HAL QUINN
President & CEO

July 28, 2016

Mitchell Leverette
Chief, Division of Solid Minerals
Bureau of Land Management
20 M Street S.E.
Room 2134LM
Washington DC, 20003

Re: Notice of Intent to Prepare a Programmatic Environmental Impact Statement to Review the Federal Coal Program and to Conduct Public Scoping Meetings

Dear Mr. Leverette:

The National Mining Association (NMA) submits the following comments on the Notice of Intent to Prepare a Programmatic Environmental Impact Statement (PEIS) to Review the Federal Coal Program. NMA is a national trade association that includes the producers of most of the nation's coal, metals, industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment and supplies; and the engineering and consulting firms, financial institutions and other firms serving the mining industry. NMA members lease and produce coal on private, state and federal lands throughout the United States and share the stated principal goal of this review—"[ensuring that] American taxpayers are receiving a fair return from the development of these publicly owned resources."[1] Unfortunately, the Secretarial Order issuing the moratorium on federal coal leases and the reforms under consideration by the Bureau of Land Management (BLM) are the product of proposals advanced by those who oppose the development of any federal coal and seek to ensure that the American taxpayer receives no return from the development of publicly owned resources.

If the BLM is sincere in its goal to achieve a fair return for taxpayers, the BLM should lift the moratorium on federal coal leasing and abandon those proposals which would short change American taxpayers and raise energy costs across the nation. Instead of pursuing these destructive policies, the BLM should recommit itself to ensuring the proper and expedient function of the federal coal leasing program on behalf of the public

[1] 80 Fed. Reg. 17720 at 17721, 17723

that it serves. Attached and incorporated in these comments is a report on the "Federal Coal Leasing Moratorium: An Examination of the Reasons Driving a Disruptive Policy" which analyzes the misguided rationales for the moratorium and policy proposals included in the PEIS that are designed to make federal coal uneconomic.

I. Department of the Interior (DOI) Previously Rejected Motivations for the Moratorium and Should Not Change Course Based on Third Party Conjectures

In moving forward with the moratorium and preparation of the PEIS, DOI is apparently fully embracing the flawed reasoning it had rejected out of hand just a few years earlier. In the PEIS scoping meetings and in the media, various anti-development organizations have resurrected these claims by deploying a combination of incomplete, misleading data and misinformation to produce a fictional narrative about the revenue and other economic returns to the public through bonus bids, royalties and surface rental fees. The Secretarial Order rests upon the uncritical acceptance of these contrived "fair market value" concerns by allowing them to serve as proxies for substituting climate-centric for market-based policies in the management of the nation's largest energy resource.

For example, many of the proposals currently advanced by groups in opposition to leasing federal coal are substantially the same as those raised in a 2011 petition for rulemaking calling for the abandonment of the lease-by-application (LBA) method for lease sales and the imposition of "carbon fees." In denying the petition in 2011, BLM explained: how the LBA method is competitive and ensures receipt of fair market value; the pace of leasing occurred at generally the same rate as reserve depletion at existing mines; the National Environmental Policy Act (NEPA) analyses conducted in conjunction for lease sales adequately evaluate GHG emissions; and, imposing a carbon or other externality-based fee exceeds BLM's delegated authority under the Mineral Leasing Act (MLA) and the Federal Land Policy Management Act (FLPMA) and would require congressional action. DOI points to no evidence or rationale that explains why these factual and legal conclusions are no longer valid. DOI's change in position from its well-considered and legally sound 2011 decision is arbitrary and capricious.

Similarly, DOI seems to now blithely accept the "keep it in the ground" organizations' characterization of two key government reports as the rationale for the moratorium. These two reports on coal leasing, one conducted by the DOI Inspector General (IG) and the other by the General Accountability Office (GAO) however, did not identify systemic weaknesses in the current leasing system. Specifically, GAO did not repudiate its 2010 finding that the LBA method can achieve the objectives of ensuring fair return to the public. When the IG testified before Congress, she confirmed in response to questions that taxpayers are receiving a fair return from the federal coal program, and in many cases receiving more than fair market value. In fact, in the months after the reports were released, DOI informed members of the U.S. Senate that neither report identified concerns meriting a moratorium on federal coal leasing. While each report identified some inconsistencies in the application of guidance or documentation for decisions, BLM has since addressed those concerns. To date, the agency has published an updated Coal Evaluation manual and handbook as well as seven instruction memoranda to its field offices in response to the modest suggestions by the IG and GAO.

II. The Reasons Underlying the Moratorium and PEIS Rely on Market Distortions and Mischaracterizations of the Coal Leasing Process Which Would Decrease Coal Production and Return for Taxpayers

Many of the potential policy options listed in BLM's PEIS Scoping Notice disguised as measures for ensuring fair return are actually market distorting policies designed to make federal coal uneconomic to mine which will result in denying communities, states and all Americans the twin-benefits of coal revenues and access to lower cost and reliable electricity.

