and the American public. The proposed regulations offer greater clarity and consistency in product valuation, reduce industry-reporting costs, and provide early certainty that companies paid and the Department collected every dollar due for the use of our Nation's valuable natural resources.

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Sincerely,

Kristen J. Sarri
Principal Deputy Assistant Secretary
Policy, Management and Budget



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

The Honorable Rob Bishop
United States House of Representatives
Washington, DC 20515

JUL 24 2015

Dear Representative Bishop:

Thank you for your letter dated July 2, 2015, regarding the Department of the Interior's (Department) Consolidated Federal Oil and Gas and Federal and Indian Coal Valuation proposed rule. In your letter, you expressed concerns regarding the proposed changes to Federal and Indian coal valuation that you believe will result in adverse consequences for segments of the American public.

The current coal valuation regulations took effect in 1989. In the years since, the industry and the marketplace changed dramatically. Regulatory changes are long overdue and urgently needed to better align our regulatory framework with a 21st century marketplace. As proposed, the valuation regulations benefit both industry and the American public. The proposed regulations offer greater clarity and consistency in product valuation, reduce industry-reporting costs, and provide early certainty that companies paid and the Department collected every dollar due for the use of our Nation's valuable natural resources.

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Sincerely,

Kristen J. Sarri
Principal Deputy Assistant Secretary
Policy, Management and Budget



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

The Honorable Doug Lamborn
United States House of Representatives JUL 24 2015
Washington, DC 20515

Dear Representative Lamborn:

Thank you for your letter dated July 2, 2015, regarding the Department of the Interior's (Department) Consolidated Federal Oil and Gas and Federal and Indian Coal Valuation proposed rule. In your letter, you expressed concerns regarding the proposed changes to Federal and Indian coal valuation that you believe will result in adverse consequences for segments of the American public.

The current coal valuation regulations took effect in 1989. In the years since, the industry and the marketplace changed dramatically. Regulatory changes are long overdue and urgently needed to better align our regulatory framework with a 21st century marketplace. As proposed, the valuation regulations benefit both industry and the American public. The proposed regulations offer greater clarity and consistency in product valuation, reduce industry-reporting costs, and provide early certainty that companies paid and the Department collected every dollar due for the use of our Nation's valuable natural resources.

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Sincerely,

Kristen J. Sarri
Principal Deputy Assistant Secretary
Policy, Management and Budget



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

The Honorable Jason Chaffetz
United States House of Representatives
Washington, DC 20515

JUL 24 2015

Dear Representative Chaffetz:

Thank you for your letter dated July 2, 2015, regarding the Department of the Interior's (Department) Consolidated Federal Oil and Gas and Federal and Indian Coal Valuation proposed rule. In your letter, you expressed concerns regarding the proposed changes to Federal and Indian coal valuation that you believe will result in adverse consequences for segments of the American public.

The current coal valuation regulations took effect in 1989. In the years since, the industry and the marketplace changed dramatically. Regulatory changes are long overdue and urgently needed to better align our regulatory framework with a 21st century marketplace. As proposed, the valuation regulations benefit both industry and the American public. The proposed regulations offer greater clarity and consistency in product valuation, reduce industry-reporting costs, and provide early certainty that companies paid and the Department collected every dollar due for the use of our Nation's valuable natural resources.

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I am sending similar letters to the cosigners of your letter.

Sincerely,

Kristen J. Sarri
Principal Deputy Assistant Secretary
Policy, Management and Budget



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

The Honorable Chris Stewart
United States House of Representatives JUL 24 2015
Washington, DC 20515

Dear Representative Stewart:

Thank you for your letter dated July 2, 2015, regarding the Department of the Interior's (Department) Consolidated Federal Oil and Gas and Federal and Indian Coal Valuation proposed rule. In your letter, you expressed concerns regarding the proposed changes to Federal and Indian coal valuation that you believe will result in adverse consequences for segments of the American public.

The current coal valuation regulations took effect in 1989. In the years since, the industry and the marketplace changed dramatically. Regulatory changes are long overdue and urgently needed to better align our regulatory framework with a 21st century marketplace. As proposed, the valuation regulations benefit both industry and the American public. The proposed regulations offer greater clarity and consistency in product valuation, reduce industry-reporting costs, and provide early certainty that companies paid and the Department collected every dollar due for the use of our Nation's valuable natural resources.

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Sincerely,

Kristen J. Sarri
Principal Deputy Assistant Secretary
Policy, Management and Budget



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

The Honorable Mia B. Love
United States House of Representatives
Washington, DC 20515

JUL 24 2015

Dear Representative Love:

Thank you for your letter dated July 2, 2015, regarding the Department of the Interior's (Department) Consolidated Federal Oil and Gas and Federal and Indian Coal Valuation proposed rule. In your letter, you expressed concerns regarding the proposed changes to Federal and Indian coal valuation that you believe will result in adverse consequences for segments of the American public.

The current coal valuation regulations took effect in 1989. In the years since, the industry and the marketplace changed dramatically. Regulatory changes are long overdue and urgently needed to better align our regulatory framework with a 21st century marketplace. As proposed, the valuation regulations benefit both industry and the American public. The proposed regulations offer greater clarity and consistency in product valuation, reduce industry-reporting costs, and provide early certainty that companies paid and the Department collected every dollar due for the use of our Nation's valuable natural resources.

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Sincerely,

Kristen J. Sarri
Principal Deputy Assistant Secretary
Policy, Management and Budget



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

The Honorable Paul A. Gosar
United States House of Representatives JUL 24 2015
Washington, DC 20515

Dear Representative Gosar:

Thank you for your letter dated July 2, 2015, regarding the Department of the Interior's (Department) Consolidated Federal Oil and Gas and Federal and Indian Coal Valuation proposed rule. In your letter, you expressed concerns regarding the proposed changes to Federal and Indian coal valuation that you believe will result in adverse consequences for segments of the American public.

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Sincerely,

Kristen J. Sarri
Principal Deputy Assistant Secretary
Policy, Management and Budget



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

The Honorable Scott R. Tipton
United States House of Representatives
Washington, DC 20515

JUL 24 2015

Dear Representative Tipton:

Thank you for your letter dated July 2, 2015, regarding the Department of the Interior's (Department) Consolidated Federal Oil and Gas and Federal and Indian Coal Valuation proposed rule. In your letter, you expressed concerns regarding the proposed changes to Federal and Indian coal valuation that you believe will result in adverse consequences for segments of the American public.

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I am sending similar letters to the cosigners of your letter.

Sincerely,

Kristen J. Sarri
Principal Deputy Assistant Secretary
Policy, Management and Budget



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

The Honorable Steve Pearce
United States House of Representatives
Washington, DC 20515

JUL 24 2015

Dear Representative Pearce:

Thank you for your letter dated July 2, 2015, regarding the Department of the Interior's (Department) Consolidated Federal Oil and Gas and Federal and Indian Coal Valuation proposed rule. In your letter, you expressed concerns regarding the proposed changes to Federal and Indian coal valuation that you believe will result in adverse consequences for segments of the American public.

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Sincerely,

Kristen J. Sarri
Principal Deputy Assistant Secretary
Policy, Management and Budget



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

The Honorable Ken Buck
United States House of Representatives
Washington, DC 20515

JUL 24 2015

Dear Representative Buck:

Thank you for your letter dated July 2, 2015, regarding the Department of the Interior's (Department) Consolidated Federal Oil and Gas and Federal and Indian Coal Valuation proposed rule. In your letter, you expressed concerns regarding the proposed changes to Federal and Indian coal valuation that you believe will result in adverse consequences for segments of the American public.

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Sincerely,

Kristen J. Sarri
Principal Deputy Assistant Secretary
Policy, Management and Budget

FAX

U. S. REPRESENTATIVE RYAN ZINKE
CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515-2600

To: Sarah Neimeyer – Director of Congressional Affairs

From: Susan Kohn – Casework Manager

Fax: 202-208-5533

Fax: 406-702-1182

Phone: 202-208-7693

Phone: 406-969-1736

Subject: Congressional Inquiry

Date: August 12, 2015

Comments:

Please find attached a signed release from **Non Responsive** who is has a claim concerning a negotiated placement of a conservation easement on his farm in Ronan, Lake County, MT. I am hopeful we can get a resolution to this claim for our constituent.

Thank you for your time concerning this issue,

Susan Kohn
Casework Manager
Congressman Ryan Zinke
222 N. 32nd Street, Ste 900
Billings, MT 59101
406-969-1736
Susan.Kohn@mail.house.gov

EXCISE STAMP
OFFICE OF THE CLERK
U.S. HOUSE OF REPRESENTATIVES

2015 AUG 17 PM 4:20

RECEIVED

755534



Congress of the United States
House of Representatives
Washington, DC 20515

August 12, 2015

Sarah Neimeyer
Director of Congressional and Legislative Affairs
U.S. Department of the Interior
Mail Stop 6242
1849 C Street, NW
Washington, DC 20240-0001

Dear Sarah,

Non Responsive has contacted Congressman Ryan Zinke's office in resolving a matter with which you might be able to provide assistance. Enclosed are copies of the information we have been provided on the particular situation for your review.

Your prompt consideration would be greatly appreciated as **Non Responsive** is eager to resolve this matter as soon as possible. A copy of your response will be sent to Congressman Ryan Zinke's constituent. If you could please send your response to:

Office of Congressman Ryan Zinke
Attn: Susan Kohn - Casework Manager
222 N. 32nd Street, Ste 900
Billings, MT 59101

Should you have any questions, please feel free to contact me at Susan.Kohn@mail.house.gov or 406-969-1736.

In God We Trust,

A handwritten signature in black ink that reads "R. K. Zinke".

Ryan K. Zinke
Member of Congress

"The Only Easy Day Was Yesterday"

RZ/sk

Ryan Zinke, Montana

113 Canon HOB
Washington, DC 20515
(202)225-3211

**Congress of the United States
House of Representatives
Washington, DC 20515-2600**

Due to the Provisions of the Privacy Act 1974 (Title 5, Section 552A of the U.S. Code) please, state in writing that I have your permission to make this inquiry and to receive any information needed to fulfill your request. Then return this form to:

U.S. Representative Ryan Zinke
Attn: Casework Manager
222 N. 32rd Avenue, Ste. 900
Billings, MT 59101

PH: (406) 969-1736
FAX: (406) 702-1182

Non Responsive

Name - Please Print Date of Birth Country of Birth

Non Responsive

Street Address or PO Box Number Apt/Suite

Non Responsive

City State Zip Code Country

Non Responsive

Home Phone Work Phone Cell Phone

Non Responsive

Social Security Number (if Applicable) File Case Number (if Applicable)

Non Responsive

August 11, 2015

Non Responsive

Signature Date Email Address

Please explain the problem with the federal government, use the back side if necessary.

Separate letter accompanying this release. Please review for details. Thanks!

Ryan Zinke, Montana

113 Canon HOB
Washington, DC 20515
(202)225-3211

**Congress of the United States
House of Representatives
Washington, DC 20515-2600**

Due to the Provisions of the Privacy Act 1974 (Title 5, Section 552A of the U.S. Code) please, state in writing that I have your permission to make this inquiry and to receive any information needed to fulfill your request. Then return this form to:

U.S. Representative Ryan Zinke
Attn: Casework Manager
222 N. 32rd Avenue, Ste. 900
Billings, MT 59101

PH: (406) 969-1736
FAX: (406) 702-1182

Non Responsive

Name - Please Print Date of Birth Country of Birth

Non Responsive

Street Address or PO Box Apt/Suite
Number

Non Responsive

City State Zip Code Country

Non Responsive

Home Phone Work Phone Cell Phone

Non Responsive

Social Security Number File Case Number (If
Applicable)

Non Responsive

August 11, 2015

Non Responsive

Signature Date Email Address

Please explain the problem with the federal government, use the back side if necessary:

Separate letter accompanying this release. Please review for details. Thanks!

Non Responsive

August 11, 2015

Congressman Ryan Zinke
Helena District Office
910 N. Last Chance Gulch, Suite B
Helena, MT 59601

Dear Congressman Zinke:

I am contacting you in my personal capacity today with a request for assistance. My wife, [Non Responsive] and I are hoping that you can help us in getting the United States Department of the Interior, Fish and Wildlife Service, to reverse a decision regarding limited development rights on a 40 acre parcel that we own in Ronan, Lake County, Montana.

[Non Responsive] negotiated placement of a conservation easement on his farm a couple of decades ago in the mid-1990's, including the 40 acre parcel in question. [Non Responsive] was not represented by legal counsel and ended up signing a version of the easement agreement that was different than the version upon which he thought he had agreed with a local Department representative. There were several irregularities in the process, including:

1. Use of maps that were hand-drawn, not to scale with no professional survey of the area conducted;
2. Ambiguous markings on the map legend, also hand-drawn, denoting various landmarks on the property; and
3. No suggestion by the Department that [Non Responsive] should seek legal counsel to review what was a several hundred thousand dollar transaction that permanently altered and limited his development rights on the entirety of his farm.

A key marking used on the map attached to the agreement identified existing buildings that could be renovated without violating the terms of the easement, one of which was clearly marked to show an old homestead that belonged to [Non Responsive] and has been connected to or in our family for nearly 100 years. A photo of the homestead is included for you.

Throughout the course of the negotiations, my [Non Responsive] was insistent on protecting his right to renovate his [Non Responsive] homestead that existed (and still exists) on the property. He verbalized this concern several times during the course of negotiations and was repeatedly assured that the Department would not interfere in his right to renovate his [Non Responsive]

former homestead. It is important to note that [redacted] had purchased the farm in question originally (in the 1980's) for the very reason that it included the home in which his parents and older siblings first lived when they moved from [redacted] to Ronan in the early 1920's. He would never have knowingly given up the right to preserve and restore the homestead and it has always been our intent to do so; in fact, the original residential well serving the homestead is still in place and serviceable.

During the process of negotiations, someone at the Department changed the map between March 9, 1995 (the version showing the homestead) and March 15, 1995 (the final version signed by [redacted] to delete the homestead as an authorized building site. [redacted] sincerely believes that the deletion was done in an effort to trick him into giving up restoration rights on the homestead and he is adamant that he did not bargain for or otherwise agree to have the homestead deleted as an authorized building site. It was long enough ago that I am not sure how it happened, but in any case [redacted] signed a final agreement, not knowing that the attached map had been changed to no longer show the homestead as an authorized building site.

My wife [redacted] and I acquired the 40 acre parcel containing the homestead a couple of years ago, and I reached out to local office of the Fish and Wildlife Service (at the National Bison Range in Moiese) to ask them to look into the irregularities in the original negotiation and see if they would be willing to allow us to renovate the homestead. Our reasoning and/or offers in advancing this request included:

1. The agreement specifically allows the Department to create exceptions, in language on page one of the agreement ("except as may be authorized from time to time by the express prior written consent of the Secretary of the Interior or authorized representative").
2. There is an ambiguously shaped mark on the hand-drawn map that [redacted] thought represented the homestead, but which the Department now claims is a marking showing a wetland. We argued that since the map was drawn by the Department and appears to show what could be interpreted as a building site, we should be allowed to renovate the homestead pursuant to paragraph 4 of the agreement, which allows "renovation and replacement of existing buildings of substantially the same size and purpose, in substantially the same location as the existing building sites shown in Exhibit A."
3. The agreement allows us to construct a non-residential farm structure, with no size limitation, to support existing agricultural purposes, a right we offered to give up in exchange for the right to renovate the homestead. It seemed to us that the construction of a barn on the 40 acres would have a much bigger impact on the purpose of the conservation easement than renovating a homestead.
4. The agreement allows us to engage in haying, grazing, and timber harvest on the property in question without the Department's permission, all of which are activities that could damage the underlying purpose of the conservation easement to a far greater degree than simply restoring an old homestead for occasional use when we return to [redacted] farm for visits. We offered to give up the right to graze and harvest timber in exchange for the right to renovate the homestead.

5. We own a separate two acre parcel that is specifically designated as an authorized building site within the conservation easement, with no limitation on the size of the structure we could construct (as there has never been a structure on our two acre lot). The two acre parcel is immediately adjacent to one of the wetland areas on the farm (it even encompasses part of such wetland) and we offered to give up our right to build on the two acres in exchange for the right to renovate the homestead.

While we were treated courteously, the Department was completely inflexible and unwilling to allow us to preserve what is a very important family legacy, even with several offered concessions that would have benefitted the Department's underlying purpose of the conservation easement to a far greater degree than allowing a renovation of the homestead would have damaged such purposes. We offered what we thought was a "win-win" solution but we were turned down flat without any explanation as to why. I asked for a formal administrative appeal of Jeff King's decision on January 28, 2014, but even after follow up requests have never received a response from the Department.

We have the right, without the consent of the Department, to hay, graze cattle on, cut timber on, and even construct a nonresidential farm structure on the 40 acres. All of these activities could be damaging to the underlying purposes of wetland protection and conservation along and near Mud Creek, but that is unfortunately all that is left to us in the absence of an allowance to renovate the homestead. We won't really have any other choice but to pursue those options if we cannot find common ground on this issue with the Department, as we have property tax obligations on the property that we have to manage in some manner.

Can you please help us? I have attached copies of various pertinent correspondences that we have had with the Department that provide supplemental details. We are also available to discuss this issue with any of your staff to help fill in the details. In addition, we're also providing this request to Senator Tester and Senator Daines in the hopes that our congressional delegation can help resolve this in order to allow our family legacy on this property to continue.

Thank you in advance for any assistance you might be able to provide. Our request is simple. We would like the Department to reverse its original decision and give us the right to renovate the homestead as a residential structure. We are willing to give up the right to graze and harvest timber on the 40 acres, as well as the right to construct nonresidential farm structures on the 40 acres. If needed, we are even willing to give up our right to build on our two acre parcel that is located on [REDACTED] farm, though we would prefer not to do so.

Please let us know what, if anything, you might be able to do on our behalves.

Sincerely,

Non Responsive

Enclosures



UNITED STATES DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
EXHIBIT "A" Map _____ of _____

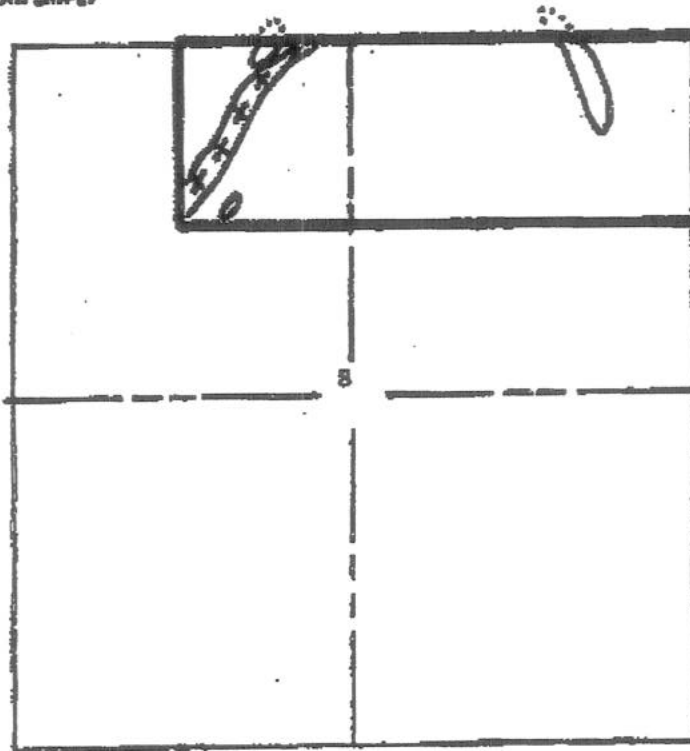
TRACT _____

Non Responsive

WILDLIFE HABITAT AREA Lake COUNTY, STATE OF Montana

T. 20 N., R. 20 W.,
Sec. 8, N4NE4, NE1/4

PRINCIPAL MERIDIAN








Scale: 4 inches = 1 Mile

This map delineates wetlands referred to in the easement conveyance dated _____ which the parties of the first part agree to maintain as a wildlife habitat area. The lands covered by this conveyance include any enlargement of the delineated wetland areas resulting from normal or abnormal increases in water.

Non Responsive

LEGEND

-  Boundary of Easement for Wildlife Habitat Conservation
-  Wetlands covered by provisions of the easement
-  Nonfunctional drainage facilities which the landowner agrees NOT to repair or clear out
-  Wetland Restoration Structure
-  Riparian area 100 feet on each side of the bank of the stream covered by Provision 2 of the easement.

Prepared by: J. Hise Date: 1/2/95

Western Montana
December 1994

UNITED STATES DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
GRANT OF EASEMENT FOR WILDLIFE HABITAT CONSERVATION

THIS INDENTURE, by and between **Non Responsive** husband and wife, of **Non Responsive**

hereinafter referred to as Grantors, and the UNITED STATES OF AMERICA, hereinafter referred to as United States, acting by and through the Secretary of the Interior or his authorized representative.

WITNESSETH:

WHEREAS, the Migratory Bird Hunting and Conservation Stamp Act, 16 U.S.C. Secs. 715a-715e and 718d(c); the Fish and Wildlife Act of 1956, 16 U.S.C. 742a-742j; the Emergency Wetlands Resources Act of 1986, 16 U.S.C. 3901, authorize the Secretary of the Interior to acquire lands and waters or interests therein for the development, advancement, management, conservation, and protection of fish and wildlife resources. The purpose of this easement is to protect the habitat quality of the wetlands and uplands described on Exhibit A, and to provide water, cover, especially nesting cover, and food for aquatic, terrestrial and avian wildlife; AND

WHEREAS, the lands described below contain habitat suitable for use as a wildlife area.

NOW, THEREFORE, for and in consideration of the sum of Three Hundred Fifty-three Thousand Dollars (\$353,000.00), to the Grantors in hand paid, the receipt of which is hereby acknowledged, Grantors hereby grant and convey unto the United States, and its assigns, an estate, interest and perpetual conservation and wildlife easement, in lands of the Grantors, together with the right of ingress and egress for the purpose of monitoring and enforcing the doing and refraining of activities by Grantors thereupon, to be a servitude upon Grantors' said lands; and Grantors covenant with the United States on behalf of themselves, their heirs, executors, administrators, successors, and assigns, forever, to do and refrain from doing upon Grantors' said lands the various activities hereinafter recited, it being hereby agreed that the doing and refraining from said activities, and each of them, upon said lands is and shall be for the benefit of the United States through the preservation and conservation of the land. No rights herein are granted to the general public for access to or entry upon the land subject to this grant of easement for any purpose. The lands to which the terms of this agreement apply are described and located in Lake County, State of Montana, to-wit:

T. 20 N., R. 20 W., PMN

Sec. 5, Farm Unit "C" (or Gov. Lot 3, SE1/4NW1/4) EXCEPTING THEREFROM that portion of Lot 3 conveyed to the State of Montana by Deed recorded in Book 39 Deeds, Page 286, Farm Unit "F" (or N1/2SW1/4), SE1/4SW1/4, SE1/4;
Sec. 8, NE1/4NW1/4, N1/2NE1/4.

SUBJECT, however, to all valid existing rights-of-way for highways, roads, railroads, pipelines, canals, laterals, electrical transmission lines, telegraph and telephone lines, cable lines, and all outstanding mineral rights in third parties.

The conveyance hereunder shall be effective on the date of the execution of this Indenture by the Secretary of the Interior or his authorized representative; provided, however, that such acceptance must be made within 9 (nine) calendar months from date of the execution of this Indenture by the Grantors, or any subsequent date as may be mutually agreed upon in writing by the parties hereto prior to the expiration of such date; and provided further, however, that in the event such acceptance is not made by such date, this Indenture shall be null and void.

The Grantors, for themselves, and for their heirs, successors and assigns, lessees, and any other person claiming under them, covenant and agree that they will cooperate in the maintenance and protection of all wetland and wildlife habitat areas, delineated on the map(s) attached hereto as Exhibit A, for the protection of fish and wildlife resources. The restrictions hereby imposed upon the use of said lands of the Grantors and the activities which Grantors covenant to refrain from doing upon said lands, except as may be authorized from time to time by the express prior written consent of the Secretary of the Interior or authorized representative, are as follows:

1. Draining, causing or permitting the draining by construction of ditches, or by any means, direct or indirect, whether through transfer of appurtenant water rights or otherwise of any surface waters in or appurtenant to these wetland areas delineated on Exhibit A; by not filling, causing or permitting the filling in with earth or any other material or leveling, causing or permitting the leveling of any part or portion of said delineated wetland areas; and by not burning, causing or permitting the burning of any wetland vegetation on any part or portion of said delineated wetland areas. This includes lakes, ponds, marshes, sloughs, swales, swamps, potholes, and other wholly or partially water-covered areas, now existing or subject to recurrence through natural or man-made causes; provided, always, that the lands covered by this conveyance shall include any enlargements of said wetland areas resulting from normal or abnormal increased water.

2. Altering the topography or other natural features by digging, excavating, plowing, disking, cutting, filling, removing or otherwise destroying the vegetative cover upon said lands delineated on Exhibit A, unless prior approval in writing is granted by the U.S. Fish and Wildlife Service; except that haying, grazing, timber harvest upon the aforesaid lands is permitted without approval in writing.

3. Subdividing or de facto subdividing, and/or developing the area for residential, commercial, industrial or any other purposes, except for agricultural uses; provided, however, that in-home businesses are permissible so long as they do not require any physical development or change to the land and/or construction of additional improvements, buildings, or other structures.

4. Erecting, building or placing any structures, including temporary living quarters, on said land, except for the renovation and replacement of existing buildings of substantially the same size and purpose, in substantially the same location as the existing building site(s) shown in Exhibit A and except for non-residential farm structures located in close proximity to existing buildings that support existing agricultural purposes.

366837

5. Dumping or disposing of non-household refuse and disposing of any material which is toxic to wildlife or considered to contaminate soil, groundwater, streams, lakes or wetlands.

Copies of the above-referenced map(s), Exhibit A, are on file in the Office of the Regional Director, U.S. Fish and Wildlife Service, Denver, Colorado.

It is understood that this indenture imposes no other obligations or restrictions upon the Grantors and that neither they nor their successors, assigns, lessees, nor any other person or party claiming under them shall, in any way, be restricted from utilizing all of the subject lands in the customary manner for hunting or agricultural purposes except as provided herein. Grantors shall pay real estate taxes and assessments. Notious weed control and emergency control of pests necessary to protect the public good are allowed and will be the responsibility of the Grantor, subject to Federal and State statutes and regulations.

It is further understood that the rights and interests granted to the United States herein shall become part of the National Wildlife Refuge System and shall be administered by the U.S. Fish and Wildlife Service, pursuant to the National Wildlife Refuge System Administration Act, 16 U.S.C. Sec. 668dd.

SPECIAL PROVISIONS

1. This indenture shall not be binding upon the United States until accepted on behalf of the United States by the Secretary of the Interior or his authorized representative, although this indenture is acknowledged by the Grantors to be presently binding upon them and to remain so until the expiration of said period for acceptance, as hereinafter described, by virtue of the payment to the Grantors, by the United States, of the sum of One Dollar, the receipt of which is hereby expressly acknowledged by Grantors.

2. Notice of acceptance of this indenture shall be given the Grantors by certified mail addressed to [Redacted] and shall be effective upon the date of mailing, and such notice shall be binding upon all Grantors without sending a separate notice to each.

3. Payment of the consideration will be made by a United States Treasury check after acceptance of this indenture by the Secretary of the Interior or his authorized representative and after the Attorney General, or in appropriate cases, the Solicitor of the Department of the Interior shall have approved the easement interest thus vested in the United States.

[Redacted Signature]

set their hands and seals this 15th day of March 1995. (L.S.) [Redacted Signature]

(L.S.) _____ (L.S.)

ACKNOWLEDGMENT

STATE Mont)
COUNTY Lake)ss

On this 13 day of May in the year 1995 before me personally appeared [Redacted] husband and wife

known to me to be the persons described in and who executed the foregoing instrument and acknowledged to me that they executed the same as their free act and deed.

(SEAL) SEAL

My commission expires

Chris Jackson
Notary Public
7-2-98

ACCEPTANCE

The Secretary of the Interior, acting by and through his authorized representative, has executed this agreement on behalf of the United States this _____ day of _____, 19__.

JUNE - 8 1995

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR

By: Paul L Hartmann
Title: CHIEF, DIVISION OF REALTY
U.S. Fish and Wildlife Service

366837

UNITED STATES DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
EXHIBIT "A" Map 1 of 2

TRACT 13C

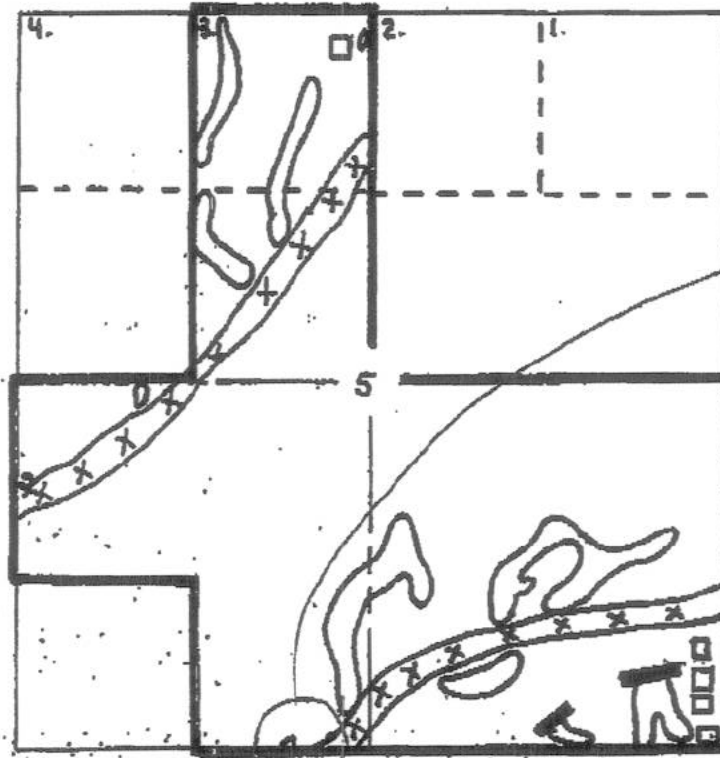
Non Responsive

WILDLIFE HABITAT AREA Lake COUNTY, STATE OF Montana

T. 20 N. R. 20 W. (or Gov. Lot 3, SE 1/4 SW 1/4) EXCEPTING THEREFROM that portion of Lot conveyed to the State of Montana by Deed recorded in Book 39 Deeds, Page 286, Farm Unit "P" (or N 1/2 SW 1/4, SE 1/2 SW 1/4, S1

Lot Table

- Lot 1 = 41.31 ac.
- Lot 2 = 41.28 ac.
- Lot 3 = 41.26 ac.
- Lot 4 = 41.23 ac.



Non Responsive
I THOUGHT THIS WAS THE HOMESTEAD

This map delineates wetlands referred to in the easement conveyance dated 3/15/95 which the parties of the first part agree to maintain as a wildlife habitat area. The lands covered by the delineated wetland areas resulting from normal or abnormal

Non Responsive

LEGEND

- Boundary of Easement for Wildlife Habitat Conservation
- Wetlands covered by provisions of the easement
- Nonfunctional drainage facilities which the landowner agrees NOT to repair or clean out
- Wetland Restoration Structure -To be maintained by Grantors
- Riparian area 100 feet on each side of the bank of the stream covered by Provision 2 of the easement.
- Existing bldg. site

Non Responsive

Prepared by: J. Hise Date: 3/9/95

366837

UNITED STATES DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
EXHIBIT "A" Map 2 of 2

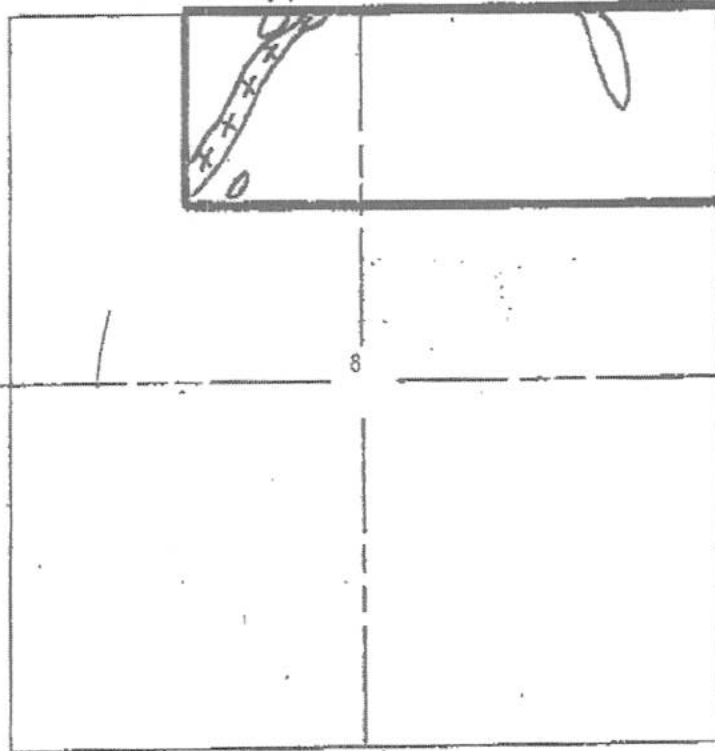
TRACT 13C

Non Responsive

WILDLIFE HABITAT AREA Lake COUNTY, STATE OF Montana

T. 20 N., R. 20 W.,
Sec. 8, NE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$.

PRINCIPAL MERIDIAN



Scale: 4 inches = 1 Mile

This map delineates wetlands referred to in the easement conveyance dated 3/15/95 which the parties of the first part agree to maintain as a wildlife habitat area. The lands covered by the easement include the delineated wetland areas resulting from normal or abnormal water accumulation.

Non Responsive

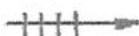
LEGEND



Boundary of Easement for Wildlife Habitat Conservation



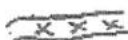
Wetlands covered by provisions of the easement



Nonfunctional drainage facilities which the landowner agrees NOT to repair or clean out



Wetland Restoration Structure To be maintained by Grantors



Riparian area 100 feet on each side of the bank of the stream covered by Provision 2 of the easement,

Prepared by: J. Hise Date: 3/9/95

STATE OF MONTANA, COUNTY OF LAKE
Recorded At 2:49 O'clock P.M. JUN 23 '95
Microfilm 366837 RUTH E. HODGERS
Fees \$24.00 by Judy M. King Deputy

From: **Non Responsive**

Subject: Request for Administrative Appeal of Your Decision Pertaining to
Conservation Easement

Date: January 28, 2014 at 3:14:30 PM MST

To: "King, Jeff" <jeff_king@fws.gov>

Cc: **Non Responsive**

Hi Jeff. It was great to talk to you today and I appreciate your efforts in seeking to resolve the discrepancy in recollections regarding the negotiations between Bill West and **Non Responsive**. I am disappointed we could not find a solution but I have appreciated your professionalism throughout our discussions on this matter.

At this point, you have reviewed all matters pertaining to the conservation easement on the subject property and have concluded that there is no authority under that agreement to renovate and/or replace the original homestead of **Non Responsive** parents. We respectfully disagree with that assertion as we have discussed and at this point I am asking for you to refer this to your legal department for an administrative appeal of your decision. Please let me know at your earliest convenience who I need to contact for further information in this regard.

To recap:

- 1 We own 40 acres that is part of the land covered by the terms of the conservation easement. As such, we are aggrieved by your decision and have standing, both administratively and before the courts, to seek a remedy. The history of this property and homestead is personally significant to us and the **Non Responsive** family, in that it is the original homestead upon which **Non Responsive** parents settled back in the 1920's.
- 2 **Non Responsive** father **Non Responsive** negotiated the terms of the easement with the USF&W *without legal representation* in approximately 1994. He contends that there is correspondence in your file, either from Bill West or Bill's assistant with whom he negotiated, specifying that the USF&W would never prevent him from renovating or replacing the homestead of his parents which is located on the 40 acres now owned by us.
- 3 **Non Responsive** was under the impression that the building site of the homestead was marked on the map listed as an exhibit to the agreement. This map was hand drawn, not to scale and not surveyed, by staff at USF&W with irregular and inconsistent shapes marked on the map to denote a number of items, including authorized building sites. **Non Responsive** did not participate in the drafting of that map and we believe that ambiguities in the map should and will, in court, be construed against USF&W if we end up having to litigate this matter, which we are determined to do if necessary.
- 4 I have previously requested a copy of the entire file and have agreed to pay the

costs of production of such file. To date, I have not yet been provided with a full and complete copy of the file, to include any correspondence between USF&W and **Non Responsive** or his agents. I would like to have a copy of the file at your earliest convenience.

5 I have previously requested, via email on January 14, 2014, for an identification of any administrative appeal process available to us to challenge your interpretation of the conservation easement. I am repeating that request via this email.

6 We also offered an informal resolution of this disputed interpretation of the conservation easement, consisting of an offer to give up our right to build on our 2 acre site by the pond on the south east side of the property covered by the easement, in return for an acknowledgment from USF&W that we have authority to renovate or replace the homestead and the adjacent farm structure as long as we comply with paragraph 4 of the agreement. You have not yet responded to that offer and we assume that your legal department will have to do so.

7 As I have stated before and have communicated in writing, we would much prefer a compromise solution that is amenable to both sides over a protracted legal battle over these issues, but we are resolved to do what is necessary, including court action, to secure the authority to restore the homestead, which was the original intention of the agreement in the first place. EndFragment

Please refer this to your legal department and confirm that you have done so. I would also appreciate knowing the name and contact information of the person to whom I should direct further correspondence.

Sincerely,

Non Responsive





United States Department of the Interior

FISH AND WILDLIFE SERVICE Mountain-Prairie Region



IN REPLY REFER TO:
FWS/R6/061066
Mail Stop 60130

MAILING ADDRESS:
Post Office Box 25486
Denver Federal Center
Denver, Colorado 80225-0486

STREET LOCATION:
134 Union Boulevard
Lakewood, Colorado 80228-1807

SEP 11 2015

The Honorable Ryan Zinke
United States House of Representatives
Attention: Susan Kohn, Casework Manager
222 North 32nd Street, Suite 900
Billings, Montana 59101

Dear Congressman Zinke:

Thank you for your inquiry of August 12, 2015, on behalf of **Non Responsive** regarding the conservation easement on land they own in Ronan, Lake County, Montana. The U.S. Fish and Wildlife Service (Service) purchased this easement in 1995 from **Non Responsive**. **Non Responsive** The purpose of the easement is to protect the habitat quality of the wetlands and uplands and to provide water, cover, nesting cover, and food for wildlife.

The provisions of the easement are designed to fulfill these purposes in a manner that also supports a working landscape by allowing the landowner to continue to make beneficial use of the land. For example, the easement restricts the rights to drain, burn, fill, or level protected wetlands. It also prohibits the alteration or destruction of the uplands through plowing, excavating, or digging. However, the easement does not restrict customary recreational or agricultural uses from continuing such as hunting, livestock grazing, haying, and timber harvest. In this way, the easement seeks to strike a balance between the conservation of valuable natural resources and the continued needs of landowners who make their living from the land.

