



November 23, 2009

**BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Ken Salazar
United States Secretary of the Interior
Department of the Interior
1849 C Street, NW
Washington D.C. 20240

Re: Petition to Recertify the Powder River Basin as a Coal Production Region in Accordance With Federal Coal Leasing Regulations and Address Global Warming Impacts of Coal Leasing; Petition to Require Coal Companies to Pay Carbon Fee for New Leases in Order to Establish Global Warming Impact Fund.

Dear Secretary Salazar:

Pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. § 553(e) and Department of Interior regulations, 43 C.F.R. § 14.2, WildEarth Guardians hereby petitions the Secretary of the Interior to recertify the Powder River Basin of northeastern Wyoming and southeastern Montana as a coal production region in accordance with 43 C.F.R. § 3400.5 and ensure that upon recertification, leasing regulations at 43 C.F.R. § 3420, *et seq.*, are fully and properly followed. In doing so, we request the Secretary of the Interior ensure that the global warming impacts of coal leasing in the Powder River Basin are fully addressed in accordance with leasing regulations at 43 C.F.R. § 3420, *et seq.* To this end, we further petition the Secretary of the Interior to establish a carbon fee for new coal leases and lease interest transfers pursuant to the Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. § 1734(b).

WildEarth Guardians is a nonprofit, public interest organization dedicated to protecting and restoring the wildlife, wild places, and wild rivers of the American West. Through its Climate and Energy Program, WildEarth Guardians advocates for replacing fossil fuels with clean, renewable energy to safeguard public health, the environment, and the Earth’s climate.

Attached to this petition is a report prepared by WildEarth Guardians documenting and describing the shortcomings of the current federal coal leasing program in the Powder River Basin. Put simply, the current process of leasing has diminished competition and prevented the Bureau of Land Management (“BLM”) from fully analyzing and addressing the environmental impacts—in particular the global warming impacts—of coal leasing in the Powder River Basin. This is all due to the BLM’s 1990 decision to “decertify” the Powder River Coal Production

Region, which has allowed the agency to utilize a streamlined leasing process driven by coal companies and dismissive of regional environmental concerns. *See* 55 Fed. Reg. 784-785 (January 9, 1990).

It is questionable whether the 1990 decertification of the Powder River Basin was appropriate at the time. However, there is no question that it is inappropriate today. The region not only produces more coal than any other region of the United States, but is a leading contributor to nationwide greenhouse gas emissions. In 2008, the region produced 42% of all coal in the U.S.—more than any other region of the country. As the largest producer of coal in the U.S., coal mining in the Powder River Basin is therefore responsible for more greenhouse gas emissions than any other direct activity. Based on 2007 data, coal mining in the region led to the release of 877,103,673 tons (795,695,068 metric tons) of carbon dioxide, 13% of the U.S. total and 40% of all carbon dioxide released by coal-fired power plants in the country.

These impacts are projected to intensify. Twelve new coal leases have been proposed by the BLM, which would collectively mine up to 5.8 billion tons of coal—as much coal as has been mined from the region in the last 20 years. Together, these proposals threaten to lead to the release of more than 10.6 billion tons (9.63 billion metric tons) of carbon dioxide. The BLM intends to imminently begin approving these coal leases.

The BLM has asserted that the 1990 “decertification” was needed to spur interest in coal leasing in the Powder River Basin. This assertion is not supported by the record of that decision. In response to a March 2009 Freedom of Information Act request submitted to both the Montana and Wyoming BLM offices by WildEarth Guardians seeking all records supporting the 1989 decision by the Regional Coal Team to decertify the Powder River Coal Production Region, we received no records indicating that coal leasing interest was waning, that decertification would actually lead to increased leasing interest, or any other information suggesting that the Powder River Basin was no longer producing coal. In fact, it appears that the rationale for the “decertification” had nothing to do with production capacity or demand for coal; at the time, the region produced 15% of all coal in the U.S. and demand was increasing

What is apparent is that the BLM appears to have decertified the Powder River Coal Production Region so as to be able to utilize the “Lease by Application” process set forth at 43 C.F.R. § 3425. The “Lease by Application” process allows coal companies, rather than the BLM, to delineate lease boundaries and undermines the ability of the BLM to analyze and address the environmental impacts of coal leasing on a regional scale.

According to the BLM, the “Lease by Application” process was simply “deemed more appropriate” in order to facilitate expansion of existing coal mines. This rationale is not allowed by federal regulation. Indeed, although BLM may have discretion to “change” a coal production region or alter boundaries, the regulations are clear that coal production regions are to be used to identify, rank, analyze, select, and schedule lease tracts (i.e., activity planning) in accordance with 43 C.F.R. § 3420.3-1. To this end, the only time the BLM would be allowed to “decertify” a coal production region is if activity planning was inappropriate, such as in areas that were determined to be unacceptable for further consideration for leasing through any land use

planning prepared consistent with 43 C.F.R. § 3420.1-4. The BLM has never made such a determination.

