Institute for Energy Economics and Financial Analysis
IEEFA.org

14900 Detroit Avenue, Suite 206
Lakewood, OH 44107
216-712-6612
staff@ieefa.org

September 29, 2021

National Coal Program Review
c/o Thomas Huebner
Bureau of Land Management
Wyoming State Office
5355 Yellowstone Rd.
Cheyenne, WY 82009

Dear Mr. Huebner,

Please find attached the Institute for Energy Economics and Financial Analysis (IEEFA.org) comments on the Notice of Intent to Conduct a Review of the Federal Coal Leasing Program (21X.LLHQ320000.L13200000.PP0000).

IEEFA has a long standing interest in the establishment, design, scope and outcome of the lease moratorium. We submit a summary of our views on the coal program's history, its contribution to our country, and the direction it should take as the country navigates the next several decades.

IEEFA's view of the coal lease program future is simple. The administration should not spend any time reforming the coal leasing process because there is no more need for new coal leases. The federal government, as the owner of the coal reserves, should be focused on identifying and closing existing mines over time, and financing the reclamation mines on federal lands. It should also ensure that lessees, coal employees and host communities are fairly compensated in the closure process and afforded opportunities to participate in the creation of new economic opportunities.

These processes should not be seen as the end of coal, but rather as a new set of investments with a new local-federal partnership. Further, fair compensation for employees and local governments is rooted in the decades of contribution made by the coal industry to the growth of the U.S. economy and the communities that benefited from the low-cost coal that the lease program provided.

Thank you for conducting this public comment, and we look forward to BLM's response to this comment period.

Sincerely,

Tom Sanzillo
Director of Financial Analysis
tsanzillo@ieefa.org

Institute for Energy Economics and Financial Analysis
IEEFA.org

14900 Detroit Avenue, Suite 206
Lakewood, OH 44107
216-712-6612
staff@ieefa.org

General Commentary on the Bureau of Land Management's Notice of Intent to Conduct a Review of the Federal Coal Leasing Program and to Seek Public Comment: Goals, Scope and Programmatic Options for Consideration

The Institute for Energy Economics and Financial Analysis (IEEFA)
September 29, 2021

In 2012, IEEFA completed a two-year research project with the publication of the "Great Giveaway." In the period leading up to its publication, Sen. Edward Markey had called on the Governmental Accountability Office to conduct an audit of the program, the first audit of the coal leasing program in more than 30 years. After IEEFA's report was published, newspapers, members of Congress, the Secretary of the Interior and the Inspector General all launched investigations that culminated in President Obama's announcement of a coal lease moratorium in his 2016 State of the Union speech.[1] The Trump administration subsequently rescinded the coal lease moratorium and the deliberative process that the Biden administration is now trying to re-establish.

Much has changed in the coal market. In 2014, the nation used 918 million tons of coal. In 2020, the nation used 477 million tons, a decline of 48 percent. Some increases will occur in 2021. The Energy Information Administration's September short-term outlook shows 2021 coal consumption is still expected to be slightly below the 2019 level of 586.5 million tons per year. Coal-fired power plants in the U.S., which form the primary underlying customer base, are expected to continue to drop dramatically through 2030. The market currently is experiencing a double-edged decline—rapid contraction and continued declines in capacity rates.[2] By 2030, IEEFA estimates that coal-unit retirements and declining use at the remaining plants will cut coal use by another 165 million to 250 million tons, resulting in fewer than 300 million tons being used by the power sector.

Coal production in the Northern Plains states is expected to decline from 320 million tons in 2021 to 194 million tons. With low renewable energy costs expected to continue, the tonnage will drop below 200 million, and prices are expected to decline in both short- and long-term scenarios.[3]

Employment by coal mine operators and contract mining companies has fallen by half since 2014, from 116,010 people to just 57,497 through June 30, 2021.

[1] The Washington Post. Obama Administration set to announce moratorium on some new federal coal leases. January 14, 2016.
[2] IEEFA. U.S. Power Sector Outlook 2021. March 2021.
[3] Energy Information Administration. 2021 Annual Energy Outlook. January 2021.

These trends tell us there is no need for more coal leases—but there is a need for federal intervention to smooth the challenges for coal communities.

In 2014, discussions about the fair return, energy needs and exports were highly relevant, as were considerations for new leasing models, improvements in competitive processes, and concerns about pre-sale valuations. Today, as the industry continues its downward trajectory, managing the decline matters more.