Because habitat fragmentation through subdivision and building construction can potentially diminish the quality of wildlife habitat in western Montana, these activities are also restricted by the conservation easements purchased by the Service, including the easement in question here. The Service has been in contact with the **Non Responsive** regarding their desire to renovate an old homestead on the easement tract, an activity that is prohibited by the easement (this particular easement does allow for the renovation and replacement of some structures; it also reserves the right to construct an additional residence in an area where one currently does not exist). The **Non Responsive** contend that **Non Responsive** unknowingly signed a version of the easement contract containing this restriction without realizing that it would prohibit the renovation/reconstruction of this homestead. However, documentation in the Service's files indicate that, when the terms of the easement were being negotiated, it was **Non Responsive** who contacted the Service and decided to have the building site reservation moved from homestead location to an area near the other existing building sites on the easement tract. The purpose of his decision, as documented in the record, was

because **Non Responsive** The Service honored **Non Responsive** request and drafted the terms of the easement according to **Non Responsive** wishes. **Non Responsive** subsequently accepted these terms when he accepted payment for the easement.

The Service will always strive to accommodate reasonable and legitimate needs of landowners if easement restrictions create unforeseen or undue hardship such as those creating health and safety concerns. This accommodation may come in the form of a temporary special use permit or, in extreme cases, the exchange of easement interests. In the **Non Responsive** case, however, no such circumstance exists and there is no threat to human health or safety caused by the easement provisions. Therefore, the Service has denied the **Non Responsive** request.

If you need additional information, please contact me at (303) 236-7920, or the Acting Assistant Regional Director for the National Wildlife Refuge System, Maureen Gallagher, at (303) 236-4304.

Sincerely,



Deputy

Regional Director

Western Montana
December 1994

UNITED STATES DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
GRANT OF EASEMENT FOR WILDLIFE HABITAT CONSERVATION

11 Microfiche
366837/8

THIS INDENTURE, by and between **Non Responsive** husband and wife, of **Non Responsive** hereinafter referred to as Grantors, and the UNITED STATES OF AMERICA, hereinafter referred to as United States, acting by and through the Secretary of the Interior or his authorized representative.

WITNESSETH:

WHEREAS, the Migratory Bird Hunting and Conservation Stamp Act, 16 U.S.C. Secs. 715a-715e and 718d(c); the Fish and Wildlife Act of 1956, 16 U.S.C. 742a-742j; the Emergency Wetlands Resources Act of 1986, 16 U.S.C. 3901, authorize the Secretary of the Interior to acquire lands and waters or interests therein for the development, advancement, management, conservation, and protection of fish and wildlife resources. The purpose of this easement is to protect the habitat quality of the wetlands and uplands described on Exhibit A, and to provide water, cover, especially nesting cover, and food for aquatic, terrestrial and avian wildlife; AND

WHEREAS, the lands described below contain habitat suitable for use as a wildlife area.

NOW, THEREFORE, for and in consideration of the sum of Three Hundred Fifty-three Thousand Dollars (\$353,000.00), to the Grantors in hand paid, the receipt of which is hereby acknowledged, Grantors hereby grant and convey unto the United States, and its assigns, an estate, interest and perpetual conservation and wildlife easement, in lands of the Grantors, together with the right of ingress and egress for the purpose of monitoring and enforcing the doing and refraining of activities by Grantors thereupon, to be a servitude upon Grantors' said lands; and Grantors covenant with the United States on behalf of themselves, their heirs, executors, administrators, successors, and assigns, forever, to do and refrain from doing upon Grantors' said lands the various activities hereinafter recited, it being hereby agreed that the doing and refraining from said activities, and each of them, upon said lands is and shall be for the benefit of the United States through the preservation and conservation of the land. No rights herein are granted to the general public for access to or entry upon the land subject to this grant of easement for any purpose. The lands to which the terms of this agreement apply are described and located in Lake County, State of Montana, to-wit:

T. 20 N., R. 20 W., PMM

Sec. 5, Farm Unit "C" (or Gov. Lot 3, SE1/4NW1/4) EXCEPTING THEREFROM that portion of Lot 3 conveyed to the State of Montana by Deed recorded in Book 39 Deeds, Page 286, Farm Unit "F" (or N1/2SW1/4), SE1/4SW1/4, SE1/4;
Sec. 8, NE1/4NW1/4, N1/2NE1/4.

SUBJECT, however, to all valid existing rights-of-way for highways, roads, railroads, pipelines, canals, laterals, electrical transmission lines, telegraph and telephone lines, cable lines, and all outstanding mineral rights in third parties.

The conveyance hereunder shall be effective on the date of the execution of this Indenture by the Secretary of the Interior or his authorized representative; provided, however, that such acceptance must be made within 9 (nine) calendar months from date of the execution of this Indenture by the Grantors, or any subsequent date as may be mutually agreed upon in writing by the parties hereto prior to the expiration of such date; and provided further, however, that in the event such acceptance is not made by such date, this Indenture shall be null and void.

The Grantors, for themselves, and for their heirs, successors and assigns, lessees, and any other person claiming under them, covenant and agree that they will cooperate in the maintenance and protection of all wetland and wildlife habitat areas, delineated on the map(s) attached hereto as Exhibit A, for the protection of fish and wildlife resources. The restrictions hereby imposed upon the use of said lands of the Grantors and the activities which Grantors covenant to refrain from doing upon said lands, except as may be authorized from time to time by the express prior written consent of the Secretary of the Interior or authorized representative, are as follows:

1. Draining, causing or permitting the draining by construction of ditches, or by any means, direct or indirect, whether through transfer of appurtenant water rights or otherwise of any surface waters in or appurtenant to these wetland areas delineated on Exhibit A; by not filling, causing or permitting the filling in with earth or any other material or leveling, causing or permitting the leveling of any part or portion of said delineated wetland areas; and by not burning, causing or permitting the burning of any wetland vegetation on any part or portion of said delineated wetland areas. This includes lakes, ponds, marshes, sloughs, swales, swamps, potholes, and other wholly or partially water-covered areas, now existing or subject to recurrence through natural or man-made causes; provided, always, that the lands covered by this conveyance shall include any enlargements of said wetland areas resulting from normal or abnormal increased water.

2. Altering the topography or other natural features by digging, excavating, plowing, disking, cutting, filling, removing or otherwise destroying the vegetative cover upon said lands delineated on Exhibit A, unless prior approval in writing is granted by the U.S. Fish and Wildlife Service; except that haying, grazing, timber harvest upon the aforesaid lands is permitted without approval in writing.

3. Subdividing or de facto subdividing, and/or developing the area for residential, commercial, industrial or any other purposes, except for agricultural uses; provided, however, that in-home businesses are permissible so long as they do not require any physical development or change to the land and/or construction of additional improvements, buildings, or other structures.

4. Erecting, building or placing any structures, including temporary living quarters, on said land, except for the renovation and replacement of existing buildings of substantially the same size and purpose, in substantially the same location as the existing building site(s) shown in Exhibit A and except for non-residential farm structures located in close proximity to existing buildings that support existing agricultural purposes.

UNITED STATES DEPARTMENT OF THE INTERIOR
 U.S. FISH AND WILDLIFE SERVICE
 EXHIBIT "A" Map 1 of 2

TRACT 13C

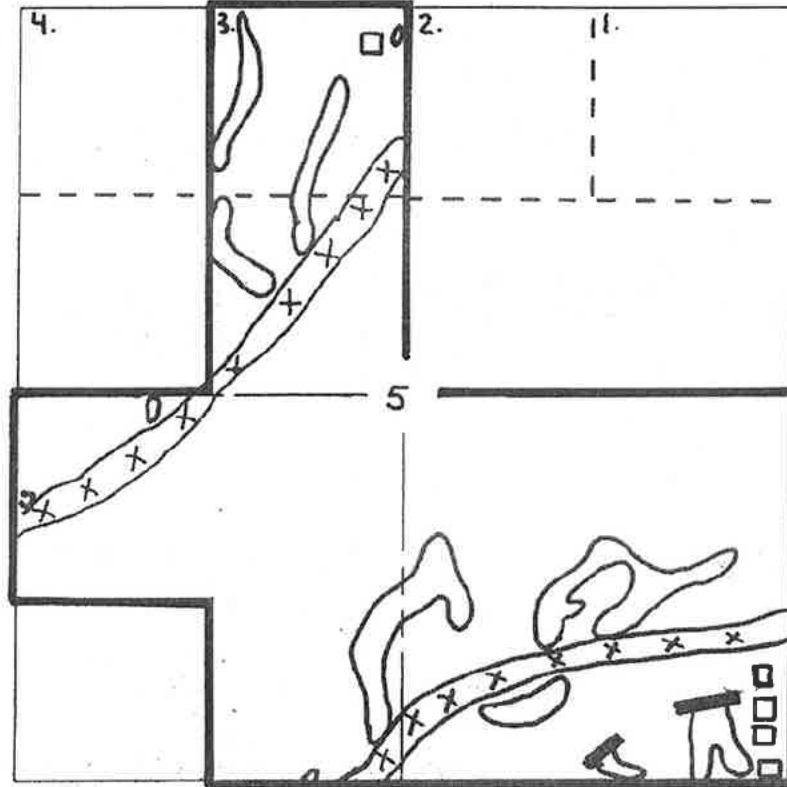
Non Responsive

WILDLIFE HABITAT AREA Lake COUNTY, STATE OF Montana

T. 20 N., R. 20 W. PRINCIPAL MERIDIAN
 Sec. 5, Farm Unit "C" (or Gov. Lot 3, SE $\frac{1}{4}$ NW $\frac{1}{4}$) EXCEPTING THEREFROM that portion of Lot
 conveyed to the State of Montana by Deed recorded in Book 39 Deeds, Page 286, Farm
 Unit "F" (or N $\frac{1}{2}$ SW $\frac{1}{4}$), SE $\frac{1}{4}$ SW $\frac{1}{4}$, S1

Lot Table

Lot 1 = 41.31 ac.
 Lot 2 = 41.28 ac.
 Lot 3 = 41.26 ac.
 Lot 4 = 41.23 ac.



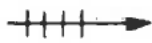





Scale: 4 Inches = 1 Mile

This map delineates wetlands referred to in the easement conveyance dated 3/15/95 which the parties of the first part agree to maintain as a wildlife habitat area. The lands covered by this easement include any wetlands or the delineated wetland areas resulting from normal or abnormal

Non Responsive

LEGEND

-  Boundary of Easement for Wildlife Habitat Conservation
-  Wetlands covered by provisions of the easement
-  Nonfunctional drainage facilities which the landowner agrees NOT to repair or clean out
-  Wetland Restoration Structure -To be maintained by Grantors
-  Riparian area 100 feet on each side of the bank of the stream covered by Provision 2 of the easement.
-  Existing bldg. site

Prepared by: J. Hise Date: 3/9/95

UNITED STATES DEPARTMENT OF THE INTERIOR
 U.S. FISH AND WILDLIFE SERVICE
 EXHIBIT "A" Map 2 of 2

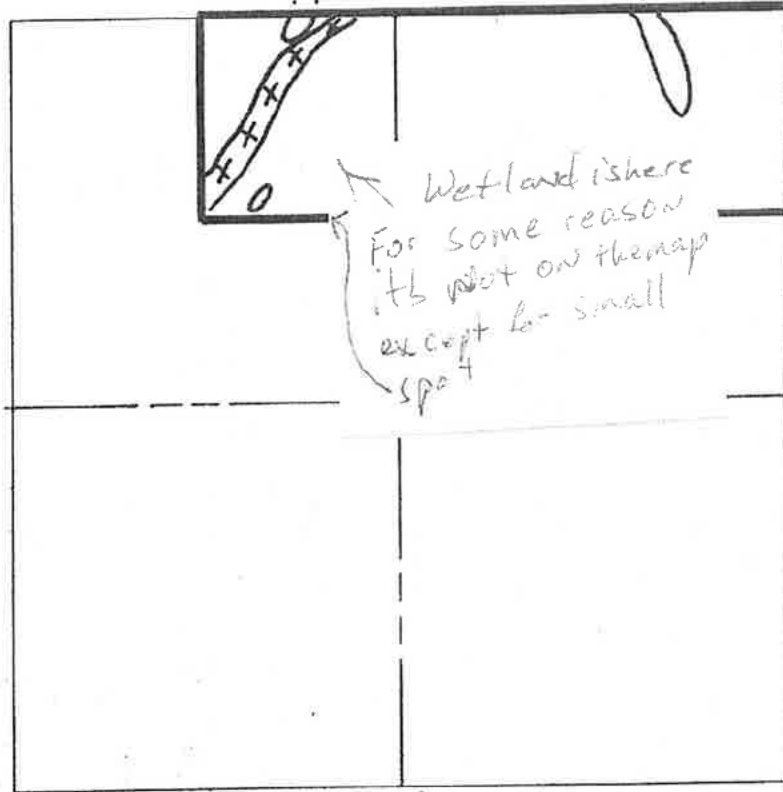
TRACT 13C

Non Responsive

WILDLIFE HABITAT AREA Lake COUNTY, STATE OF Montana

T. 20 N., R. 20 W.,
 Sec. 8, N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$.

PRINCIPAL MERIDIAN



This map delineates wetlands referred to in the easement conveyance dated 3/15/95 which the parties of the first part agree to maintain as a wildlife habitat area. The lands covered by the easement include the wetlands and the delineated wetland areas resulting from normal or abnormal flooding.

Non Responsive

LEGEND

Boundary of Easement for Wildlife Habitat Conservation

Wetlands covered by provisions of the easement

Nonfunctional drainage facilities which the landowner agrees NOT to repair or clean out

Wetland Restoration Structure To be maintained by Grantors

Riparian area 100 feet on each side of the bank of the stream covered by Provision 2 of the easement.

Prepared by: J. Hise Date: 3/9/95

Landowner Signature

UNITED STATES DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
EXHIBIT "A" Map 1 of 2

TRACT 13C

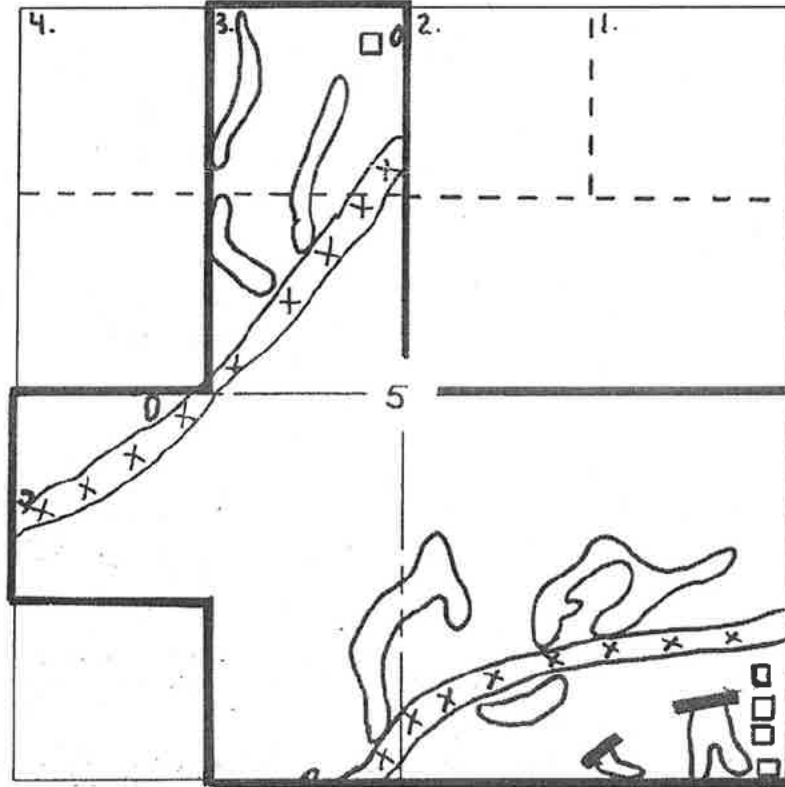
Non Responsive

WILDLIFE HABITAT AREA Lake COUNTY, STATE OF Montana

T. 20 N., R. 20 W. PRINCIPAL MERIDIAN
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conveyed to the State of Montana by Deed recorded in Book 39 Deeds, Page 286, Farm
Unit "F" (or N $\frac{1}{4}$ SW $\frac{1}{4}$), SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE

Lot Table

- Lot 1 = 41.31 ac.
- Lot 2 = 41.28 ac.
- Lot 3 = 41.26 ac.
- Lot 4 = 41.23 ac.



Scale: 4 Inches = 1 Mile

This map delineates wetlands referred to in the easement conveyance dated 3/15/95 which the parties of the first part agree to maintain as a wildlife habitat area. The lands covered by the easement include the delineated wetland areas resulting from normal or abnormal

Non Responsive

LEGEND

- Boundary of Easement for Wildlife Habitat Conservation
- Wetlands covered by provisions of the easement
- Nonfunctional drainage facilities which the landowner agrees NOT to repair or clean out
- Wetland Restoration Structure -To be maintained by Grantors
- Riparian area 100 feet on each side of the bank of the stream covered by Provision 2 of the easement.
- Existing bldg. site

Prepared by: J. Hise Date: 3/9/95

Landowner Signature

Non Responsive

UNITED STATES DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
EXHIBIT "A" Map 2 of 2

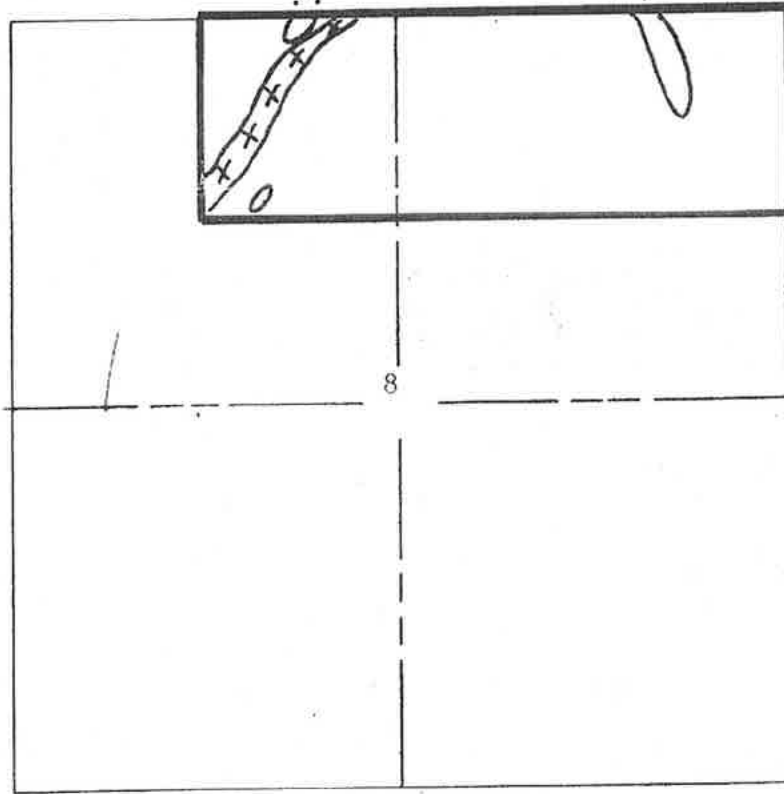
TRACT 13C

Non Responsive

WILDLIFE HABITAT AREA Lake COUNTY, STATE OF Montana

T. 20 N., R. 20 W.,
Sec. 8, N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$.

PRINCIPAL MERIDIAN



Scale: 4 Inches = 1 Mile

This map delineates wetlands referred to in the easement conveyance dated 3/15/95 which the parties of the first part agree to maintain as a wildlife habitat area. The lands covered by this map are the delineated wetland areas resulting from normal or abnormal

STATE OF MONTANA, COUNTY OF LAKE
Recorded At 2:49 O'Clock P.M. JUN 23 '95
Microfilm 366837 RUTH E. HODGERS
Fee \$24.00 By Judy M. [Signature] Deputy

Non Responsive

LEGEND



Boundary of Easement for Wildlife Habitat Conservation



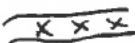
Wetlands covered by provisions of the easement



Nonfunctional drainage facilities which the landowner agrees NOT to repair or clean out



Wetland Restoration Structure To be maintained by Grantors



Riparian area 100 feet on each side of the bank of the stream covered by Provision 2 of the easement,

Prepared by:

J. Hise

Date:

3/9/95

Landowner Signature

UNITED STATES DEPARTMENT OF THE INTERIOR
 U.S. FISH AND WILDLIFE SERVICE
 EXHIBIT "A" Map _____ of _____

Final
 Regional
 Office

Non Responsive

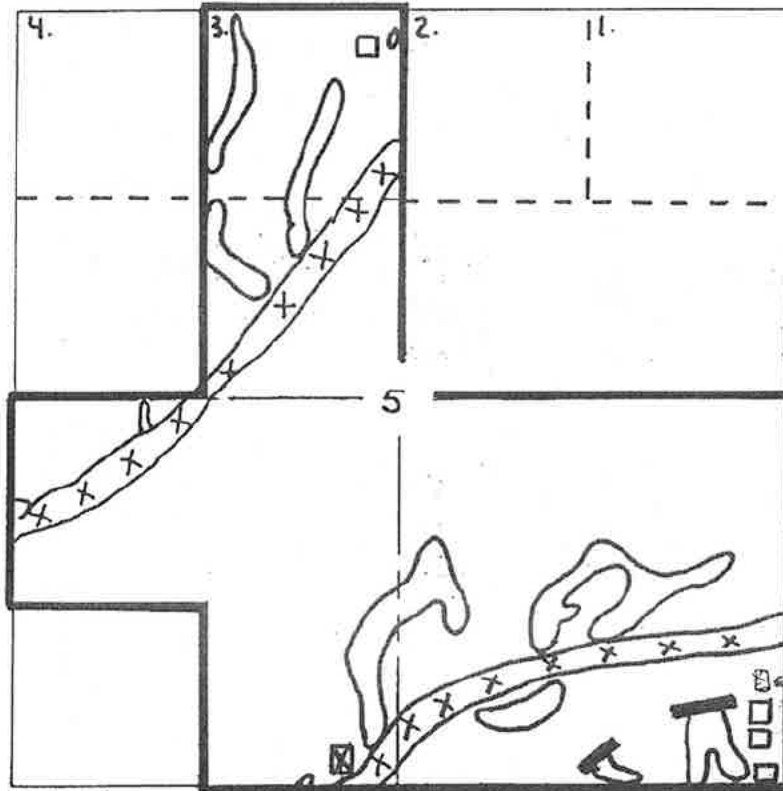
TRACT _____

WILDLIFE HABITAT AREA Lake _____ COUNTY, STATE OF Montana

T. 20 N., R. 20 W. PRINCIPAL MERIDIAN
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Lot Table

- Lot 1 = 41.31 ac.
- Lot 2 = 41.28 ac.
- Lot 3 = 41.26 ac.
- Lot 4 = 41.23 ac.



Add these -
 two wetlands

Scale: 4 Inches = 1 Mile

This map e
 agree to a
 delineated

Lyan!

which the parties of the first part
 ice include any enlargement of the

LEGEND

Talk to me about

r Signature

Non Responsive

He is

Moving his home site.

⌋

+++

■

⌋

□

Wetland Restoration

by Grantors

Riparian area 100 feet on each side of the bank of the stream covered by
 Provision 2 of the easement.

Existing bldg. site

Prepared by: _____ J. Hise Date: 3/9/95

UNITED STATES DEPARTMENT OF THE INTERIOR
 U.S. FISH AND WILDLIFE SERVICE
 EXHIBIT "A" Map _____ of _____

*Final
 Revised 8/95*

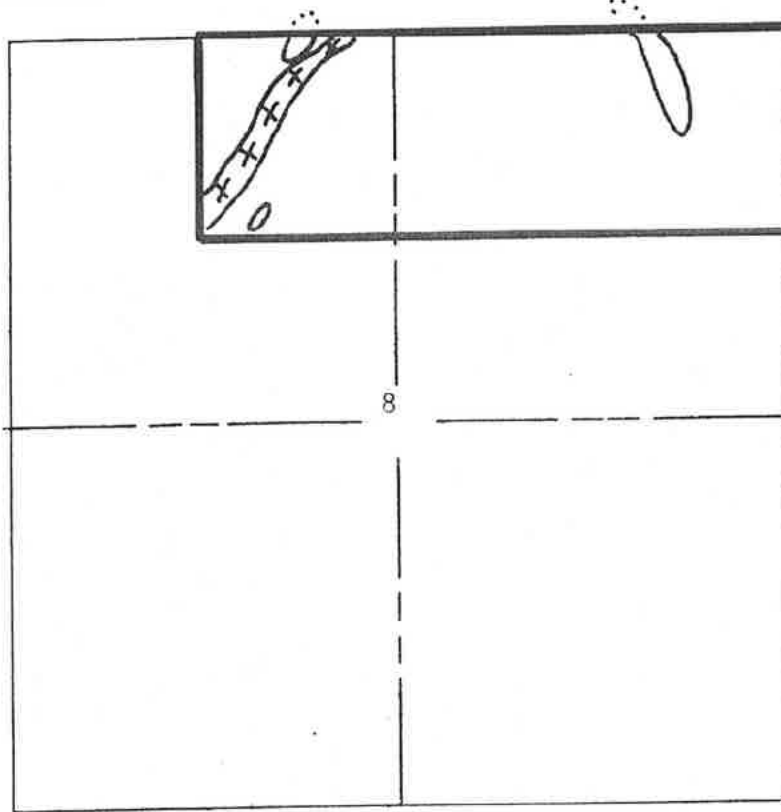
TRACT _____

Non Responsive

WILDLIFE HABITAT AREA Lake COUNTY, STATE OF Montana

T. 20 N., R. 20 W.,
 Sec. 8, N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$.

PRINCIPAL MERIDIAN



Scale: 4 Inches = 1 Mile

This map delineates wetlands referred to in the easement conveyance dated _____ which the parties of the first part agree to maintain as a wildlife habitat area. The lands covered by this conveyance include any enlargement of the delineated wetland areas resulting from normal or abnormal increased water.

LEGEND

 Landowner Signature



Boundary of Easement for Wildlife Habitat Conservation



Wetlands covered by provisions of the easement



Nonfunctional drainage facilities which the landowner agrees NOT to repair or clean out



Wetland Restoration Structure



Riparian area 100 feet on each side of the bank of the stream covered by Provision 2 of the easement,

Prepared by: J. Hise Date: 3/9/95

Record of Negotiation

U.S. DEPARTMENT of the INTERIOR
FISH and WILDLIFE SERVICE
DIVISION of REALTY

LA Montana
 Project Lake Co.
 Tract 13C
 Owner **Non Responsive**

Call No.	Date of Call	Tel. or Visit	Talked With	Place of Contact	Offer	Demand
			Non Responsive	his home		

Comprehensive Details of Call: (add. persons present, non-agreement reasons, deliv. of J.C. state., etc.)

3/14/95 - Tuesday ^{afternoon} ~~morning~~ 2 p.m.

3/14 - Met w/ **Non Responsive** & wife - We drove around the easement area. He was pleased with the offer and is planning on taking to the Bank today to have it notarized & given to me tomorrow

3/15 - Call **Non Responsive** move fixtures, resid sites from SWSE 1/4 to existing bldg. site. He wants his **Non Responsive**

Non Responsive called Refuge & they sent me revised ma

4/24 - Wants to close ASAP - is aware of political situation
 Feels ^{he needs} agreements written up govt to challenge tribes

Since **Non Responsive** built the restoration structures he will be required to maintain them.

7/18 - Mailed ck Fed Ex

Follow-up planned for _____ Negotiator B. Adler



RECEIVED

Congress 75th of the United States

2015 SEP 11 PM 3:30

House of Representatives

OFFICE OF THE
EXECUTIVE SECRETARIAT

Washington, DC 20515

August 14, 2015

Sarah Neimeyer
Director of Congressional and Legislative Affairs
U. S. Department of the Interior
Mail Stop 6242
11849 C Street, NW
Washington, DC 20240-0001

Dear Ms. Neimeyer;

I've recently received a letter and information from **Non Responsive** According to the information, her elderly father, **Non Responsive** signed an agreement with Department of Interior/U.S. Fish and Wildlife Service, allowing a conservation easement on his land. The father had reviewed documents that he had participated in developing with the USFWS. He was later presented with, what he thought were the same documents, to sign, which he did. Upon later review, he observed that his homestead of 100 years, which he had mapped out to be eliminated from the easement, had been included into the easement, according to the USFWS. This has brought great concern and has created a very negative atmosphere regarding the USFWS, to the point of potential litigation. **Non Responsive** had bought the ranch for the sole purpose of preserving the homestead and had no intention of including it in the easement agreement.

I've reviewed the documents provided to me and have seen where the changes have been made and see that it could have been an oversight by USFWS. I don't think this was purposely done, but could be construed as such. The original map shows the homestead site, and the signed document shows a site that can be easily considered the homestead, although the map is rather crudely drawn. It appears this may have only been an oversight of USFWS, and could be easily corrected. **Non Responsive** was shown the original documents, then, a few days later, asked to sign them and did, although changes had been made, unknown to him. **Non Responsive** **Non Responsive** has also tried to exchange other allowable building sites, near wetlands, for the old homestead building site that is not near a wetland.

I applaud Montanans like **Non Responsive** who have spent their lives managing their land to the point that it is desired so much that a conservation easement for the public benefit and wildlife habitat is sought. **Non Responsive** wanted to do the right thing, in his mind, and give access to land

that may never be seen and enjoyed by anyone outside the private property owner, while still preserving the family heritage.

Non Responsive

made a generous gesture to the DOI/USFWS on behalf of his family and generations to come. He was protecting his original homestead, but allowed others to use the land. I would ask that the DOI/USFWS to do the right thing and work with the daughter to settle what has become a nightmare for the family. Thank you very much for your consideration. I look forward to your response.

In God We Trust,

A handwritten signature in black ink that reads "R. K. Zinke". The signature is written in a cursive, slightly stylized font.

Ryan Zinke
Member of Congress

"The Only Easy Day Was Yesterday"

RZ/RV

Congress of the United States
Washington, DC 20515

September 28, 2015

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

Dear Secretary Jewell

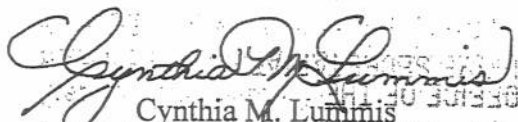
We write in regard to the Consolidated Federal Oil and Gas and Federal and Indian Coal Valuation Reform (ONRR-2012-0004 (1012-AA13)) and a peer review recently completed by Energy Ventures Analysis, Inc. titled, *Coal Sales Prices used for Valuation and Payment of Federal Royalties, A Peer Review of Previous Studies by Headwaters Economics*.


As the Office of Natural Resources Revenue and your department continue to review comments related to the proposed rule change to federal coal valuation, we ask that you give full consideration to the attached peer review of the Headwaters Economics studies performed by Energy Ventures Analysis at the request of Cloud Peak Energy. The peer review raises concerns that the Headwaters Economic studies contain significant errors, utilize flawed data, and make biased assumptions. The proposed rule needs further review of its economic effects. Moving forward with a rule that could lead to a significant reduction in federal coal production and thus in royalty revenue would be a serious error and counter to the mission of ONRR.

Coal production on federal lands creates jobs, provides affordable electricity, and generates important revenue for the American taxpayer and states across the West. Any proposed changes to the royalty policy should be geared towards maintaining a fair return for the taxpayer. While we reiterate our previous request that you withdraw the rule to allow your Department to undertake further study, at a minimum you should give full consideration to the findings in the attached peer review.

Thank you for your attention to this matter and we look forward to a timely response.

Sincerely,


Cynthia M. Lummis
Member of Congress


Ryan Zinke
Member of Congress

RECEIVED

Congress of the United States
House of Representatives
Washington, DC 20515-5001

OFFICIAL BUSINESS

PRINTED ON RECYCLED PAPER

Gynthia P. Lemmi
M.C.

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

RECEIVED OCT 08 2015



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, D.C. 20240

NOV 25 2015

The Honorable Ryan Zinke
United States House of Representatives
Washington, DC 20515

Dear Representative Zinke:

Thank you for your letter dated September 28, 2015, regarding the Department of the Interior's (Department) Consolidated Federal Oil and Gas and Federal and Indian Coal Valuation proposed rule. In your letter, you asked that the Department consider the report from Energy Ventures Analysis, Inc. entitled, *Coal Sales Prices used for Valuation and Payment of Federal Royalties, A Peer Review of Previous Studies by Headwaters Economics*.

The 120-day comment period for the proposed valuation rule closed on May 8, 2015. Once the comment period closed, the Office of Natural Resources Revenue (ONRR) began the intensive process of categorizing, reviewing, and analyzing the input from over 300 commenters and over 190,000 petition signatories. Once ONRR completes the analysis, the Department will review the results and decide on a path forward.

The United States Congress remains an important partner in the Department's efforts to collect every dollar due and ensure a fair return for the use of the public's valuable natural resources. We appreciate your interest in the proposed rule and are committed to working with you throughout the process as we determine the best path forward.

Sincerely,

Kristen J. Sarri
Principal Deputy Assistant Secretary
Policy, Management and Budget



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, D.C. 20240

NOV 25 2015

The Honorable Cynthia M. Lummis
United States House of Representatives
Washington, DC 20515

Dear Representative Lummis:

Thank you for your letter dated September 28, 2015, regarding the Department of the Interior's (Department) Consolidated Federal Oil and Gas and Federal and Indian Coal Valuation proposed rule. In your letter, you asked that the Department consider the report from Energy Ventures Analysis, Inc. entitled, *Coal Sales Prices used for Valuation and Payment of Federal Royalties, A Peer Review of Previous Studies by Headwaters Economics*.

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Sincerely,

Kristen J. Sarri
Principal Deputy Assistant Secretary
Policy, Management and Budget

Congress of the United States
House of Representatives
Washington, DC 20515

November 30, 2015

The Honorable Sally Jewell
Secretary
Department of the Interior
1849 C Street, NW
Washington, DC 20240

Secretary Jewell:

I understand that several Senators wrote to you on Monday, November 2nd, urging you to accelerate finalizing the Office of Natural Resources Revenue (ONRR)'s proposed "Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform" rule, published on January 6, 2015 (80 Fed. Reg. 608). This change to coal valuation rules would inhibit coal exports, as well as impose a range of other measures designed to keep coal in the ground. I urge you to consider the following facts.

Government Accountability Office (GAO) Comptroller General Dodaro has confirmed to me and my staff that the GAO report on the federal coal leasing program made no recommendation for the changes to coal valuation rules contained in the proposed ONRR rule. I have also not found any similar recommendation in the Department of Interior's Inspector General Report on the subject.

In fact, the basis for developing this rule seems to have been based on biased studies produced by Headwaters Economics in Bozeman, MT. I attach for your information a peer review of these Headwaters studies by respected energy economics consulting firm, Energy Ventures Analysis (EVA) that thoroughly discredits the flawed data manipulated by Headwaters to arrive at predetermined and false conclusions. Put simply, claims of systematic royalty evasion or underpayment are utterly false.

Recently, the largest exporter of coal from the Powder River Basin, possessing a mine in southeast Montana, announced it would scale back and potentially cease coal exports in 2016. This will begin a series of devastating losses for my state. The decision could cost Montana up to \$15 million in tax revenues, and the federal government between \$10 and \$12 million in royalty revenue. Most disturbingly, this could lead to the loss of good-paying jobs directly and indirectly supporting the industry. Their decision partly reflects weak pricing in Japan and South Korea, the main export markets for PRB coal, but I understand that the deep uncertainty and concern around the proposed ONRR rule, and specifically its unprecedented and unjustified "default provision," play an important part in this decision.

2015 DEC -8 AM 11:03

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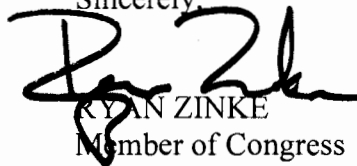
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In addition to my concerns about the impacts facing private industry, I believe the proposed rule will place undue burdens on energy producing tribes across the country. The Crow Tribe of Montana already faces an uphill battle when it comes to providing for their members. I have heard from Crow leaders that they have recently experienced serious negative revenue impacts from an existing coal mine as a result of the pending Clean Power Plan regulations, which is leading to closure of their main customer, a Minnesota power plant. This could realistically lead to closure of that mine, which makes up a significant source of the Tribe's budget. Without coal development opportunities, the tribe will suffer immeasurable losses. Their continuing efforts to further develop and monetize their resources, thereby diminishing reliance on federal government funding, is dependent to a large extent on coal exports. Those exports are also jeopardized by the proposed ONRR rule and highlight the far-reaching unintended consequences of this ill-considered regulation.

Finally, I am well aware of the extensive feedback that BLM received from stakeholders during its listening sessions on the federal coal leasing program. While "keep the coal in the ground" may have been a recurring refrain from environmental interests, it was also made indelibly clear that coal producers are struggling in a very depressed marketplace. There is no economic justification for increasing royalty fees or leasing costs at this time. The federal coal leasing program exists to foster and promote coal production on federal lands, not discourage it.

In view of these facts, I urge you to withdraw the proposed ONRR rule from further consideration and to resist pressure to use regulatory authority under the federal coal leasing program to discourage coal mining on federal and tribal lands.

Sincerely,



RYAN ZINKE
Member of Congress

Coal Sales Prices used for Valuation and Payment of Federal Royalties

A Peer Review of Previous Studies by Headwaters Economics

September 16, 2015

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I. Summary

Headwaters Economics has published two reports alleging that the coal prices reported to ONRR by producers on federal coal leases are substantially less than the actual commodity price for the coal when sold to the end user, leading to a large loss of federal royalty revenue. Headwaters reached this conclusion from its calculation of the average net mine price by coal-producing state from reported delivered coal prices. This study is a review of the data sources, analysis and conclusions reported by Headwaters. The conclusions of our review are:

1. **Headwaters selected results which supported its conclusion while ignoring contrary results.** Headwaters selected only two states (Wyoming and Montana) to support its conclusion, ignoring contrary results from its own analysis for other large federal coal states. While Headwaters claimed that the results for these other states (Colorado, New Mexico and Utah) were not as robust, based upon whether a large majority of coal sales were delivered to the electric power sector, this contention is false. Headwaters inability to replicate the reported mine prices by state from the “net delivered prices” is not evidence of under-payment of royalties on federal coal – it is evidence that Headwaters used poor-quality data and performed inadequate analysis. The fact that Headwaters selected the only two states which seemed to support its conclusion is evidence of Headwaters’ bias, seeking data to support a conclusion which it had already reached.
2. **Headwaters relied upon poor-quality estimated data to perform its analysis.** Headwaters did not have actual data for the mine prices which it estimated from the reported delivered coal prices to electric power companies; it relied upon a private third-party data service (SNL Energy) for these estimates. There are widespread errors in the price estimates from the SNL data service. SNL over-estimated the delivered coal price to the largest customer for Montana coal (which was an unregulated power company so even its delivered coal price was not reported, just estimated), leading to a huge error in its calculation of Montana coal prices. Further, SNL failed to deduct all of the costs included in the reported delivered costs to estimate the net mine prices (it only deducted estimated transportation carrier charges, but failed to deduct destination state sales taxes and rail car costs).

