



United States Department of the Interior  
BUREAU OF LAND MANAGEMENT  
Washington, D.C. 20240  
<http://www.blm.gov>



In Reply Refer To:  
3420 (320)

JAN 28 2011

Mr. Jeremy Nichols  
Climate and Energy Program Director  
WildEarth Guardians  
1536 Wynkoop, Suite 301  
Denver, Colorado 80202

Dear Mr. Nichols:

This is in response to your petition dated November 23, 2009, in which you requested the Secretary of the Interior to recertify the Powder River Basin (PRB) as a coal production region under 43 CFR 3400.5. Your petition also asks for the establishment of a carbon fee for new coal leases under the Federal Land Policy and Management Act (FLPMA) to create a Global Warming Impact Fund.

The Department of the Interior (the Department) offers Federal coal resources through two types of competitive leasing processes. In a regional coal leasing process, the Bureau of Land Management (BLM) initiates leasing based on its determination of the demand for Federal coal and national energy needs. By contrast, the lease-by-application (LBA) process is initiated by existing coal lessees or individuals (64 FR 52240). Both leasing processes require compliance with the National Environmental Policy Act (NEPA) of 1969 a public process whereby the direct, indirect, and cumulative impacts associated with the leasing action are analyzed.

In order to consider whether it is appropriate to return to Federal coal leasing on a regional basis in the PRB, a review of the Federal coal leasing program is pertinent to the issues raised in your petition. We will address each point in your petition after the background discussion.

#### Background

The 1976 Federal Coal Leasing Amendment Act (FCLAA) amended the Mineral Leasing Act (MLA) of 1920. The FCLAA requires receipt of fair market value (FMV) for coal leases sold, requires the BLM to ensure the maximum economic recovery of the Federal coal resources, eliminates preference right non-competitive coal leasing, and recognizes prior rights established under the MLA prior to enactment of the FCLAA. The original Federal coal production regions were established, not certified, in 1979 as part of the Federal Coal Management Program (FCMP).

In 1979, the BLM prepared a programmatic Final Environmental Statement implementing the FCMP-identified 12 coal supply regions, including the Powder River Coal Production Region (PRCPR), and further refined these areas by identifying those with significant Federal coal resources. The description of the identified coal production region boundaries were published in the *Federal Register* on November 9, 1979 (44 FR 65196-97). Through the FCMP the Department also promulgated the 43 CFR Subpart 3400 regulations (44 FR 42584-652) guiding the BLM coal program. Two types of advisory boards were established under the FCMP, the Federal-State Coal Advisory Board (FSCAB) and the Regional Coal Teams (RCT). The FSCAB served as the primary advisory for the FCMP body at the national level. The RCTs were originally established under the umbrella of the FSCAB, separately chartered under the Federal Advisory Committee Act (FACA), and serve a primary advisory role for the FCMP at the regional level.

Implementation of the FCMP in the PRCPR began with a regional lease sale held in 1982, and planning for second sale commenced. The second sale was suspended in 1984 due to allegations regarding the 1982 sale. The allegations concerning the 1982 PRCPR sale included criminal disclosure of appraisal information before the sale and failure of appraisal and sale procedures to ensure the public received FMV. There were also challenges to the adequacy of the planning and NEPA work that supported the sale. Two investigations were completed with reports issued in 1984 that evaluated the allegations: Report of the *Commission on Fair Market Value Policy for Federal Coal Leasing* (Linowes Commission, February 1984) and the *Review of Planning Considerations in Federal Coal Leasing* (Office of Technology Assessment, May 1984). On the basis of the findings and recommendations contained in these reports, in the Department made changes to the Federal coal leasing program in 1985. In addition, included in the Linowes Commission's report were several recommendations that the Government should implement leasing policies that distinguish between new production tracts, maintenance, and bypass tracts. As a result, the BLM's consideration of the LBA process in areas of low interest in regional leasing began from recommendations of the Linowes Commission.

As part of the coal program regulations at 43 CFR 3400.4, the Department established the Powder River Basin Regional Coal Team (PRBRCT) to make recommendations on leasing in the PRB. The PRBRCT is composed of the BLM State Directors from Wyoming and Montana, the Governors of Wyoming and Montana; and representatives of the Northern Cheyenne Tribe, the Crow Tribal Council, the U.S. Department of Agriculture-Forest Service, the Office of Surface Mining, the U.S. Fish and Wildlife Service, the National Park Service, and the U.S. Geological Survey. Because the PRBRCT was originally an advisory group as established under regulations at 43 CFR Subpart 1784, the PRBRCT continues to use the public participation procedures from the FACA regulations.