A. The LBA Method Achieves the Sale of Coal at Fair Market Value

Critics of the LBA method assume, without any explanation, that in the absence of multiple bidders, lease sales are not capable of producing bonus bids at fair market value. Their premise presumably is that competition among more bidders will bid the transaction value up to what economists may refer to as the fundamental value. This might be true in theory, but in reality many mineral asset and lease sales are successfully transacted for fair market value with a single buyer.

The absence of more bidders for federal coal leases does not reflect that leases are being offered at less than fair market value, but instead reflects the restructuring of the industry and the advanced development of the coal regions within federal lands. There are fewer mines and fewer coal companies today than during the period when the regional leasing process commenced in the 1980s. As one would expect, interest in leasing now arises primarily from companies with nearby existing operations seeking to replace coal reserves at roughly their depletion rate. The prohibitively high cost of developing new open-pit mines of the scale necessary to be profitable in the Powder River Basin (PRB), where the vast majority of leased federal coal is produced, creates a barrier to market entry that will be unaffected by any change away from the LBA system.

However, this thinner pool of potential bidders has not prevented BLM from identifying accurately the fair market value of coal for a lease sale. The aim of fair market value is finding the transaction price that would most likely be negotiated between a typical buyer and seller each having reasonable but not absolute knowledge of the reserve. Comparable sales produce fair market valuations because they measure transaction values. The comparable sales method is the preferred method of valuation by professionals when reliable market and sales data are available. BLM relies upon peer-reviewed analysis that uses comparative sales. The successful bonus bids under the LBA leasing method have increased at a rate outpacing the increase in coal prices. The most recent bonus bids for coal leases in the Powder River Basin (PRB) are 700 percent higher than those in 1990.

Furthermore, abandoning the LBA method of leasing and returning to centralized or regional lease sales is unlikely to attract more bidders or yield higher bids. The earlier system of scheduling lease sales based upon national and regional demand forecasts failed with many tracts receiving one or no bids. The Department's earlier leasing framework was built around centralized planning whereby leasing targets and schedules were established to match the forecasted demand and production estimates by the Department of Energy. The purpose of the centralized process was to meet the nation's energy needs and foster competition in lease sales.

However, the regional coal leasing experience using an established schedule limiting when coal will be leased depended on perfect foresight in anticipating coal demand and leasing interest and produced dismal results. Because of the great uncertainties surrounding a wide range of factors affecting demand and supply—nationally and regionally—the exercise produced rapidly changing targets year over year. The current structure of the coal industry and advanced development of the coal regions suggests an even lower probability that centralized or regional leasing will yield better results than the LBA method.

B. The Effective Royalty Rate for Federal Coal is Above Market and Should Be Retained or Reduced to Maximize Return for Taxpayers

Claims that federal royalty rates (12.5% surface mines; 8% underground mines) do not provide a fair return are equally inaccurate, and fail to consider that federal rates are substantially (30%-65%) higher than the prevailing rates for private coal in the East. Moreover, private coal lessees rarely, if ever, pay bonus bids or surface rentals— a fact completely ignored by the groups on whose information DOI relied in imposing for the leasing moratorium. As an example, for the Powder River Basin (PRB) in Wyoming which produces 80% of the coal on federal lands, the government receives almost 40 cents on every dollar of coal sold. To illustrate the above market rate; the current price per ton of coal in PRB is approximately $11.00. The 12.5% federal royalty results in a tax on this price at $1.38. The average price of the lease acquisition fee (bonus bid) adds another $1.00. Two more federal taxes are levied on this ton of coal, the AML tax of $0.28 per ton and the Black Lung Excise Tax of $0.55 per ton. Finally, this ton of coal is also taxed through the state severance tax and the county tax applicable in the PRB, at a rate of 5.3% and 4.5% respectively, adding another $1.08 in taxes. In total, this amounts to $4.28 in taxes on every $11.00 worth of coal sold, an effective tax rate of 39%.

Despite this reality, organizations providing the supporting rationale for the coal leasing moratorium misuse data and create deceptive metrics for their claim that coal producers do not pay the royalty on the market value of the coal. The Mineral Leasing Act (MLA) imposes a production royalty on coal, oil, and gas based upon the value as reflected by the sales price of the commodity at the mine or well. Opponents of federal coal leasing use artificial constructs such as "gross market price" or "full value" by adding to the commodity price the transportation costs incurred by buyers. They advocate moving the point of valuation for calculating the royalty from the sales price received by the coal producer to the point of its use by the buyer. The result is not a production royalty on the market price of the commodity, but rather a federal tax on two separate transactions: coal sales by the coal producer and transportation services provided by the railroads to the coal buyer. This artificial construct fundamentally misconstrues what a royalty is in the first place, and if adopted as the metric would only serve to drive down production and deny taxpayers a fair return for the development of public resources.