3. **Headwaters did not account for the fact that mines with federal coal leases have non-federal coal leases also.** Headwaters assumed that all coal produced at any mine with a federal coal lease was federal coal. This incorrect assumption resulted in Headwaters over-estimating the average mine price for federal coal in the states of Wyoming and Montana. These states have some large mines which have a “checkerboard” mix of federal and private coal leases. The coal produced from these mines is high-priced coal sold to local (“mine-mouth”) power plants. Headwaters’ assumption that all of this coal was federal coal incorrectly increased its calculated average mine price in these states.
4. **Our detailed analysis of the Montana coal sales data for FY 2014 explained the differences between Headwaters calculated “net delivered” mine prices and the prices reported to ONRR to be due to errors in the data relied upon by Headwaters and Headwaters’ flawed assumptions.** The difference between Headwaters’ calculation of the “net delivered” mine price and the coal prices reported to ONRR was greatest for the state of Montana (Headwaters calculated a mine price 44% higher than the reported price). We analyzed all of the coal sales data for Montana coal from SNL Energy relied upon by Headwaters and found large errors in Headwaters’ calculation due to the following problems:
 - a. SNL had a huge error in over-estimating the delivered coal price to the Colstrip power plant, which is the largest market for Montana coal;
 - b. SNL’s data did not include sales to the second-largest customer for Montana coal (Detroit Edison’s Belle River and St. Clair power plants), which were at lower prices than the average for Montana coal; and,
 - c. Headwaters assumed that all coal production from mines with any federal coal lease were federal coal, but much of the coal produced at the mines with the highest sales prices (Bull Mountains and Rosebud mines) were from private coal leases, so Headwaters over-weighted the higher-priced coal in its average.
5. **Resellers of coal are a very small part of the market and are not a “loophole” avoiding federal royalties.** Headwaters provided no support for its allegation that unnamed “brokers” are reselling coal purchased from producers of federal coal at high profit margins creating an enormous “loophole” to avoid paying federal royalties. Headwaters reached the startling conclusion that the avoided federal royalties are costing the government \$139 million annually, which implies that “brokers” are earning profits exceeding \$1 billion annually (\$139 million divided by the maximum federal royalty rate

of 12.5% equals \$1.11 billion). Actually, the federal data on coal purchases by electric power companies shows coal sales by unaffiliated resellers (Headwaters' unnamed "brokers") were a very small part of the market, only 1.7% of Wyoming coal sales, some of which were power companies reselling excess coal which they had purchased, and just 0.8% of Montana coal sales. The participation of coal trading companies in the market for coal from Wyoming and Montana has dwindled to almost no volume, because they have had difficulty earning any margins at all. Headwaters only evidence that there are large profit margins earned by brokers is its own flawed analysis of "net delivered" mine prices.

6. **The changes to the royalty system proposed by Headwaters are not "transparent".** Headwaters repeatedly asserts that the current system of valuing coal sales for federal royalties is not transparent and its proposed change to using the "net delivered" mine prices would be transparent. In fact, the current system is transparent to ONRR, who has access to every sales contract and transaction by the federal coal lessees and audits these sales. The changes proposed by Headwaters are not transparent; they rely on inaccurate estimates provided by private data companies. Neither the lessees (the coal producers) nor ONRR have access to the data on the delivered coal prices or the "net delivered" mine prices and they cannot check or audit these numbers. Further, the data sources do not include all sales of federal coal, just sales to electric power companies. Headwaters itself was not even "transparent" in its own analysis, as it has not provided its data and calculations for others to review, yet it contends that every coal sales transaction should be available for public scrutiny to check whether ONRR is doing its job auditing coal sales prices.

II. Introduction

Energy Ventures Analysis, Inc. ("EVA") was retained by Cloud Peak Energy ("CPE") to perform a peer review of recent studies regarding the methods used by the Department of Interior ("DOI"), Office of Natural Resources Revenue ("ONRR") to value the sales price used to calculate royalties of federal coal leases. A series of press articles alleging that coal companies were under-paying royalties on federal coal leases¹ as well as a letter to DOI from Senator Ron Wyden requesting

¹ Rucker, Patrick. "Asia coal export boom brings no bonus for U.S. taxpayers." Reuters. December 4, 2012. <http://www.reuters.com/article/2012/12/04/us-usa-coal-royalty-idUSBRE8B30IL20121204>; Davenport, Coral. "U.S. Charging Coal Companies Too Little for Land, Report Says." New York Times. February 7, 2014.

action by DOI² contributed to a proposed rule by ONRR³ to make some changes to the method of valuation of coal sold from federal leases.

Some of this publicity was specifically directed at non arm's-length sales, where coal is sold and valued using market based mechanisms, under formal transactions to affiliated entities. These affiliates were either sales companies owned by the same parent company as the lessees or vertically-integrated power companies which owned the coal supply to their power plants. This type of sale arrangement, which applies to a comparatively small percentage of Federal coal volume and is specifically covered in the existing regulations, is the subject to formal a DOI/ONRR review which was initiated in January 2015.

Subsequent to the announced review of regulations covering non arm's-length sales, there have been further reports claiming that even coal which has been valued using the sales price under arm's-length contracts do not properly reflect the market value of the coal.⁴ These reports allege that there has been massive avoidance of payment of federal coal royalties by failing to report true value of the coal sales to end users and have called for alternatives to change the point of valuation of the coal sales from the mine price (typically known as the FOB, or "free on board", mine price) to the delivered price to the ultimate customer or using the delivered price less transportation costs to determine the FOB mine price (the net mine price), rather than the sales price reported by the lessees (the coal producers).

While theoretically, the "net delivered" mine price should yield the same result as the FOB mine price reported by the lessees, reports by a company called Headwaters Economics ("Headwaters") allege that they have demonstrated that the calculated net mine price (which it calls the "net

http://www.nytimes.com/2014/02/08/us/us-charging-coal-companies-toolittle-for-land-report-says.html?_r=0;

² Wyden, Murkowski Seek Answers on Coal Royalty Payments. Press Release, January 4, 2013. Senator Ron Wyden (D, OR). <https://www.wyden.senate.gov/news/press-releases/wyden-murkowski-seek-answers-on-coal-royalty-payments>

³ U.S. Department of the Interior, Office of the Secretary. Interior Department Announces Initial Steps to Strengthen Federal Energy Valuation Rules, Expand Guidance on Federal Coal Program. Bureau of Land Management News Release, December 19, 2014. http://www.blm.gov/wo/st/en/info/newsroom/2014/december/nr_12_19_2014.html.

⁴ Center for American Progress, "Cutting Subsidies and Closing Loopholes in the U.S. Department of the Interior's Coal Program", January 6, 2015. <https://www.americanprogress.org/issues/green/report/2015/01/06/103880/cutting-subsidies-and-closing-loopholes-in-the-u-s-department-of-the-interiors-coal-program/>

delivered price”) is higher than the FOB mine prices reported to ONRR under the first arm’s-length sales price.⁵ Headwaters claims that:

“This method of valuation [i.e., the “net delivered price’] closes the loophole that may allow for companies to structure sales using affiliated brokers to artificially reduce the commodity value of federal coal that is required for royalty valuation. Most importantly, using net delivered costs would close the loophole for all sales, not only for sales where coal is marketed directly by mines and their affiliates.”⁶

Headwaters further states that:

“Using net delivered price has significant transparency advantages, and similar benefits to streamline the assessment process for industry and ONRR compliance audits. Delivered prices are known for sales to regulated utilities (independent of the sale structure). Additional price data is revealed by sales on spot markets, and by market index prices for coal of varying qualities delivered to domestic and export markets. Market analysis firms including Platts and SNL Energy track market prices and transportation costs closely and could be used to reveal prices that would be used by mines for royalty valuation. This transparency would also allow for public review of federal royalty valuation without necessarily revealing contract prices, mining and marketing costs, and other proprietary data.”⁷

Headwaters has prepared two analyses of the “net delivered” mine prices for coal sales from federal leases by state and compared these prices to the average prices reported to ONRR by coal producers on the sales of coal by state from its lessees pursuant to the legal disclosure obligations of the lessees.

In its January Report, Headwaters used data reported by the U.S. Energy Information Administration (“EIA”) on the delivered coal prices reported to electric power companies as well as industrial users and exports. Headwaters used a separate report from EIA on the average transportation cost of coal by state of origin to domestic power companies. Headwaters calculated the average delivered price of all coal sales by state and subtracted the average transportation costs by state of origin to determine the “net delivered” mine price. Headwaters concluded that the average “net delivered” mine price by state was much higher than the FOB mine price reported to ONRR. Headwaters concluded that the avoided federal royalties were huge. In its January Report, Headwaters calculated that using the “net delivered” price would

⁵ Headwaters Economics, “An Assessment of U.S. Federal Coal Royalties”, January 2015. <http://headwaterseconomics.org/energy/coal/coal-royalty-valuation> and Headwaters Economics, “The Impact of Federal Coal Royalty Reform on Prices, Production, and State Revenue”, May 2015. <http://headwaterseconomics.org/energy/coal/coal-royalty-reform-impacts>

⁶ Headwaters May Report at 19.

⁷ Ibid.

have resulted in increased federal royalties of \$173 million annually,⁸ which it reduced to \$139 million annually in its May Report.⁹

There were many limitations regarding the EIA data which Headwaters relied upon in its January Report. EIA withheld the average transportation rates for many states due to confidentiality, so Headwaters had to rely on an incomplete data set to calculate an average. Further, the average transportation rates to the electric power sector could not be applied to the average delivered prices for industrial and export sales. Headwaters also used the average delivered coal price by state of destination for industrial customers, regardless of the origin of the coal, which resulted in an over-estimate of the price for Wyoming and Montana coal, which is much lower-cost per ton.

Headwaters relied upon a different approach to calculate the “net delivered” mine price in its May Report. Headwaters purchased data from SNL Energy, a private market information and analysis firm. SNL relies in part upon prices reported by electric power companies (both regulated and unregulated) to EIA on Form 923. For regulated electric power companies, SNL used the delivered prices reported by EIA and estimated the transportation costs for each transaction to calculate a “net delivered” mine price. For unregulated merchant power companies, EIA does not release the delivered coal price (due to confidentiality). SNL estimates both the mine price and the transportation costs for coal deliveries to these companies. Headwaters used the average mine price estimated by SNL for deliveries to domestic power companies from mines with federal coal leases to calculate the “net delivered” mine price for sales of federal coal by state.

In both the January and May reports, Headwaters concluded that the calculated “net delivered” mine prices were higher than the FOB mine prices reported to ONRR in the states of Wyoming and Montana (the states with the most federal coal production, measured by tons produced). Headwaters takes this result as evidence that there is a “loophole” which results in significant amounts of coal being resold (either by affiliates or independent brokers) at higher prices, thus avoiding paying federal royalties, amounting to a revenue loss of \$139 million annually.

CPE commissioned this report to review Headwaters’ approach and data sources and to analyze whether an accurate and independent analysis of the data used by Headwaters does in fact

⁸ Headwaters January Report at 24 concluded that the increased royalties would have been \$865 million higher over a five-year period.

⁹ Headwaters May Report at 13.

demonstrate that coal is being sold for higher prices than reported to ONRR or whether the current system is working to determine the FOB mine price of coal sold from federal leases.

III. Conclusions

Based upon a review of the data, methodology and calculations used by Headwaters, we have reached the following conclusions:

1. **There is no basis for Headwaters' conclusion that a calculated "net delivered" mine price is higher than the FOB mine price producers report to ONRR.** In fact, Headwaters' own results show large inconsistencies, as its calculation of the "net delivered" mine price is *lower* than the price reported to ONRR for more than half of the states, as summarized on Exhibit 1.

Exhibit 1: Comparison of Average Mine Prices Reported to ONRR and Calculated by Headwaters for the Fiscal Years 2008 – 2014¹⁰

State	Reported to ONRR			Headwaters Calculations		Difference	
	Coal Sales (1000 tons)	Sales Value (\$1000)	FOB Mine Price	Coal Receipts (1000 tons)	Netback Mine Price	Sales Volume	Mine Price
Alabama	10,248	\$522,148	\$50.95	1,260	\$65.13	-88%	28%
Colorado	131,470	\$5,520,508	\$41.99	138,570	\$41.73	5%	-1%
Kentucky	1,270	\$99,528	\$78.39	1,483	\$101.75	17%	30%
Montana	163,732	\$2,484,234	\$15.17	137,901	\$21.84	-16%	44%
New Mexico	30,853	\$1,522,424	\$49.34	82,412	\$35.19	167%	-29%
North Dakota	19,747	\$336,469	\$17.04	158,484	\$16.32	703%	-4%
Oklahoma	4,249	\$216,008	\$50.84	2,803	\$28.93	-34%	-43%
Utah	83,542	\$3,030,170	\$36.27	112,036	\$30.89	34%	-15%
Wyoming	2,648,832	\$33,574,705	\$12.68	2,573,019	\$15.50	-3%	22%
Total	3,093,943	\$47,306,193	\$15.29	3,207,965	\$18.05		

Headwaters wishes to focus only on the results for the states of Montana and Wyoming, where its calculations show a "net delivered" mine price higher than the FOB mine price reported to ONRR, explaining that:

"As a result, our results are only robust for states where a large majority of sales from mines with active federal leases are to the domestic power sector. This is true of Montana and Wyoming."

However, the states of Colorado, New Mexico, North Dakota and Utah all have a majority of sales to the domestic power sector, greater than the state of Montana, yet these are states where Headwaters' calculated the "net delivered" mine prices to be lower than the prices

¹⁰ Headwaters May Report, Tables 1 and 2.

reported to ONRR. While Wyoming is clearly the largest coal-producing state, the coal sales value reported to ONRR for coal produced in Colorado, New Mexico and Utah are similar in magnitude to Montana¹¹ and the shares of sales to the domestic power sector are equal to or greater than Montana, as shown on Exhibit 2. The fact that Headwaters' own calculations show that these states have "net delivered" prices *lower* than the prices reported to ONRR is clear evidence that the problem is Headwaters used poor data and performed a flawed analysis, not that the prices reported to ONRR do not reflect the accurate FOB mine price.

Exhibit 2: Share of 2013 Total Coal Production by State delivered to the Domestic Power Sector¹²

State	Total Production	Domestic Power Sales	Power Sector Share
Alabama	18,620	4,137	22.2%
Colorado	24,236	14,413	59.5%
Kentucky	80,380	60,375	75.1%
Montana	42,231	25,000	59.2%
New Mexico	21,969	21,867	99.5%
North Dakota	27,639	21,543	77.9%
Oklahoma	1,136	537	47.3%
Utah	16,977	12,587	74.1%
Wyoming	387,924	373,505	96.3%
Total	621,112	533,964	86.0%

2. **Headwaters made significant errors in its estimation of federal coal production, which distorted its results.** As Exhibit 1 shows, Headwaters analysis did a poor job of matching the total tons sold from federal coal leases by state. Where Headwaters estimated that the sales volumes to domestic power companies were less than the actual coal production reported to ONRR, this could be explained by sales to non-power markets, which Headwaters could not calculate. However, for 5 of the 9 states which it analyzed, Headwaters calculated sales of federal coal to the domestic power sector to be *greater* than the actual total amount of coal produced, which demonstrates that there are problems with the quality of the data and

¹¹ While Headwaters made the statement in its January Report that "Montana coal sales to domestic power plants account for 95.7 percent of sales over the period" 2008 to 2012 (page 19), that is incorrect and refuted by the data in the same report on Tables B1 (207,705,922 tons produced) and B4 (157,090,721 tons sold to electric power sector, or 75.6%). This percentage declined in 2013 and 2014.

¹² EIA, "Annual Coal Report 2013" for coal production data by state and EIA, "Annual Coal Distribution Report 2013" for distribution of U.S. coal to the electric power sector. <http://www.eia.gov/coal/annual/> and <http://www.eia.gov/coal/distribution/annual/>

Headwaters' analysis, rendering any conclusion unreliable. In some cases, the magnitude of the error is huge, 34% for Utah, 167% for New Mexico, and 703% for North Dakota. Even the 5% excess tonnage for Colorado is significant, given the large share of Colorado coal sales to industrial and export markets. This problem demonstrates that Headwaters' analysis is not reliable and its conclusion that federal "royalty revenue could increase by \$139 million annually"¹³ using "net delivered prices" is not supported by the analysis.

The failure to accurately assess the share of coal produced by mine from federal leases created a large error in Headwaters' calculations. In the 2 states where Headwaters calculated higher "net delivered" mine prices than the average price of federal coal reported to ONRR (Montana and Wyoming), there are several large mine-mouth power plants (where the coal supply to the plant is dedicated from mines adjacent to the power plant). For these power plants, the FOB mine price and the delivered price is approximately (assumed to be exactly) the same amount per ton. While these plants have a low delivered price of coal, the FOB mine price is generally higher than the mine price received by mines which sell in the open market. The large mine-mouth plants in these states (Colstrip in Montana and Jim Bridger and Kemmerer in Wyoming) receive coal from mines which have "checkerboard" coal leases, which alternate between federal and private ownership. Thus, the assumption that these mines are 100% federal coal induced a large error in Headwaters' analysis, biasing the average "net delivered" mine price for federal coal well above the average price for coal actually produced from federal leases in these states.

- 3. The SNL "data" on coal sales prices FOB mine are not data, they are estimates, with large errors that distort the analysis.** In its May Report, Headwaters decided only to use data for coal sold to the domestic electric power sector because data for these sales are more readily available. In order to calculate the "net delivered" mine price, Headwaters relied upon a database of coal deliveries to the electric power sector which it purchased from SNL Financial, Inc. ("SNL"), which is a news and information service. The U.S. Energy Information Administration ("EIA") collects data on Form 923 from power generators on their fuel purchases, either monthly (for plants over 200 MW) or annually (for smaller plants). EIA collects data on the coal deliveries, including the tons received, the coal quality, and the commodity price, both delivered and FOB mine. However, due to confidentiality, EIA does

¹³ Id at 13.

not release the FOB mine price and, for unregulated power generators, does not release the delivered coal price either. For regulated utility generators, SNL provides its own estimates of the FOB mine price by relying upon the delivered prices reported by the utilities and released by EIA, less SNL's own estimates of the transportation costs from the mine to the plant.¹⁴ For unregulated plants, SNL does not use the reported delivered price (which is not released by EIA) less estimated transportation costs to estimate the FOB mine price. Instead, SNL uses the delivered price for all coal delivered to each destination state reported by EIA (where it is not withheld to protect confidentiality for unregulated power companies) and deducts the estimated transportation costs to calculate the FOB mine price.¹⁵

The estimated mine prices reported by SNL have large errors and cannot be relied upon for the purpose of determining the "net delivered" mine price as an alternative to the prices reported by the coal lessors to ONRR. For example, the state for which Headwaters found the largest discrepancy between the reported price to ONRR and its "net delivered" mine price calculation was Montana, which was one of only two states where Headwaters found a "problem" where its calculated "net delivered" price was higher than the reported FOB mine price (Headwaters' price calculation was 44% above the average price reported to ONRR as shown on Exhibit 1). The largest consumer of Montana coal is the mine-mouth Colstrip power plant. In calendar year 2014, the mine-mouth Colstrip plant reported receipts of 8,752,704 tons on the EIA Form 923 out of a total of 29,811,530 tons of reported receipts of Montana coal (29.4%).¹⁶ However, EIA does not release the average price of coal delivered to Colstrip because the operator and partial owner of the plant is an unregulated generator (Talen Energy). SNL estimated the delivered price to Colstrip (with the same mine price as

¹⁴ In its May report, Headwaters stated that "Transportation costs are reported for regulated utilities in the U.S. by the Energy Information Administration. Where these costs are not reported, SNL energy estimates transportation costs based on waybill samples from the U.S. Department of Transportation, Surface Transportation Board." (Headwaters May Report at 21). This statement is not correct, or is misleading at best. Because of confidentiality, EIA does not release or report the transportation rates for any coal delivery for any power plant or any mine, whether regulated or unregulated. EIA does publish an annual report providing the total transportation cost for coal by state of origin to state of destination, by subtracting the reported commodity price from the reported delivered price. However, even these data are redacted by EIA for many of the origin-destination state combinations for confidentiality to prevent users from doing the calculations which Headwaters performed. While Headwaters used this annual report in its January report, SNL does not use any EIA data on actual transportation costs in its database. SNL estimates the transportation costs for all coal deliveries, not just those for unregulated companies.

¹⁵ SNL, "Coal Transportation Rate Methodology" at https://www.snl.com/help/HelpFile/Coal_Transportation.htm

¹⁶ EIA Form 923, "EIA923_Schedules_2_3_4_5_M_12_2014_Data_Early_Release.xls" at <http://www.eia.gov/electricity/data/eia923/>

transportation costs were assumed to be zero) to be \$37.76 per ton in 2014 and \$37.65 per ton in 2013.¹⁷ However, other public sources are available to determine an accurate delivered coal price. One of the plant owners, Puget Sound Energy, is a regulated utility who owns 50% of units 1-2 and 25% of units 3-4. Puget, like other regulated utilities, files an annual report to the Federal Energy Regulatory Commission (the FERC Form 1) which provides the delivered coal price to the Colstrip power plant. Calculating the total delivered price for the Colstrip station from the FERC Form 1 yields delivered prices of \$24.49 per ton and \$25.69 per ton in 2014 and 2013, respectively. Thus, SNL's estimate of the "net delivered" mine price for 29% of all Montana coal was about 50% above the actual reported prices to FERC.

This huge error by SNL, combined with the fact that Headwaters mistakenly assumed that 100% of the production at the Rosebud mine was federal coal, is the primary reason that Headwaters' calculation of the "net delivered" coal price for Montana coal is far above the actual average sales prices reported to ONRR.¹⁸

4. The proposed changes to the methodology for valuing federal coal for royalty purposes suggested by Headwaters are neither "transparent" nor "efficient". Headwaters asserts that: "Changing the price used for valuation to net delivered prices has multiple advantages over using the first arm's-length sale price....Using net delivered price has significant transparency advantages, and similar benefits to streamline the assessment process for industry and ONRR compliance audits."¹⁹ These claims are not supported by Headwaters' own analysis. Headwaters process was anything but transparent:

- Headwaters did not rely upon public data, but rather purchased data from a private service (SNL Financial) not available to the public;

¹⁷ SNL Briefing Book, Colstrip Power Plant at <https://www.snl.com/interactivex/FuelContractDetail.aspx?Period=2014&Q=0&ExpM=0&FCT=-1&FT=-1&MSt=Any&MPR=-1&IsBuyer=1&Region=0&HC=4062485&ID=2449&Type=2&lvl=4&ViewBy=1&PP=2449&updYear=1&updOther=0>

¹⁸ Of course, ONRR has access to the actual coal contracts and sales prices from the Rosebud mine to the Colstrip plant. In fact, the Department of Interior audited the sales price to the Colstrip plant and brought litigation against Western Energy (the Westmoreland Coal subsidiary which owns the Rosebud mine) which it successfully settled to receive royalties on the payment for conveyor transportation costs to Colstrip. See Westmoreland Coal SEC Form 8-K at <http://www.sec.gov/Archives/edgar/data/106455/000095012309022460/0000950123-09-022460-index.htm>.

¹⁹ Headwaters May Report at 19.

- The database used by Headwaters did not cover all coal sales, just sales to electric power companies, which were only about 80% of U.S. coal production in 2013;²⁰
- EIA only reports delivered prices for plants owned by regulated electric utilities, which excluded 27% of all coal purchases by electric power companies reported to EIA in 2014;²¹
- EIA does not disclose the FOB mine price for any sales transaction due to confidentiality, so *all of the prices relied upon by Headwaters were estimates, not actual sales prices*;
- The EIA data on electric power coal purchases is not released promptly; the 2013 calendar year final data was released on March 10, 2015, hardly an efficient source of information;
- The mine price estimates used by Headwaters were not performed by an official government entity, like ONRR, or a regulated entity with legal reporting obligations, but rather by an unofficial private service with no demonstrated reliability; and,
- Headwaters itself was not transparent in its report; it has not released the data which it used or the calculations which it performed, but rather just a couple of tables summarizing 7 years of data and analysis.

Headwaters states that “Additional price data is revealed by sales on spot markets, and by market index prices for coal of varying qualities delivered to domestic and export markets.”²² These are exactly the price benchmarks which ONRR has proposed to eliminate for use in valuation of non-arm’s-length transactions, due to claims by Headwaters and others that these prices do not properly value the actual sales price received by lessees. While market index prices for coal sales on the over-the-counter (“OTC”) markets are good indicators of current market prices, they are not as accurate as the actual sales contract prices reported to ONRR, which provide the prices received on the actual coal shipments.

5. **Headwaters has no basis to speculate that there is a large “loophole” exploited by affiliates and unnamed “brokers” to avoid royalty payments.** Headwaters asserts that “current subsidies in the regulation and marketing loopholes due to royalty valuation policy were worth about \$850 million between 2008 and 2012.”²³ Headwaters describes this “loophole” to be the fact that proceeds for the resale of coal by affiliate marketing companies or

²⁰ EIA, “Annual Coal Report 2013” shows total U.S. coal production in 2013 to be 982,876,000 tons, while EIA “Annual Coal Distribution Report 2013” shows distribution of U.S. coal to the electric power sector to be 785,121,000 tons. <http://www.eia.gov/coal/annual/> and <http://www.eia.gov/coal/distribution/annual/>

²¹ EIA Form 923, “EIA923_Schedules_2_3_4_5_M_12_2014_Data_Early_Release.xls” at <http://www.eia.gov/electricity/data/eia923/>

²² Headwaters May Report at 19.

²³ Headwaters January Report at 25.

independent “brokers” are not subject to royalties on their gains (Headwaters does not mention the possibility of losses on resale). Headwaters accuses the coal companies of deliberately underpaying royalties by using affiliated marketing companies, stating: “For example, companies have arguably exploited a loophole that allows mines to transfer coal for low mine prices to affiliates who then remarket coal to consumers at the higher full commodity value of the coal.”²⁴ Headwaters acknowledges at one point that the proposed changes by ONRR would close the “loophole” for affiliated marketing companies: “The net delivered price and the first arm’s-length sale price are the same price for all sales where mines and their affiliates are marketing coal directly to consumers. In these instances, the contract value reveals the price that would be used for royalty valuation.”²⁵ However, Headwaters contradicts this conclusion when it states that: “ONRR’s assessment that proposed reforms would not generate additional revenue suggests arm’s length price reforms would not effectively close the “affiliate” loophole. This is at least partially due to the fact that the loophole would remain open for independent brokers.”²⁶

Headwaters performed no analysis of the role of independent brokers (more properly called trading companies) which purchase coal FOB mine from producers and resell the coal to ultimate customers, hoping to make a profit. Nevertheless, Headwaters alleges that these transactions are generating huge profits creating a “loophole” to avoid paying royalties. Headwaters’ May report asserts that federal royalties would increase by \$139 million annually by using the “net delivered” mine price²⁷ instead of the reported FOB mine price, which would imply that the profit margins for the coal trading companies must be over \$1.1 billion annually (at a 12.5% royalty rate). Our analysis of the EIA 923 data reported by the electric power companies shows that the claim that brokers play a large role in the ultimate sale of coal to consumers is false.

The power companies report the name of the coal supplier for each monthly purchase as well as the mine which is the source of the coal (EIA provides the reporting companies with a dropdown list of mines to select using the ID number assigned by the Mine Safety and Health Administration, or “MSHA”). The 2014 EIA 923 data reports 29,887,563 tons of coal delivered from the state of Montana and 389,217,875 tons from the state of Wyoming. None of the

²⁴ Headwaters May Report at 2.

²⁵ Headwaters May Report at 19.

²⁶ *Id.* at 2.

²⁷ *Ibid.*

deliveries from the state of Montana had an unknown MSHA ID and only 210,799 tons from Wyoming (0.05%) had an unknown ID (meaning that the customer did not know what mine the coal origin). For the Montana coal deliveries, the supplier name reported by the buyers was the coal producing company for all but 252,982 tons (0.8%) sold by third parties (C. Reiss, Traxenergy and the City of Marquette) and 890,461 tons (3.0%) sold to Consumers Power by Venture Fuels, an affiliate of Cloud Peak Energy which has a separate royalty agreement with ONRR to account for affiliate sales. As the affiliate sales issue is being addressed by the current review underway by ONRR, only the miniscule amount of third-party sales (0.8%) could possibly be sales by “brokers” who are profiting by the resale of coal and not paying federal royalties on the sales margin. For deliveries of Wyoming coal, only 6,611,617 tons (1.7%) were identified as coming from suppliers who were not the companies which owned the mine which was the origin of the coal. One third-party supplier sold most of this coal (Twin Eagle Resource Management²⁸ – 4,687,125 tons) and 4 other sales companies sold between 100,000 and 500,000 tons (Peabody CoalTrade, Cargill, C. Reiss and Robindale/RES Coal). Another 3 power companies (NRG, Alliant and Luminant) resold a total of 422,721 tons, while the remaining 214,795 tons were sold by 6 trading companies.

These very small amounts of coal re-sold by trading companies and power customers can have no meaningful impact on the calculation of the average sales price used to determine federal coal royalties. Coal trading plays a very small role in the markets for Montana and Wyoming coal and has an equal probability of losses as it does of profits. Most coal trades are to balance monthly shipments and production. Most independent coal trading companies have ended participation in the OTC market for Powder River Basin coal, as the markets have little liquidity or volatility which are needed to support a trading business.

- 6. The current valuation system is already “transparent” to the only entity that matters – ONRR.** Headwaters wants “transparency” for “public review of federal royalty valuation”²⁹, for which the only purpose is for the public to check if ONRR is doing its job properly. ONRR currently has complete “transparency” for review of every coal sale made by a lessee, including sales to affiliates and “brokers”, which Headwaters alleges are taking advantage of a “loophole” in the valuation process. ONRR is an agency which is entrusted by Congress to

²⁸ Twin Eagle acquired an energy trading company previously known as Enserco and the total includes sales reported as both Twin Eagle and Enserco.

²⁹ Ibid.

perform this task and it is subject to outside audit by an Inspector General and the General Accounting Office. There is no reason to suppose these agencies are not doing their job and Headwaters' unsupported claims to not make its implications of malfeasance credible. Headwaters acknowledges that "contract prices, mining and marketing costs"³⁰ of the lessees are proprietary data properly kept confidential, yet wants the general public to be able to duplicate all of these proprietary sales transactions to check ONRR's work. This is like asserting that the public should be able to review individual income tax returns to check whether the Internal Revenue Service is doing its job properly.

IV. Analysis of Montana Coal Sales Prices for Mines with Federal Leases

Headwaters alleges that the average coal price reported to ONRR for the states of Montana and Wyoming are below the average mine price for these states calculated from the SNL data for mines with federal coal leases. In particular, Headwaters claimed that the actual FOB mine price for coal sold from federal leases in Montana was 44% higher than the average price reported to ONRR over the 7 year period covering Fiscal Years 2008 – 2014.

In order to test the validity of Headwaters analysis and the data which it used, we have performed a detailed analysis of its calculations of the Montana "net delivered" coal price, where it alleges the largest discrepancy with the ONRR data. We have analyzed the SNL data sources and methodology used by Headwaters to understand what the reasons were for this very large difference between the prices reported to ONRR and Headwater's "net delivered" mine price. Specifically, our questions were:

- 1) Is the difference in reported prices due to downstream profits realized by affiliated marketing companies and independent brokers, as alleged by Headwaters' or,
- 2) Is the difference in reported prices due to problems with the data and analysis and is there any difference once these problems are identified and corrected?

Replication of Headwaters Data and Analysis

Headwaters did not provide any detail as to the data which it relied upon and they aggregated the data across all deliveries and a period of 7 fiscal years. In order to perform a detailed analysis of all of the Montana coal shipments from federal leases, we had to recreate Headwaters' analysis

³⁰ Ibid.

using the methodology and data sources which were described in Appendix A to the May Report.

³¹ Specifically, the process described by Headwaters, which we repeated, was:

1. Use all monthly coal deliveries to the electric power sector for the period October 2007 to September 2014 (fiscal years which correspond to the ONRR data). These data were downloaded from SNL Financial in a database. The SNL data is the EIA Form 923 data, with SNL adding estimates for transportation costs and FOB mine prices (as well as delivered prices for unregulated generators which EIA does not disclose). In order to provide a detailed analysis by coal mine, we recreated the analysis for Fiscal Year 2014.
2. Match the data for all coal shipments originating from the state of Montana with the mine origin by MSHA ID number as reported on the SNL database. All of the records for Montana coal deliveries in 2014 had an MSHA ID number assigned to the delivery.
3. Calculate the average coal prices FOB mine and delivered by mine.

Following the same methodology as Headwaters, we have reproduced the same results. The average mine price for Montana coal in Fiscal Year 2014 for mines with federal leases using Headwaters' data and methodology is shown on Exhibit 3. **The apparent weighted average FOB mine price for all coal sales to the domestic power sector calculated using Headwaters' methodology was \$28.38 per ton. For the same Fiscal Year 2014, the average price reported to ONRR was \$17.18 per ton, confirming the very large difference found by Headwaters for the average over 7 years.**

³¹ Headwaters declined our request to share their calculations and underlying data and has only produced a table showing the totals for the 7-year period. However, we have reproduced their calculations for the 7-year period as well as for each fiscal year.

Exhibit 3: Calculation of Average Mine Price for Montana Federal Coal Leases, FY 2014 Using Headwaters Data and Methodology³²

Methodology Used by Headwaters Economics							
MT Mine	% Federal Lease	All Deliveries	Federal Leases	Delivered Price (\$/ton)	Transportation Cost (\$/ton)	All Deliveries	Federal Coal
Absaloka	0%	5,840	0	\$37.43	\$20.57	\$16.86	\$16.86
Decker	100%	758	758	\$30.46	\$17.71	\$12.74	\$12.74
Rosebud	100%	7,967	7,967	\$38.03	\$0.00	\$38.03	\$38.03
Savage	100%	63	63	\$25.17	\$5.38	\$19.79	\$19.79
Signal Peak	100%	144	144	\$77.87	\$26.07	\$51.80	\$51.80
Spring Creek	100%	5,490	5,490	\$36.06	\$20.03	\$16.02	\$16.02
Total	71%	20,262	14,422	\$37.22	\$8.84	\$25.06	\$28.38
Average Price Reported to ONRR			21,427				\$17.18

Error #1: Correction for the SNL Data Error for the Colstrip Power Plant

The largest customer for Montana coal delivered to the electric power sector is the Colstrip power plant. Colstrip is a mine-mouth plant located adjacent to the Rosebud coal mine and the coal is delivered by conveyor belt. All of the coal deliveries shown on Exhibit 3 from the Rosebud mine are to the Colstrip power plant, with \$0.00 per ton transportation cost. The very high mine price reported by SNL of \$38.03 for this one mine and plant is the major reason why the SNL/Headwaters mine average price is far above the price reported to ONRR.

The SNL price estimate for the Colstrip plant is wrong. Because the Colstrip plant is operated by a merchant generator, EIA does not publish the delivered coal price to preserve confidentiality. For merchant plants, SNL's procedure is to use the average delivered coal price for all coal (regardless of origin) delivered to the state reported by EIA in the Electric Power Monthly.³³ However, EIA withholds the average delivered coal price by state for independent power producers (merchant generators) where there are not enough power plants who report monthly data to prevent analysts from discovering the delivered price. EIA did not publish a monthly delivered coal price for the state of Montana in 2013 or 2014.³⁴ As a result, the price estimated by SNL for Colstrip is far above the actual price for coal delivered to Colstrip.

³² Deliveries to electric power sector and prices from SNL Financial. Mines with federal coal leases from BLM. Average price reported to ONRR FY 2014: <http://statistics.onrr.gov/ReportTool.aspx>

³³ Personal communication from Steve Piper, Director, Energy Research, SNL Energy on September 9, 2015.

³⁴ EIA, "Electric Power Monthly", Table 4.10. <http://www.eia.gov/electricity/monthly/>

There are other public sources of data which provide reliable estimates of the delivered cost of coal purchased by power plants. One of these sources is the Form 1, an annual report filed by regulated electric utilities with the Federal Energy Regulatory Commission ("FERC"). The Colstrip plant is co-owned by both regulated and unregulated power companies. The largest regulated owner is Puget Sound Energy, who owns 50% of Colstrip units 1-2 and 25% of units 3-4. Puget reports its cost of coal delivered to Colstrip units 1-2 and units 3-4 by calendar year.

While EIA does not report the monthly delivered price for independent power producers in Montana on the Electric Power Monthly, EIA does provide the average annual delivered coal price to all power plants in the state of Montana by coal type (subbituminous and lignite). Colstrip is by far the largest power plant in Montana and it receives 86% - 91% of the total subbituminous coal delivered to Montana each year. As a result, the annual reported delivered price for subbituminous coal to Montana is a close approximation of the (undisclosed) delivered price to Colstrip.

A comparison of the quantity and prices reported by SNL compared to the FERC Form 1 and EIA Montana data is shown on Exhibit 4. In most years, SNL's estimate of the delivered price to Colstrip (which is the same as the Rosebud mine price) is far above the FERC and EIA data. The FERC and EIA data are very similar, reflecting the fact that these are accurate reported data sources, with the small differences due to the fact that EIA includes all subbituminous coal delivered to Montana, not just Colstrip.

Exhibit 4: Comparison of Delivered Coal Prices for the Colstrip Plant³⁵

	Calendar Year							
	2008	2009	2010	2011	2012	2013	2014	
FERC Form 1 Data								
Tons Burned								
Colstrip 1-2	50%	1,391,673	1,446,801	1,469,911	1,214,793	905,093	1,444,314	1,338,220
Colstrip 3-4	25%	1,884,759	1,338,982	1,785,698	1,430,462	1,509,826	1,267,303	1,527,867
Total		10,322,382	8,249,530	10,082,614	8,151,434	7,849,490	7,957,840	8,787,908
Delivered Price \$/ton								
Colstrip 1-2		\$15.86	\$17.40	\$21.75	\$29.40	\$37.15	\$29.52	\$29.32
Colstrip 3-4		\$16.30	\$18.49	\$16.76	\$21.14	\$19.91	\$23.50	\$22.37
Average		\$16.18	\$18.11	\$18.21	\$23.60	\$23.89	\$25.69	\$24.49
EIA Average Delivered Price of Subbituminous Coal to Montana								
Tons received		11,755,720	9,348,457	11,287,200	9,422,469	8,560,170	8,969,928	
Delivered price \$/ton		\$16.56	\$17.89	\$18.44	\$22.31	\$23.43	\$26.64	
SNL Energy Data								
Tons received		10,654,144	8,081,926	10,077,757	8,405,469	7,754,748	7,953,774	8,752,704
Delivered price \$/ton		\$25.30	\$21.69	\$25.92	\$23.29	\$24.94	\$37.65	\$37.76
Difference in Reported Prices (\$/ton)								
FERC vs. EIA		(\$0.38)	\$0.22	(\$0.23)	\$1.29	\$0.46	(\$0.95)	
SNL vs. FERC		\$9.12	\$3.58	\$7.71	(\$0.31)	\$1.05	\$11.96	\$13.27
SNL vs. EIA		\$8.74	\$3.80	\$7.48	\$0.98	\$1.51	\$11.01	

Correcting the large mistake in the SNL data for coal sales from the Rosebud mine substantially reduces the difference between the calculated “net delivered” price for coal sales to the power sector and the price reported to ONRR for Montana coal sales in FY 2014 as shown on Exhibit 5.