## 1.0 Decertification

The petition questions whether the 1990 "decertification" of the PRCPR as a "coal production region" was appropriate. BLM policy as stated in the Handbook, H-3420-1, *Competitive Coal Leasing*, allows a lead state director to request the decertification of a designated Federal coal production region if this is the course recommend by the RCT.

When evaluating whether or not to decertify a designated production region, the RCT decision must be based on current and projected market conditions, the potential for emergency leasing, the level of industry interest in Federal coal, public comment, and views expressed by the RCT and the affected state governor. A proposal to decertify a designated coal production region, per policy, must be announced in the *Federal Register* (H-3420-1, Rel.3-235, p. II-4).

During a PRBRCT meeting held on December 15, 1988, a decision was made to gather public comments on a proposal regarding the partial or total decertification of the PRCPR. The discussion was initiated in 1988 because there had been no leasing in the PRCPR since the 1982 sale. By 1989, mine operators in the PRB were running short of reserves to maintain production at existing mines. This resulted in the filing of an emergency LBA during 1989. The PRBRCT recommendation to decertify the region was based in part on the limited expression of leasing interest for new mine development in the region, declining market values for raw coal, and public input. In January 1990, the decision to conditionally “decertify” the PRCPR, consistent with the advice of the PRBRCT and in consideration of public comment, was published in the *Federal Register* (55 FR 784-5). The conditions of this decision included the following: 1) the RCT would continue to be active and guide the subsequent coal LBA process, 2) the LBA was to be restricted to tracts that would continue or extend the life of a mine, 3) applications for new mine starts or to expand existing mine facilities would be considered on a case-by-case basis by the RCT, and 4) operating guidelines for processing coal LBAs being prepared must be acceptable to and approved by the RCT.

This decision to decertify the PRCPR recognized that the PRB was a mature coal production region where a sufficient number of mining operations were in place to meet demand. Leasing demand in the decertified PRCPR was anticipated to be limited to replacement of exhausted reserves, which could be accomplished through maintenance leasing. Under this scenario, leasing by application would match the rate of reserve depletion through production.

## 2.0 Emergency Leasing

The petition states the belief that the LBA process (per 43 CFR 3425.0-2) can only be used when there is an emergency need for unleased coal or areas outside of coal production regions. As provided in the BLM policy found in H-3420-1, when the RCT makes the recommendation to decertify the designated coal region, it must provide information on the procedures for leasing Federal coal in the area (H-3420-1, p. II-5). Further, this policy states that leasing by application outside designated Federal coal production regions (this includes undesignated regions) is not restricted to emergency situations. While the term “undesignated region” is not specifically defined in this policy, it pertains to those coal regions that have been decertified. The policy supports this conclusion stating, “RCTs also become involved in the lease by application process in those Federal coal production regions that have been decertified and where the RCTs have been retained to oversee the **lease by application** [emphasis added] and related coal leasing activities” (H-3420-1, p. III-9).

### 3.0 Increased Coal Production

The petition notes that production of PRB coal has increased steadily since decertification. Part of this growth is due to an increase in the demand for electric power and the related increase in demand for steam coal as a fuel for low cost electric generation. There are also cost (mining and reclamation) advantages that have favored PRB coal over other domestic coal regions as well as the coal's low sulfur content which results in cost-effective air pollution control. The production increase has been made with no new mining operations opening since decertification; although, several of the operations have consolidated. The leasing of coal reserves in the PRB under the LBA process has been essentially at the same rate as reserves have been depleted. This level of leasing activity is consistent with the 1990 decertification action.

### 4.0 Role of Industry in the LBA Process

Under the LBA process, an application for a coal lease is made by the applicant initially identifying those lands that the applicant has determined are necessary to maintain production at an existing mine. The BLM identifies alternatives, which may include more or less lands than are included in the application, or may segregate the lands in the application into more than one potential coal lease. The BLM is able to reconfigure the tract in the public interest, to conserve coal resources, enhance competitive potential, and mitigate impacts. In almost every LBA offered in the PRB, the BLM has delineated a preferred alternative that differs from the application.