In the same vein, a royalty rate that would include a so-called "externality adder" for the consideration of nebulous climate change impacts could no longer be considered a royalty. By changing the rate to include a "cost" derived for purported externalities the royalty would no longer reflect a share of a portion of either the minerals or their value which is the very purpose and meaning of a royalty. Oddly, an externality-based adder would decrease the value of the minerals by making them less economic to mine and sell (i.e., less valuable). DOI previously rejected a similar concept when it denied a 2011 petition by WildEarth Guardians to include an ill-conceived externality adder.

C. Coal Exports Are Not a Valid Basis for Reevaluating Valuation Regulations or Royalty Rates

As part of the PEIS process, BLM appears to be considering arguments raised by the Center for American Progress (CAP) that current leasing and royalty valuation regulations do not capture the true value of coal exports. This argument suffers from the same fundamental error as its arguments for using the total delivered cost to domestic consumers as the market price of the commodity. CAP asserts that PRB coal sold in the export market sells for five times more than it does domestically. This distortion is premised on ignoring the substantial costs of transporting coal to the terminal, having it loaded on a vessel and shipped overseas, which can be more than six times the mining cost for PRB coal.

Coal exports have never comprised a significant share of coal production from western states with federal coal lands. During the zenith of U.S. coal exports, exports from Colorado, Montana, Utah and Wyoming were 4 percent of the total production in those states. In general, Western U.S. coal is at a significant disadvantage in the seaborne steam coal market. The four largest importers of coal, China, Japan, India, and Korea are substantially closer to the two largest exporters of coal, Australia and Indonesia, both of which enjoy low mining costs. Currently, the vast majority of exports of Western coal must go through Canadian, U.S. Gulf Coast or Great Lakes ports which represent significant transportation and logistics costs, placing the Western mines at a competitive disadvantage. Future Western coal exports are dependent on the development of port capacity on the U.S. West Coast. The development of port capacity on the West Coast would be beneficial to Western coal exports by increasing market access. However, this really is of no moment to the proponents of the moratorium who are actively lobbying against such development efforts because they would prefer to see the coal remain in the ground.

The relatively small portion of western coal exported precludes potential exports from serving as a basis to value new coal leases. The value of increased coal exports would be captured in the royalty which is based upon the price of the coal sold at the mine. Charging federal royalties on the total cost of exporting coal as CAP and others advocate will shift exports to private coal where royalties are paid on the basis of F.O.B. mine price and decrease return for taxpayers on the development of federal coal.

III. DOI Data Exposes the Contrived Nature of the Reasons Underlying the Moratorium and Show that the Federal Coal Program is Working

The performance of the federal coal leasing program as reflected in DOI's own data exposes the contrived nature of the reasons offered for the leasing moratorium and programmatic review. Previous concerns about speculative holding of leases without production resulting in the enactment of the Federal Coal Leasing Act Amendments (FCLAA) in 1976 have been addressed successfully—the number of leases decreased and coal production increased. Since 1990, both the number of leases and the amount of acreage under lease have decreased substantially (35%).

With the advanced development of the coal regions, coal companies have sought new leases at roughly the rate of depletion of coal at existing operations as predicted by BLM when it shifted to the LBA leasing method. This reflects the reality that market changes and depletion drive the number of bidders for a lease, not the LBA process itself. Also, since 2003, total revenues from federal coal leases (bonus bids, royalties and surface rentals) amount to $13.8 billion; lease revenues in 2014 were twice the amount in 2003; bonus bids have increased substantially (700 percent in the PRB); coal royalty revenue is 88 percent higher despite coal production increasing by only 2 percent; revenue per acre under lease has increased 40% despite lower coal prices recently. These facts dispose of any notion that the program is not continuing to ensure a fair return for taxpayers.

IV. Environmental Considerations

The various issues raised about environmental and social impacts are a collection of considerations that are already addressed at multiple stages in the leasing and mine permitting process. Moreover, many of the issues listed in the Scoping Notice regarding such impacts and purported externalities would apply with equal force to the other leasing programs administered by DOI.