³⁵ Sources: Puget Sound Energy, FERC Form 1, 2008 – 2014; EIA Coal Data Browser at [http://www.eia.gov/beta/coal/data/browser/#/topic/45?agg=0.1&geo=00000000004&rank=5a&freq=A&start=2008&end=2013&ctype=map<ype=pin&rtype=s&pin=&rse=0&maptype=0](http://www.eia.gov/beta/coal/data/browser/#/topic/45?agg=0.1&geo=00000000004&rank=5a&freq=A&start=2008&end=2013&ctype=map<ype=pin&rtype=s&pin=&rse=0&maptype=0;); SNL Energy Briefing Book, Colstrip plant at <https://www.snl.com/InteractiveX/PlantFuels.aspx?ID=2449>

Exhibit 5: Calculation of Average Mine Price for Montana Federal Coal Leases, FY 2014 Using Headwaters Data Corrected for Colstrip Price

Corrected Delivered Price for Rosebud Mine to Colstrip Power Plant							
MT Mine	% Federal Lease	Deliveries (000 tons)	Federal Leases	Delivered Price (\$/ton)	Transportation Cost (\$/ton)	All Deliveries	Federal Coal
Absaloka	0%	5,840	0	\$37.43	\$20.57	\$16.86	\$16.86
Decker	100%	758	758	\$30.46	\$17.71	\$12.74	\$12.74
Rosebud	100%	7,967	7,967	\$24.79	\$0.00	\$24.79	\$24.79
Savage	100%	63	63	\$25.17	\$5.38	\$19.79	\$19.79
Signal Peak	100%	144	144	\$77.87	\$26.07	\$51.80	\$51.80
Spring Creek	100%	5,490	5,490	\$36.06	\$20.03	\$16.02	\$16.02
Total	71%	20,262	14,422	\$29.91	\$8.84	\$19.86	\$21.07
Average Price Reported to ONRR			21,427				\$17.18

Error #2: Correction for Missing SNL Data

Headwaters relied upon SNL data to estimate the average mine price for Montana coal. The SNL data only includes coal sales to the domestic power sector, which only accounts for 59.2% of Montana coal sales, as shown on Exhibit 2 earlier. However, SNL does not even include all of the sales to the electric power sector. SNL excluded almost all sales to the second-largest customer of Montana coal, Detroit Edison (“DTE”), because DTE reported the coal delivered to the common storage area for the Belle River and St. Clair power plants (reported on the EIA Form 923 as “BRSC Shared Storage”), rather than to the plants themselves.³⁶ Also, the 2014 SNL data used by Headwaters does not include coal deliveries to plants (Stanton, Hoot Lake, and Savage) which only report annually, rather than monthly. As a result, the SNL data used by Headwaters only included 47.3% of the Montana sales to the electric power sector in FY 2014, as shown on Exhibit 6.

Exhibit 6: Total Montana Coal Production and Sales to the Power Sector Reported by SNL, FY 2014 (1000 tons)³⁷

Mine	Total Produced	SNL Data	Percent Reported	Missing from SNL		Corrected Data
				Detroit Edison	Annual Reporting	
Absaloka	6,416	5,840	91%			5,840
Decker	3,308	758	23%	2,632		3,390
Rosebud	8,232	7,967	97%			7,967
Savage	340	63	19%		203	266
Signal Peak	7,501	144	2%			144
Spring Creek	17,014	5,490	32%	3,968	821	10,279
Total	42,811	20,262	47%	6,600	1,024	27,886

³⁶ Personal communication from Steve Piper, Director, SNL Energy on September 9, 2015.

³⁷ Total production from MSHA Form 7000-2 data; sales missing from SNL from EIA Form 923.

All of the Montana coal sales to DTE, Stanton and Hoot Lake came from the Decker and Spring Creek mines, which had the SNL's lowest reported "net delivered" mine prices in Montana. By excluding these coal sales, the net result was to increase the weighted average price for Montana coal sales.

The price for the missing coal sales data to DTE can be determined from the reported delivered prices on EIA Form 923 and the average FOB mine price for Decker from the reported financial statements for Cloud Peak Energy ("CPE"). CPE owned 50% of Decker Coal Company until it sold this share to its partner, Ambre Energy (now renamed Lighthouse Resources) on September 12, 2014. CPE published the financial statements for Decker in its quarterly filings with the SEC as footnote 22 to its consolidated financial statements in its Form 10-Q (supplemental guarantor/non-guarantor financial statements). The statement of operations for CPE's non-guarantor subsidiaries is the Decker financial results. The quarterly operating revenues and income statements for Fiscal Year 2014 for Decker Coal Company and the average sales price are shown on Exhibit 7.

Exhibit 7: Decker Coal Financial Statements and Sales Prices FY 2014³⁸

	2013 Q4	2014 Q1	2014 Q2	2014 Q3	FY 2014
Revenue	\$ 6,805	\$ 3,965	\$ 5,592	\$ 6,095	\$ 22,457
Costs and expenses					
Cost of product sold	5,690	5,174	6,736	5,932	23,532
Depreciation and depletion	(5,939)	(218)	(22)	(929)	(7,108)
Accretion	456	1,016	1,016	771	3,259
	207	5,972	7,730	5,774	19,683
Operating income	6,598	(2,007)	(2,138)	321	2,774
Tons sold	483	272	385	422	1,562
Revenues per ton	\$14.09	\$14.58	\$14.52	\$14.44	\$14.38

These average sales prices were used for the sales price to DTE, since DTE sales accounted for 77% of the total Decker sales. Using the reported delivered price from the EIA Form 923 and the Decker sales price FOB mine allowed the calculation of the freight costs from Decker to DTE. These freight costs were applied to the receipts reported by DTE from the Spring Creek mine to estimate the FOB mine price for Spring Creek sales to DTE for the same period. The "net

³⁸ Financial statements from Cloud Peak Energy SEC Forms 10-Q 2013 and 2014 and Form 10-K 2014. Sales tonnage from Cloud Peak Energy quarterly earnings releases at www.cloudpeakenergy.com

delivered” prices for sales to plants which had reported freight costs by SNL in prior years was determined by using the prior SNL freight estimates. **Adjusting the SNL data used by Headwaters for the sales which were missing from the SNL database results in a lower average price for Montana coal sales, as shown on Exhibit 8. The average sales price for FY 2014 is just \$0.61 per ton higher than the price reported to ONRR.**

Exhibit 8: Average Mine Price for Montana Federal Coal Leases, FY 2014 Using Headwaters Data Corrected for Colstrip Price and Missing SNL Data

Adjusted Deliveries to Correct for Missing Sales Data							
MT Mine	% Federal Lease	Deliveries (000 tons)	Federal Leases	Delivered Price (\$/ton)	Transportation Cost (\$/ton)	All Deliveries	Federal Coal
Absaloka	0%	5,840	0	\$37.43	\$20.57	\$16.86	\$16.86
Decker	100%	3,390	3,390	\$38.10	\$24.08	\$13.99	\$13.99
Rosebud	100%	7,967	7,967	\$24.79	\$0.00	\$24.79	\$24.79
Savage	100%	266	266	\$25.17	\$5.38	\$19.79	\$19.79
Signal Peak	100%	144	144	\$77.87	\$26.07	\$51.80	\$51.80
Spring Creek	100%	17,191	17,191	\$28.11	\$13.50	\$14.97	\$14.97
Total	83%	34,798	28,958	\$28.59	\$11.01	\$17.63	\$17.79
Average Price Reported to ONRR			21,427				\$17.18

Error #3: Correction for the Share of Montana Coal Production from Federal Leases

In its analysis, Headwaters assumed that any mine which had a federal coal lease had all of its production from federal coal. This assumption is false. None of these mines produces exclusively from federal leases. These mines have state leases and private leases also. For federal lands, 1 out of every 18 sections is owned by the state. Because the mines which have a higher FOB mine price (Signal Peak and Rosebud) have a lower share of coal produced from federal leases, Headwaters’ assumption that all of the coal from these mines was produced from federal coal leads Headwaters to calculate a higher average mine price than would be calculated using the correct share of coal production from federal leases.³⁹

The Signal Peak (Bull Mountains) mine only acquired its first federal lease on June 1, 2012.⁴⁰ As shown in the environmental assessment prepared in support of this lease, Signal Peak’s mine plan

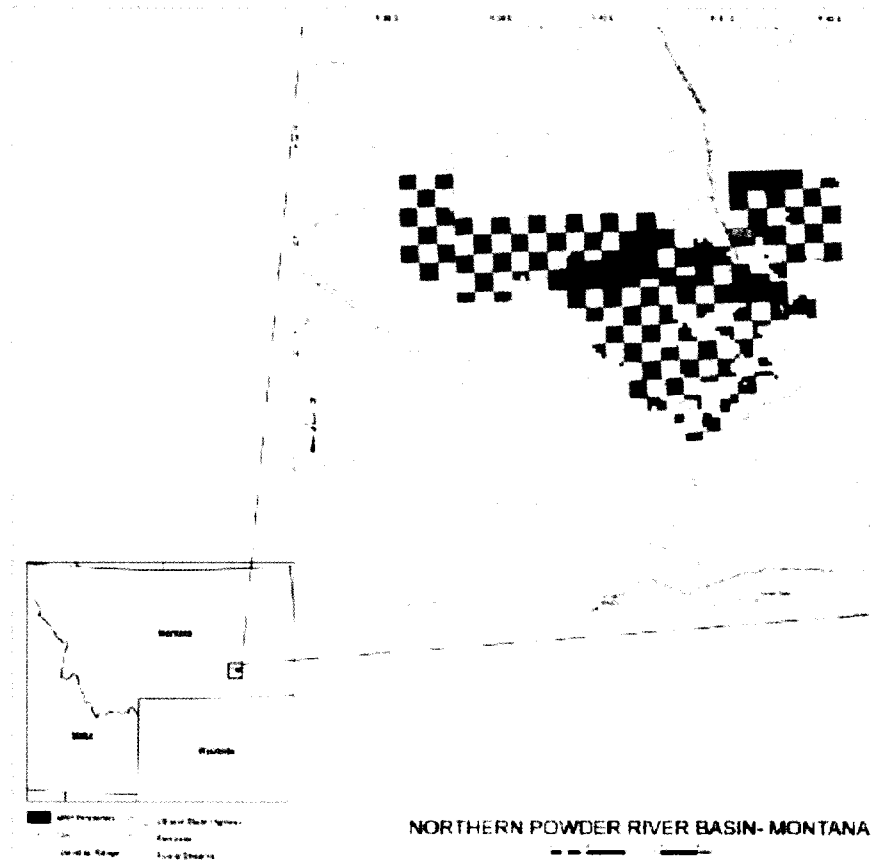
³⁹ Consistent with Headwaters’ calculations, the Absaloka mine produces no federal coal (it is 100% Indian coal).

⁴⁰ See <http://www.blm.gov/mt/st/en/prog/energy/coal/tables.html>.

would not produce coal from the new federal lease until the end of 2014,⁴¹ so none of the Signal Peak coal production was from federal coal during the entire period studied by Headwaters from 2008 to 2014. As this is the highest-priced coal in Montana, this assumption caused Headwaters to overstate the average Montana coal price throughout the period.

Headwaters has also overstated the amount of federal coal produced from the Rosebud mine, which has the second-highest coal sales price in Montana. The Rosebud mine has “checkerboard” coal leases, with alternating sections leased from the federal government and a private entity (Natural Resource Partners (“NRP”), which acquired the Burlington Northern railroad coal properties). NRP shows the extent of its coal leases at the Westmoreland Rosebud mine (“Western Energy”) in its 10-K, as shown on Exhibit 9.

Exhibit 9: NRP Coal Leases at the Rosebud Mine⁴²



⁴¹ U.S. Bureau of Land Management, “Environmental Assessment Bull Mountains Mine No. 1”, April 2011. <http://www.blm.gov/mt/st/en/prog/energy/coal.html>

⁴² Natural Resource Partners, SEC Form 10-K, 2014, page 13.

The share of coal produced at the Rosebud mine from its federal leases can be estimated from the amount of leased coal production reported by NRP. For FY 2014, NRP reported leased coal production of 2,385,000 tons out of 8,232,258 tons total production.⁴³ Assuming the remainder of the coal was 17/18 federal coal and the remainder state leases (Westmoreland reports that the mine has state leases⁴⁴), the federal coal share at Rosebud was 67%. Cloud Peak reported that the 2014 coal production at the Spring Creek mine was 78% federal coal (the remainder was from state leases).⁴⁵ We have estimated the shares of federal production from Decker to be 94% (federal and state leases) and from Savage to be 50% (mostly private coal).

Correcting the production for the share of coal produced from federal leases, the total federal production and the average mine price are very close to the values reported by ONRR (within \$0.06 per ton), as shown on Exhibit 10. Thus, properly analyzed, the “net delivered” mine prices for Montana coal do not show any additional revenues which are not subject to royalties, as alleged by Headwaters.

Exhibit 10: Average Mine Price for Montana Federal Coal Leases, FY 2014 Using Headwaters Data Corrected for Colstrip Price, Missing SNL Data, and Federal Coal Lease Share

Corrected for Share of Coal Produced from Federal Leases							
MT Mine	% Federal Lease	Deliveries (000 tons)	Federal Leases	Delivered Price (\$/ton)	Transportation Cost (\$/ton)	All Deliveries	Federal Coal
Absaloka	0%	5,840	0	\$37.43	\$20.57	\$16.86	\$16.86
Decker	94%	3,390	3,202	\$38.10	\$24.08	\$13.99	\$13.99
Rosebud	67%	7,967	5,344	\$24.79	\$0.00	\$24.79	\$24.79
Savage	50%	266	133	\$25.17	\$5.38	\$19.79	\$19.79
Signal Peak	0%	144	0	\$77.87	\$26.07	\$51.80	\$51.80
Spring Creek	78%	17,191	13,409	\$28.11	\$13.50	\$14.97	\$14.97
Total	63%	34,798	22,088	\$28.74	\$11.72	\$17.63	\$17.24
Average Price Reported to ONRR			21,427				\$17.18

V. SNL’s Estimates of Freight Costs Overstate the Net Mine Price

The predicate of Headwaters’ use of SNL’s mine price data is that SNL provides an accurate estimate of the “net delivered price” to the electric power sector (the delivered price reported by the power companies on EIA Form 923 less the cost of freight).⁴⁶ However, SNL’s methodology

⁴³ Natural Resource Partners, SEC Forms 10-Q 2013 and 2014 and 2013 Form 10-K.

⁴⁴ Westmoreland Coal Company, SEC Form 10-K, 2014, page 13.

⁴⁵ Personal communication from Tom Nelson, August 28, 2015.

⁴⁶ The SNL data does not include sales to industrial customers or export markets at all.

persistently and significantly under-estimates the difference between the reported delivered price and the mine price, leading SNL to over-estimate the FOB mine price. **Once the problems with SNL's estimates are corrected, there is no basis to conclude that the FOB mine prices reported to ONRR are less than the actual price at which the coal is sold.**

EIA collects data on the cost and quality of fuels on Form 923. For the cost of coal, Form 923 collects two types of cost data: the total delivered cost and the commodity cost for each delivery of coal every month. The reporting instructions for the Form 923 define these costs as follows:

- **“Total Delivered Cost (all fuels):** Enter the delivered cost of the fuel in cents per million Btu (MMBtu) to the nearest 0.1 cent. Include all costs incurred in the purchase and delivery of the fuel to the plant. Do not include adjustments associated with prior months' fuel costs....For coal, include maintenance and depreciation costs of coal delivered in railcars owned by the plant. Do not include unloading costs.”
- **“Commodity Cost (for coal, petroleum coke, and natural gas):** Report the cost (in cents per million Btu rounded to the nearest 0.1 cent) at the point of first loading (free on board mine or transportation pipeline (FOB)), including taxes and quality-related charges or credits. Do not include loading and unloading charges, dust proofing, freeze conditioning, switching charges, diesel fuel surcharges, pipeline charges, transportation charges, or any other charges relating to the movement of the fuel to the point of use.”⁴⁷

While EIA collects the FOB mine price data for each coal delivery to the electric power sector, it does not disclose the FOB mine price for these sales, or even the delivered price for coal receipts at nonutility (merchant) power plants.⁴⁸ Thus, SNL must estimate the FOB mine prices using the delivered cost for regulated power plants. For unregulated power plants, SNL uses the average delivered coal price for all coal deliveries by destination state, published by EIA in the Electric Power Monthly.

SNL's methodology to estimate the FOB mine price is to take the reported “total delivered cost” (converted from cents per million Btu to dollars per ton) and to subtract an estimated transportation cost (in dollars per ton). For Montana and Wyoming coal, the vast majority of the coal is shipped by rail (with some coal transferred from rail to barge, vessel or truck for final delivery). SNL describes its transportation cost estimation methodology for estimating rail transportation rates as follows:

⁴⁷ EIA, “Form EIA-923 Power Plant Operations Report Instructions”. <http://www.eia.gov/survey/>

⁴⁸ Id, page 38.

- Collect data from the Public Use Waybill file, which has a time lag of two years, which reveals the rail rate charged by origin area and termination area.⁴⁹
- Based upon the billed freight revenue and billed weight, calculate the rail rate per ton of coal and the route length in miles.
- Derive a formula of rail rate per ton-mile as a function of rail distance for all of the annual Waybill data.
- Estimate the rail rate for each shipment based on the mileage of the rail distance.
- Adjust the rail rate quarterly based upon the changes in the Rail Cost Adjustment Factor filed with the Association of American Railroads and changes in fuel surcharges reported by the railroads.

What is clear is that the “total delivered cost” which EIA requires to be reported on the Form 923 includes costs beyond the commodity price FOB mine and the rail rate charged by the rail carrier. As is stated in EIA’s instructions, the total delivered cost includes the following items specifically excluded from the FOB mine cost, which are not included in the rail rates reported by the rail carriers on the Waybill data:

- Maintenance and depreciation costs for railcars owned by the plant (which includes virtually all customers purchasing Montana and Wyoming coal);
- Sales taxes charged by many states on the cost of coal (at a minimum the states with sales taxes on the cost of coal include Arizona, Georgia, Illinois, Louisiana and Washington); and,
- Freeze conditioning and dust proofing additives.

SNL does not subtract these costs in estimating the FOB mine price and therefore systematically overstates the FOB mine price in its database (even if all of its rail rate estimation methodology were accurate).

This systematic error can be shown by a comparison of the SNL transportation estimates with a report published by EIA annually on the coal transportation costs by state of origin to state of destination. While Headwaters relied upon this EIA study in its January Report (Appendix B) and referred to the EIA study in its May Report⁵⁰, Headwaters relied upon the SNL data in its May

⁴⁹ The areas are the Bureau of Economic Analysis Economic Area.

⁵⁰ Headwaters May Report, footnote 12, at 8.

Report, not the EIA data, and never compared the results of the EIA transportation data with the SNL data. We have made this comparison.

The EIA study calculated the transportation costs by subtracting the reported commodity price FOB mine from the total delivered costs. For reasons of confidentiality, EIA did not disclose the detailed data, but aggregated the data by state of origin, state of destination, and primary mode of shipment (rail, barge or truck). EIA even withheld many of the state origin-destination pairs to preserve confidentiality for individual customers, where states had few customers purchasing coal from a state. Thus, the EIA data included all costs reported in the total delivered price, including taxes, rail cars and other costs, which SNL did not include. We have calculated the average transportation costs reported by SNL for coal originating in Wyoming and Montana by state of destination with the EIA reported costs for the same shipments for the years 2008 – 2012 (the only years reported by EIA). Exhibit 11 shows the results of this analysis.

Exhibit 11: Comparison of Transportation Costs reported by SNL and EIA for Wyoming and Montana Coal⁵¹

Coal Dest.		SNL Data, Adjusted to 2012 \$/ton					EIA Data, Constant 2012 \$/ton					\$/ton Difference (SNL minus EIA)				
State	State	2008	2009	2010	2011	2012	2008	2009	2010	2011	2012	2008	2009	2010	2011	2012
WY	AL	\$13.65	\$12.58	\$13.29	\$14.33	\$17.03	W	W	W	W	W	W	W	W	W	W
WY	AR	\$16.77	\$16.17	\$14.14	\$15.80	\$21.77	W	\$18.80	\$18.95	\$20.82	\$21.47	W	(\$2.63)	(\$4.81)	(\$5.02)	\$0.30
WY	AZ	\$18.44	\$17.40	\$15.93	\$17.88	\$21.65	\$23.08	W	W	W	\$24.37	(\$4.64)	W	W	W	(\$2.72)
WY	CA	\$10.63	\$12.01	\$9.75	\$10.52	\$15.35	\$12.01	\$11.94	\$11.92	\$12.73	\$13.23	(\$1.38)	\$0.07	(\$2.17)	(\$2.21)	\$2.12
WY	CO	\$20.34	\$19.31	\$20.32	\$22.83	\$23.33	W	W	W	W	W	W	W	W	W	W
WY	IA	\$11.41	\$12.17	\$11.95	\$13.20	\$14.94	\$10.78	\$10.20	\$10.50	\$10.80	\$10.97	\$0.63	\$1.97	\$1.45	\$2.40	\$3.97
WY	IL	\$15.88	\$18.98	\$13.97	\$14.85	\$19.11	\$15.81	\$15.44	\$16.35	\$16.52	\$19.14	\$0.07	\$3.54	(\$2.38)	(\$1.67)	(\$0.03)
WY	IN	\$17.25	\$15.68	\$15.05	\$20.30	\$17.22	\$23.77	\$20.99	\$21.05	\$30.66	\$30.11	(\$6.52)	(\$5.31)	(\$6.00)	(\$10.36)	(\$12.89)
WY	KS	\$14.22	\$13.94	\$14.02	\$15.47	\$18.27	\$14.40	\$13.81	\$14.75	\$18.03	\$18.40	(\$0.18)	\$0.13	(\$0.73)	(\$2.56)	(\$0.13)
WY	KY	\$18.40	\$17.23	\$14.28	\$17.35	\$21.37	\$24.52	W	W	W	W	W	W	W	W	W
WY	LA	\$21.88	\$24.10	\$20.26	\$20.70	\$22.95	W	W	W	W	W	W	W	W	W	W
WY	MD	\$29.18	\$30.80	\$25.66	\$28.27	\$38.93	W	W	W	W	W	W	W	W	W	W
WY	MI	\$17.41	\$18.75	\$16.93	\$21.10	\$27.29	\$19.52	\$19.46	\$19.70	\$31.70	\$35.08	(\$2.11)	(\$0.71)	(\$2.77)	(\$10.60)	(\$7.79)
WY	MN	\$17.16	\$16.27	\$13.80	\$15.84	\$21.33	\$18.57	\$19.02	\$21.32	\$21.97	\$21.66	(\$1.41)	(\$2.75)	(\$7.52)	(\$6.13)	(\$0.33)
WY	MO	\$14.54	\$13.90	\$12.52	\$14.49	\$18.20	\$15.76	\$13.43	\$14.52	\$17.06	\$18.54	(\$1.22)	\$0.47	(\$2.00)	(\$2.57)	(\$0.34)
WY	MS	\$17.34	\$20.75	\$21.63	\$25.78	\$27.71	W	W	W	W	W	W	W	W	W	W
WY	MT	\$9.40	\$10.96	\$8.04	\$8.81	\$13.59	W	W	W	W	W	W	W	W	W	W
WY	ND	\$14.86	\$13.78	\$12.42	\$13.60	\$17.92	W	W	W	W	W	W	W	W	W	W
WY	NE	\$8.83	\$11.07	\$10.39	\$11.61	\$14.87	\$8.62	\$10.41	\$11.28	\$11.95	\$14.35	\$0.21	\$0.66	(\$0.89)	(\$0.34)	\$0.52
WY	NV	\$9.33	\$14.47	\$12.85	\$14.55	\$17.80	W	\$25.40	\$30.00	\$30.10	\$23.99	W	(\$10.93)	(\$17.15)	(\$15.55)	(\$6.19)
WY	NH	\$22.94	\$28.46	\$23.24	\$25.82	\$29.40	W	W	W	W	W	W	W	W	W	W
WY	NY	\$21.27	\$22.58	\$20.59	\$23.56	\$26.08	\$28.91	\$26.87	\$32.08	\$36.19	\$40.74	(\$7.64)	(\$4.29)	(\$11.49)	(\$12.63)	(\$14.66)
WY	OK	\$14.04	\$15.88	\$14.59	\$15.49	\$19.98	\$14.30	\$19.02	\$18.50	\$18.90	\$21.03	(\$0.26)	(\$3.14)	(\$3.91)	(\$3.41)	(\$1.05)
WY	OR	\$15.10	\$15.53	\$16.81	\$17.68	\$18.62	W	W	W	W	W	W	W	W	W	W
WY	SD	\$17.20	\$16.78	\$14.05	\$14.61	\$21.66	W	W	W	W	W	W	W	W	W	W
WY	TN	\$15.97	\$18.07	\$17.72	\$19.50	\$22.54	\$24.91	\$22.21	\$23.37	\$27.02	\$29.51	(\$8.94)	(\$4.14)	(\$5.65)	(\$7.52)	(\$6.97)
WY	TX	\$16.44	\$16.17	\$15.21	\$16.79	\$18.60	\$14.70	\$15.11	\$20.93	\$21.25	\$20.11	\$1.74	\$1.06	(\$5.72)	(\$4.46)	(\$1.51)
WY	WA	\$16.64	\$16.69	\$14.05	\$15.81	\$24.08	W	W	W	W	W	W	W	W	W	W
WY	WI	\$15.99	\$16.47	\$15.72	\$18.02	\$22.43	\$19.97	\$20.36	\$20.74	\$25.89	\$24.99	(\$3.98)	(\$3.89)	(\$5.02)	(\$7.87)	(\$2.56)
WY	WV	\$22.29	\$21.76	\$23.10	\$30.42	\$38.10	W	W	W	W	W	W	W	W	W	W
WY	WY	\$3.79	\$4.07	\$3.58	\$3.95	\$4.60	\$7.14	\$5.87	\$5.40	\$5.57	\$5.71	(\$3.35)	(\$1.80)	(\$1.82)	(\$1.62)	(\$1.11)
Wt. Average		\$14.42	\$15.02	\$13.47	\$15.01	\$18.10	\$15.87	\$15.34	\$16.87	\$18.66	\$19.20	(\$1.45)	(\$0.32)	(\$3.41)	(\$3.65)	(\$1.10)
MT	AZ	\$18.93	\$18.71	\$17.12	\$18.97	\$20.76	W	W	W	W	W	W	W	W	W	W
MT	MI	\$13.47	\$15.46	\$16.14	\$18.61	\$19.71	\$16.23	\$12.68	\$13.72	\$27.01	\$29.94	(\$2.76)	\$2.78	\$2.42	(\$8.40)	(\$10.23)
MT	MN	\$14.35	\$14.43	\$12.67	\$14.18	\$17.88	\$14.57	\$16.34	\$16.61	\$18.73	\$17.94	(\$0.22)	(\$1.91)	(\$3.94)	(\$4.55)	(\$0.06)
MT	MT	\$0.40	\$0.74	\$0.48	\$0.49	\$0.69	W	W	W	W	W	W	W	W	W	W
MT	ND	\$13.00	\$12.54	\$11.66	\$12.47	\$18.73	W	W	W	W	W	W	W	W	W	W
MT	OH	\$22.31	\$24.27	\$16.23	\$18.30	\$27.07	\$48.95	\$41.98	\$34.73	W	W	(\$26.64)	(\$17.71)	(\$18.50)	W	W
MT	WA	\$16.14	\$16.37	\$13.89	\$15.63	\$24.38	W	W	W	W	W	W	W	W	W	W
MT	WI	\$20.94	\$18.83	\$17.22	\$19.48	\$26.39	W	W	W	\$30.60	W	W	W	W	(\$11.12)	W
WA >>		\$13.99	\$15.14	\$14.63	\$16.80	\$19.12	\$15.63	\$15.00	\$16.33	\$23.68	\$26.08	(\$1.64)	\$0.14	(\$1.70)	(\$6.88)	(\$6.96)

Including only the data not withheld by EIA for confidentiality, this comparison shows that SNL's estimate of transportation costs was significantly below EIA's data for almost all states in almost all years. For the period 2008 – 2012, the weighted average difference for Wyoming coal was \$2.02 per ton and for Montana coal was \$3.08 per ton. This error means that Headwaters overstated the "net delivered" mine prices for these states by this amount, which explains almost the entire difference in prices for Wyoming coal reported to ONRR compared to Headwaters' calculation. Headwaters incorrectly attributed the price difference to "marketing

⁵¹ EVA analysis of SNL data downloaded from SNL's website, adjusted to constant 2012 dollars to match the EIA data, and EIA, "Coal Transportation Rates to the Electric Power Sector", Tables 4a, 4b and 4c. <http://www.eia.gov/coal/transportationrates/>

margins” which affiliated and non-affiliated brokers earned on remarketing federal coal at higher prices and avoiding royalties.⁵²

VI. Experience and Qualifications

EVA is a market research and analysis company which was founded in 1981. EVA specializes in market analysis of the North American energy markets, including coal, natural gas, oil, and electric power. EVA’s clients include producers, consumers and transporters of coal, as well as investors and banks. EVA also performs market analyses for federal administrative and regulatory agencies, such as the Energy Information Administration and the Office of Surface Mining as well as state agencies such as public utility commissions.

The primary author of this report is Mr. Seth Schwartz, president of EVA. EVA has been performing analyses of U.S. energy markets since its founding in 1981. EVA analyzes and publishes regular reports on the coal, natural gas and power markets, including forecasts of supply, demand and prices. Mr. Schwartz leads EVA’s practice analyzing U.S. coal markets. He has testified as an expert witness on coal markets in numerous court, arbitration and regulatory hearings, including:

- Supreme Court of the United States (Wyoming v. Oklahoma, 1992)
- Federal district courts in Pennsylvania, Virginia, Missouri, Indiana, Kentucky, Florida, Ohio, Alabama, and West Virginia;
- State courts in Virginia, Kentucky, Pennsylvania, Colorado, Wyoming, Texas and West Virginia;
- U.S. bankruptcy courts in Delaware, Kentucky, Missouri, Tennessee and Louisiana; and,
- Regulatory hearings of the Surface Transportation Board, the Federal Energy Regulatory Commission and public utility commissions in the states of Utah, Texas, Florida, Georgia, and Ohio.

Mr. Schwartz has been a member of the Working Group for the Annual Energy Outlook prepared by the U.S. Energy Information Administration and testified at FERC’s Technical Conference on Environmental Regulations and Electric Reliability, Wholesale Electricity Markets, and Energy Infrastructure regarding the Clean Power Plan proposed rule. Mr. Schwartz gives presentations on coal markets at numerous industry conferences, for private energy companies and for EIA.

⁵² Headwaters January Report at 3.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAR 2 0 2016

The Honorable Ryan Zinke
United States House of Representatives
Washington, DC 20515

Dear Representative Zinke:

Thank you for your letter dated November 30, 2015, regarding the Department of the Interior's (Department) Consolidated Federal Oil and Gas and Federal and Indian Coal Valuation proposed rule. In your letter, you referenced the report from Energy Ventures Analysis, Inc. entitled, *Coal Sales Prices used for Valuation and Payment of Federal Royalties, A Peer Review of Previous Studies by Headwaters Economics* and urged the Department to withdraw the proposed rule.

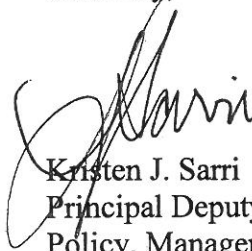
As noted in the November 25, 2015, response to your September 28, 2015, letter transmitting the report to the Department for consideration, the 120-day comment period for the proposed valuation rule closed on May 8, 2015. However, the public comment period was not the only opportunity for input. Consultation and public engagement regarding the regulatory reform of oil, gas, and coal valuation started in May 2011, when the Office of Natural Resources Revenue (ONRR) published two Advanced Notices of Proposed Rulemaking in the Federal Register to obtain input from the public and the regulated industry.

The Headwaters Economics studies cited in the report you transmitted were not the basis for the reforms in the proposed rule. The Department issued the proposed rule because the current Federal oil, gas, and Federal and Indian coal valuation regulations have been in effect since the late 1980's. In the decades since, the Department's responsibilities have not changed, but the industry and the marketplace have changed dramatically. Regulatory changes are long overdue and necessary to better align our regulatory framework with the 21st century industry and marketplace. The proposed regulations offer greater clarity and consistency in product valuation and provide early certainty that companies pay and the Department collects every dollar due for the use of our Nation's valuable natural resources.

The recommended regulatory changes would not alter the underlying principles of the current regulations. For example, by proposing these amendments, the Department reaffirms that, for purposes of determining royalty, the value of crude oil and natural gas produced from Federal leases and coal produced from Federal and Indian leases is determined at or near the lease, and that gross proceeds from arm's-length contracts are the best indication of market value.

I assure you that the State and Montana and the United States Congress remain important partners in the Department's efforts to collect every dollar due and ensure a fair return for the use of the public's valuable natural resources. We appreciate your interest in the proposed rule and are committed to working with you throughout the process as we determine the best path forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen J. Sarri". The signature is fluid and cursive, with a large initial "K" and "S".

Kristen J. Sarri
Principal Deputy Assistant Secretary
Policy, Management and Budget

Congress of the United States
House of Representatives
Washington, DC 20515

December 4, 2015

The Honorable Sally Jewell
Secretary
Department of the Interior
1849 C Street, N.W.
Washington, D.C 20240

Secretary Jewell:

I wrote to you and Attorney General Holder over six months ago (April 21, 2015), encouraging swift action to complete negotiations relating to the Blackfeet Water Settlement. While I appreciate that progress has been made between the Department of the Interior (DOI) and the Blackfeet Tribe on a number of key issues, I am alarmed by the substitute bill recently filed for mark-up before the Senate Indian Affairs Committee. This bill reflects a significant step backward on the negotiations and appears to move us further away from a congressionally approved settlement.

It is my understanding that the substitute bill was largely crafted by staff at the DOI. The changes to S.1125, the Blackfeet Water Rights Settlement Act of 2015, reflected in the substitute bill would remove federal funding and critical provisions relating to the Birch Creek Agreement. I do not support the measure sent to Congress nor will I urge Chairman Rob Bishop to introduce settlement legislation in the U.S. House of Representatives if the bill conflicts with the Blackfeet Water Compact and the Birch Creek Agreement as approved by the Montana legislature. I am particularly concerned about language in the substitute bill that suggests federal legislation may not be consistent with the Compact and that the Compact may need to be modified to ensure consistency between the two bills.

The Montana Compact Commission struck a careful balance in developing the Blackfeet Water Compact. As a member of the Montana legislature, I clearly remember the discussion and compromises relating to the Compact generally and specifically relating to Birch Creek. Without the Birch Creek Agreement, the Montana legislature would not have approved the Blackfeet Water Compact.

The Birch Creek Agreement contains two key elements that should be included in any legislation before I will support its introduction in the U.S. House of Representatives. First, the legislation must include a significant federal cost share for the rehabilitation and enhancement of the Four Horns Feeder Canal, Dam, and Reservoir. These structures will be owned by the Blackfeet Tribe and will assist with the development of their water rights on Birch Creek. The State of Montana has pledged \$20 million for this project and has requested that the federal government contribute \$14 million. Given the significant tribal benefits to be realized from this investment, and given

its inclusion in the Birch Creek Agreement, I am baffled by the DOI's efforts to remove this federal funding from the bill. I strongly support the \$14 million cost share and encourage DOI to accept that measure of federal responsibility for this project.

Second, the legislation must recognize the importance of the other component of the Birch Creek Agreement. Adequate funding is to be available for use by Birch Creek water users to lease water from the Tribe, or otherwise secure their own water supplies, following the expiration of the 25-year term of deferral and water delivery under the existing agreement. I am not seeking federal funding for these purposes – the State of Montana has already appropriated and pledged funding to accomplish this goal. However, it is critical that the federal legislation recognize and incorporate this element of the overall settlement as endorsed by the Montana legislature.

Please know that I view these two provisions as integral to the Birch Creek Agreement and the Blackfeet Water Compact. I look forward to working with you and Interior to structure and ratify a Blackfeet settlement that is consistent with the Compact passed by the Montana legislature.

Sincerely,



RYAN ZINKE
Member of Congress



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

FEB 29 2016

The Honorable Ryan Zinke
United States House of Representatives
Washington, DC 20515

Dear Representative Zinke:

Thank you for your letter dated December 4, 2015, regarding the Blackfeet water rights settlement and funding issues associated with the Birch Creek Agreement. Secretary Jewell has asked me, as Chair of the Working Group on Indian Water Settlements, to respond to your letter.

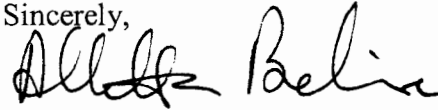
For many years, the Department of the Interior (Department) has been working closely with the Blackfeet Tribe (Tribe), the State of Montana, local water users and the Montana delegation to achieve a settlement of the Blackfeet water rights claims, and we note that the Senate Committee on Indian Affairs ordered S. 1125 reported out of Committee favorably. Since the first introduction of legislation authorizing the Blackfeet settlement in 2010, the Department has sought to play a constructive role in encouraging all affected parties to reach an agreement that could be supported by the Administration and enacted by Congress. We share the view expressed in your letter that substantial progress has been made.

To date, the Administration has not developed formal views on S. 1125 or the substitute amendment to S. 1125 you referenced in your letter pending before the Senate Indian Affairs Committee (substitute amendment). We appreciate the opportunity to clarify that, while the Department did not draft or approve the substitute amendment, we have reviewed various draft provisions of S. 1125 at the behest of relevant committees, members of the Montana delegation and settlement parties, and have provided recommendations on various provisions.

While we continue to review the substitute amendment, in response to your letter, it does not appear to conflict with the Birch Creek Agreement reached among the State, the Tribe and the Pondera County Canal Reservoir and Company. Regarding your concerns about provisions in the substitute amendment allowing for modification of the Compact to ensure consistency with the legislation ultimately enacted, we draw your attention to virtually identical provisions in the Crow Water Rights Settlement Act of 2010 and other settlements enacted by Congress in the last decade. To the best of our knowledge, any differences between the substitute amendment and the Blackfeet Water Compact relate to Federal obligations which the Tribe and the State are aware of and have accepted. In addition, the Department testified twice before the Senate Committee on Indian Affairs on earlier versions of the Blackfeet water settlement legislation, and expressed our concerns about the provisions in the settlement legislation pertaining to non-Indian users. The language recommendations we shared with the Tribe, the State, and the sponsors on the substitute amendment are consistent with our prior testimony.

In closing, I want to emphasize that the Department's role in the settlement negotiations and subsequent discussions pertaining to S. 1125 is guided by our goal of upholding the United States' trust responsibility and promoting Indian self-determination and economic self-sufficiency. We appreciate your interest in this settlement and look forward to working with you as the process continues.

Sincerely,

A handwritten signature in black ink, appearing to read "Alletta D. Belin". The signature is written in a cursive style with a large initial "A".

Alletta D. Belin

Senior Counselor to the Deputy Secretary

Congress of the United States

Washington, DC 20515

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February 26, 2016

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OFFICE OF THE
SECRETARIAT

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

Dear Secretary Jewell:

We write in regards to your recently issued Secretarial Order No. 3338. This order directs that a moratorium on coal lease sales be implemented pending a Programmatic Environmental Impact Statement (PEIS) to be conducted by the Bureau of Land Management, in addition to preventing completion of pending lease applications. We have questions regarding your order.