What should be done to support the remains of the coal industry, its employees, the host communities for mines and power plants, and the regional economies that have benefited from coal development for decades? Key questions include how much coal we will need and for how long; what should be done about clean-up responsibilities; and how to support the growth of new energy sectors.

The federal government is the owner of the reserves. Its lessees will need to serve its interests if the program is to serve the ultimate beneficiaries—the various U.S. stakeholders. IEEFA believes the process should move forward with the type of planning assumptions contemplated by the design reforms of the late 1970s.

First, the government needs to get a handle on how much federal coal is needed. Second, it must decide how to adjust the mine leases to produce the amount needed. Third, it must figure out how to work with all stakeholders to create a smooth decline of the amount of coal under federal lease. And, fourth, it must determine how to design and pay for the longer-term close-out costs of an industry that once served the nation's economic and national security needs.

To direct this effort, the Interior secretary will require the support of many federal agencies. Typically, a president can create a Cabinet-level commission that can mobilize multi-department resources needed to address the issues. IEEFA proposes such a commission, both to complete the moratorium planning process and to oversee its implementation.

I. Moratorium Research Protocol: Establish a working model of coal production in the United States that accurately reflects current market conditions and projects production through 2050, with specific emphasis on coal reserves currently under active leases.

IEEFA's initial report and subsequent investigations and studies by third parties showed that the government has not obtained fair market value for coal leases since the early 1980s. This served several critically important development goals for the United States at the time. In the process, however, the U.S. government adopted policies and procedures that systematically avoided basing leasing decisions on actual market conditions and trends. IEEFA proposes that the moratorium policy should use methods and analyses that are supported by current market trends. Those trends would be illustrated in large measure by addressing the following information needs and questions:

1. An estimate of the continued trajectory of coal use in the United States through 2050 by type, region, state and amount of federally owned coal.

   a. Assuming current number of existing coal plants.
   b. Adjusting current list for announced coal plant closures.
   c. Adjusting current list of likely coal plant closures based on:
      i. Low renewable energy costs
      ii. Low oil and gas prices
      iii. Low and moderate economic growth
      iv. Declining capacity auction prices.
2. A current list of all mines under active leases including:
   a. Reserves at time of original lease signing: total, 8,800 and 8,400
   b. Current reserve levels as of June 2021: total, 8,800 and 8,400
   c. Estimated annual production and reserve levels through 2050: total, 8,800 and 8,400
   d. Current ownership: total, 8,800 and 8,400
   e. Ownership over the last 10 years: total, 8,800 and 8,400.
3. A current list of all mines under active leasing including:
   a. Coal plants served by the mine and annual consumption by plant, current and last 10 years
   b. Coal plant capacity factors, current and last 10 years.

II. Program Direction for Lease Program: The lease program should concentrate on terminating existing leases, issuing no new ones and managing the cleanup process.

Moratorium activities should be designed to produce a program that recognizes the U.S. government's ownership of coal reserves on federal lands is entering a new period. The federal government owns these resources at a time when coal demand nationwide is declining. Market forces indicate continued decline.

As an owner of a resource that is in a state of declining demand, the federal government needs to secure its financial interests and ensure an orderly management of the reserves and the lease agreements governing coal production and distribution.

The basic program, going forward, should consider this changing role and realign the partnership between private coal producers and the federal government's ownership interests.

A. Retiring Leases and cleaning up the mines.

Recommendations:

1. No new leases are required for the foreseeable future.
2. A program of early lease terminations should be adopted that facilitates the decline of the reserves under federal leasing in an orderly manner. Pending more detailed analyses, the initial focus should be on terminating leases covering mines with 8,400 BTU coal.

    a. Additional program options can be considered going forward for the higher BTU coal reserves under lease.
3. Early terminations should initially be voluntary, but the Department of the Interior should consider stronger actions in the event of low participation by coal lessees.
4. Early coal termination lease proposals to the Interior Department should be accompanied by a remediation plan by the coal lessee.
    a. For lessees planning to terminate a lease, the federal government will offer an incentive package. Incentives to terminate a lease will be based on whether the early coal termination is accompanied by a plan to remediate the mines under lease.
    b. For those lessees that do not file an early lease termination with a remediation plan, incentives should be limited to a payment of no more than 50% of the estimated profits from remaining extractable coal tons under lease. Remaining extractable coal tons should be based on the model created by the secretary's committee under the moratorium research protocol outlined above.
5. For companies filing an early lease termination with a plan of remediation, federal settlement payments should be based on a sliding scale designed to achieve a financially sound, environmentally sustainable plan of remediation supported by the following revenue sources:
    a. Bond obligations of the lessee created under leases to comply with the Resource Conservation and Recovery Act (RCRA);
    b. Fifty percent of the federal government's early-termination-with-remediation-plan payments to coal lessees;
    c. Any such state resources supplied under supplemental programs established under state law; and
    d. Any equity contributions provided by the lessee, its successors or from partners or other entities investing in the future ownership and or use of the site for economic development purposes. The source of such contributions can be from private for-profit, private non-profit or public corporations organized under U.S. law.