Furthermore, the “Lease by Application” process is only to be used where there is an “emergency need for unleased coal” or in areas “outside coal production regions.” *See* 43 C.F.R. § 3425.0-2. It is a streamlined process meant to facilitate leasing in areas that are not producing coal, or where a genuine emergency need for unleased coal exists. Federal regulations do not allow the “Lease by Application” process to be used to facilitate expansion of existing mines. The BLM nevertheless pushed ahead with decertification of the Powder River Basin in 1990, enabling the agency to utilize the streamlined “Lease by Application” process simply to facilitate expansion of existing mines.

Importantly, the decertification of the Powder River Coal Production Region is preventing the BLM from fully analyzing and addressing the environmental impacts—in particular the global warming impacts—of coal leasing in the Powder River Basin. Under the “Lease by Application” process, environmental considerations play little, if any, role in coal leasing. Not only is the BLM prohibited from limiting coal leasing in the region based on environmental considerations, but the agency is not allowed to delineate lease boundaries that take into account environmental impacts. Although the BLM has admitted that coal from the Powder River Basin contributes to 13% of the nation’s carbon dioxide emissions, the agency is unable to limit leasing or otherwise consider alternatives that reduce the global warming impacts of coal leasing on a regional scale in the Powder River Basin.

This petition specifically requests that the Secretary of the Interior issue a notice in the Federal Register that the Powder River Basin is recertified as a coal production region. The Secretary of the Interior, through the Bureau of Land Management, is authorized to change coal production regions, or alter coal production region boundaries, through publication of a notice of change in the Federal Register in accordance with 43 C.F.R. § 3400.5. We request the Secretary undertake such an action to recertify the Powder River Coal Production Region.

We further request that the Secretary of the Interior ensure that upon recertification, leasing regulations at 43 C.F.R. § 3420, *et seq.*, are fully and properly followed by the BLM. These regulations require that the regional impacts of coal leasing be analyzed and addressed. Further, these regulations require that lease boundaries and the regional leasing schedule be based on a consideration of environmental concerns. To this end, we petition the Secretary of the Interior to ensure the BLM fully addresses the global warming impacts of coal leasing in the Powder River Basin in accordance with leasing regulations at 43 C.F.R. § 3420, *et seq.*

In addressing the global warming impacts of coal leasing in the Powder River Basin in accordance with 43 C.F.R. § 3420, *et seq.*, the BLM will not only have an affirmative duty to analyze the global warming impacts of coal leasing in the Powder River Basin, but to minimize such impacts. In doing so, we request that the Secretary of the Interior ensure the BLM reduces greenhouse gas emissions associated with coal leasing in the Powder River Basin.

The adoption of such a goal is squarely supported by President Barack Obama. On October 5, 2009, President Obama called on all federal agencies to “measure, report, and reduce

their greenhouse gas emissions from direct and indirect activities.” See Executive Order No. 13514. President Obama’s Executive Order directed federal agencies to establish a “percentage reduction target” for reducing direct and indirect greenhouse gas emissions by June 2010. This Executive Order came on the heels of your September 14, 2009 Secretarial Order, which called for the development of a “unified greenhouse gas emission reduction program” among Department of Interior agencies. See Secretarial Order No. 3289.

In furtherance of the need to reduce greenhouse gas emissions, The BLM should establish a carbon fee for new coal leases to create a Global Warming Impact Fund. The carbon fee should be established pursuant to FLPMA as a reasonable charge to reimburse the BLM for the costs of addressing the global warming impacts of coal leasing. FLPMA provides the Secretary of the Interior with authority to “require a deposit of any payments intended to reimburse the United States for reasonable costs with respect to applications,” including coal lease application. See 43 U.S.C. § 1734(b). Such payments are “authorized to be appropriated and made available until expended” by FLPMA. *Id.* Funds from the Global Warming Impact Fund should reimburse the BLM for renewable energy development, habitat restoration, and other efforts to address the impacts of global warming stemming from coal leasing in the Powder River Basin.

In the long-term, the goal of the Secretary of Interior should be to reduce greenhouse gases by promoting renewable energy development in the Powder River Basin and beyond. As the report attached to this petition recommends, the Department of the Interior should report on the renewable energy potential of the Powder River Basin and with the guidance of this report, develop and implement a plan to promote the expeditious development of renewable energy in the Powder River Basin.

We appreciate your time and attention to this petition and the need to address greenhouse gas emissions associated with coal mining in the Powder River Basin of northeastern Wyoming and southeastern Montana. If you have any questions, concerns, or would like to discuss the issues raised in this petition further, please contact me at the information below. Thank you.

Sincerely,

Jeremy Nichols
Climate and Energy Program Director
WildEarth Guardians
1536 Wynkoop, Suite 301
Denver, CO 80202
(303) 573-4898 x 1303
jnichols@wildearthguardians.org

cc: Nancy Sutley
Chair
White House Council on Environmental Quality
722 Jackson Place, NW

Washington, D.C. 20006

Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460