1. Your order notes that there have been two previous moratoriums on coal lease sales. These were in response to legislative action by Congress: the enactment of the National Environmental Policy Act in 1970, and the FY1984 Interior Appropriations Act, that specifically called for a moratorium. We are unaware of any recent legislation that would authorize a similar moratorium. The only recent legislative action on coal was a provision in the Consolidated Appropriations Act of 2016 calling on the Office of Surface Mining to halt its proposed Stream Protection rulemaking and reengage with states as cooperating agencies. While your order generally cites the *Mineral Leasing Act*, *the National Environmental Policy Act*, *the Surface Mining Control and Reclamation Act*, and *the Federal Land Policy and Management Act*, **please provide the specific legal justification for your actions.**
2. Some have argued that the Department is the proprietor and sovereign regulator of mineral development on the public lands under the Mineral Leasing Act. As you acknowledge numerous times in the order, the Department has the statutory duty to ensure a fair return to the taxpayer. Coal lease sales provide revenue to both the federal and state governments through per acre fees as well as bonus bids on the coal reserve tonnage. Many states rely on this money to fund education and community services. Some estimates place this revenue to be as high as \$1 billion. **Please provide your estimate of lost revenue to federal, state, and local governments due to the moratorium as well as other economic impacts.**
3. In providing justification for the moratorium and PEIS, you indicate that the moratorium is needed to respond to concerns raised by the Government Accountability Office (GAO) and Department of the Interior's Office of Inspector General (OIG), specifically centered on whether taxpayers are receiving fair market value from the sale of coal. Yet, the GAO and OIG investigations found no evidence of royalty evasion or underpayment in the Federal Coal Leasing Program and made no recommendations for changes to royalty

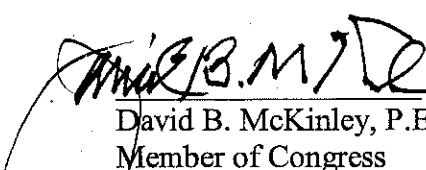
valuation methods. **Please list all the actions that your agency has taken, to date, to address the recommendations of the GAO and OIG reports.**


4. The coal industry in America, and the energy sector in, general, are facing economic distress. Several coal companies have declared bankruptcy, while others face challenges in acquiring financing. The moratorium significantly compounds these difficulties. **Please provide your estimate of the effects on employment in the coal industry and their suppliers downstream due to the moratorium.**


Coal Production on federal lands creates jobs, provides affordable electricity and generates important revenue for the federal and state governments. As such, it is difficult to understand how efforts that preclude future coal production will ensure any return to the taxpayer, much less a fair return.

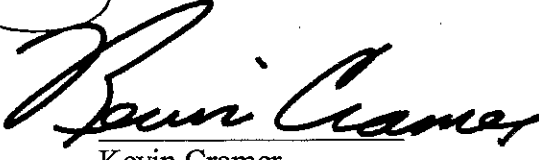
Thank you for your attention to this matter and we look forward to your timely response.

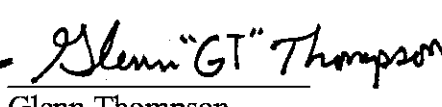
Sincerely,

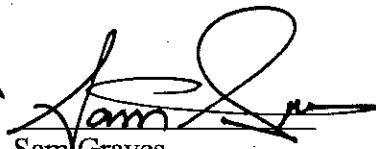

David B. McKinley, P.E.
Member of Congress

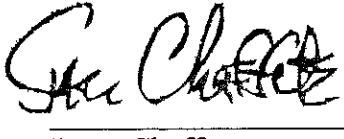

Cynthia Lummis
Member of Congress

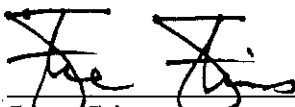

Ryan Zinke
Member of Congress

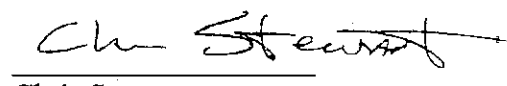

Kevin Cramer
Member of Congress

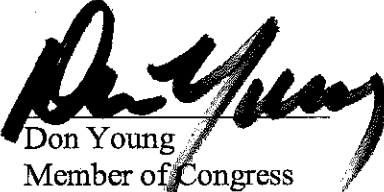

Glenn Thompson
Member of Congress



Sam Graves
Member of Congress

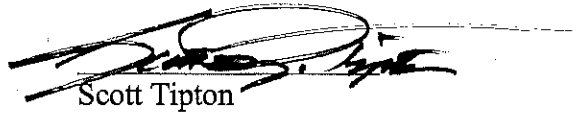

Jason Chaffetz
Member of Congress


Steve Stivers
Member of Congress


Chris Stewart
Member of Congress


Don Young
Member of Congress


Stevan Pearce
Member of Congress


Scott Tipton
Member of Congress



Bruce Westerman
Member of Congress



Louie Gohmert
Member of Congress



Jason Smith
Member of Congress



Doug Lamborn
Member of Congress



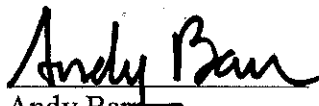
Mike Bost
Member of Congress



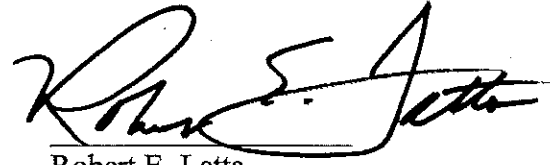
Brett Guthrie
Member of Congress



Hal Rogers
Member of Congress



Andy Barr
Member of Congress



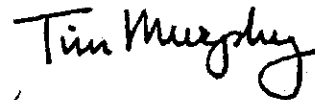
Robert E. Latta
Member of Congress



Paul Gosar
Member of Congress



Bill Johnson
Member of Congress



Tim Murphy
Member of Congress



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 27 2016

The Honorable David B. McKinley
House of Representatives
Washington, DC 20515

Dear Representative McKinley:

Thank you for your letter dated February 26, 2016, to Secretary of the Interior Sally Jewell regarding the Federal coal program. Secretary Jewell has asked me to respond on her behalf. I appreciate that you took the time to share your concerns regarding Secretarial Order No. 3338, which directs the Bureau of Land Management (BLM) to launch a comprehensive review of the Federal coal program.

While the review is underway, the Department of the Interior (Department) is instituting a pause on the issuance of new coal leases on Federal lands, subject to limited, enumerated exemptions and exclusions, so that those leasing decisions can benefit from the recommendations that result from the review. Given the abundance of coal reserves under lease, declining demand for coal, and accommodations that will be made for emergency and other enumerated circumstances, the pause should have no material impact on the Nation's coal production levels, currently or in the foreseeable future. During and after the pause, companies can continue to mine the large amount of coal reserves already under lease, estimated to be enough to sustain current levels of production from Federal land for approximately 20 years.

The programmatic review of the Federal coal program will include opportunities for public participation, which began with six scoping meetings for the Programmatic Environmental Impact Statement (PEIS). The scoping meetings were held across the United States in Wyoming, Utah, Tennessee, Washington, Colorado and Pennsylvania. The Department will release an interim report by the end of 2016 based on the scoping process, alternatives that will be evaluated in the PEIS and, as appropriate, any initial analytical results. The full programmatic review is expected to take approximately 3 years.

In your letter, you asked about legal authorities for issuing the Secretarial Order, which include, but are not limited to, the Mineral Leasing Act, 30 U.S.C. §§ 181 *et seq.*; the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351 *et seq.*; the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*; the Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201 *et seq.*; and the Federal Land Policy and Management Act, 43 U.S.C. §§ *et seq.* Secretary Jewell directed the BLM to conduct a broad, programmatic review of the Federal coal program it

administers through the preparation of a discretionary PEIS under the National Environmental Policy Act. The Department is authorized to undertake this effort in its stewardship role as a public land manager. The Department is charged by Congress with managing and overseeing mineral development on public lands, not only for the purpose of ensuring safe and responsible development of mineral resources, but also to ensure conservation of the resources, protection of scientific, historic, and environmental values on the public lands, and compliance with applicable environmental laws. In addition, the Department has the statutory duty to ensure a fair return to the taxpayer and broad discretionary authority to decide where, when, and under what terms and conditions, mineral development should occur, including with respect to the issuance of Federal coal leases.

You raised concerns about the potential for loss of revenue to Federal, state, and local governments, as well as the potential impact on employment in the coal industry, stemming from the pause on new coal leases. The pause should not significantly affect production of Federal coal. The pause does not apply to existing leases and coal production activities, and we estimate that currently there are about 20 years of recoverable coal reserves, at current production levels, under lease on Federal lands. In addition, the Secretarial Order provided limited exclusions to the pause for small lease modifications (160 acres or less), coal lease exchanges, certain preference right lease interests, and emergency circumstances. For the applications that were pending when the Secretarial Order was issued and that do not fit within an exclusion from the pause, the BLM may continue to process the applications up to, but not including, issuance of a final decision to hold a sale or modify a lease.

The pause also does not apply to pending lease applications that have already completed environmental analysis and received a final Record of Decision or Decision Records by the BLM or the applicable Federal surface management agency, including those decisions that are undergoing re-evaluation after having been vacated by judicial decision. Furthermore, the pause does not apply to metallurgical coal (used in steel production), renewals of existing leases, or other BLM, Office of Surface Mining Reclamation and Enforcement, or Office of Natural Resources Revenue (ONRR) actions related to the Federal coal program, such as mine plan approvals. Additionally, the pause does not apply to coal leases on tribal or allotted lands.

Based on these considerations, overall, the Department does not expect the pause either to significantly affect current production, or to have any material impact on Federal, state, and local government revenue, or on employment, either now or in the future.

We recognize and share your deep concerns about the economic distress facing the coal industry and coal-dependent communities today. We have seen the results of these economic challenges reflected in bankruptcies, job losses, and the low industry interest in new leases. These economic challenges began long before the Secretarial Order and reflect market forces outside the Department that predate the Order. Far from exacerbating these market forces, the programmatic review aims to provide us a better understanding of the issues confronting the coal industry now and in the future. In addition, the Obama Administration is responding to coal industry job losses through various initiatives (such as the POWER+ Plan, which invests in coal communities, workers, and technologies) and will continue to do so in the future. We would welcome your support for these efforts.

You also asked about recent actions taken to address recommendations of the U.S. Government Accountability Office and the Department of the Interior's Office of Inspector General regarding the Federal coal program. There have been 2 recent audits of the BLM's coal management program resulting in a total of 21 recommendations under the general categories of (1) coal leasing and exports, (2) inspection and enforcement, (3) royalty rate reductions, and (4) transparency.¹ To date, the actions taken by the BLM to address recommendations related to each of the four general coal management categories include the following:

- **Coal Leasing and Exports:** The BLM published (in cooperation with the Office of Valuation Services) the Coal Evaluation Manual and Handbook that establishes fair market value guidance, procedures, and third party reviews. In the handbook, the BLM provided domestic and export market consideration criteria, and guidance to require use of the same standards for lease sales and lease modifications. The BLM also issued policies to standardize the evaluation requirements for lease sales, bid rejections, and reoffers, and to emphasize internal controls and safeguards for fair market value records.
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We look forward to working with you and other interested Members of Congress as we address these complex issues surrounding management of the public's coal resources. A similar reply is being sent to the co-signers of your correspondence.

Sincerely,



Janice M. Schneider
Assistant Secretary
Land and Minerals Management

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United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, D.C. 20240

JUL 27 2016

The Honorable Cynthia Lummis
House of Representatives
Washington, DC 20515

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Sincerely,



Janice M. Schneider
Assistant Secretary
Land and Minerals Management

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United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 27 2016

The Honorable Ryan Zinke
House of Representatives
Washington, DC 20515

Dear Representative Zinke:

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United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 27 2016

The Honorable Kevin Cramer
House of Representatives
Washington, DC 20515

Dear Representative Cramer:

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You also asked about recent actions taken to address recommendations of the U.S. Government Accountability Office and the Department of the Interior's Office of Inspector General regarding the Federal coal program. There have been 2 recent audits of the BLM's coal management program resulting in a total of 21 recommendations under the general categories of (1) coal leasing and exports, (2) inspection and enforcement, (3) royalty rate reductions, and (4) transparency.¹ To date, the actions taken by the BLM to address recommendations related to each of the four general coal management categories include the following:

- **Coal Leasing and Exports**: The BLM published (in cooperation with the Office of Valuation Services) the Coal Evaluation Manual and Handbook that establishes fair market value guidance, procedures, and third party reviews. In the handbook, the BLM provided domestic and export market consideration criteria, and guidance to require use of the same standards for lease sales and lease modifications. The BLM also issued policies to standardize the evaluation requirements for lease sales, bid rejections, and reoffers, and to emphasize internal controls and safeguards for fair market value records.
- **Inspection and Enforcement**: The BLM published a new Inspection and Enforcement Handbook and Manual; developed policy to ensure the integrity of exploration data; developed online training and national standards for conducting inspections; evaluated its enforcement capabilities with the Department's Office of the Solicitor; issued policy on rotation, cross-training, and succession planning for mine inspectors; and developed an inspector certification program.
- **Royalty Rate Reductions**: The BLM issued new royalty-rate-reduction guidance to streamline the application review process and required consultation with ONRR for financial hardship royalty-rate-reduction application processing.
- **Transparency**: The BLM developed guidance on release of fair market value information to the public and developed guidance on coal lease sales information that should be listed on BLM websites.

We look forward to working with you and other interested Members of Congress as we address these complex issues surrounding management of the public's coal resources. A similar reply is being sent to the co-signers of your correspondence.

Sincerely,


Janice M. Schneider
Assistant Secretary
Land and Minerals Management

¹ The Office of the Inspector General, U.S. Department of the Interior, Final Evaluation Report – Coal Management Program (CR-EV-BLM-0001-2012) (June 11, 2013), and The U.S. Government Accountability Office, Coal Leasing: BLM Could Enhance Appraisal Process, More Explicitly Consider Coal Exports, and Provide More Public Information (GAO-14-140) (December 18, 2013), Publicly Released February 4, 2014.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 27 2016

The Honorable Glenn Thompson
House of Representatives
Washington, DC 20515

Dear Representative Thompson:

Thank you for your letter dated February 26, 2016, to Secretary of the Interior Sally Jewell regarding the Federal coal program. Secretary Jewell has asked me to respond on her behalf. I appreciate that you took the time to share your concerns regarding Secretarial Order No. 3338, which directs the Bureau of Land Management (BLM) to launch a comprehensive review of the Federal coal program.

While the review is underway, the Department of the Interior (Department) is instituting a pause on the issuance of new coal leases on Federal lands, subject to limited, enumerated exemptions and exclusions, so that those leasing decisions can benefit from the recommendations that result from the review. Given the abundance of coal reserves under lease, declining demand for coal, and accommodations that will be made for emergency and other enumerated circumstances, the pause should have no material impact on the Nation's coal production levels, currently or in the foreseeable future. During and after the pause, companies can continue to mine the large amount of coal reserves already under lease, estimated to be enough to sustain current levels of production from Federal land for approximately 20 years.

The programmatic review of the Federal coal program will include opportunities for public participation, which began with six scoping meetings for the Programmatic Environmental Impact Statement (PEIS). The scoping meetings were held across the United States in Wyoming, Utah, Tennessee, Washington, Colorado and Pennsylvania. The Department will release an interim report by the end of 2016 based on the scoping process, alternatives that will be evaluated in the PEIS and, as appropriate, any initial analytical results. The full programmatic review is expected to take approximately 3 years.

In your letter, you asked about legal authorities for issuing the Secretarial Order, which include, but are not limited to, the Mineral Leasing Act, 30 U.S.C. §§ 181 *et seq.*; the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351 *et seq.*; the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*; the Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201 *et seq.*; and the Federal Land Policy and Management Act, 43 U.S.C. §§ *et seq.* Secretary Jewell directed the BLM to conduct a broad, programmatic review of the Federal coal program it

administers through the preparation of a discretionary PEIS under the National Environmental Policy Act. The Department is authorized to undertake this effort in its stewardship role as a public land manager. The Department is charged by Congress with managing and overseeing mineral development on public lands, not only for the purpose of ensuring safe and responsible development of mineral resources, but also to ensure conservation of the resources, protection of scientific, historic, and environmental values on the public lands, and compliance with applicable environmental laws. In addition, the Department has the statutory duty to ensure a fair return to the taxpayer and broad discretionary authority to decide where, when, and under what terms and conditions, mineral development should occur, including with respect to the issuance of Federal coal leases.

You raised concerns about the potential for loss of revenue to Federal, state, and local governments, as well as the potential impact on employment in the coal industry, stemming from the pause on new coal leases. The pause should not significantly affect production of Federal coal. The pause does not apply to existing leases and coal production activities, and we estimate that currently there are about 20 years of recoverable coal reserves, at current production levels, under lease on Federal lands. In addition, the Secretarial Order provided limited exclusions to the pause for small lease modifications (160 acres or less), coal lease exchanges, certain preference right lease interests, and emergency circumstances. For the applications that were pending when the Secretarial Order was issued and that do not fit within an exclusion from the pause, the BLM may continue to process the applications up to, but not including, issuance of a final decision to hold a sale or modify a lease.

The pause also does not apply to pending lease applications that have already completed environmental analysis and received a final Record of Decision or Decision Records by the BLM or the applicable Federal surface management agency, including those decisions that are undergoing re-evaluation after having been vacated by judicial decision. Furthermore, the pause does not apply to metallurgical coal (used in steel production), renewals of existing leases, or other BLM, Office of Surface Mining Reclamation and Enforcement, or Office of Natural Resources Revenue (ONRR) actions related to the Federal coal program, such as mine plan approvals. Additionally, the pause does not apply to coal leases on tribal or allotted lands.

Based on these considerations, overall, the Department does not expect the pause either to significantly affect current production, or to have any material impact on Federal, state, and local government revenue, or on employment, either now or in the future.

We recognize and share your deep concerns about the economic distress facing the coal industry and coal-dependent communities today. We have seen the results of these economic challenges reflected in bankruptcies, job losses, and the low industry interest in new leases. These economic challenges began long before the Secretarial Order and reflect market forces outside the Department that predate the Order. Far from exacerbating these market forces, the programmatic review aims to provide us a better understanding of the issues confronting the coal industry now and in the future. In addition, the Obama Administration is responding to coal industry job losses through various initiatives (such as the POWER+ Plan, which invests in coal communities, workers, and technologies) and will continue to do so in the future. We would welcome your support for these efforts.

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We look forward to working with you and other interested Members of Congress as we address these complex issues surrounding management of the public's coal resources. A similar reply is being sent to the co-signers of your correspondence.

Sincerely,



Janice M. Schneider
Assistant Secretary
Land and Minerals Management

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United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 27 2016

The Honorable Sam Graves
House of Representatives
Washington, DC 20515

Dear Representative Graves:

Thank you for your letter dated February 26, 2016, to Secretary of the Interior Sally Jewell regarding the Federal coal program. Secretary Jewell has asked me to respond on her behalf. I appreciate that you took the time to share your concerns regarding Secretarial Order No. 3338, which directs the Bureau of Land Management (BLM) to launch a comprehensive review of the Federal coal program.

While the review is underway, the Department of the Interior (Department) is instituting a pause on the issuance of new coal leases on Federal lands, subject to limited, enumerated exemptions and exclusions, so that those leasing decisions can benefit from the recommendations that result from the review. Given the abundance of coal reserves under lease, declining demand for coal, and accommodations that will be made for emergency and other enumerated circumstances, the pause should have no material impact on the Nation's coal production levels, currently or in the foreseeable future. During and after the pause, companies can continue to mine the large amount of coal reserves already under lease, estimated to be enough to sustain current levels of production from Federal land for approximately 20 years.

The programmatic review of the Federal coal program will include opportunities for public participation, which began with six scoping meetings for the Programmatic Environmental Impact Statement (PEIS). The scoping meetings were held across the United States in Wyoming, Utah, Tennessee, Washington, Colorado and Pennsylvania. The Department will release an interim report by the end of 2016 based on the scoping process, alternatives that will be evaluated in the PEIS and, as appropriate, any initial analytical results. The full programmatic review is expected to take approximately 3 years.

In your letter, you asked about legal authorities for issuing the Secretarial Order, which include, but are not limited to, the Mineral Leasing Act, 30 U.S.C. §§ 181 *et seq.*; the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351 *et seq.*; the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*; the Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201 *et seq.*; and the Federal Land Policy and Management Act, 43 U.S.C. §§ *et seq.* Secretary Jewell directed the BLM to conduct a broad, programmatic review of the Federal coal program it

administers through the preparation of a discretionary PEIS under the National Environmental Policy Act. The Department is authorized to undertake this effort in its stewardship role as a public land manager. The Department is charged by Congress with managing and overseeing mineral development on public lands, not only for the purpose of ensuring safe and responsible development of mineral resources, but also to ensure conservation of the resources, protection of scientific, historic, and environmental values on the public lands, and compliance with applicable environmental laws. In addition, the Department has the statutory duty to ensure a fair return to the taxpayer and broad discretionary authority to decide where, when, and under what terms and conditions, mineral development should occur, including with respect to the issuance of Federal coal leases.

You raised concerns about the potential for loss of revenue to Federal, state, and local governments, as well as the potential impact on employment in the coal industry, stemming from the pause on new coal leases. The pause should not significantly affect production of Federal coal. The pause does not apply to existing leases and coal production activities, and we estimate that currently there are about 20 years of recoverable coal reserves, at current production levels, under lease on Federal lands. In addition, the Secretarial Order provided limited exclusions to the pause for small lease modifications (160 acres or less), coal lease exchanges, certain preference right lease interests, and emergency circumstances. For the applications that were pending when the Secretarial Order was issued and that do not fit within an exclusion from the pause, the BLM may continue to process the applications up to, but not including, issuance of a final decision to hold a sale or modify a lease.

The pause also does not apply to pending lease applications that have already completed environmental analysis and received a final Record of Decision or Decision Records by the BLM or the applicable Federal surface management agency, including those decisions that are undergoing re-evaluation after having been vacated by judicial decision. Furthermore, the pause does not apply to metallurgical coal (used in steel production), renewals of existing leases, or other BLM, Office of Surface Mining Reclamation and Enforcement, or Office of Natural Resources Revenue (ONRR) actions related to the Federal coal program, such as mine plan approvals. Additionally, the pause does not apply to coal leases on tribal or allotted lands.

Based on these considerations, overall, the Department does not expect the pause either to significantly affect current production, or to have any material impact on Federal, state, and local government revenue, or on employment, either now or in the future.

We recognize and share your deep concerns about the economic distress facing the coal industry and coal-dependent communities today. We have seen the results of these economic challenges reflected in bankruptcies, job losses, and the low industry interest in new leases. These economic challenges began long before the Secretarial Order and reflect market forces outside the Department that predate the Order. Far from exacerbating these market forces, the programmatic review aims to provide us a better understanding of the issues confronting the coal industry now and in the future. In addition, the Obama Administration is responding to coal industry job losses through various initiatives (such as the POWER+ Plan, which invests in coal communities, workers, and technologies) and will continue to do so in the future. We would welcome your support for these efforts.

You also asked about recent actions taken to address recommendations of the U.S. Government Accountability Office and the Department of the Interior's Office of Inspector General regarding the Federal coal program. There have been 2 recent audits of the BLM's coal management program resulting in a total of 21 recommendations under the general categories of (1) coal leasing and exports, (2) inspection and enforcement, (3) royalty rate reductions, and (4) transparency.¹ To date, the actions taken by the BLM to address recommendations related to each of the four general coal management categories include the following:

- **Coal Leasing and Exports**: The BLM published (in cooperation with the Office of Valuation Services) the Coal Evaluation Manual and Handbook that establishes fair market value guidance, procedures, and third party reviews. In the handbook, the BLM provided domestic and export market consideration criteria, and guidance to require use of the same standards for lease sales and lease modifications. The BLM also issued policies to standardize the evaluation requirements for lease sales, bid rejections, and reoffers, and to emphasize internal controls and safeguards for fair market value records.
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We look forward to working with you and other interested Members of Congress as we address these complex issues surrounding management of the public's coal resources. A similar reply is being sent to the co-signers of your correspondence.

Sincerely,



Janice M. Schneider
Assistant Secretary
Land and Minerals Management

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United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 27 2016

The Honorable Jason Chaffetz
House of Representatives
Washington, DC 20515

Dear Representative Chaffetz:

Thank you for your letter dated February 26, 2016, to Secretary of the Interior Sally Jewell regarding the Federal coal program. Secretary Jewell has asked me to respond on her behalf. I appreciate that you took the time to share your concerns regarding Secretarial Order No. 3338, which directs the Bureau of Land Management (BLM) to launch a comprehensive review of the Federal coal program.

While the review is underway, the Department of the Interior (Department) is instituting a pause on the issuance of new coal leases on Federal lands, subject to limited, enumerated exemptions and exclusions, so that those leasing decisions can benefit from the recommendations that result from the review. Given the abundance of coal reserves under lease, declining demand for coal, and accommodations that will be made for emergency and other enumerated circumstances, the pause should have no material impact on the Nation's coal production levels, currently or in the foreseeable future. During and after the pause, companies can continue to mine the large amount of coal reserves already under lease, estimated to be enough to sustain current levels of production from Federal land for approximately 20 years.

The programmatic review of the Federal coal program will include opportunities for public participation, which began with six scoping meetings for the Programmatic Environmental Impact Statement (PEIS). The scoping meetings were held across the United States in Wyoming, Utah, Tennessee, Washington, Colorado and Pennsylvania. The Department will release an interim report by the end of 2016 based on the scoping process, alternatives that will be evaluated in the PEIS and, as appropriate, any initial analytical results. The full programmatic review is expected to take approximately 3 years.

In your letter, you asked about legal authorities for issuing the Secretarial Order, which include, but are not limited to, the Mineral Leasing Act, 30 U.S.C. §§ 181 *et seq.*; the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351 *et seq.*; the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*; the Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201 *et seq.*; and the Federal Land Policy and Management Act, 43 U.S.C. §§ *et seq.* Secretary Jewell directed the BLM to conduct a broad, programmatic review of the Federal coal program it

administers through the preparation of a discretionary PEIS under the National Environmental Policy Act. The Department is authorized to undertake this effort in its stewardship role as a public land manager. The Department is charged by Congress with managing and overseeing mineral development on public lands, not only for the purpose of ensuring safe and responsible development of mineral resources, but also to ensure conservation of the resources, protection of scientific, historic, and environmental values on the public lands, and compliance with applicable environmental laws. In addition, the Department has the statutory duty to ensure a fair return to the taxpayer and broad discretionary authority to decide where, when, and under what terms and conditions, mineral development should occur, including with respect to the issuance of Federal coal leases.

You raised concerns about the potential for loss of revenue to Federal, state, and local governments, as well as the potential impact on employment in the coal industry, stemming from the pause on new coal leases. The pause should not significantly affect production of Federal coal. The pause does not apply to existing leases and coal production activities, and we estimate that currently there are about 20 years of recoverable coal reserves, at current production levels, under lease on Federal lands. In addition, the Secretarial Order provided limited exclusions to the pause for small lease modifications (160 acres or less), coal lease exchanges, certain preference right lease interests, and emergency circumstances. For the applications that were pending when the Secretarial Order was issued and that do not fit within an exclusion from the pause, the BLM may continue to process the applications up to, but not including, issuance of a final decision to hold a sale or modify a lease.

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Based on these considerations, overall, the Department does not expect the pause either to significantly affect current production, or to have any material impact on Federal, state, and local government revenue, or on employment, either now or in the future.

We recognize and share your deep concerns about the economic distress facing the coal industry and coal-dependent communities today. We have seen the results of these economic challenges reflected in bankruptcies, job losses, and the low industry interest in new leases. These economic challenges began long before the Secretarial Order and reflect market forces outside the Department that predate the Order. Far from exacerbating these market forces, the programmatic review aims to provide us a better understanding of the issues confronting the coal industry now and in the future. In addition, the Obama Administration is responding to coal industry job losses through various initiatives (such as the POWER+ Plan, which invests in coal communities, workers, and technologies) and will continue to do so in the future. We would welcome your support for these efforts.

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We look forward to working with you and other interested Members of Congress as we address these complex issues surrounding management of the public's coal resources. A similar reply is being sent to the co-signers of your correspondence.

Sincerely,



Janice M. Schneider
Assistant Secretary
Land and Minerals Management

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United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 27 2016

The Honorable Steve Stivers
House of Representatives
Washington, DC 20515

Dear Representative Stivers:

Thank you for your letter dated February 26, 2016, to Secretary of the Interior Sally Jewell regarding the Federal coal program. Secretary Jewell has asked me to respond on her behalf. I appreciate that you took the time to share your concerns regarding Secretarial Order No. 3338, which directs the Bureau of Land Management (BLM) to launch a comprehensive review of the Federal coal program.

While the review is underway, the Department of the Interior (Department) is instituting a pause on the issuance of new coal leases on Federal lands, subject to limited, enumerated exemptions and exclusions, so that those leasing decisions can benefit from the recommendations that result from the review. Given the abundance of coal reserves under lease, declining demand for coal, and accommodations that will be made for emergency and other enumerated circumstances, the pause should have no material impact on the Nation's coal production levels, currently or in the foreseeable future. During and after the pause, companies can continue to mine the large amount of coal reserves already under lease, estimated to be enough to sustain current levels of production from Federal land for approximately 20 years.

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We look forward to working with you and other interested Members of Congress as we address these complex issues surrounding management of the public's coal resources. A similar reply is being sent to the co-signers of your correspondence.

Sincerely,



Janice M. Schneider
Assistant Secretary
Land and Minerals Management

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United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 27 2016

The Honorable Chris Stewart
House of Representatives
Washington, DC 20515

Dear Representative Stewart:

Thank you for your letter dated February 26, 2016, to Secretary of the Interior Sally Jewell regarding the Federal coal program. Secretary Jewell has asked me to respond on her behalf. I appreciate that you took the time to share your concerns regarding Secretarial Order No. 3338, which directs the Bureau of Land Management (BLM) to launch a comprehensive review of the Federal coal program.

While the review is underway, the Department of the Interior (Department) is instituting a pause on the issuance of new coal leases on Federal lands, subject to limited, enumerated exemptions and exclusions, so that those leasing decisions can benefit from the recommendations that result from the review. Given the abundance of coal reserves under lease, declining demand for coal, and accommodations that will be made for emergency and other enumerated circumstances, the pause should have no material impact on the Nation's coal production levels, currently or in the foreseeable future. During and after the pause, companies can continue to mine the large amount of coal reserves already under lease, estimated to be enough to sustain current levels of production from Federal land for approximately 20 years.

The programmatic review of the Federal coal program will include opportunities for public participation, which began with six scoping meetings for the Programmatic Environmental Impact Statement (PEIS). The scoping meetings were held across the United States in Wyoming, Utah, Tennessee, Washington, Colorado and Pennsylvania. The Department will release an interim report by the end of 2016 based on the scoping process, alternatives that will be evaluated in the PEIS and, as appropriate, any initial analytical results. The full programmatic review is expected to take approximately 3 years.

In your letter, you asked about legal authorities for issuing the Secretarial Order, which include, but are not limited to, the Mineral Leasing Act, 30 U.S.C. §§ 181 *et seq.*; the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351 *et seq.*; the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*; the Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201 *et seq.*; and the Federal Land Policy and Management Act, 43 U.S.C. §§ *et seq.* Secretary Jewell directed the BLM to conduct a broad, programmatic review of the Federal coal program it

administers through the preparation of a discretionary PEIS under the National Environmental Policy Act. The Department is authorized to undertake this effort in its stewardship role as a public land manager. The Department is charged by Congress with managing and overseeing mineral development on public lands, not only for the purpose of ensuring safe and responsible development of mineral resources, but also to ensure conservation of the resources, protection of scientific, historic, and environmental values on the public lands, and compliance with applicable environmental laws. In addition, the Department has the statutory duty to ensure a fair return to the taxpayer and broad discretionary authority to decide where, when, and under what terms and conditions, mineral development should occur, including with respect to the issuance of Federal coal leases.

You raised concerns about the potential for loss of revenue to Federal, state, and local governments, as well as the potential impact on employment in the coal industry, stemming from the pause on new coal leases. The pause should not significantly affect production of Federal coal. The pause does not apply to existing leases and coal production activities, and we estimate that currently there are about 20 years of recoverable coal reserves, at current production levels, under lease on Federal lands. In addition, the Secretarial Order provided limited exclusions to the pause for small lease modifications (160 acres or less), coal lease exchanges, certain preference right lease interests, and emergency circumstances. For the applications that were pending when the Secretarial Order was issued and that do not fit within an exclusion from the pause, the BLM may continue to process the applications up to, but not including, issuance of a final decision to hold a sale or modify a lease.

The pause also does not apply to pending lease applications that have already completed environmental analysis and received a final Record of Decision or Decision Records by the BLM or the applicable Federal surface management agency, including those decisions that are undergoing re-evaluation after having been vacated by judicial decision. Furthermore, the pause does not apply to metallurgical coal (used in steel production), renewals of existing leases, or other BLM, Office of Surface Mining Reclamation and Enforcement, or Office of Natural Resources Revenue (ONRR) actions related to the Federal coal program, such as mine plan approvals. Additionally, the pause does not apply to coal leases on tribal or allotted lands.

Based on these considerations, overall, the Department does not expect the pause either to significantly affect current production, or to have any material impact on Federal, state, and local government revenue, or on employment, either now or in the future.

We recognize and share your deep concerns about the economic distress facing the coal industry and coal-dependent communities today. We have seen the results of these economic challenges reflected in bankruptcies, job losses, and the low industry interest in new leases. These economic challenges began long before the Secretarial Order and reflect market forces outside the Department that predate the Order. Far from exacerbating these market forces, the programmatic review aims to provide us a better understanding of the issues confronting the coal industry now and in the future. In addition, the Obama Administration is responding to coal industry job losses through various initiatives (such as the POWER+ Plan, which invests in coal communities, workers, and technologies) and will continue to do so in the future. We would welcome your support for these efforts.

You also asked about recent actions taken to address recommendations of the U.S. Government Accountability Office and the Department of the Interior's Office of Inspector General regarding the Federal coal program. There have been 2 recent audits of the BLM's coal management program resulting in a total of 21 recommendations under the general categories of (1) coal leasing and exports, (2) inspection and enforcement, (3) royalty rate reductions, and (4) transparency.¹ To date, the actions taken by the BLM to address recommendations related to each of the four general coal management categories include the following:

- **Coal Leasing and Exports**: The BLM published (in cooperation with the Office of Valuation Services) the Coal Evaluation Manual and Handbook that establishes fair market value guidance, procedures, and third party reviews. In the handbook, the BLM provided domestic and export market consideration criteria, and guidance to require use of the same standards for lease sales and lease modifications. The BLM also issued policies to standardize the evaluation requirements for lease sales, bid rejections, and reoffers, and to emphasize internal controls and safeguards for fair market value records.
- **Inspection and Enforcement**: The BLM published a new Inspection and Enforcement Handbook and Manual; developed policy to ensure the integrity of exploration data; developed online training and national standards for conducting inspections; evaluated its enforcement capabilities with the Department's Office of the Solicitor; issued policy on rotation, cross-training, and succession planning for mine inspectors; and developed an inspector certification program.
- **Royalty Rate Reductions**: The BLM issued new royalty-rate-reduction guidance to streamline the application review process and required consultation with ONRR for financial hardship royalty-rate-reduction application processing.
- **Transparency**: The BLM developed guidance on release of fair market value information to the public and developed guidance on coal lease sales information that should be listed on BLM websites.

We look forward to working with you and other interested Members of Congress as we address these complex issues surrounding management of the public's coal resources. A similar reply is being sent to the co-signers of your correspondence.

Sincerely,



Janice M. Schneider
Assistant Secretary
Land and Minerals Management

¹ The Office of the Inspector General, U.S. Department of the Interior, Final Evaluation Report – Coal Management Program (CR-EV-BLM-0001-2012) (June 11, 2013), and The U.S. Government Accountability Office, Coal Leasing: BLM Could Enhance Appraisal Process, More Explicitly Consider Coal Exports, and Provide More Public Information (GAO-14-140) (December 18, 2013), Publicly Released February 4, 2014.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 27 2016

The Honorable Don Young
House of Representatives
Washington, DC 20515

Dear Representative Young:

Thank you for your letter dated February 26, 2016, to Secretary of the Interior Sally Jewell regarding the Federal coal program. Secretary Jewell has asked me to respond on her behalf. I appreciate that you took the time to share your concerns regarding Secretarial Order No. 3338, which directs the Bureau of Land Management (BLM) to launch a comprehensive review of the Federal coal program.

While the review is underway, the Department of the Interior (Department) is instituting a pause on the issuance of new coal leases on Federal lands, subject to limited, enumerated exemptions and exclusions, so that those leasing decisions can benefit from the recommendations that result from the review. Given the abundance of coal reserves under lease, declining demand for coal, and accommodations that will be made for emergency and other enumerated circumstances, the pause should have no material impact on the Nation's coal production levels, currently or in the foreseeable future. During and after the pause, companies can continue to mine the large amount of coal reserves already under lease, estimated to be enough to sustain current levels of production from Federal land for approximately 20 years.

The programmatic review of the Federal coal program will include opportunities for public participation, which began with six scoping meetings for the Programmatic Environmental Impact Statement (PEIS). The scoping meetings were held across the United States in Wyoming, Utah, Tennessee, Washington, Colorado and Pennsylvania. The Department will release an interim report by the end of 2016 based on the scoping process, alternatives that will be evaluated in the PEIS and, as appropriate, any initial analytical results. The full programmatic review is expected to take approximately 3 years.

In your letter, you asked about legal authorities for issuing the Secretarial Order, which include, but are not limited to, the Mineral Leasing Act, 30 U.S.C. §§ 181 *et seq.*; the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351 *et seq.*; the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*; the Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201 *et seq.*; and the Federal Land Policy and Management Act, 43 U.S.C. §§ *et seq.* Secretary Jewell directed the BLM to conduct a broad, programmatic review of the Federal coal program it

administers through the preparation of a discretionary PEIS under the National Environmental Policy Act. The Department is authorized to undertake this effort in its stewardship role as a public land manager. The Department is charged by Congress with managing and overseeing mineral development on public lands, not only for the purpose of ensuring safe and responsible development of mineral resources, but also to ensure conservation of the resources, protection of scientific, historic, and environmental values on the public lands, and compliance with applicable environmental laws. In addition, the Department has the statutory duty to ensure a fair return to the taxpayer and broad discretionary authority to decide where, when, and under what terms and conditions, mineral development should occur, including with respect to the issuance of Federal coal leases.

You raised concerns about the potential for loss of revenue to Federal, state, and local governments, as well as the potential impact on employment in the coal industry, stemming from the pause on new coal leases. The pause should not significantly affect production of Federal coal. The pause does not apply to existing leases and coal production activities, and we estimate that currently there are about 20 years of recoverable coal reserves, at current production levels, under lease on Federal lands. In addition, the Secretarial Order provided limited exclusions to the pause for small lease modifications (160 acres or less), coal lease exchanges, certain preference right lease interests, and emergency circumstances. For the applications that were pending when the Secretarial Order was issued and that do not fit within an exclusion from the pause, the BLM may continue to process the applications up to, but not including, issuance of a final decision to hold a sale or modify a lease.

The pause also does not apply to pending lease applications that have already completed environmental analysis and received a final Record of Decision or Decision Records by the BLM or the applicable Federal surface management agency, including those decisions that are undergoing re-evaluation after having been vacated by judicial decision. Furthermore, the pause does not apply to metallurgical coal (used in steel production), renewals of existing leases, or other BLM, Office of Surface Mining Reclamation and Enforcement, or Office of Natural Resources Revenue (ONRR) actions related to the Federal coal program, such as mine plan approvals. Additionally, the pause does not apply to coal leases on tribal or allotted lands.

Based on these considerations, overall, the Department does not expect the pause either to significantly affect current production, or to have any material impact on Federal, state, and local government revenue, or on employment, either now or in the future.