B. Transitional Investments and Economic Recovery: Protecting employee's salaries, health benefits and pensions; mitigating local budget deficits; and building new economic growth opportunities.

The basic development concepts used in the design and implementation of transitional activities are rooted in the federal government's historical support for communities affected by defense plant closings. A comprehensive treatment of the financial and social development issues creates benefits for all stakeholders. This flows from the premise covering defense plants that communities that hosted defense plants supported national security, and developed job opportunities, fiscal mechanisms and economic growth programs that relied on a federal partnership.[4]

The justification for the expansion of the federal coal lease policies in the 1970s flowed from the premises that energy was a national security issue; regional economic expansion

[4] Office of Technology Assessment. After the Cold War. 1991.

was essential to the country's economic health; and host communities could develop job opportunities, fiscal mechanisms and economic growth programs that relied on the federal coal lease program.[5]

In both instances, the federal partnership provided decades of local and national economic benefits. The decline of the coal sector and its string of bankruptcies have eroded its decades of contributions to the U.S. economy. The partnership arrangements, however, changed in each case. New federal partnerships were necessary.

The plans for the coal lease program must, like these other initiatives, look at public dollar outlays as investments in new jobs, new tax bases and new growth areas. The issue of national security remains a concern for energy policy.[6] It goes unmentioned in the regulatory treatment but renewable energy can be an important tool for energy independence.

Recommendations:

1. The primary consideration for the federal government, as the reserve owner, should be maximizing remaining coal assets to be mined and sold for the purposes of addressing:
    a. the environmental challenges created by decades of coal mining;
    b. the social and financial challenges created by the continued loss of jobs, pensions, and medical benefits;
    c. the revenue loss to state and local budgets; and
    d. the creation of new economic growth opportunities.
2. All revenues accruing from payments made to the federal government under leases shall be set aside in a special "Early Lease Termination Fund." Special waivers granted to coal companies,[7] in the form of royalty relief,[8] should be rescinded as soon as practicable.[9] Administration efforts to this end are promising but lack the comprehensive approach needed will be limited in its impact.[10]
3. In addition to revenues from royalties, rents or other payments, the fund and its activities should be supported by:
    a. Such allocations made by Congress and
    b. Resources generated by executive actions employing such resource-sharing agreements as necessary

    Accounting presentations by the fund should include using separate accounting techniques resources supplied for fund-related activities by private corporations, local and state governments, and private philanthropic organizations.
4. In addition to the environmental challenges outlined above, resources must be mobilized to cover employment opportunities, revenue losses to state and local budgets, and new local and regional economic activities.

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[5] IEEFA. The Great Giveaway. June 2012.
[6] The Atlantic Council. The many new ways energy and national security are intersecting. January 21, 2021.
[7] E&E News. Interior keeps slashing royalty rates for coal companies. August 25, 2021.
[8] IEEFA. IEEFA royalty reform comments. May 2015.
[9] Department of Interior. How Revenue Works. (last visited September 28, 2021)
[10] Natural Resources Revenue Office. Valuation reform and civil penalty rule; withdrawal. September 30, 2021.

    a. Resources for employment should support existing job holders and future job opportunities.
    b. Existing job holders should be supported through a system of replacement or insurance wages that compensate them for salaries lost due to plant, mine, port, rail or other losses of coal and coal-related employment.
    c. Existing job holders should be supported through a system of payments to sustain health insurance and pensions with benefit levels no less than those existing at the time of job loss.
5. Fiscal payments to local and state governments should be made to affected governmental bodies over a five-year period. Payments should be based in the first year on the average revenues paid for the last five years. Payments should decline proportionally over the five years.
6. The secretary's committee should establish with the cooperation of governors of affected states such coordination mechanism as necessary to support new economic growth strategies in the affected areas.