Coal mining on federal lands is subject to multiple—and often redundant—stages of pre-leasing screening, land use planning, environmental review and permitting. Noticeably absent from the Secretarial Order or the Scoping Notice is any specific deficiencies that can be traced to the current program that incorporates various statutory mandates. These steps include:

- Land Use Planning (FLPMA, FCLAA and SMCRA)
    - BLM conducts, in cooperation with other federal agencies and states, a rigorous land use planning process to review the public lands for potential coal leasing incorporating the considerations set forth by statute in the Federal Land Policy Management Act (FLPMA), the Federal Coal Leasing Act Amendments (FCLAA) and the Surface Mining Control and Reclamation Act (SMCRA). These considerations include multiple use, sustained yield, protection of critical environmental areas and the application of specific unsuitability criteria. The purpose of the coal screening stage of the land use planning process is to identify those federal lands that are acceptable for further consideration for coal leasing and development. No other resource on federal lands is subjected to such a far ranging and in depth assessment for determining what lands should remain open for use or leasing.
- NEPA Analysis Prior to Coal Lease Sale
    - When DOI accepts an application to lease a tract of federal lands for coal leasing, it begins an analysis under the National Environment Policy Act (NEPA) of potential environmental impacts of the proposed leasing action, including "reasonably foreseeable" direct, indirect, and cumulative impacts of leasing coal. Over the past several years, DOI has prepared multiple Environmental Impact Statements evaluating all of the issues raised in the Scoping Notice. *See e.g.*, Final EIS for the Wright Area Coal Lease Applications (July 2010). Final EIS for the South Gillette Area Coal Lease Applications (Aug. 2009); Final EIS for the West Antelope II Coal Lease Application (Dec. 2008). Each EIS evaluates issues mentioned in the Scoping Notice, and more, including: quantity and quality of water resources; aquifer drawdown; impacts on streams and alluvial valley floors, air quality and associated effects on health and visibility; wildlife; endangered species; other land uses; effects of coal combustion on greenhouse gas emissions and associated climate change-related effects. Notably, the Scoping Notice is devoid of any discussion about these comprehensive reviews or the serial and unsuccessful attempts by certain so-called "stakeholders" to have them set aside in court as inadequate.

- Mine Plan Review (MLA and SMCRA)
  - Any lessee must receive approval of a Mineral Leasing Act (MLA) mining plan by DOI that ensures the maximum economic recovery of the coal resource.
- Mining Permits (SMCRA and other laws)
  - A state SMCRA permit application must be submitted and approved which includes a detailed operation and reclamation plan, monitoring, mitigation and reclamation requirements. Mining operations must also receive permits related to air and water quality under state corollaries to the Clean Air Act and Clean Water Act. Much of the analysis is redundant among these applications as well as with the NEPA analysis already performed prior to the lease sale.

Several organizations that the Scoping Notice refers to as "stakeholders" have also advanced a wholly uninformed critique of the coal industry's environmental performance. To the extent they take issue with the percentage of mined lands reaching phase III bond release, their complaint goes to the applicable law—the Surface Mining Control and Reclamation Act—which precludes even applying for final release until at least 10 years *after* a mined area has been reclaimed. A substantial amount of the mine permit areas include long-term facilities (e.g., buildings, roads, stockpiles and ancillary support areas) that are intended to serve the life of the mine. When long term facilities are excluded to evaluate the pace of reclamation with mining, well over half--61 percent---of the lands disturbed by mining in Wyoming and Montana have already been restored (backfilled, graded and revegetated) according to the Office of Surface Mining (OSM). Moreover, OSM reports that the mines in those states were free of any off-site impacts.

V. Conclusion

For the foregoing reasons, DOI must discontinue the unjustified moratorium on federal coal leasing. The moratorium rests upon contrived reasons allowing politics to masquerade as policy. The moratorium is contrary to the Energy Policy Act of 2005 that directed agencies to undertake efforts to ensure the production of secure, affordable and reliable domestic energy from diverse sources including coal. A number of changes to the coal leasing program are warranted, but they do not require either a moratorium or a PEIS. These changes would make the program more efficient by reducing redundancies, make federal coal more competitive and bring in more revenue sooner. These changes include:

- Reducing federal coal royalty rates to bring them closer to parity with the prevailing rates charged on private coal lands.
- Reducing leasing delays that rob the public of the time value of money by delaying the payment of lease bonus bids, surface rentals and production royalties. Lease sales are now taking six to seven years to complete in many cases. The extensive NEPA analysis conducted to date in the various coal

regions should allow DOI to deploy various options under NEPA to rely and build upon that analysis.

- Eliminating redundancies in the environmental analysis and review of MLA mining plans and SMCRA permits. There does not appear to be any purpose or objective of the MLA mining plan that cannot be satisfied under the SMCRA permit operation and reclamation plan.

If you have any questions regarding these comments or the attached report, please contact NMA General Counsel Katie Sweeney at (202)463-2627 or Associate General Counsel Adam Eckman at (202)463-2643.

Sincerely,

Hal Quinn