We recognize and share your deep concerns about the economic distress facing the coal industry and coal-dependent communities today. We have seen the results of these economic challenges reflected in bankruptcies, job losses, and the low industry interest in new leases. These economic challenges began long before the Secretarial Order and reflect market forces outside the Department that predate the Order. Far from exacerbating these market forces, the programmatic review aims to provide us a better understanding of the issues confronting the coal industry now and in the future. In addition, the Obama Administration is responding to coal industry job losses through various initiatives (such as the POWER+ Plan, which invests in coal communities, workers, and technologies) and will continue to do so in the future. We would welcome your support for these efforts.

You also asked about recent actions taken to address recommendations of the U.S. Government Accountability Office and the Department of the Interior's Office of Inspector General regarding the Federal coal program. There have been 2 recent audits of the BLM's coal management program resulting in a total of 21 recommendations under the general categories of (1) coal leasing and exports, (2) inspection and enforcement, (3) royalty rate reductions, and (4) transparency.¹ To date, the actions taken by the BLM to address recommendations related to each of the four general coal management categories include the following:

- **Coal Leasing and Exports:** The BLM published (in cooperation with the Office of Valuation Services) the Coal Evaluation Manual and Handbook that establishes fair market value guidance, procedures, and third party reviews. In the handbook, the BLM provided domestic and export market consideration criteria, and guidance to require use of the same standards for lease sales and lease modifications. The BLM also issued policies to standardize the evaluation requirements for lease sales, bid rejections, and reoffers, and to emphasize internal controls and safeguards for fair market value records.
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- **Royalty Rate Reductions:** The BLM issued new royalty-rate-reduction guidance to streamline the application review process and required consultation with ONRR for financial hardship royalty-rate-reduction application processing.
- **Transparency:** The BLM developed guidance on release of fair market value information to the public and developed guidance on coal lease sales information that should be listed on BLM websites.

We look forward to working with you and other interested Members of Congress as we address these complex issues surrounding management of the public's coal resources. A similar reply is being sent to the co-signers of your correspondence.

Sincerely,



Janice M. Schneider
Assistant Secretary
Land and Minerals Management

¹ The Office of the Inspector General, U.S. Department of the Interior, Final Evaluation Report – Coal Management Program (CR-EV-BLM-0001-2012) (June 11, 2013), and The U.S. Government Accountability Office, Coal Leasing: BLM Could Enhance Appraisal Process, More Explicitly Consider Coal Exports, and Provide More Public Information (GAO-14-140) (December 18, 2013), Publicly Released February 4, 2014.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 27 2016

The Honorable Stevan Pearce
House of Representatives
Washington, DC 20515

Dear Representative Pearce:

Thank you for your letter dated February 26, 2016, to Secretary of the Interior Sally Jewell regarding the Federal coal program. Secretary Jewell has asked me to respond on her behalf. I appreciate that you took the time to share your concerns regarding Secretarial Order No. 3338, which directs the Bureau of Land Management (BLM) to launch a comprehensive review of the Federal coal program.

While the review is underway, the Department of the Interior (Department) is instituting a pause on the issuance of new coal leases on Federal lands, subject to limited, enumerated exemptions and exclusions, so that those leasing decisions can benefit from the recommendations that result from the review. Given the abundance of coal reserves under lease, declining demand for coal, and accommodations that will be made for emergency and other enumerated circumstances, the pause should have no material impact on the Nation's coal production levels, currently or in the foreseeable future. During and after the pause, companies can continue to mine the large amount of coal reserves already under lease, estimated to be enough to sustain current levels of production from Federal land for approximately 20 years.

The programmatic review of the Federal coal program will include opportunities for public participation, which began with six scoping meetings for the Programmatic Environmental Impact Statement (PEIS). The scoping meetings were held across the United States in Wyoming, Utah, Tennessee, Washington, Colorado and Pennsylvania. The Department will release an interim report by the end of 2016 based on the scoping process, alternatives that will be evaluated in the PEIS and, as appropriate, any initial analytical results. The full programmatic review is expected to take approximately 3 years.

In your letter, you asked about legal authorities for issuing the Secretarial Order, which include, but are not limited to, the Mineral Leasing Act, 30 U.S.C. §§ 181 *et seq.*; the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351 *et seq.*; the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*; the Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201 *et seq.*; and the Federal Land Policy and Management Act, 43 U.S.C. §§ *et seq.* Secretary Jewell directed the BLM to conduct a broad, programmatic review of the Federal coal program it

administers through the preparation of a discretionary PEIS under the National Environmental Policy Act. The Department is authorized to undertake this effort in its stewardship role as a public land manager. The Department is charged by Congress with managing and overseeing mineral development on public lands, not only for the purpose of ensuring safe and responsible development of mineral resources, but also to ensure conservation of the resources, protection of scientific, historic, and environmental values on the public lands, and compliance with applicable environmental laws. In addition, the Department has the statutory duty to ensure a fair return to the taxpayer and broad discretionary authority to decide where, when, and under what terms and conditions, mineral development should occur, including with respect to the issuance of Federal coal leases.

You raised concerns about the potential for loss of revenue to Federal, state, and local governments, as well as the potential impact on employment in the coal industry, stemming from the pause on new coal leases. The pause should not significantly affect production of Federal coal. The pause does not apply to existing leases and coal production activities, and we estimate that currently there are about 20 years of recoverable coal reserves, at current production levels, under lease on Federal lands. In addition, the Secretarial Order provided limited exclusions to the pause for small lease modifications (160 acres or less), coal lease exchanges, certain preference right lease interests, and emergency circumstances. For the applications that were pending when the Secretarial Order was issued and that do not fit within an exclusion from the pause, the BLM may continue to process the applications up to, but not including, issuance of a final decision to hold a sale or modify a lease.

The pause also does not apply to pending lease applications that have already completed environmental analysis and received a final Record of Decision or Decision Records by the BLM or the applicable Federal surface management agency, including those decisions that are undergoing re-evaluation after having been vacated by judicial decision. Furthermore, the pause does not apply to metallurgical coal (used in steel production), renewals of existing leases, or other BLM, Office of Surface Mining Reclamation and Enforcement, or Office of Natural Resources Revenue (ONRR) actions related to the Federal coal program, such as mine plan approvals. Additionally, the pause does not apply to coal leases on tribal or allotted lands.

Based on these considerations, overall, the Department does not expect the pause either to significantly affect current production, or to have any material impact on Federal, state, and local government revenue, or on employment, either now or in the future.

We recognize and share your deep concerns about the economic distress facing the coal industry and coal-dependent communities today. We have seen the results of these economic challenges reflected in bankruptcies, job losses, and the low industry interest in new leases. These economic challenges began long before the Secretarial Order and reflect market forces outside the Department that predate the Order. Far from exacerbating these market forces, the programmatic review aims to provide us a better understanding of the issues confronting the coal industry now and in the future. In addition, the Obama Administration is responding to coal industry job losses through various initiatives (such as the POWER+ Plan, which invests in coal communities, workers, and technologies) and will continue to do so in the future. We would welcome your support for these efforts.

You also asked about recent actions taken to address recommendations of the U.S. Government Accountability Office and the Department of the Interior's Office of Inspector General regarding the Federal coal program. There have been 2 recent audits of the BLM's coal management program resulting in a total of 21 recommendations under the general categories of (1) coal leasing and exports, (2) inspection and enforcement, (3) royalty rate reductions, and (4) transparency.¹ To date, the actions taken by the BLM to address recommendations related to each of the four general coal management categories include the following:

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We look forward to working with you and other interested Members of Congress as we address these complex issues surrounding management of the public's coal resources. A similar reply is being sent to the co-signers of your correspondence.

Sincerely,



Janice M. Schneider
Assistant Secretary
Land and Minerals Management

¹ The Office of the Inspector General, U.S. Department of the Interior, Final Evaluation Report – Coal Management Program (CR-EV-BLM-0001-2012) (June 11, 2013), and The U.S. Government Accountability Office, Coal Leasing: BLM Could Enhance Appraisal Process, More Explicitly Consider Coal Exports, and Provide More Public Information (GAO-14-140) (December 18, 2013), Publicly Released February 4, 2014.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 27 2016

The Honorable Scott Tipton
House of Representatives
Washington, DC 20515

Dear Representative Tipton:

Thank you for your letter dated February 26, 2016, to Secretary of the Interior Sally Jewell regarding the Federal coal program. Secretary Jewell has asked me to respond on her behalf. I appreciate that you took the time to share your concerns regarding Secretarial Order No. 3338, which directs the Bureau of Land Management (BLM) to launch a comprehensive review of the Federal coal program.

While the review is underway, the Department of the Interior (Department) is instituting a pause on the issuance of new coal leases on Federal lands, subject to limited, enumerated exemptions and exclusions, so that those leasing decisions can benefit from the recommendations that result from the review. Given the abundance of coal reserves under lease, declining demand for coal, and accommodations that will be made for emergency and other enumerated circumstances, the pause should have no material impact on the Nation's coal production levels, currently or in the foreseeable future. During and after the pause, companies can continue to mine the large amount of coal reserves already under lease, estimated to be enough to sustain current levels of production from Federal land for approximately 20 years.

The programmatic review of the Federal coal program will include opportunities for public participation, which began with six scoping meetings for the Programmatic Environmental Impact Statement (PEIS). The scoping meetings were held across the United States in Wyoming, Utah, Tennessee, Washington, Colorado and Pennsylvania. The Department will release an interim report by the end of 2016 based on the scoping process, alternatives that will be evaluated in the PEIS and, as appropriate, any initial analytical results. The full programmatic review is expected to take approximately 3 years.

In your letter, you asked about legal authorities for issuing the Secretarial Order, which include, but are not limited to, the Mineral Leasing Act, 30 U.S.C. §§ 181 *et seq.*; the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351 *et seq.*; the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*; the Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201 *et seq.*; and the Federal Land Policy and Management Act, 43 U.S.C. §§ *et seq.* Secretary Jewell directed the BLM to conduct a broad, programmatic review of the Federal coal program it

administers through the preparation of a discretionary PEIS under the National Environmental Policy Act. The Department is authorized to undertake this effort in its stewardship role as a public land manager. The Department is charged by Congress with managing and overseeing mineral development on public lands, not only for the purpose of ensuring safe and responsible development of mineral resources, but also to ensure conservation of the resources, protection of scientific, historic, and environmental values on the public lands, and compliance with applicable environmental laws. In addition, the Department has the statutory duty to ensure a fair return to the taxpayer and broad discretionary authority to decide where, when, and under what terms and conditions, mineral development should occur, including with respect to the issuance of Federal coal leases.

You raised concerns about the potential for loss of revenue to Federal, state, and local governments, as well as the potential impact on employment in the coal industry, stemming from the pause on new coal leases. The pause should not significantly affect production of Federal coal. The pause does not apply to existing leases and coal production activities, and we estimate that currently there are about 20 years of recoverable coal reserves, at current production levels, under lease on Federal lands. In addition, the Secretarial Order provided limited exclusions to the pause for small lease modifications (160 acres or less), coal lease exchanges, certain preference right lease interests, and emergency circumstances. For the applications that were pending when the Secretarial Order was issued and that do not fit within an exclusion from the pause, the BLM may continue to process the applications up to, but not including, issuance of a final decision to hold a sale or modify a lease.

The pause also does not apply to pending lease applications that have already completed environmental analysis and received a final Record of Decision or Decision Records by the BLM or the applicable Federal surface management agency, including those decisions that are undergoing re-evaluation after having been vacated by judicial decision. Furthermore, the pause does not apply to metallurgical coal (used in steel production), renewals of existing leases, or other BLM, Office of Surface Mining Reclamation and Enforcement, or Office of Natural Resources Revenue (ONRR) actions related to the Federal coal program, such as mine plan approvals. Additionally, the pause does not apply to coal leases on tribal or allotted lands.

Based on these considerations, overall, the Department does not expect the pause either to significantly affect current production, or to have any material impact on Federal, state, and local government revenue, or on employment, either now or in the future.

We recognize and share your deep concerns about the economic distress facing the coal industry and coal-dependent communities today. We have seen the results of these economic challenges reflected in bankruptcies, job losses, and the low industry interest in new leases. These economic challenges began long before the Secretarial Order and reflect market forces outside the Department that predate the Order. Far from exacerbating these market forces, the programmatic review aims to provide us a better understanding of the issues confronting the coal industry now and in the future. In addition, the Obama Administration is responding to coal industry job losses through various initiatives (such as the POWER+ Plan, which invests in coal communities, workers, and technologies) and will continue to do so in the future. We would welcome your support for these efforts.

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We look forward to working with you and other interested Members of Congress as we address these complex issues surrounding management of the public's coal resources. A similar reply is being sent to the co-signers of your correspondence.

Sincerely,



Janice M. Schneider
Assistant Secretary
Land and Minerals Management

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United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 27 2016

The Honorable Bruce Westerman
House of Representatives
Washington, DC 20515

Dear Representative Westerman:

Thank you for your letter dated February 26, 2016, to Secretary of the Interior Sally Jewell regarding the Federal coal program. Secretary Jewell has asked me to respond on her behalf. I appreciate that you took the time to share your concerns regarding Secretarial Order No. 3338, which directs the Bureau of Land Management (BLM) to launch a comprehensive review of the Federal coal program.

While the review is underway, the Department of the Interior (Department) is instituting a pause on the issuance of new coal leases on Federal lands, subject to limited, enumerated exemptions and exclusions, so that those leasing decisions can benefit from the recommendations that result from the review. Given the abundance of coal reserves under lease, declining demand for coal, and accommodations that will be made for emergency and other enumerated circumstances, the pause should have no material impact on the Nation's coal production levels, currently or in the foreseeable future. During and after the pause, companies can continue to mine the large amount of coal reserves already under lease, estimated to be enough to sustain current levels of production from Federal land for approximately 20 years.

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administers through the preparation of a discretionary PEIS under the National Environmental Policy Act. The Department is authorized to undertake this effort in its stewardship role as a public land manager. The Department is charged by Congress with managing and overseeing mineral development on public lands, not only for the purpose of ensuring safe and responsible development of mineral resources, but also to ensure conservation of the resources, protection of scientific, historic, and environmental values on the public lands, and compliance with applicable environmental laws. In addition, the Department has the statutory duty to ensure a fair return to the taxpayer and broad discretionary authority to decide where, when, and under what terms and conditions, mineral development should occur, including with respect to the issuance of Federal coal leases.

You raised concerns about the potential for loss of revenue to Federal, state, and local governments, as well as the potential impact on employment in the coal industry, stemming from the pause on new coal leases. The pause should not significantly affect production of Federal coal. The pause does not apply to existing leases and coal production activities, and we estimate that currently there are about 20 years of recoverable coal reserves, at current production levels, under lease on Federal lands. In addition, the Secretarial Order provided limited exclusions to the pause for small lease modifications (160 acres or less), coal lease exchanges, certain preference right lease interests, and emergency circumstances. For the applications that were pending when the Secretarial Order was issued and that do not fit within an exclusion from the pause, the BLM may continue to process the applications up to, but not including, issuance of a final decision to hold a sale or modify a lease.

The pause also does not apply to pending lease applications that have already completed environmental analysis and received a final Record of Decision or Decision Records by the BLM or the applicable Federal surface management agency, including those decisions that are undergoing re-evaluation after having been vacated by judicial decision. Furthermore, the pause does not apply to metallurgical coal (used in steel production), renewals of existing leases, or other BLM, Office of Surface Mining Reclamation and Enforcement, or Office of Natural Resources Revenue (ONRR) actions related to the Federal coal program, such as mine plan approvals. Additionally, the pause does not apply to coal leases on tribal or allotted lands.

Based on these considerations, overall, the Department does not expect the pause either to significantly affect current production, or to have any material impact on Federal, state, and local government revenue, or on employment, either now or in the future.

We recognize and share your deep concerns about the economic distress facing the coal industry and coal-dependent communities today. We have seen the results of these economic challenges reflected in bankruptcies, job losses, and the low industry interest in new leases. These economic challenges began long before the Secretarial Order and reflect market forces outside the Department that predate the Order. Far from exacerbating these market forces, the programmatic review aims to provide us a better understanding of the issues confronting the coal industry now and in the future. In addition, the Obama Administration is responding to coal industry job losses through various initiatives (such as the POWER+ Plan, which invests in coal communities, workers, and technologies) and will continue to do so in the future. We would welcome your support for these efforts.

You also asked about recent actions taken to address recommendations of the U.S. Government Accountability Office and the Department of the Interior's Office of Inspector General regarding the Federal coal program. There have been 2 recent audits of the BLM's coal management program resulting in a total of 21 recommendations under the general categories of (1) coal leasing and exports, (2) inspection and enforcement, (3) royalty rate reductions, and (4) transparency.¹ To date, the actions taken by the BLM to address recommendations related to each of the four general coal management categories include the following:

- **Coal Leasing and Exports**: The BLM published (in cooperation with the Office of Valuation Services) the Coal Evaluation Manual and Handbook that establishes fair market value guidance, procedures, and third party reviews. In the handbook, the BLM provided domestic and export market consideration criteria, and guidance to require use of the same standards for lease sales and lease modifications. The BLM also issued policies to standardize the evaluation requirements for lease sales, bid rejections, and reoffers, and to emphasize internal controls and safeguards for fair market value records.
- **Inspection and Enforcement**: The BLM published a new Inspection and Enforcement Handbook and Manual; developed policy to ensure the integrity of exploration data; developed online training and national standards for conducting inspections; evaluated its enforcement capabilities with the Department's Office of the Solicitor; issued policy on rotation, cross-training, and succession planning for mine inspectors; and developed an inspector certification program.
- **Royalty Rate Reductions**: The BLM issued new royalty-rate-reduction guidance to streamline the application review process and required consultation with ONRR for financial hardship royalty-rate-reduction application processing.
- **Transparency**: The BLM developed guidance on release of fair market value information to the public and developed guidance on coal lease sales information that should be listed on BLM websites.

We look forward to working with you and other interested Members of Congress as we address these complex issues surrounding management of the public's coal resources. A similar reply is being sent to the co-signers of your correspondence.

Sincerely,



Janice M. Schneider
Assistant Secretary
Land and Minerals Management

¹ The Office of the Inspector General, U.S. Department of the Interior, Final Evaluation Report – Coal Management Program (CR-EV-BLM-0001-2012) (June 11, 2013), and The U.S. Government Accountability Office, Coal Leasing: BLM Could Enhance Appraisal Process, More Explicitly Consider Coal Exports, and Provide More Public Information (GAO-14-140) (December 18, 2013), Publicly Released February 4, 2014.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 27 2016

The Honorable Louie Gohmert
House of Representatives
Washington, DC 20515

Dear Representative Gohmert:

Thank you for your letter dated February 26, 2016, to Secretary of the Interior Sally Jewell regarding the Federal coal program. Secretary Jewell has asked me to respond on her behalf. I appreciate that you took the time to share your concerns regarding Secretarial Order No. 3338, which directs the Bureau of Land Management (BLM) to launch a comprehensive review of the Federal coal program.

While the review is underway, the Department of the Interior (Department) is instituting a pause on the issuance of new coal leases on Federal lands, subject to limited, enumerated exemptions and exclusions, so that those leasing decisions can benefit from the recommendations that result from the review. Given the abundance of coal reserves under lease, declining demand for coal, and accommodations that will be made for emergency and other enumerated circumstances, the pause should have no material impact on the Nation's coal production levels, currently or in the foreseeable future. During and after the pause, companies can continue to mine the large amount of coal reserves already under lease, estimated to be enough to sustain current levels of production from Federal land for approximately 20 years.

The programmatic review of the Federal coal program will include opportunities for public participation, which began with six scoping meetings for the Programmatic Environmental Impact Statement (PEIS). The scoping meetings were held across the United States in Wyoming, Utah, Tennessee, Washington, Colorado and Pennsylvania. The Department will release an interim report by the end of 2016 based on the scoping process, alternatives that will be evaluated in the PEIS and, as appropriate, any initial analytical results. The full programmatic review is expected to take approximately 3 years.

In your letter, you asked about legal authorities for issuing the Secretarial Order, which include, but are not limited to, the Mineral Leasing Act, 30 U.S.C. §§ 181 *et seq.*; the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351 *et seq.*; the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*; the Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201 *et seq.*; and the Federal Land Policy and Management Act, 43 U.S.C. §§ *et seq.* Secretary Jewell directed the BLM to conduct a broad, programmatic review of the Federal coal program it

administers through the preparation of a discretionary PEIS under the National Environmental Policy Act. The Department is authorized to undertake this effort in its stewardship role as a public land manager. The Department is charged by Congress with managing and overseeing mineral development on public lands, not only for the purpose of ensuring safe and responsible development of mineral resources, but also to ensure conservation of the resources, protection of scientific, historic, and environmental values on the public lands, and compliance with applicable environmental laws. In addition, the Department has the statutory duty to ensure a fair return to the taxpayer and broad discretionary authority to decide where, when, and under what terms and conditions, mineral development should occur, including with respect to the issuance of Federal coal leases.

You raised concerns about the potential for loss of revenue to Federal, state, and local governments, as well as the potential impact on employment in the coal industry, stemming from the pause on new coal leases. The pause should not significantly affect production of Federal coal. The pause does not apply to existing leases and coal production activities, and we estimate that currently there are about 20 years of recoverable coal reserves, at current production levels, under lease on Federal lands. In addition, the Secretarial Order provided limited exclusions to the pause for small lease modifications (160 acres or less), coal lease exchanges, certain preference right lease interests, and emergency circumstances. For the applications that were pending when the Secretarial Order was issued and that do not fit within an exclusion from the pause, the BLM may continue to process the applications up to, but not including, issuance of a final decision to hold a sale or modify a lease.

The pause also does not apply to pending lease applications that have already completed environmental analysis and received a final Record of Decision or Decision Records by the BLM or the applicable Federal surface management agency, including those decisions that are undergoing re-evaluation after having been vacated by judicial decision. Furthermore, the pause does not apply to metallurgical coal (used in steel production), renewals of existing leases, or other BLM, Office of Surface Mining Reclamation and Enforcement, or Office of Natural Resources Revenue (ONRR) actions related to the Federal coal program, such as mine plan approvals. Additionally, the pause does not apply to coal leases on tribal or allotted lands.

Based on these considerations, overall, the Department does not expect the pause either to significantly affect current production, or to have any material impact on Federal, state, and local government revenue, or on employment, either now or in the future.

We recognize and share your deep concerns about the economic distress facing the coal industry and coal-dependent communities today. We have seen the results of these economic challenges reflected in bankruptcies, job losses, and the low industry interest in new leases. These economic challenges began long before the Secretarial Order and reflect market forces outside the Department that predate the Order. Far from exacerbating these market forces, the programmatic review aims to provide us a better understanding of the issues confronting the coal industry now and in the future. In addition, the Obama Administration is responding to coal industry job losses through various initiatives (such as the POWER+ Plan, which invests in coal communities, workers, and technologies) and will continue to do so in the future. We would welcome your support for these efforts.

You also asked about recent actions taken to address recommendations of the U.S. Government Accountability Office and the Department of the Interior's Office of Inspector General regarding the Federal coal program. There have been 2 recent audits of the BLM's coal management program resulting in a total of 21 recommendations under the general categories of (1) coal leasing and exports, (2) inspection and enforcement, (3) royalty rate reductions, and (4) transparency.¹ To date, the actions taken by the BLM to address recommendations related to each of the four general coal management categories include the following:

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We look forward to working with you and other interested Members of Congress as we address these complex issues surrounding management of the public's coal resources. A similar reply is being sent to the co-signers of your correspondence.

Sincerely,



Janice M. Schneider
Assistant Secretary
Land and Minerals Management

¹ The Office of the Inspector General, U.S. Department of the Interior, Final Evaluation Report – Coal Management Program (CR-EV-BLM-0001-2012) (June 11, 2013), and The U.S. Government Accountability Office, Coal Leasing: BLM Could Enhance Appraisal Process, More Explicitly Consider Coal Exports, and Provide More Public Information (GAO-14-140) (December 18, 2013), Publicly Released February 4, 2014.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 27 2016

The Honorable Jason Smith
House of Representatives
Washington, DC 20515

Dear Representative Smith:

Thank you for your letter dated February 26, 2016, to Secretary of the Interior Sally Jewell regarding the Federal coal program. Secretary Jewell has asked me to respond on her behalf. I appreciate that you took the time to share your concerns regarding Secretarial Order No. 3338, which directs the Bureau of Land Management (BLM) to launch a comprehensive review of the Federal coal program.

While the review is underway, the Department of the Interior (Department) is instituting a pause on the issuance of new coal leases on Federal lands, subject to limited, enumerated exemptions and exclusions, so that those leasing decisions can benefit from the recommendations that result from the review. Given the abundance of coal reserves under lease, declining demand for coal, and accommodations that will be made for emergency and other enumerated circumstances, the pause should have no material impact on the Nation's coal production levels, currently or in the foreseeable future. During and after the pause, companies can continue to mine the large amount of coal reserves already under lease, estimated to be enough to sustain current levels of production from Federal land for approximately 20 years.

The programmatic review of the Federal coal program will include opportunities for public participation, which began with six scoping meetings for the Programmatic Environmental Impact Statement (PEIS). The scoping meetings were held across the United States in Wyoming, Utah, Tennessee, Washington, Colorado and Pennsylvania. The Department will release an interim report by the end of 2016 based on the scoping process, alternatives that will be evaluated in the PEIS and, as appropriate, any initial analytical results. The full programmatic review is expected to take approximately 3 years.

In your letter, you asked about legal authorities for issuing the Secretarial Order, which include, but are not limited to, the Mineral Leasing Act, 30 U.S.C. §§ 181 *et seq.*; the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351 *et seq.*; the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*; the Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201 *et seq.*; and the Federal Land Policy and Management Act, 43 U.S.C. §§ *et seq.* Secretary Jewell directed the BLM to conduct a broad, programmatic review of the Federal coal program it

administers through the preparation of a discretionary PEIS under the National Environmental Policy Act. The Department is authorized to undertake this effort in its stewardship role as a public land manager. The Department is charged by Congress with managing and overseeing mineral development on public lands, not only for the purpose of ensuring safe and responsible development of mineral resources, but also to ensure conservation of the resources, protection of scientific, historic, and environmental values on the public lands, and compliance with applicable environmental laws. In addition, the Department has the statutory duty to ensure a fair return to the taxpayer and broad discretionary authority to decide where, when, and under what terms and conditions, mineral development should occur, including with respect to the issuance of Federal coal leases.

You raised concerns about the potential for loss of revenue to Federal, state, and local governments, as well as the potential impact on employment in the coal industry, stemming from the pause on new coal leases. The pause should not significantly affect production of Federal coal. The pause does not apply to existing leases and coal production activities, and we estimate that currently there are about 20 years of recoverable coal reserves, at current production levels, under lease on Federal lands. In addition, the Secretarial Order provided limited exclusions to the pause for small lease modifications (160 acres or less), coal lease exchanges, certain preference right lease interests, and emergency circumstances. For the applications that were pending when the Secretarial Order was issued and that do not fit within an exclusion from the pause, the BLM may continue to process the applications up to, but not including, issuance of a final decision to hold a sale or modify a lease.

The pause also does not apply to pending lease applications that have already completed environmental analysis and received a final Record of Decision or Decision Records by the BLM or the applicable Federal surface management agency, including those decisions that are undergoing re-evaluation after having been vacated by judicial decision. Furthermore, the pause does not apply to metallurgical coal (used in steel production), renewals of existing leases, or other BLM, Office of Surface Mining Reclamation and Enforcement, or Office of Natural Resources Revenue (ONRR) actions related to the Federal coal program, such as mine plan approvals. Additionally, the pause does not apply to coal leases on tribal or allotted lands.

Based on these considerations, overall, the Department does not expect the pause either to significantly affect current production, or to have any material impact on Federal, state, and local government revenue, or on employment, either now or in the future.

We recognize and share your deep concerns about the economic distress facing the coal industry and coal-dependent communities today. We have seen the results of these economic challenges reflected in bankruptcies, job losses, and the low industry interest in new leases. These economic challenges began long before the Secretarial Order and reflect market forces outside the Department that predate the Order. Far from exacerbating these market forces, the programmatic review aims to provide us a better understanding of the issues confronting the coal industry now and in the future. In addition, the Obama Administration is responding to coal industry job losses through various initiatives (such as the POWER+ Plan, which invests in coal communities, workers, and technologies) and will continue to do so in the future. We would welcome your support for these efforts.

You also asked about recent actions taken to address recommendations of the U.S. Government Accountability Office and the Department of the Interior's Office of Inspector General regarding the Federal coal program. There have been 2 recent audits of the BLM's coal management program resulting in a total of 21 recommendations under the general categories of (1) coal leasing and exports, (2) inspection and enforcement, (3) royalty rate reductions, and (4) transparency.¹ To date, the actions taken by the BLM to address recommendations related to each of the four general coal management categories include the following:

- **Coal Leasing and Exports**: The BLM published (in cooperation with the Office of Valuation Services) the Coal Evaluation Manual and Handbook that establishes fair market value guidance, procedures, and third party reviews. In the handbook, the BLM provided domestic and export market consideration criteria, and guidance to require use of the same standards for lease sales and lease modifications. The BLM also issued policies to standardize the evaluation requirements for lease sales, bid rejections, and reoffers, and to emphasize internal controls and safeguards for fair market value records.
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- **Transparency**: The BLM developed guidance on release of fair market value information to the public and developed guidance on coal lease sales information that should be listed on BLM websites.

We look forward to working with you and other interested Members of Congress as we address these complex issues surrounding management of the public's coal resources. A similar reply is being sent to the co-signers of your correspondence.

Sincerely,



Janice M. Schneider
Assistant Secretary
Land and Minerals Management

¹ The Office of the Inspector General, U.S. Department of the Interior, Final Evaluation Report – Coal Management Program (CR-EV-BLM-0001-2012) (June 11, 2013), and The U.S. Government Accountability Office, Coal Leasing: BLM Could Enhance Appraisal Process, More Explicitly Consider Coal Exports, and Provide More Public Information (GAO-14-140) (December 18, 2013), Publicly Released February 4, 2014.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 27 2016

The Honorable Doug Lamborn
House of Representatives
Washington, DC 20515

Dear Representative Lamborn:

Thank you for your letter dated February 26, 2016, to Secretary of the Interior Sally Jewell regarding the Federal coal program. Secretary Jewell has asked me to respond on her behalf. I appreciate that you took the time to share your concerns regarding Secretarial Order No. 3338, which directs the Bureau of Land Management (BLM) to launch a comprehensive review of the Federal coal program.

While the review is underway, the Department of the Interior (Department) is instituting a pause on the issuance of new coal leases on Federal lands, subject to limited, enumerated exemptions and exclusions, so that those leasing decisions can benefit from the recommendations that result from the review. Given the abundance of coal reserves under lease, declining demand for coal, and accommodations that will be made for emergency and other enumerated circumstances, the pause should have no material impact on the Nation's coal production levels, currently or in the foreseeable future. During and after the pause, companies can continue to mine the large amount of coal reserves already under lease, estimated to be enough to sustain current levels of production from Federal land for approximately 20 years.

The programmatic review of the Federal coal program will include opportunities for public participation, which began with six scoping meetings for the Programmatic Environmental Impact Statement (PEIS). The scoping meetings were held across the United States in Wyoming, Utah, Tennessee, Washington, Colorado and Pennsylvania. The Department will release an interim report by the end of 2016 based on the scoping process, alternatives that will be evaluated in the PEIS and, as appropriate, any initial analytical results. The full programmatic review is expected to take approximately 3 years.

In your letter, you asked about legal authorities for issuing the Secretarial Order, which include, but are not limited to, the Mineral Leasing Act, 30 U.S.C. §§ 181 *et seq.*; the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351 *et seq.*; the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*; the Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201 *et seq.*; and the Federal Land Policy and Management Act, 43 U.S.C. §§ *et seq.* Secretary Jewell directed the BLM to conduct a broad, programmatic review of the Federal coal program it

administers through the preparation of a discretionary PEIS under the National Environmental Policy Act. The Department is authorized to undertake this effort in its stewardship role as a public land manager. The Department is charged by Congress with managing and overseeing mineral development on public lands, not only for the purpose of ensuring safe and responsible development of mineral resources, but also to ensure conservation of the resources, protection of scientific, historic, and environmental values on the public lands, and compliance with applicable environmental laws. In addition, the Department has the statutory duty to ensure a fair return to the taxpayer and broad discretionary authority to decide where, when, and under what terms and conditions, mineral development should occur, including with respect to the issuance of Federal coal leases.

You raised concerns about the potential for loss of revenue to Federal, state, and local governments, as well as the potential impact on employment in the coal industry, stemming from the pause on new coal leases. The pause should not significantly affect production of Federal coal. The pause does not apply to existing leases and coal production activities, and we estimate that currently there are about 20 years of recoverable coal reserves, at current production levels, under lease on Federal lands. In addition, the Secretarial Order provided limited exclusions to the pause for small lease modifications (160 acres or less), coal lease exchanges, certain preference right lease interests, and emergency circumstances. For the applications that were pending when the Secretarial Order was issued and that do not fit within an exclusion from the pause, the BLM may continue to process the applications up to, but not including, issuance of a final decision to hold a sale or modify a lease.

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Based on these considerations, overall, the Department does not expect the pause either to significantly affect current production, or to have any material impact on Federal, state, and local government revenue, or on employment, either now or in the future.

We recognize and share your deep concerns about the economic distress facing the coal industry and coal-dependent communities today. We have seen the results of these economic challenges reflected in bankruptcies, job losses, and the low industry interest in new leases. These economic challenges began long before the Secretarial Order and reflect market forces outside the Department that predate the Order. Far from exacerbating these market forces, the programmatic review aims to provide us a better understanding of the issues confronting the coal industry now and in the future. In addition, the Obama Administration is responding to coal industry job losses through various initiatives (such as the POWER+ Plan, which invests in coal communities, workers, and technologies) and will continue to do so in the future. We would welcome your support for these efforts.

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We look forward to working with you and other interested Members of Congress as we address these complex issues surrounding management of the public's coal resources. A similar reply is being sent to the co-signers of your correspondence.

Sincerely,



Janice M. Schneider
Assistant Secretary
Land and Minerals Management

¹ The Office of the Inspector General, U.S. Department of the Interior, Final Evaluation Report – Coal Management Program (CR-EV-BLM-0001-2012) (June 11, 2013), and The U.S. Government Accountability Office, Coal Leasing: BLM Could Enhance Appraisal Process, More Explicitly Consider Coal Exports, and Provide More Public Information (GAO-14-140) (December 18, 2013), Publicly Released February 4, 2014.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 27 2016

The Honorable Mike Bost
House of Representatives
Washington, DC 20515

Dear Representative Bost:

Thank you for your letter dated February 26, 2016, to Secretary of the Interior Sally Jewell regarding the Federal coal program. Secretary Jewell has asked me to respond on her behalf. I appreciate that you took the time to share your concerns regarding Secretarial Order No. 3338, which directs the Bureau of Land Management (BLM) to launch a comprehensive review of the Federal coal program.

While the review is underway, the Department of the Interior (Department) is instituting a pause on the issuance of new coal leases on Federal lands, subject to limited, enumerated exemptions and exclusions, so that those leasing decisions can benefit from the recommendations that result from the review. Given the abundance of coal reserves under lease, declining demand for coal, and accommodations that will be made for emergency and other enumerated circumstances, the pause should have no material impact on the Nation's coal production levels, currently or in the foreseeable future. During and after the pause, companies can continue to mine the large amount of coal reserves already under lease, estimated to be enough to sustain current levels of production from Federal land for approximately 20 years.

The programmatic review of the Federal coal program will include opportunities for public participation, which began with six scoping meetings for the Programmatic Environmental Impact Statement (PEIS). The scoping meetings were held across the United States in Wyoming, Utah, Tennessee, Washington, Colorado and Pennsylvania. The Department will release an interim report by the end of 2016 based on the scoping process, alternatives that will be evaluated in the PEIS and, as appropriate, any initial analytical results. The full programmatic review is expected to take approximately 3 years.

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We recognize and share your deep concerns about the economic distress facing the coal industry and coal-dependent communities today. We have seen the results of these economic challenges reflected in bankruptcies, job losses, and the low industry interest in new leases. These economic challenges began long before the Secretarial Order and reflect market forces outside the Department that predate the Order. Far from exacerbating these market forces, the programmatic review aims to provide us a better understanding of the issues confronting the coal industry now and in the future. In addition, the Obama Administration is responding to coal industry job losses through various initiatives (such as the POWER+ Plan, which invests in coal communities, workers, and technologies) and will continue to do so in the future. We would welcome your support for these efforts.

You also asked about recent actions taken to address recommendations of the U.S. Government Accountability Office and the Department of the Interior's Office of Inspector General regarding the Federal coal program. There have been 2 recent audits of the BLM's coal management program resulting in a total of 21 recommendations under the general categories of (1) coal leasing and exports, (2) inspection and enforcement, (3) royalty rate reductions, and (4) transparency.¹ To date, the actions taken by the BLM to address recommendations related to each of the four general coal management categories include the following:

- **Coal Leasing and Exports:** The BLM published (in cooperation with the Office of Valuation Services) the Coal Evaluation Manual and Handbook that establishes fair market value guidance, procedures, and third party reviews. In the handbook, the BLM provided domestic and export market consideration criteria, and guidance to require use of the same standards for lease sales and lease modifications. The BLM also issued policies to standardize the evaluation requirements for lease sales, bid rejections, and reoffers, and to emphasize internal controls and safeguards for fair market value records.
- **Inspection and Enforcement:** The BLM published a new Inspection and Enforcement Handbook and Manual; developed policy to ensure the integrity of exploration data; developed online training and national standards for conducting inspections; evaluated its enforcement capabilities with the Department's Office of the Solicitor; issued policy on rotation, cross-training, and succession planning for mine inspectors; and developed an inspector certification program.
- **Royalty Rate Reductions:** The BLM issued new royalty-rate-reduction guidance to streamline the application review process and required consultation with ONRR for financial hardship royalty-rate-reduction application processing.
- **Transparency:** The BLM developed guidance on release of fair market value information to the public and developed guidance on coal lease sales information that should be listed on BLM websites.

We look forward to working with you and other interested Members of Congress as we address these complex issues surrounding management of the public's coal resources. A similar reply is being sent to the co-signers of your correspondence.

Sincerely,



Janice M. Schneider
Assistant Secretary
Land and Minerals Management

¹ The Office of the Inspector General, U.S. Department of the Interior, Final Evaluation Report – Coal Management Program (CR-EV-BLM-0001-2012) (June 11, 2013), and The U.S. Government Accountability Office, Coal Leasing: BLM Could Enhance Appraisal Process, More Explicitly Consider Coal Exports, and Provide More Public Information (GAO-14-140) (December 18, 2013), Publicly Released February 4, 2014.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 27 2016

The Honorable Brett Guthrie
House of Representatives
Washington, DC 20515

Dear Representative Guthrie:

Thank you for your letter dated February 26, 2016, to Secretary of the Interior Sally Jewell regarding the Federal coal program. Secretary Jewell has asked me to respond on her behalf. I appreciate that you took the time to share your concerns regarding Secretarial Order No. 3338, which directs the Bureau of Land Management (BLM) to launch a comprehensive review of the Federal coal program.

While the review is underway, the Department of the Interior (Department) is instituting a pause on the issuance of new coal leases on Federal lands, subject to limited, enumerated exemptions and exclusions, so that those leasing decisions can benefit from the recommendations that result from the review. Given the abundance of coal reserves under lease, declining demand for coal, and accommodations that will be made for emergency and other enumerated circumstances, the pause should have no material impact on the Nation's coal production levels, currently or in the foreseeable future. During and after the pause, companies can continue to mine the large amount of coal reserves already under lease, estimated to be enough to sustain current levels of production from Federal land for approximately 20 years.

The programmatic review of the Federal coal program will include opportunities for public participation, which began with six scoping meetings for the Programmatic Environmental Impact Statement (PEIS). The scoping meetings were held across the United States in Wyoming, Utah, Tennessee, Washington, Colorado and Pennsylvania. The Department will release an interim report by the end of 2016 based on the scoping process, alternatives that will be evaluated in the PEIS and, as appropriate, any initial analytical results. The full programmatic review is expected to take approximately 3 years.

In your letter, you asked about legal authorities for issuing the Secretarial Order, which include, but are not limited to, the Mineral Leasing Act, 30 U.S.C. §§ 181 *et seq.*; the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351 *et seq.*; the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*; the Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201 *et seq.*; and the Federal Land Policy and Management Act, 43 U.S.C. §§ *et seq.* Secretary Jewell directed the BLM to conduct a broad, programmatic review of the Federal coal program it

administers through the preparation of a discretionary PEIS under the National Environmental Policy Act. The Department is authorized to undertake this effort in its stewardship role as a public land manager. The Department is charged by Congress with managing and overseeing mineral development on public lands, not only for the purpose of ensuring safe and responsible development of mineral resources, but also to ensure conservation of the resources, protection of scientific, historic, and environmental values on the public lands, and compliance with applicable environmental laws. In addition, the Department has the statutory duty to ensure a fair return to the taxpayer and broad discretionary authority to decide where, when, and under what terms and conditions, mineral development should occur, including with respect to the issuance of Federal coal leases.

You raised concerns about the potential for loss of revenue to Federal, state, and local governments, as well as the potential impact on employment in the coal industry, stemming from the pause on new coal leases. The pause should not significantly affect production of Federal coal. The pause does not apply to existing leases and coal production activities, and we estimate that currently there are about 20 years of recoverable coal reserves, at current production levels, under lease on Federal lands. In addition, the Secretarial Order provided limited exclusions to the pause for small lease modifications (160 acres or less), coal lease exchanges, certain preference right lease interests, and emergency circumstances. For the applications that were pending when the Secretarial Order was issued and that do not fit within an exclusion from the pause, the BLM may continue to process the applications up to, but not including, issuance of a final decision to hold a sale or modify a lease.

The pause also does not apply to pending lease applications that have already completed environmental analysis and received a final Record of Decision or Decision Records by the BLM or the applicable Federal surface management agency, including those decisions that are undergoing re-evaluation after having been vacated by judicial decision. Furthermore, the pause does not apply to metallurgical coal (used in steel production), renewals of existing leases, or other BLM, Office of Surface Mining Reclamation and Enforcement, or Office of Natural Resources Revenue (ONRR) actions related to the Federal coal program, such as mine plan approvals. Additionally, the pause does not apply to coal leases on tribal or allotted lands.

Based on these considerations, overall, the Department does not expect the pause either to significantly affect current production, or to have any material impact on Federal, state, and local government revenue, or on employment, either now or in the future.

We recognize and share your deep concerns about the economic distress facing the coal industry and coal-dependent communities today. We have seen the results of these economic challenges reflected in bankruptcies, job losses, and the low industry interest in new leases. These economic challenges began long before the Secretarial Order and reflect market forces outside the Department that predate the Order. Far from exacerbating these market forces, the programmatic review aims to provide us a better understanding of the issues confronting the coal industry now and in the future. In addition, the Obama Administration is responding to coal industry job losses through various initiatives (such as the POWER+ Plan, which invests in coal communities, workers, and technologies) and will continue to do so in the future. We would welcome your support for these efforts.

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We look forward to working with you and other interested Members of Congress as we address these complex issues surrounding management of the public's coal resources. A similar reply is being sent to the co-signers of your correspondence.

Sincerely,



Janice M. Schneider
Assistant Secretary
Land and Minerals Management

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United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 27 2016

The Honorable Hal Rogers
House of Representatives
Washington, DC 20515

Dear Representative Rogers:

Thank you for your letter dated February 26, 2016, to Secretary of the Interior Sally Jewell regarding the Federal coal program. Secretary Jewell has asked me to respond on her behalf. I appreciate that you took the time to share your concerns regarding Secretarial Order No. 3338, which directs the Bureau of Land Management (BLM) to launch a comprehensive review of the Federal coal program.

While the review is underway, the Department of the Interior (Department) is instituting a pause on the issuance of new coal leases on Federal lands, subject to limited, enumerated exemptions and exclusions, so that those leasing decisions can benefit from the recommendations that result from the review. Given the abundance of coal reserves under lease, declining demand for coal, and accommodations that will be made for emergency and other enumerated circumstances, the pause should have no material impact on the Nation's coal production levels, currently or in the foreseeable future. During and after the pause, companies can continue to mine the large amount of coal reserves already under lease, estimated to be enough to sustain current levels of production from Federal land for approximately 20 years.

The programmatic review of the Federal coal program will include opportunities for public participation, which began with six scoping meetings for the Programmatic Environmental Impact Statement (PEIS). The scoping meetings were held across the United States in Wyoming, Utah, Tennessee, Washington, Colorado and Pennsylvania. The Department will release an interim report by the end of 2016 based on the scoping process, alternatives that will be evaluated in the PEIS and, as appropriate, any initial analytical results. The full programmatic review is expected to take approximately 3 years.

In your letter, you asked about legal authorities for issuing the Secretarial Order, which include, but are not limited to, the Mineral Leasing Act, 30 U.S.C. §§ 181 *et seq.*; the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351 *et seq.*; the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*; the Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201 *et seq.*; and the Federal Land Policy and Management Act, 43 U.S.C. §§ *et seq.* Secretary Jewell directed the BLM to conduct a broad, programmatic review of the Federal coal program it

administers through the preparation of a discretionary PEIS under the National Environmental Policy Act. The Department is authorized to undertake this effort in its stewardship role as a public land manager. The Department is charged by Congress with managing and overseeing mineral development on public lands, not only for the purpose of ensuring safe and responsible development of mineral resources, but also to ensure conservation of the resources, protection of scientific, historic, and environmental values on the public lands, and compliance with applicable environmental laws. In addition, the Department has the statutory duty to ensure a fair return to the taxpayer and broad discretionary authority to decide where, when, and under what terms and conditions, mineral development should occur, including with respect to the issuance of Federal coal leases.

You raised concerns about the potential for loss of revenue to Federal, state, and local governments, as well as the potential impact on employment in the coal industry, stemming from the pause on new coal leases. The pause should not significantly affect production of Federal coal. The pause does not apply to existing leases and coal production activities, and we estimate that currently there are about 20 years of recoverable coal reserves, at current production levels, under lease on Federal lands. In addition, the Secretarial Order provided limited exclusions to the pause for small lease modifications (160 acres or less), coal lease exchanges, certain preference right lease interests, and emergency circumstances. For the applications that were pending when the Secretarial Order was issued and that do not fit within an exclusion from the pause, the BLM may continue to process the applications up to, but not including, issuance of a final decision to hold a sale or modify a lease.

The pause also does not apply to pending lease applications that have already completed environmental analysis and received a final Record of Decision or Decision Records by the BLM or the applicable Federal surface management agency, including those decisions that are undergoing re-evaluation after having been vacated by judicial decision. Furthermore, the pause does not apply to metallurgical coal (used in steel production), renewals of existing leases, or other BLM, Office of Surface Mining Reclamation and Enforcement, or Office of Natural Resources Revenue (ONRR) actions related to the Federal coal program, such as mine plan approvals. Additionally, the pause does not apply to coal leases on tribal or allotted lands.

Based on these considerations, overall, the Department does not expect the pause either to significantly affect current production, or to have any material impact on Federal, state, and local government revenue, or on employment, either now or in the future.

We recognize and share your deep concerns about the economic distress facing the coal industry and coal-dependent communities today. We have seen the results of these economic challenges reflected in bankruptcies, job losses, and the low industry interest in new leases. These economic challenges began long before the Secretarial Order and reflect market forces outside the Department that predate the Order. Far from exacerbating these market forces, the programmatic review aims to provide us a better understanding of the issues confronting the coal industry now and in the future. In addition, the Obama Administration is responding to coal industry job losses through various initiatives (such as the POWER+ Plan, which invests in coal communities, workers, and technologies) and will continue to do so in the future. We would welcome your support for these efforts.

You also asked about recent actions taken to address recommendations of the U.S. Government Accountability Office and the Department of the Interior's Office of Inspector General regarding the Federal coal program. There have been 2 recent audits of the BLM's coal management program resulting in a total of 21 recommendations under the general categories of (1) coal leasing and exports, (2) inspection and enforcement, (3) royalty rate reductions, and (4) transparency.¹ To date, the actions taken by the BLM to address recommendations related to each of the four general coal management categories include the following:

- **Coal Leasing and Exports**: The BLM published (in cooperation with the Office of Valuation Services) the Coal Evaluation Manual and Handbook that establishes fair market value guidance, procedures, and third party reviews. In the handbook, the BLM provided domestic and export market consideration criteria, and guidance to require use of the same standards for lease sales and lease modifications. The BLM also issued policies to standardize the evaluation requirements for lease sales, bid rejections, and reoffers, and to emphasize internal controls and safeguards for fair market value records.
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- **Transparency**: The BLM developed guidance on release of fair market value information to the public and developed guidance on coal lease sales information that should be listed on BLM websites.

We look forward to working with you and other interested Members of Congress as we address these complex issues surrounding management of the public's coal resources. A similar reply is being sent to the co-signers of your correspondence.

Sincerely,



Janice M. Schneider
Assistant Secretary
Land and Minerals Management

¹ The Office of the Inspector General, U.S. Department of the Interior, Final Evaluation Report – Coal Management Program (CR-EV-BLM-0001-2012) (June 11, 2013), and The U.S. Government Accountability Office, Coal Leasing: BLM Could Enhance Appraisal Process, More Explicitly Consider Coal Exports, and Provide More Public Information (GAO-14-140) (December 18, 2013), Publicly Released February 4, 2014.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 27 2016

The Honorable Andy Barr
House of Representatives
Washington, DC 20515

Dear Representative Barr:

Thank you for your letter dated February 26, 2016, to Secretary of the Interior Sally Jewell regarding the Federal coal program. Secretary Jewell has asked me to respond on her behalf. I appreciate that you took the time to share your concerns regarding Secretarial Order No. 3338, which directs the Bureau of Land Management (BLM) to launch a comprehensive review of the Federal coal program.

While the review is underway, the Department of the Interior (Department) is instituting a pause on the issuance of new coal leases on Federal lands, subject to limited, enumerated exemptions and exclusions, so that those leasing decisions can benefit from the recommendations that result from the review. Given the abundance of coal reserves under lease, declining demand for coal, and accommodations that will be made for emergency and other enumerated circumstances, the pause should have no material impact on the Nation's coal production levels, currently or in the foreseeable future. During and after the pause, companies can continue to mine the large amount of coal reserves already under lease, estimated to be enough to sustain current levels of production from Federal land for approximately 20 years.

The programmatic review of the Federal coal program will include opportunities for public participation, which began with six scoping meetings for the Programmatic Environmental Impact Statement (PEIS). The scoping meetings were held across the United States in Wyoming, Utah, Tennessee, Washington, Colorado and Pennsylvania. The Department will release an interim report by the end of 2016 based on the scoping process, alternatives that will be evaluated in the PEIS and, as appropriate, any initial analytical results. The full programmatic review is expected to take approximately 3 years.

In your letter, you asked about legal authorities for issuing the Secretarial Order, which include, but are not limited to, the Mineral Leasing Act, 30 U.S.C. §§ 181 *et seq.*; the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351 *et seq.*; the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*; the Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201 *et seq.*; and the Federal Land Policy and Management Act, 43 U.S.C. §§ *et seq.* Secretary Jewell directed the BLM to conduct a broad, programmatic review of the Federal coal program it

administers through the preparation of a discretionary PEIS under the National Environmental Policy Act. The Department is authorized to undertake this effort in its stewardship role as a public land manager. The Department is charged by Congress with managing and overseeing mineral development on public lands, not only for the purpose of ensuring safe and responsible development of mineral resources, but also to ensure conservation of the resources, protection of scientific, historic, and environmental values on the public lands, and compliance with applicable environmental laws. In addition, the Department has the statutory duty to ensure a fair return to the taxpayer and broad discretionary authority to decide where, when, and under what terms and conditions, mineral development should occur, including with respect to the issuance of Federal coal leases.

You raised concerns about the potential for loss of revenue to Federal, state, and local governments, as well as the potential impact on employment in the coal industry, stemming from the pause on new coal leases. The pause should not significantly affect production of Federal coal. The pause does not apply to existing leases and coal production activities, and we estimate that currently there are about 20 years of recoverable coal reserves, at current production levels, under lease on Federal lands. In addition, the Secretarial Order provided limited exclusions to the pause for small lease modifications (160 acres or less), coal lease exchanges, certain preference right lease interests, and emergency circumstances. For the applications that were pending when the Secretarial Order was issued and that do not fit within an exclusion from the pause, the BLM may continue to process the applications up to, but not including, issuance of a final decision to hold a sale or modify a lease.

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Based on these considerations, overall, the Department does not expect the pause either to significantly affect current production, or to have any material impact on Federal, state, and local government revenue, or on employment, either now or in the future.

We recognize and share your deep concerns about the economic distress facing the coal industry and coal-dependent communities today. We have seen the results of these economic challenges reflected in bankruptcies, job losses, and the low industry interest in new leases. These economic challenges began long before the Secretarial Order and reflect market forces outside the Department that predate the Order. Far from exacerbating these market forces, the programmatic review aims to provide us a better understanding of the issues confronting the coal industry now and in the future. In addition, the Obama Administration is responding to coal industry job losses through various initiatives (such as the POWER+ Plan, which invests in coal communities, workers, and technologies) and will continue to do so in the future. We would welcome your support for these efforts.

You also asked about recent actions taken to address recommendations of the U.S. Government Accountability Office and the Department of the Interior's Office of Inspector General regarding the Federal coal program. There have been 2 recent audits of the BLM's coal management program resulting in a total of 21 recommendations under the general categories of (1) coal leasing and exports, (2) inspection and enforcement, (3) royalty rate reductions, and (4) transparency.¹ To date, the actions taken by the BLM to address recommendations related to each of the four general coal management categories include the following:

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We look forward to working with you and other interested Members of Congress as we address these complex issues surrounding management of the public's coal resources. A similar reply is being sent to the co-signers of your correspondence.

Sincerely,



Janice M. Schneider
Assistant Secretary
Land and Minerals Management

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United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 27 2016

The Honorable Robert E. Latta
House of Representatives
Washington, DC 20515

Dear Representative Latta:

Thank you for your letter dated February 26, 2016, to Secretary of the Interior Sally Jewell regarding the Federal coal program. Secretary Jewell has asked me to respond on her behalf. I appreciate that you took the time to share your concerns regarding Secretarial Order No. 3338, which directs the Bureau of Land Management (BLM) to launch a comprehensive review of the Federal coal program.

While the review is underway, the Department of the Interior (Department) is instituting a pause on the issuance of new coal leases on Federal lands, subject to limited, enumerated exemptions and exclusions, so that those leasing decisions can benefit from the recommendations that result from the review. Given the abundance of coal reserves under lease, declining demand for coal, and accommodations that will be made for emergency and other enumerated circumstances, the pause should have no material impact on the Nation's coal production levels, currently or in the foreseeable future. During and after the pause, companies can continue to mine the large amount of coal reserves already under lease, estimated to be enough to sustain current levels of production from Federal land for approximately 20 years.

The programmatic review of the Federal coal program will include opportunities for public participation, which began with six scoping meetings for the Programmatic Environmental Impact Statement (PEIS). The scoping meetings were held across the United States in Wyoming, Utah, Tennessee, Washington, Colorado and Pennsylvania. The Department will release an interim report by the end of 2016 based on the scoping process, alternatives that will be evaluated in the PEIS and, as appropriate, any initial analytical results. The full programmatic review is expected to take approximately 3 years.

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We look forward to working with you and other interested Members of Congress as we address these complex issues surrounding management of the public's coal resources. A similar reply is being sent to the co-signers of your correspondence.

Sincerely,



Janice M. Schneider
Assistant Secretary
Land and Minerals Management

¹ The Office of the Inspector General, U.S. Department of the Interior, Final Evaluation Report – Coal Management Program (CR-EV-BLM-0001-2012) (June 11, 2013), and The U.S. Government Accountability Office, Coal Leasing: BLM Could Enhance Appraisal Process, More Explicitly Consider Coal Exports, and Provide More Public Information (GAO-14-140) (December 18, 2013), Publicly Released February 4, 2014.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 27 2016

The Honorable Paul Gosar
House of Representatives
Washington, DC 20515

Dear Representative Gosar:

Thank you for your letter dated February 26, 2016, to Secretary of the Interior Sally Jewell regarding the Federal coal program. Secretary Jewell has asked me to respond on her behalf. I appreciate that you took the time to share your concerns regarding Secretarial Order No. 3338, which directs the Bureau of Land Management (BLM) to launch a comprehensive review of the Federal coal program.

While the review is underway, the Department of the Interior (Department) is instituting a pause on the issuance of new coal leases on Federal lands, subject to limited, enumerated exemptions and exclusions, so that those leasing decisions can benefit from the recommendations that result from the review. Given the abundance of coal reserves under lease, declining demand for coal, and accommodations that will be made for emergency and other enumerated circumstances, the pause should have no material impact on the Nation's coal production levels, currently or in the foreseeable future. During and after the pause, companies can continue to mine the large amount of coal reserves already under lease, estimated to be enough to sustain current levels of production from Federal land for approximately 20 years.

The programmatic review of the Federal coal program will include opportunities for public participation, which began with six scoping meetings for the Programmatic Environmental Impact Statement (PEIS). The scoping meetings were held across the United States in Wyoming, Utah, Tennessee, Washington, Colorado and Pennsylvania. The Department will release an interim report by the end of 2016 based on the scoping process, alternatives that will be evaluated in the PEIS and, as appropriate, any initial analytical results. The full programmatic review is expected to take approximately 3 years.

In your letter, you asked about legal authorities for issuing the Secretarial Order, which include, but are not limited to, the Mineral Leasing Act, 30 U.S.C. §§ 181 *et seq.*; the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351 *et seq.*; the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*; the Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201 *et seq.*; and the Federal Land Policy and Management Act, 43 U.S.C. §§ *et seq.* Secretary Jewell directed the BLM to conduct a broad, programmatic review of the Federal coal program it

administers through the preparation of a discretionary PEIS under the National Environmental Policy Act. The Department is authorized to undertake this effort in its stewardship role as a public land manager. The Department is charged by Congress with managing and overseeing mineral development on public lands, not only for the purpose of ensuring safe and responsible development of mineral resources, but also to ensure conservation of the resources, protection of scientific, historic, and environmental values on the public lands, and compliance with applicable environmental laws. In addition, the Department has the statutory duty to ensure a fair return to the taxpayer and broad discretionary authority to decide where, when, and under what terms and conditions, mineral development should occur, including with respect to the issuance of Federal coal leases.

You raised concerns about the potential for loss of revenue to Federal, state, and local governments, as well as the potential impact on employment in the coal industry, stemming from the pause on new coal leases. The pause should not significantly affect production of Federal coal. The pause does not apply to existing leases and coal production activities, and we estimate that currently there are about 20 years of recoverable coal reserves, at current production levels, under lease on Federal lands. In addition, the Secretarial Order provided limited exclusions to the pause for small lease modifications (160 acres or less), coal lease exchanges, certain preference right lease interests, and emergency circumstances. For the applications that were pending when the Secretarial Order was issued and that do not fit within an exclusion from the pause, the BLM may continue to process the applications up to, but not including, issuance of a final decision to hold a sale or modify a lease.

The pause also does not apply to pending lease applications that have already completed environmental analysis and received a final Record of Decision or Decision Records by the BLM or the applicable Federal surface management agency, including those decisions that are undergoing re-evaluation after having been vacated by judicial decision. Furthermore, the pause does not apply to metallurgical coal (used in steel production), renewals of existing leases, or other BLM, Office of Surface Mining Reclamation and Enforcement, or Office of Natural Resources Revenue (ONRR) actions related to the Federal coal program, such as mine plan approvals. Additionally, the pause does not apply to coal leases on tribal or allotted lands.

Based on these considerations, overall, the Department does not expect the pause either to significantly affect current production, or to have any material impact on Federal, state, and local government revenue, or on employment, either now or in the future.

We recognize and share your deep concerns about the economic distress facing the coal industry and coal-dependent communities today. We have seen the results of these economic challenges reflected in bankruptcies, job losses, and the low industry interest in new leases. These economic challenges began long before the Secretarial Order and reflect market forces outside the Department that predate the Order. Far from exacerbating these market forces, the programmatic review aims to provide us a better understanding of the issues confronting the coal industry now and in the future. In addition, the Obama Administration is responding to coal industry job losses through various initiatives (such as the POWER+ Plan, which invests in coal communities, workers, and technologies) and will continue to do so in the future. We would welcome your support for these efforts.

You also asked about recent actions taken to address recommendations of the U.S. Government Accountability Office and the Department of the Interior's Office of Inspector General regarding the Federal coal program. There have been 2 recent audits of the BLM's coal management program resulting in a total of 21 recommendations under the general categories of (1) coal leasing and exports, (2) inspection and enforcement, (3) royalty rate reductions, and (4) transparency.¹ To date, the actions taken by the BLM to address recommendations related to each of the four general coal management categories include the following:

- **Coal Leasing and Exports:** The BLM published (in cooperation with the Office of Valuation Services) the Coal Evaluation Manual and Handbook that establishes fair market value guidance, procedures, and third party reviews. In the handbook, the BLM provided domestic and export market consideration criteria, and guidance to require use of the same standards for lease sales and lease modifications. The BLM also issued policies to standardize the evaluation requirements for lease sales, bid rejections, and reoffers, and to emphasize internal controls and safeguards for fair market value records.
- **Inspection and Enforcement:** The BLM published a new Inspection and Enforcement Handbook and Manual; developed policy to ensure the integrity of exploration data; developed online training and national standards for conducting inspections; evaluated its enforcement capabilities with the Department's Office of the Solicitor; issued policy on rotation, cross-training, and succession planning for mine inspectors; and developed an inspector certification program.
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- **Transparency:** The BLM developed guidance on release of fair market value information to the public and developed guidance on coal lease sales information that should be listed on BLM websites.

We look forward to working with you and other interested Members of Congress as we address these complex issues surrounding management of the public's coal resources. A similar reply is being sent to the co-signers of your correspondence.

Sincerely,



Janice M. Schneider
Assistant Secretary
Land and Minerals Management

¹ The Office of the Inspector General, U.S. Department of the Interior, Final Evaluation Report – Coal Management Program (CR-EV-BLM-0001-2012) (June 11, 2013), and The U.S. Government Accountability Office, Coal Leasing: BLM Could Enhance Appraisal Process, More Explicitly Consider Coal Exports, and Provide More Public Information (GAO-14-140) (December 18, 2013), Publicly Released February 4, 2014.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 27 2016

The Honorable Bill Johnson
House of Representatives
Washington, DC 20515

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We look forward to working with you and other interested Members of Congress as we address these complex issues surrounding management of the public's coal resources. A similar reply is being sent to the co-signers of your correspondence.

Sincerely,



Janice M. Schneider
Assistant Secretary
Land and Minerals Management

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United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 27 2016

The Honorable Tim Murphy
House of Representatives
Washington, DC 20515

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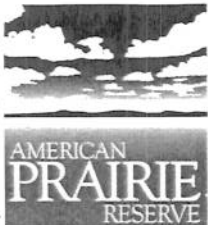
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Janice M. Schneider
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Land and Minerals Management

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Also via U.S. Mail

March 3, 2016

The Honorable Ryan Zinke
United State House of Representatives
113 Cannon House Office Building
Washington, DC 20515

Dear Congressman Zinke:

As I mentioned during our meeting last December 9th, one of my goals is to assure we have an open and consistent line of communication so you have accurate information about our organization, its work, and purposes.

After receiving your March 2nd press release, "DOI Secretary and BLM Director Admit Knowing Nothing About Bison, Zinke Demands Accountability, Transparency & Fairness for Montana Ranchers and Farmers," I see an opportunity to address some apparent confusion regarding American Prairie Reserve's work in general and in particular our request to the Bureau of Land Management for change-of-use permit on our Flat Creek allotment.

I arrive in Washington, D.C., the evening of April 11th and can be available to meet with you anytime on the 12th, 13th or 14th. Perhaps your office could arrange for Secretary Jewell and Director Kornze to join us?

Recognizing the difficulty of coordinating multiple schedules, as an alternative, I will be pleased to work with your office to arrange a conference call in the next few weeks that includes our President Sean Gerrity and Board Chairman George Matelich. We welcome the opportunity to discuss with you anything you'd like about APR and to provide clarity regarding our request to the BLM.

I will follow up immediately with Jocelyn to see what might work.

Sincerely,

Pete Geddes
Managing Director

P.S. I've attached two Op-Ed's addressing some of these issues.

cc:

- Ms. Sally Jewell, Secretary United States Department of the Interior
- Mr. Neil Kornze, Director Bureau of Land Management
- Mr. Sean Gerrity, President American Prairie Reserve
- Mr. George Matelich, Chairman American Prairie Reserve Board of Directors

* DEAR SECRETARY JEWELL -
I WOULD BE PLEASED
TO MEET & REVIEW THIS
WITH YOU.
BEST
/
PETE GEDDES

RECEIVED SECRETARIAT

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In Defense of Year-Round Grazing

By Sean Gerrity
American Prairie Reserve

I appreciate this opportunity to address some apparent confusion regarding American Prairie Reserve's request to the Bureau of Land Management concerning a potential change-of-use on our Flat Creek BLM allotment. Specifically, we asked that bison be allowed to graze year-round versus part of the year. This request is similar to year-round requests other local livestock producers have been granted. We also asked to remove interior fences on the Flat Creek allotment.

There are a number of reasons why we are confident that year-round grazing without interior fences will work well on Flat Creek. First, many science-based articles support our strategy. The work, including articles by Drs. Brady Allred at the University of Montana, Samuel Fuhlendorf at Oklahoma State and Michel Kohl at Utah State, confirms that bison use the land differently than cows. Rather than graze mostly in one spot, bison tend to move at a steady speed while feeding. They visit water sources far less frequently than cattle and tend to rest far from water sources and shade, even in extraordinarily hot weather. Once they graze an area, bison generally do not return to that exact same spot for some time, mimicking one of the key features of rest-rotation systems. In short, bison naturally demonstrate the behaviors that rest-rotation pasturing techniques seek to produce.

Second, we know range health is largely determined by stocking rates versus rest-rotation systems. Most livestock producers, biologists and agencies are aware of the steadily-growing body of literature questioning the uniform application of rest-rotation as the best management method in all cases. This evolving thinking agrees that there are certain habitats where rest-rotation can be a beneficial and logical choice, but there is significant evidence that non-fragmented, year-round pastures can be just as productive (and sometimes even more beneficial).

Working under the direction of and approval from the BLM, we keep bison numbers on our allotments at medium stocking rates to reduce impact on — and in most cases enhance — the forage and cover that is important for wild species. Our end goal is to manage the habitat where bison exist so that it is at least as good, if not significantly better, than the habitat that surrounds it. The BLM's range conservationists monitor all of American Prairie Reserve's 218,000 acres of BLM allotments. On Telegraph Creek and Box Elder in particular, where we have 620 bison (total live animals versus cow-calf pairs), they consistently report that the range fits well within their standards and desired quality levels.

Third, we've seen this work in practice. Our Reserve-based team has logged thousands of hours of close-up observations. They also have analyzed data we collect using satellite radio collars to track grazing patterns on our allotments. They confirm that bison rotate themselves quite efficiently in these large spaces. And we continue to conduct research as part of our bison-grazing plan. We track range and wildlife health on other allotments and will do the same on Flat Creek.

In summary, since starting our herd in 2005, we have shown that bison can thrive on this landscape with no detrimental effects on neighboring operations. We understand that our grazing privileges on BLM land are just that, a privilege. Therefore, we are motivated to demonstrate that all BLM allotments associated with American Prairie Reserve are able to be easily accessed and

enjoyed by the public and are good models of high-quality wildlife habitat.

We encourage anyone with questions to visit our operation anytime. Contact Reserve Manager Damien Austin (damien@americanprairie.org), Lead Scientist Kyran Kunkel (kyran@americanprairie.org) or me, Sean Gerrity (sean@americanprairie.org), with questions or to arrange a visit.

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NEW YORK, MONDAY, DECEMBER 28, 2015

The Yellowstone of the Future

By PETE GEDDES DEC. 28, 2015



Lorin Liza

Bozeman, Mont. — PERHAPS, like me, you were among the tens of millions who visited one of our national parks this year. If you did, you most likely shared my appreciation for the foresight of previous generations to set aside treasures like Yellowstone. This legacy of conservation has long served as a point of pride for our country, and rightly so.

The federal government's creation and protection of vast, iconic places largely came to a halt in the mid-1950s. But there is a new model for conserving large, ecologically valuable landscapes and the wildlife that depends on them — one that does not rely on lobbying for government action and funding. It is a hybrid, combining existing public lands with private resources and a businesslike approach to securing land, restoring wildlife and benefiting people.

It is being applied in places like Mozambique, for example, where the philanthropist Greg Carr is working to rebuild Gorongosa National Park and the communities that surround it through a public-private partnership between the Mozambique government and the Goron-

gosa Restoration Project; and in South America at Conservacion Patagonica, founded by the conservationists Kris and the late Doug Tompkins, which is purchasing land to create new national parks for the people of Argentina and Chile.

Here in the United States, on Montana's northern Great Plains, American Prairie Reserve is using this model to build our nation's first large-scale 21st-century park. Rather than seeking government financing, we are raising private funds to purchase approximately 500,000 acres in order to link them with the area's existing three million acres of public lands. When complete, this landscape will be roughly the size of Connecticut, privately funded, endowed and managed for the benefit of wildlife and people.

Those who use this model will identify ecosystems in need of conservation and engage private individuals or organizations that leverage public resources to carve out protected areas. The grasslands of northeast Montana are a priority for conservation because of their extraordinary biodiversity and large percentage (almost 90 percent) of

intact native prairie. It is one of the few landscapes left that bears some semblance to what Lewis and Clark witnessed about 200 years ago when they passed through.

The success of private-public conservation projects depends on incorporating private lands. These lands, especially in the American West, are critical because they are at low elevations and surround rivers and streams — key travel corridors for wildlife. Many of the West's existing protected areas were chosen for their geologic and scenic values, rather than their ability to support wildlife.

Yellowstone, for example, is a high plateau covered with

snow much of the year. Each spring animals spill out of the park — elk run through fences and wolves harass and sometimes kill livestock — and onto adjacent private lands searching for food. The boundaries of the park were drawn for political reasons, not ecological ones, and the animals crossing them come into conflict with neighboring ranchers.

Increasing wildlife populations is a sociological problem. Ranchers are asked to bear some of the costs without seeing benefits and hence view wildlife as a threat to their economic security. To change this dynamic, we've started a for-profit beef com-

pany selling a brand called Wild Sky, a business that fits well with the state's ranching culture — and culture is an important variable often overlooked by conservationists.

Here's how it works. Wild Sky ranchers agree to modify their operations in accordance with our conservation goals by, for example, not tilling native prairie or killing prairie dogs. In return Wild Sky pays them a premium when they sell their cattle. Much like a frequent-flyer program, ranchers choosing to do more receive higher payments. For example, we install camera traps on ranchers' land and offer payment for photos of species we wish to restore, like mountain lions and bears.

This business is only a year old and yet has been profitable since August, selling about 50,000 pounds of beef per month across the country. And Wild Sky is not our only for-profit venture. For several years the High West Distillery, headquartered in Park City, Utah, has produced American Prairie Bourbon, giving 10 percent of the profits on this label to our nonprofit. The hybrid conservation model allows this sort of

experimentation to augment traditional fund-raising.

This is done to create a critical habitat for a variety of species, including our nation's most iconic animal, the American bison. With a decade of bison management under our belt, most of our neighbors consider our herd of more than 600 an excellent example of how bison can be managed naturally on a large landscape with little to no negative effect on nearby livestock operations.

As Montana slogs through the long and contentious process of deciding if and where to establish bison outside of Yellowstone, we are developing the largest, most genetically diverse, disease-free conservation bison herds in North America.

Around the world, "environmental entrepreneurs," as we call ourselves, are creating alternatives to the traditional models of nature protection — filling a void left by governments either unwilling or unable to act. Our role is a vital, but often underappreciated, piece of the conservation puzzle, and it can be used as a model to protect the world's natural legacy.

Shrinking Habitats

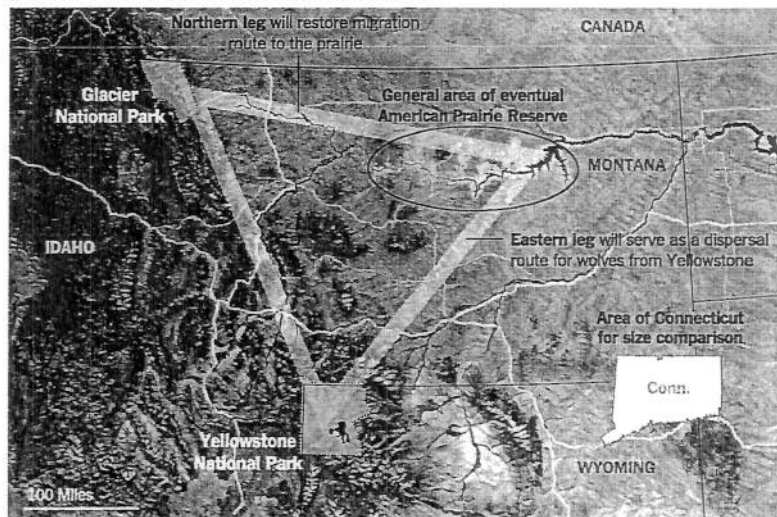
Wildlife has been driven off most of its original habitat. Before modern settlements, grizzlies roamed over much of the American West and well into Mexico. Now their range is mostly in Canada.



Source: American Prairie Reserve
By The New York Times

Wildlife Corridors

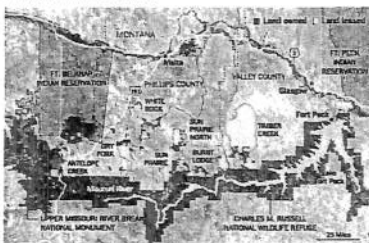
The American Prairie Reserve is envisioned as a third large-scale conservation area forming a leg of the Montana Wildlife and Tourism Triangle. Wildlife corridors provided by conservation-minded landowners help link the Reserve with Glacier and Yellowstone National Parks, allowing wildlife to move naturally instead of being constrained to relatively small parks and preserves. The combined public and private lands will protect an area about the size of Connecticut.



Source: American Prairie Reserve
By The New York Times

Patching Together a Better Wildlife Habitat

By leasing and buying lands surrounding two federal protected areas in Montana, a conservation group hopes to create the American Prairie Reserve.



Source: American Prairie Reserve
By The New York Times

Congress of the United States
House of Representatives
Washington, DC 20560-1018

RECEIVED
2016 MAR 29 PM 3:41
OFFICE OF THE
EXECUTIVE SECRETARY

March 29, 2016

The Honorable Mike Connor
Deputy Secretary
US Department of the Interior
1849 C Street
Washington, DC 20240

Dear Secretary Connor:

We have received alarming reports that the Department of Interior is directing the BLM and the National Park Service to disregard the intent of Congress with respect to a Department of Labor regulation on wage and overtime rules for federal contractors.

Section 110 of the Consolidated Appropriations Act of 2016 (Public Law No: 114-113), which was signed into law on December 18, 2015 by President Obama, prohibits the Department of Labor from using funds to implement, administer and enforce E.O. 13658 on federal contracts and permits authorizing seasonal recreation services or seasonal recreational equipment rental. This provision was specifically designed to prevent the Department of Labor contract clause enforcing E.O. 13658 from being included on outfitter and guide permits, contracts and contract-like instruments.

As you may know, E.O. 13658 sharply raised the minimum wage and overtime pay requirement for federal contractors, most of whom are paid by the federal government to provide equipment and services to various federal agencies. Unlike outfitter and guide contracts, when new procurement contracts are issued, the costs are passed on to the agency. Federal permit holders, including outfitters and guides who operate on public lands, are in a very different situation—they do not fit the traditional definition of a contractor. Instead of being paid by an agency to perform a service, they pay the agencies. Their connection to the federal government is the permit they require to operate on federal lands. The higher costs associated with E.O. 13658 will have to be paid by the public, which will cause many of the guides and outfitters to either go out of business or simply not operate on public lands.

It was clearly the intent of Congress in the Consolidated Appropriations Act of 2016 that federal agencies abate implementation of E.O. 13658 for these seasonal recreational service providers. An attempt by the Department of Interior to skirt Congressional intent would be ill-advised, harmful to the economy of many western communities, and will hurt the ability of millions of Americans to access public lands.

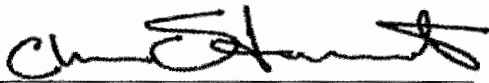
Therefore, we urge you to advise those agencies under your authority to recognize the intent of Congress and to abate inclusion of the Department of Labor standard contract clause implementing E.O. 13658 on new outfitter and guide permits issues in 2016 and to cease making that clause a condition of permit compliance for any permits in which the clause was included in 2015.

For your convenience the language included in P.L. No. 114-1134 can be found below.

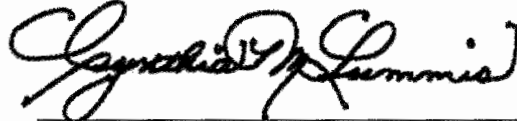
SEC. 110. None of the funds made available by this Act may be used to implement, administer, or enforce the Establishing a Minimum Wage for Contractors regulation published by the Department of Labor in the Federal Register on October 7, 2014 (79 Fed. Reg. 60634 et seq.), with respect to Federal contracts, permits, or other contract-like instruments entered into with the Federal Government in connection with Federal property or lands, specifically related to offering seasonal recreational services or seasonal recreation equipment rental for the general public: Provided, That this section shall not apply to lodging and food services associated with seasonal recreation services.

We look forward to hearing your response.

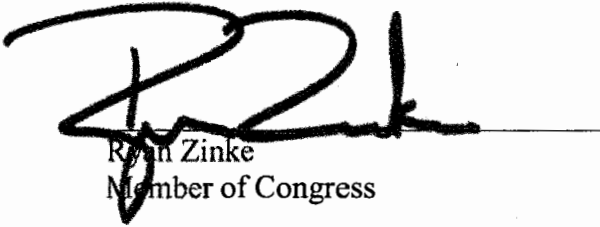
Thank you,



Chris Stewart
Member of Congress



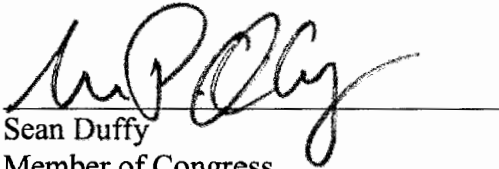
Cynthia Lummis
Member of Congress



Ryan Zinke
Member of Congress



Doug Lamborn
Member of Congress



Sean Duffy
Member of Congress



Bruce Westerman
Member of Congress



Matt Salmon
Member of Congress



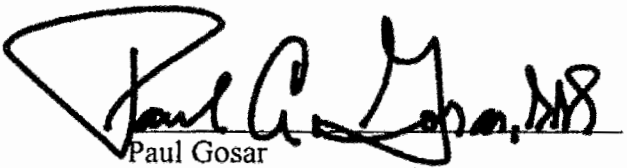
Scott Tipton
Member of Congress



Rob Bishop
Member of Congress



Doug LaMalfa
Member of Congress



Paul Gosar
Member of Congress



Kevin Cramer
Member of Congress



Vaught, Daniel <daniel_vaught@ios.doi.gov>

Fwd: Letter to Deputy Secretary Connor RE: Implementation of DOL rule on wage and overtime

Callaway, Catherine <catherine_callaway@ios.doi.gov>

Tue, Mar 29, 2016 at 3:36 PM

To: Daniel Vaught <daniel_vaught@ios.doi.gov>

Hello Dan,

Please process in DTS.

Thanks,

Cathy

*Catherine Callaway
Secretarial Assistant
Office of the Assistant Secretary,
Policy, Management and Budget
Department of the Interior
1849 C Street, NW, Room: 7213
Washington, DC 20240
Office: 202-208-1927
Fax: 202-513-0734*

----- Forwarded message -----

From: **Larsen, Gordon** <Gordon.Larsen@mail.house.gov>

Date: Tue, Mar 29, 2016 at 3:03 PM

Subject: Letter to Deputy Secretary Connor RE: Implementation of DOL rule on wage and overtime

To: "Jeremy_Bratt@ios.doi.gov" <Jeremy_Bratt@ios.doi.gov>, "catherine_callaway@ios.doi.gov" <catherine_callaway@ios.doi.gov>

Cc: "Frischknecht, Daryn" <Daryn.Frischknecht@mail.house.gov>

Hi Jeremy and Catherine,

Thanks for your help scheduling a phone call two weeks ago between Rep. Stewart and Assistant Secretary Kristen Sarri. Rep. Stewart appreciated the chance to talk with her.

Please see attached a letter from Rep. Stewart and 11 other House members to Deputy Secretary Mike Connor. The letter emphasizes the same points Rep. Stewart highlighted in the phone conversation with Ms. Sarri, namely that Congressional intent in the omnibus appropriations bill was clear that all agencies should abate implementation of Executive Order 13658 with respect to seasonal recreation businesses.

Please let me know if I should be sending the letter to someone else.

Best,

Gordon

Gordon Larsen

Legislative Director

Rep. Chris Stewart (UT-2)

323 Cannon House Office Building

(202)225-8066



3-29-2016 Letter to Mike Connor, DOL Rule.pdf

151K

RYAN K. ZINKE
MONTANA AT-LARGE

113 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3211

HOUSE ARMED SERVICES COMMITTEE
NATURAL RESOURCES COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515

April 7, 2016

The Honorable Michael L. Connor
Deputy Secretary
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Deputy Secretary Connor:

Nearly a year ago, I appealed to Secretary Sally Jewell to work together with the Blackfoot Tribe of Montana to thoroughly examine their water rights proposal, determine federal costs, and negotiate a final settlement. During this time, the Tribe has reached significant milestones under the framework of House Natural Resources Committee (Committee) Chairman Rob Bishop's new criteria for Indian water settlements. Under this process, the Department of Justice (DOJ) and Department of the Interior (DOI) must submit the certifications and final documents in the form of a letter prior to introduction and movement of legislation in the House of Representatives. I strongly urge you to ensure that DOI completes this letter in conjunction with the DOJ as swiftly as possible. The Tribe has given far too much and waited far too long for their Compact to not be federally recognized this year.

I cannot understate the urgency of the Blackfoot Water Compact's passage through Congress. Both the Tribe and the state of Montana have critical projects contingent on the Compact's authorization, thereby heightening the immediate importance of the Committee receiving a letter from both Departments. I understand your agency has nearly settled all extenuating issues with the Compact. Therefore, I implore you to help advance this effort by ensuring construction of the document is successful and reaches the desk of Chairman Bishop no later than June of this year. I can assure you I will fight to see its passage in Congress once introduced.

Thank you for your assistance and prompt consideration of this request. I look forward to working with you to successfully move the Compact forward.

Sincerely,


RYAN ZINKE
Member of Congress

2016 APR 18 PM 2:17

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RECEIVED



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAY 27 2016

The Honorable Ryan K. Zinke
U.S. House of Representatives
Washington D.C. 20515

Dear Representative Zinke:

Thank you for your letter dated April 7, 2016, to Deputy Secretary of the Interior Michael L. Connor asking him to advance the Administration's review process of the Blackfeet Tribe's water rights settlement to the House Committee on Natural Resources (Committee) in a timely manner. Deputy Secretary Connor has asked me, as the Chair of the Working Group on Indian Water Settlement, to respond to your letter on his behalf.

I am pleased to report that the Department of the Interior and Department of Justice submitted a letter to Chairman Bishop on May 16, 2016, with proposed legislation that the parties have agreed to, a copy of which is attached here to. We appreciate your advocacy on behalf of this settlement and look forward to working with you to advance this legislation.

Sincerely,

Alletta D. Belin
Senior Counselor to the Deputy Secretary

Enclosure



The Honorable Rob Bishop
Chairman, Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

We write to provide our views on the *Blackfeet Water Rights Settlement Act of 2016* (Blackfeet Water Settlement). The Administration is supportive of the Blackfeet Water Settlement if amended to conform to the attached redline of S. 1125 as reported out of the Senate Committee on Indian Affairs on February 3, 2016. Although settlement of the Blackfeet Tribe's water rights claims in Montana will fulfill important Federal trust obligations and provide important benefits to the American taxpayer, Office of Management and Budget advises that it is still assessing and evaluating the information necessary for it to definitively conclude whether the proposed settlement meets all of the *Criteria and Procedures*.¹

As you are aware, Congress and the Executive Branch have a long history of working together to secure and protect tribal water rights by supporting negotiated settlement of Indian water rights disputes and avoiding protracted and costly litigation where possible. We look forward to working closely with you in the months ahead to enact a Blackfeet Water Settlement and other Indian water rights settlements that adhere to the *Criteria and Procedures*, fulfill the Federal trust responsibility to Indian tribes, promote sound water management, and benefit and protect American taxpayers.

1. Background.

The Blackfeet Indian Reservation (Reservation) is set up against the Rocky Mountains and possesses some of the most spectacular scenery in the United States. It provides significant habitat for countless wildlife and fish species, including many protected species. Reservation fisheries are world renowned. Yet the Reservation struggles with high unemployment, extreme poverty, and a lack of employment opportunities. The Reservation ranks as the 5th poorest reservation in the United States. The American Community Survey of 2014 calculates the poverty rate on the Reservation at nearly 40 percent, with unemployment at more than 20 percent, and the percent of the population that did not work in the previous 12 months is even higher, at 39.1 percent. In addition to these bleak statistics, at least 30 percent of Reservation

¹ *Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims (Criteria and Procedures)* (55 FR 9223, March 12, 1990).

households live in housing that lacks complete plumbing or kitchen facilities and more than 80 percent of school age children are eligible for free or reduced school lunches.

The Blackfeet Tribe's (Tribe) water rights have been fought over for more than 100 years, as reflected in approximately 14 court cases and congressional proceedings addressing directly or indirectly the use and control of the Reservation's water resources.² Modern efforts to quantify the Tribe's reserved water rights began in 1979 when the State of Montana (State) filed suit in State court as part of the statewide water rights adjudication proceeding. At the same time, the United States filed a case in Federal court in Montana to adjudicate the Tribe's reserved water rights claims. The question of jurisdiction that arose as a result of the two lawsuits was decided in 1983 by the United States Supreme Court, which held that state court was the appropriate forum to adjudicate tribal reserved water rights pursuant to the McCarran Amendment, 43 U.S.C. § 666.³

In 1989, the Tribe initiated negotiations with the Montana Compact Commission and in 1990 the Department of the Interior appointed a Federal Negotiation Team to assist in achieving a negotiated settlement of the Tribe's reserved water rights claims. The State and the Tribe reached an agreement in 2007, in the form of a Compact, which the Montana Legislature approved in 2009. Federal legislation to authorize the Compact was first introduced in 2010. Since then the Administration has been negotiating with the Tribe and the State to resolve important Federal concerns relating to cost, cost sharing, Federal interests, and Federal responsibilities. Those negotiations lowered the Federal cost of the settlement by approximately \$230 million.

2. Consistency with the Criteria and Procedures including Criteria 4 and 5(a) and (b).

The Blackfeet Water Settlement is consistent with the United States' responsibility as trustee to Indians and will secure to the Tribe the right to use and obtain benefits from Reservation water resources, thus ensuring the Tribe will receive equivalent benefits for claims it will waive as part of the settlement.⁴ The settlement resolves all outstanding Blackfeet water claims, quantifies a tribal water right to more than 750,000 acre-feet of surface water and nearly all groundwater on the Reservation, and funds the construction and rehabilitation of water related infrastructure on the Reservation for the benefit of the tribal community.⁵ Federal settlement funding will provide lasting benefits for the Tribe and its members, by protecting public health and creating substantial numbers of temporary and permanent employment opportunities on the Reservation, including opportunities in the construction, water management, renewable energy, agricultural, recreation, and tourism industries.⁶ The settlement also will resolve decades old disputes among the Tribe, its neighbors, the State, and the Federal Government, and will encourage long-term harmony and cooperation among all parties.⁷ The settlement includes a process that will enable the Blackfeet

² A detailed listing of the cases and congressional hearings touching on the Tribe's water rights is attached as Exhibit A.

³ *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545 (1983). The Federal Court action has been stayed since 1983 pending the outcome of the State adjudication.

⁴ *Criteria and Procedures*, Preamble.

⁵ *Criteria and Procedures*, No. 3.

⁶ *Criteria and Procedures*, No. 7.

⁷ *Criteria and Procedures*, No. 10.

Tribe and the Fort Belknap Indian Community to resolve a conflict that exists between them over relative rights to use the Milk River. The settlement process is fair and provides funding to support the Tribes' efforts to reach a resolution. The settlement authorizes the Secretary to establish criteria to provide for such an arrangement if the Tribes do not reach a successful sharing arrangement. This settlement is a crucial and long-awaited step towards achieving the permanent tribal homeland promised to the Blackfeet Tribe in the treaties and agreements ratified by Congress between 1855 and 1896 that serve as the foundation of the relationship between the Tribe and the United States.⁸

The Administration and the Tribe worked collaboratively to target funding for initiatives that will allow the Tribe to manage Reservation water resources and promote economic self-sufficiency on the Reservation.

Settlement funding focuses primarily on Federal programmatic responsibilities, including funding for dam safety repairs and deferred maintenance for Bureau of Indian Affairs facilities on the Reservation;⁹ increasing water storage capacity for irrigation and other economic activities on the Reservation;¹⁰ construction, rehabilitation, and expansion of the Blackfeet Regional Water System to provide safe, clean drinking water to all of the Reservation's major population centers;¹¹ improving tribal irrigation projects with on-farm improvements for tribal trust lands;¹² and establishing the Blackfeet Tribal Water and Energy Office to support self-determination and enhance the Tribe's capacity to manage its trust resources.

Specifically, the improvements to irrigation infrastructure on the Reservation will have a major impact on the tribal economy as the economy on the Reservation is a rural economy dependent on farming and ranching and many tribal members make their living through ranching operations and associated hay and alfalfa farming operations. The funding to construct, rehabilitate, and expand the Tribe's municipal water system will ensure all major population centers on the Reservation have reliable and safe drinking water supply for fifty years into the future. Currently, the Tribe experiences school closures and business disruptions because of the unreliability of municipal water systems, and has had to operate under a "boil order" for more than a decade in a major population center until the Tribe was able to cobble together grants, loans, and its own funds to update part of its system.

The Blackfeet Water Settlement funding will add significant temporary and permanent job opportunities for tribal members on the Reservation. These benefits will derive from Federal spending on important water related infrastructure projects and improvements.

⁸ *Treaty with the Blackfeet*, 1855, Oct. 17, 1855, 11 Stat., 657, Ratified Apr. 15, 1856, Proclaimed Apr. 25, 1856, *Act of April 15, 1874* (18 Stat. 28, chapter 96), *Agreement of 1888*, ratified by the Act approved May 1, 1888 (25 Stat. 113), *Agreement of 1895*, dated September 26, 1895, ratified by the Act approved June 10, 1896 (29 Stat. 321, 353), Criteria and Procedures, No. 10.

⁹ Indian Dam Safety Act of 1994, 25 U.S.C. § 3801 et seq.

¹⁰ 25 U.S.C. § 13, "the Secretary of the Interior . . . shall expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians . . . for development of water supplies." (Emphasis supplied).

¹¹ It is "the policy of the United States that all Indian communities and Indian homes, new and existing be provided with safe and adequate water supply systems...as soon as possible." 25 U.S.C. § 1632(a)(5).

¹² 1907 Blackfeet Allotment Act

Settlement funding will also provide vital improvements for the Tribe's own farming and ranching activities, including the significant bison herds maintained by the Tribe. Such activities are an important source of tribal revenues and an important source of jobs for tribal members. Settlement funds will also support improvements to tribal lakes and fisheries, providing important habitat improvements as well as recreational and economic development opportunities that take advantage of the natural environment. Such activities will contribute to increased tribal revenues and allow the Tribe to provide better and more comprehensive services to Tribal members.

The settlement will also provide water supplies and increased water storage capacity which will help the Tribe establish better economic conditions to support a viable homeland for its members. Federal funding also will address important obligations of the Bureau of Reclamation on the Reservation and provide compensation to the Tribe for deferring water use. As originally proposed to this Administration, the Blackfeet Water Settlement included Federal funding of more than \$650 million. The Administration scrutinized every Federal dollar in the original proposal, and worked closely with the Tribe and the State to reduce the overall cost of the settlement by well over \$200 million and increase State cost share. The State's direct contribution to the Blackfeet Water Settlement is now \$49 million, a substantial and appropriate direct state cost share.¹³ While the current Blackfeet Water Settlement authorizes substantial Federal funding requirements through fiscal year 2025, we have confirmed that this level of funding is necessary in order for the Tribe to develop its capacity to manage and develop its water resources.

Federal funding for the Blackfeet Water Settlement also must be considered in its historical context. The 1.5 million acre Blackfeet Reservation has a significant supply of water arising on or near the Reservation. Despite the availability of water on the Reservation, for more than 100 years senior priority tribal water has been diverted off of the Reservation for the benefit of off-reservation, junior, non-Indian water users. The Boundary Waters Treaty of 1909, unfortunately, did not protect Blackfeet's water rights. The construction and operation of the Milk River Project, similarly, did not account for the Tribe's water and property rights. While the United States funded and enabled non-Indians to use tribal water from the Reservation, it failed to do so for the Tribe or its members. Those actions and inactions by the United States created the circumstances that have necessitated this settlement to fulfill the Tribe's senior water rights without harming the non-Indians who have for many generations relied on the Tribe's water.

The Blackfeet Water Settlement also provides important benefits to American taxpayers and the State of Montana. The final quantification of the Tribe's reserved water rights will bring stability for all water users within the State and will provide the certainty and reliability necessary to sustain the economy of the State without disruption. Important Federal proprietary interests in Glacier National Park (Park), the Lewis and Clark National Forest (Forest), the Bowdoin National Wildlife Refuge, and the Milk River Project will be protected by the settlement. The Park and Forest will enjoy protection of important instream flows with early priority dates.

Notably, the Settlement will resolve or provide a process for resolving disputes and any Federal liability regarding the Milk River Project. Reclamation's use and occupancy of Reservation

¹³ Criteria and Procedures, No. 6.

lands for the St. Mary Canal and other features of the Milk River Project has been disputed by the Tribe for more than 100 years. Under the process described in section 7 of the Settlement Act, the dispute will be resolved, and the parties' legitimate interests will be protected going forward on a permanent basis. Additionally, the Tribe has filed objections to the Milk River Project water rights claims that are pending in the Montana general stream adjudication. The Tribe will withdraw its objections in certain basins at the request of the United States. The United States will realize tremendous value from the resolution of these two disputes in addition to the consideration from the Tribe's waivers of legal claims for damages relating to its water rights and water resources. Avoidance of these potential money damage awards against the United States represents additional and very significant benefits for the Federal Government and the American taxpayer. Finally, the settlement will deliver immeasurable benefits to the Nation as a whole as Congress resolutely fulfills solemn promises made to the Blackfeet people generations ago.

3. Approval in writing of Settlement Agreement and draft Amendment.

The Blackfeet-Montana Water Compact was first agreed to in 2007 by the State's Reserved Water Rights Compact Commission and the Blackfeet Tribal Business Council pursuant to Montana's compact process. The Compact was enacted into State law in 2009. When Federal legislation is enacted that ratifies and modifies the Compact, the settlement act and the Compact will be submitted to a referendum by the tribal membership. Upon certification of a favorable vote, the Compact will be ready for signing by the Secretary, the Tribe, and the State. Following that, the Tribe, the United States, and the State will move the Montana Water Court to enter the Settlement. Once entered, the Settlement will become final and enforceable upon the enforceability date, a date described in the settlement legislation. The State, acting through the State Attorney General's Office and its congressional delegation, the Tribe, acting through the Tribal Business Council, and the Administration have reviewed and support the legislation in the attached form of amendments to S. 1125.

4. Conveyance to court of Settlement Agreement and draft Amendment.

The State of Montana's process for achieving Indian water settlements is unique. The Montana Attorney General and the settling parties do not report to the Montana Water Court until after the settlement has been enacted and ratified by the tribal membership. At that point, the parties will submit a proposed final water decree to the Court for approval. This process has been followed for other Montana Indian water settlements. Currently, there is a stay of proceedings in place for the adjudication of the Tribe's Federal reserved water rights to allow time for Congress to enact authorizing legislation. The stay expires in January 2017.

5. List of claims being settled.

1. **Federal/Tribal claims.** All claims for water rights within the State that the Tribe, its members and allottees, or the United States acting as trustee for the Tribe and the allottees, asserted or could have asserted in any proceeding, including a State stream adjudication, on or before the enforceability date, except to the extent that such rights are recognized in the Compact and Settlement legislation;
2. **Trust claims against the United States for water quantity.** All claims against the United States (including the agencies and employees of the United States) relating to

claims for water rights within the State that the United States, acting as trustee for the Tribe, asserted or could have asserted in any proceeding, including a stream adjudication in the State, except to the extent that such rights are recognized as Tribal water rights under the Settlement legislation;

3. **Trust claims against the United States for damages.** All claims against the United States (including the agencies and employees of the United States) relating to damages, losses, or injuries to water, water rights, land, or natural resources due to loss of water or water rights (including damages, losses, or injuries to hunting, fishing, gathering, or cultural rights due to loss of water or water rights, claims relating to interference with, diversion, or taking of water, or claims relating to failure to protect, acquire, replace, or develop water, water rights, or water infrastructure) within the State that first accrued at any time prior to and including the enforceability date;
4. **Milk River Project Objections.** The Tribe will withdraw its objections to the water rights claims filed by the United States for the benefit of the Milk River Project in Basins 40 T and 40 F;
5. **Takings Claims.** All claims against the United States (including the agencies and employees of the United States) that first accrued at any time on or before the enforceability date arising from the taking or acquisition of the land of the Tribe or resources for the construction of the features of the St. Mary Unit of the Milk River Project;
6. **Operational claims.** All claims against the United States (including the agencies and employees of the United States) that first accrued at any time on or before the enforceability date relating to the construction, operation, and maintenance of the St. Mary Unit of the Milk River Project including Sherburne Dam, St. Mary Diversion Dam, St. Mary Canal and associated infrastructure and the management of flows in Swiftcurrent Creek, including the diversion of Swiftcurrent Creek into Lower St. Mary Lake;
7. **Failure to provide adequate water.** All claims against the United States (including the agencies and employees of the United States) relating to the failure to establish or provide a municipal rural or industrial water delivery system on the Reservation;
8. **Deferred maintenance claims.** All claims against the United States (including the agencies and employees of the United States) relating to failure to provide for, operate, or maintain, or to deferral of maintenance for, the Blackfeet Irrigation Project or any other irrigation system or irrigation project on the Reservation;
9. **State water right claims.** All claims against the United States (including the agencies and employees of the United States) relating to the litigation of the water rights of the Tribe in the State;
10. **Compact claims.** All claims against the United States (including the agencies and employees of the United States) relating to the negotiation, execution, or the adoption of the Compact (including exhibits) and the Settlement legislation;
11. **Specific legal case resolved.** All claims against the United States (including the agencies and employees of the United States) reserved in subsections (b) through (d) of section 6 of the settlement for the case styled *Blackfeet Tribe v. United States*, No. 02-127L (Fed. Cl. 2012);
12. **Dam safety claims.** All claims against the United States (including the agencies and employees of the United States) that first accrued at any time on or before the enforceability date relating to the construction, operation, and management of Lower

Two Medicine Dam and Reservoir and Four Horns Dam and Reservoir, including any claims relating to the failure to provide dam safety improvements for Four Horns Reservoir; and

13. **International Boundary Waters Treaty claims.** All claims against the United States (including the agencies and employees of the United States) that first accrued at any time on or before the enforceability date relating to the allocation of waters of the Milk River and St. Mary River (including tributaries) between the United States and Canada pursuant to the International Boundary Waters Treaty of 1909 (36 Stat. 2448).

6. The settlement and proposed legislation do not include financial authorizations for claims already settled by Congress or claims that have no legal basis.

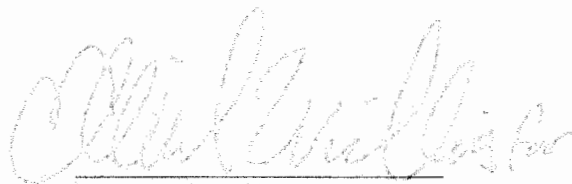
The claims that will be settled as part of this settlement have a legal basis, have not been previously settled by Congress, and were not settled in prior cases against the United States.¹⁴ The Tribe has brought claims against the United States in the U.S. Court of Federal Claims and the Indian Claims Commission but none of those claims is included in the claims that the Tribe would waive in consideration for enactment of the Blackfeet Water Settlement.

We look forward to working with you and the Committee to complete this settlement.

Sincerely,



Alletta D. Belin
Chair, Working Group on
Indian Water Settlements
Department of the Interior



Peter J. Kadzik
Assistant Attorney General
for Legislative Affairs
Department of Justice

¹⁴ Claims brought by the Tribe against the United States in the past include the following, none of which relate to any of the claims being settled as part of the Blackfeet Water Settlement: *Blackfeet et al., Nations v. United States*, 81 Ct. Cl. 101, 131 (1935); *Blackfeet and Gros Ventre Tribes of Indians etc. v. United States*, 2 Ind. Cl. Com. 302 (1952); *Blackfeet and Gros Ventre Tribes of Indians etc. v. United States*, 162 Ct. Cl. 136 (1963); *Blackfeet and Gros Ventre Tribes of Indians etc. v. United States*, 15 Ind. Cl. Com. 561 (1965); *Blackfeet and Gros Ventre Tribes of Indians etc. v. United States*, 18 Ind. Cl. Com. 348a, 348b, 348c (1967); *Blackfeet and Gros Ventre Tribes of Indians etc. v. United States*, 18 Ind. Cl. Com. 241 (1967); *Blackfeet and Gros Ventre Tribes of Indians etc. v. United States*, 19 Ind. Cl. Com. 363 (1968); *Blackfeet and Gros Ventre Tribes of Indians etc. v. United States*, 32 Ind. Cl. Com. 65 (1973); *Blackfeet and Gros Ventre Tribes of Indians etc. v. United States*, 34 Ind. Cl. Com. 122 (1974); *Blackfeet Tribe v. United States*, No. 02-127L (Fed. Cl. 2012).

Attachment A

Cases

United States v. Conrad Investment Company, 156 Fed. 123 (D. Mont. 1907), *aff'd Conrad Investment Co. v. United States*, 161 Fed. 829 (9th Cir. 1908) (Tribe's paramount right to use waters of Birch Creek for present and future needs confirmed);

United States v. Aageson, No. CIV-79-21-GF (D. Mont. April 5, 1979) (Federal action to quantify Blackfeet water rights, stayed pending completion of State Court Adjudication),

In re the Adjudication of the Existing and Reserved Rights to the Use of Water, Both Surface and Underground, of the Blackfeet Tribe of the Blackfeet Reservation within the State of Montana, Civ. No. WC-91-1 (Mont. Water Ct. 1979) (State adjudication of Blackfeet Tribe's reserved water rights that would be settled by S. 1125),

Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983), (state court jurisdiction over tribal water rights in Arizona and Montana, including Blackfeet reserved water rights), *Northern Cheyenne Tribe v. Tongue River Water Users, et al.*, 484 F. Supp. 31 (D. Mont 1979), *Northern Cheyenne v. Adsit, et al.*, 668 F.2d 1080 (9th Cir. 1982); *Northern Cheyenne Tribe v. Adsit, et al.*, 721 F.2d 1187 (9th Cir. 1983) (refusal to dismiss Federal court actions involving certain Montana Tribes' water rights, including Blackfeet Tribe's reserved water rights, pending outcome of state adjudication),

State ex rel. Greely v. Confederated Salish & Kootenai Tribes of the Flathead Reservation, 712 P.2d 754 (Mont. 1985) (determination of adequacy of state adjudication of federal reserved water rights, including Blackfeet Tribe's reserved water rights),

Blackfeet Indian Nation v. Hodel, 634 F. Supp. 646 (D. Mont. 1986).

Congressional Proceedings

Act of March 1, 1907, 34 Stat. 1015, 1035,

Blackfeet Indian Reservation, Serial One: Hearings before the J. Commission of the Cong. of the United States, 63d Cong. (1914),

Surplus Lands, Blackfeet Indian Reservation, Mont., Hearings before the S. Comm. on Indian Affairs on S. 793: A Bill Modifying and Amending the Act Providing For the Disposal of the Surplus Unallotted Lands within the Blackfeet Indian Reservation, Mont., Part 2, 64th Cong. (1916),

Montana Water Rights, Hearings before the Select S. Comm. on Indian Affairs: First Sess. on Oversight of Litigation Involving Water Rights in Montana, 96th Cong. (1979),

Disbursement of BIA Funds for Study of Blackfeet Reservation Irrigable Land, Hearing before the Select S. Comm. on Indian Affairs: First Sess. on the Oversight of Disbursement of Funds by the Bureau of Indian Affairs to Do a Study of the Irrigable Acres on the Blackfeet Indian Reservation in Montana, 98th Cong. (1983),

*S. 2956, the Pechanga Band of Luiseño Mission Indians Water Rights Settlement Act, and S. 3290, the **Blackfeet Water Rights Settlement Act of 2010**, Hearing before the S. Comm. on Indian Affairs, Second Sess., 111th Cong. (2010); S. 134, S. 399, S. 1327, and S. 1345,*

Hearing before the S. Comm. on Indian Affairs, First Sess.: S. 399, the Blackfeet Water Rights Settlement Act of 2011, 112th Cong. (2011),

S. 434, the Blackfeet Water Rights Settlement Act of 2013 and S. 611, the Sandia Pueblo Settlement Technical Amendment Act, Hearing before the S. Comm. on Indian Affairs, First Sess., 113th Cong. (2013).

RECEIVED
Congress of the United States

House of Representatives APR 18 PM 12:18
86 Washington, DC 20515
OFFICE OF THE SECRETARIAT

April 7, 2016

The Honorable Richard Cordray
Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

The Honorable Sally Jewell
Secretary
Department of the Interior
1849 C Street, NW
Washington, DC 20503

Dear Director Cordray and Secretary Jewell:

I write to encourage your agencies to engage in government-to-government consultation with Native American tribes during rulemaking processes, particularly as the Consumer Financial Protection Bureau (CFPB) crafts new regulatory standards for the small-dollar lending industry. I am concerned Tribal impacts are not being adequately considered during this process and firmly believe it is the duty of both your agencies to protect the interests and sovereignty of Tribes.

Just as states across the country are not monolithic, nor are Montana's eight tribes, seven of which are federally recognized. Each has their own priorities for economic development. In this case, the Chippewa Cree Tribe of the Rocky Boy's Reservation has been diligently working to tap into the online consumer financial services industry. As both of you well know, Tribes face difficult barriers in creating and sustaining healthy economies due to a variety of factors, including remote reservations. As a result, Tribes have pursued innovative businesses to generate revenue and bring diverse opportunities for economic development to their communities. E-commerce and online financial services are one of the avenues available to allow the Chippewa Cree to meet their goal of true self-sufficiency.

Despite the federal trust responsibility owed to Tribes, we have heard the CFPB has refused to engage in meaningful consultation with many sovereign nations. Those who are interested in participating in a consultation process have appealed to the Department of the Interior (DOI) but have not received an adequate response. It is the responsibility of our government, specifically DOI and CFPB, to respect and work with the people of this land. Therefore, I urge you to collaborate collectively as a means to ensure Tribes such as the Chippewa Cree are included in the discussions surrounding the proposed rule, how it may be implemented, the rulemaking itself, timelines, etc. Tribes provide much needed financial services in a responsible manner that protects the consumer while also ensuring their economic independence interests are maintained.

As Montana's sole Congressman, it is my job to ensure the sovereignty of all Tribes in my state is protected. It is imperative you consider the impacts this rulemaking will have on their rights and interests. I intend to work with you further on this important matter and look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Zinke", written over the word "Sincerely,".

RYAN ZINKE
Member of Congress



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAY 23 2016

The Honorable Ryan Zinke
U.S. House of Representatives
Washington, DC 20515

Dear Representative Zinke:

Thank you for your letter dated April 7, 2016, addressed to Secretary Jewell and Director Cordray, regarding consultation on rulemaking between the Consumer Financial Protection Bureau (CFPB) and tribes. Secretary Jewell asked that I respond to your letter on her behalf.

The Department of the Interior (Department) is committed to engaging in consultation with tribes regarding Federal actions that affect tribes. The Department understands the obligation to consult and recognizes the benefits of a formal policy that ensures effective nation-to-nation consultation.

The President directed all Federal agencies to develop a tribal consultation policy. The Department has been in communication with CFPB and understands that CFPB has developed such a policy and engaged in several tribal consultation sessions. If requested by CFPB, the Department is willing to meet and discuss the issues raised in your letter.

If you have additional questions, please contact Mr. Miles Janssen, Counselor to the Assistant Secretary – Indian Affairs, at (202) 208-7163.

Sincerely,

Lawrence S. Roberts
Acting Assistant Secretary – Indian Affairs

cc: Director, CFPB

Congress of the United States
House of Representatives
Washington, DC 20515

July 6, 2016

The Honorable Loretta Lynch
Attorney General
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

The Honorable Sally Jewell
Secretary
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Attorney General Lynch and Secretary Jewell:

On May 24, 2016, the House Committee on Natural Resources (Committee) held a hearing to examine the discussion draft authorizing and implementing the Blackfeet Tribe of Montana's water rights settlement. At the time of the hearing, the Office of Management and Budget (OMB) was still assessing information to conclude "...whether the proposed settlement meets all of the *Criteria and Procedures*."¹ While I was disappointed to see OMB further complicating the process, on June 23, 2016, Dionne Thompson, Deputy Commissioner of External and Intergovernmental Affairs at the Bureau of Reclamation, testified that both the Pechanga and Blackfeet settlements were now confirmed as adhering to the *Criteria and Procedures*.² This news represented a tremendous stride forward, but there is further work to do that requires your immediate assistance.

In an effort to confirm these settlements are more cost effective than continuous litigation, Chairman Rob Bishop wrote to you both on July 1, 2016, to request the identification and justification of a net benefit and net cost savings to the federal government and American taxpayers. I ask that you work with the Chairman and Committee staff as quickly as possible to provide this explanation, as time is truly of the essence. With few working session days remaining in the 114th Congress, it is imperative the Department of Justice and Department of the Interior, under your leadership, respond with the proper calculations and cost-benefit analyses no later than August 31, 2016.

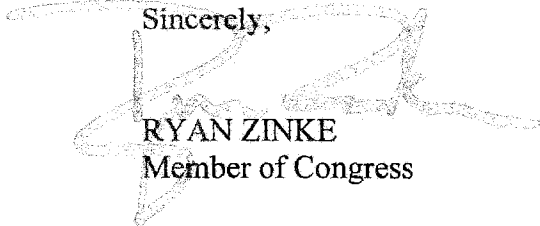
¹ Letter from the Department of the Interior and Department of Justice to Chairman Rob Bishop regarding "*Blackfeet Water Rights Settlement Act of 2016*," May 16, 2016, page 1.

² Testimony from Dionne Thompson, Deputy Commissioner of External and Intergovernmental Affairs at the Bureau of Reclamation, Department of the Interior, June 23, 2016, page 1.

The Blackfeet are warriors. They have sacrificed far beyond what is necessary to see to their Water Compact's passage through Congress. The urgency of this information is further expounded by how critical water and water access is to the Tribe's overall livelihood. The accomplishments thus far on the settlement are significant, having only been made possible by their tireless commitment to the cause. Please do what is right for the Tribe, the state of Montana, and the nation by replying to the Chairman's request as soon as possible so we can finally complete the process.

Thank you for your assistance and prompt consideration of this request. I look forward to working with you further to advance the Blackfeet Water Compact.

Sincerely,



RYAN ZINKE
Member of Congress



Howarth, Robert <robert_howarth@ios.doi.gov>

Fw: Rep. Zinke Letter to Sec. Jewell

1 message

Jeremy Bratt <jeremy_bratt@ios.doi.gov>

Wed, Jul 6, 2016 at 3:55 PM

To: Joshua Mahan <joshua_mahan@ios.doi.gov>, Legs Summary Group <Robert_Howarth@ios.doi.gov>, SIWRO <Pamela_Williams@ios.doi.gov>, SIWRO <Fain_Gildea@ios.doi.gov>, Letty Belin <letty_belin@ios.doi.gov>

FYI

From: Kaster Averill, Amanda <amanda.averill@mail.house.gov>

Sent: Wednesday, July 6, 2016 2:10 PM

To: Bratt, Jeremy

Reply To: Kaster Averill, Amanda

Subject: Rep. Zinke Letter to Sec. Jewell

Hi Jeremy, I know you're out of the office but wanted to send you a copy of the following letter my boss sent earlier this afternoon.

Thank you,

Amanda

Amanda Kaster Averill

Legislative Assistant

Congressman Ryan Zinke, Montana

113 Cannon HOB | 202-225-3211 | zinke.house.gov

Follow Congressman Zinke on Twitter [@RepRyanZinke](https://twitter.com/RepRyanZinke)

7-6-16 Blackfeet Water Compact Letter DOI and DOJ.pdf
977K

FAX

U. S. REPRESENTATIVE RYAN ZINKE RECEIVED
CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515-2600

2016 NOV -8 PM 3: 34
OFFICE OF THE
EXECUTIVE SECRETARIAT

To: Mr. Darren R. Pete – NW Director Congressional Affairs

From: Susan Kohn – Casework Manager

Fax: (202)208-5533

Fax: (406)702-1182

Phone: (202)208-5706

Phone: (406)969-1736

Subject: Congressional Inquiry

Date: 10/31/2016

Comments:

Good Afternoon,

I have attached a signed privacy release form from **Non Responsive** concerning an issue with the BIA and a deed to his property on the Fort Peck in Montana

Thank you for your time concerning these matters for **Non Responsive**

If you have any questions, please feel free to contact me.

Susan Kohn
Casework Manager
Congressman Ryan Zinke
222 N. 32nd Street, Ste 900
Billings, MT 59101
406-969-1736
Susan.Kohn@mail.house.gov

Congress of the United States
House of Representatives
Washington, DC 20515

October 31, 2016

Mr. Darren R Pete
1849 C STREET, NW DIRECTOR, OFFICE OF CONGRESSIONAL AND LEGISLATIVE
AFFAIRS BUREAU OF INDIAN AFFAIRS
U.S. DEPARTMENT OF THE INTERIOR MAIL STOP 3648
Washington, DC 20240-0001

Dear Mr. Pete,

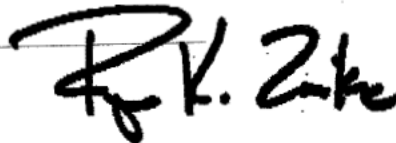
Non Responsive has contacted **Congressman Ryan Zinke's** office in resolving a matter with which you might be able to provide assistance. Enclosed are copies of the information we have been provided on the particular situation for your review.

Your prompt consideration would be greatly appreciated as **Non Responsive** is eager to resolve this matter as soon as possible. A copy of your response will be sent to **Congressman Ryan Zinke's** constituent. If you could please send your response to:

Office of Congressman Ryan Zinke
Attn: Casework Manager - Susan Kohn
222 N. 32nd Street, Suite 900
Billings, MT 59101

Should you have any questions, please feel free to contact me at 406-969-1736.

In God We Trust,



Ryan K. Zinke
Member of Congress

"The Only Easy Day Was Yesterday"

RZ/sk

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515-2600

Due to the Provisions of the Privacy Act 1974 (Title 5, Section 552A of the U.S. Code) please, state in writing that I have your permission to make this inquiry and to receive any information needed to fulfill your request. Then return this form to:

U.S. Representative Ryan Zinke
Attn: Casework Manager
222 N. 32rd Avenue, Ste. 900
Billings, MT 59101

PH: (406) 969-1736
FAX: (406) 702-1182

Non Responsive

Name - Please Print Date of Birth Country of Birth

Non Responsive

Street Address or PO Box Apt/Suite Number

Non Responsive

City State Zip Code Country

Non Responsive

Home Phone Work Phone Cell Phone
Non Responsive

Social Security Number File Case Number (if Applicable)

Non Responsive

10-27-16

Non Responsive

Signature Date Email Address

Please explain the problem with the federal government, use the back side if necessary:

I entered in to a land purchase in Oct. 1995.

This took place on the Ft. Peck Reservation Tribal

member to Tribal member. The property was appraised

and the owner passed away Nov. 1995. His nephew

Non Responsive signed a modification to continue the sale

Paid rent and needed a contract for deed. I questioned why I was never told this for eight years into paying annual payments of \$7800 ^{ea} per year. [Non Responsive] signed a deed. Had it notarized mailed it back to B.I.A. Superintendent Spike Big Horn refused to sign off to get me a deed. Yet my money was paid in full and paid to [Non Responsive] I questioned what's going on a conflict of interest. [Non Responsive]

[Non Responsive]

After 20 years of living and running livestock on the property I received a letter that the B.I.A. was going to confiscate my equipment, livestock property in the shop and machinery sheds. I told them get me a deed. NO Action, NO Letters + NO ANSWERS. A year later I received a phone call I'm trespassing and are going to be fined. I told them I wanted a deed and nothing ever happened. The property is now going to shit. Trees fell on house and wind has blown roofs off of out sheds, but yet I can't do nothing except watch a working farm + ranch fall to pieces. I have made many attempts to get this resolved and never get no where. The persons or personnel in these positions don't have to answer to nobody and I have been told as far as their concerns it is closed, but yet I have no deed. The history of the B.I.A. on the Fort Peck Agency may speak for its self corruption, corruption, and yet more corruption. I pat your back if you pat mine.

I have purchased other property on the reservation tribal member to tribal member no problems. [Non Responsive] purchased property in 1996 the deed was never recorded [Non Responsive]

[Non Responsive] Federal Judge yellowtail at his probate said the people here are in dereliction of there duties, why would it not be recorded for 12 years. ? It got recorded and I received the property in his will.

I have a personal friend [Non Responsive] who has been trying to help me, but no answers. I have gave her a copy of my personal records to forward to you and your people to get a better scade of my situation. Thank you

[Non Responsive]