It is logical and prudent for the lease tracts to be adjacent to one or more existing mines. These are production maintenance tracts and, as such, are located so that existing operations can pass onto these tracts without leaving tracts un-leased and undeveloped in between the existing Federal coal lease and the proposed production maintenance tract that would require significant additional disturbance and cost to mine independently. Production maintenance leasing can only work in a decertified coal production region.

Regional leasing is a vehicle through which the BLM makes multiple Federal coal tracts available for sale based on the need for leasing as assessed by an analysis of national and regional coal markets. In a regional leasing mode, the BLM considers several criteria to establish the quantity of coal to be offered through regional leasing, including expressions of interest from industry (43 CFR 3420.2(c)(3)). However, the quantity of coal to be offered through regional leasing remains at the discretion of the Secretary on the Interior. Meeting the leasing demand relative to one mine is further complicated in that a regional coal sale will include numerous tracts that are all offered for competitive sale on a single sale date rather than to offering individual coal lease tracts for sale as processing and environment analysis are completed. The regional leasing mechanism is appropriate where new mines are planned, and for competition for new coal mining properties. Regional leasing is difficult where existing mines are competing in an open coal market, depleting their existing leases at market rates, and needing to replace reserves throughout a continuum of time.

In addition, under a regional leasing scenario, the BLM, rather than the applicant, must complete geologic exploration activities and fund regional NEPA analysis. Based on the BLM's current budget forecast and possible lack of personnel needed to complete these evaluations, the results could vary including a reduced return to the public from coal sales (due to sale timing), a higher potential for bypass of leasing Federal coal lands for private lands, and forced emergency leasing. Given these issues, over time BLM decertified all 12 of the FCMP-identified coal supply regions, including the PRCPR.

Under both regional leasing and the LBA process, the sales are always competitive, even if there is only one bidder, because the BLM sets a FMV (using the process explained in the BLM Handbook, H-3070-1, *Economic Evaluation of Coal Properties*) and will not accept any bid that does not meet that value. These values are not disclosed, and bidders recognize that they need to bid a fair value or the bids will be rejected. The BLM has rejected numerous bids that were the apparent high bid.

All of this evidence demonstrates that the BLM practice has ensured fair market values are received for LBA tracts and allows production to be maintained at already operating mines. Meanwhile, the coal resource is managed to avoid bypass and isolation and encourage competition.

## 5.0 Global Warming

The petition asks for the assurance of the Department that the BLM fully addresses global warming impacts associated with coal leasing in the PRB. It states that decertifying the PRCPR has prevented the BLM from fully analyzing and addressing the environmental impacts of leasing coal, specifically global warming.

The BLM coal LBA NEPA analyses in the PRB recognizes and discusses the issues of greenhouse gases (GHG) and climate change. Foremost, the NEPA analysis clearly states that policies regulating specific levels of significance have not yet been established for GHG emissions. Given the state of the science, it is not possible to associate specific actions with the specific global impacts such as potential climate effects. Therefore, the analysis cannot reach definitive conclusions as to the extent or significance of the emissions on global climate. However, in the interest of full disclosure, the BLM does attempt to quantify the amount of GHG emissions.

The NEPA analysis estimates direct emissions of GHGs as a result of continued mining operations of the applicant mine, the proposed mining operations that may result from the proposed leasing action, and the volume potential GHG emissions resulting from the assumed use of the coal at dispersed electric generation facilities. The site-specific impacts analyzed are based on the assumption that when an LBA tract is offered for competitive lease, the BLM would accept a bid, the lease would be issued, and mining would be authorized under all applicable laws. Further, the applicant for the LBA is assumed to be the lessee, and the proposed lease would be permitted as an extension of the applicant's adjoining mining operations. An analysis of the GHG emissions is completed for each alternative LBA configuration, including the No Action Alternative.

The cumulative impact analysis evaluates the contribution of the site-specific alternatives to cumulative effects on the environment. The cumulative NEPA analysis assumes that existing PRB coal mining will continue at a rate consistent with coal demand forecasts, within the maximum allowable rates under the conditions of the State mining permit, and that all PRB coal will be used for coal-fired electric generation. In total, the NEPA analysis provides an upper limit estimate of the potential GHG emissions resulting from use of the coal that would be produced from the proposed LBA and for the cumulative PRB coal production.

The BLM utilizes publicly available data from the Energy Information Administration (EIA) to model environment impacts of future coal demand. The most recent Annual Energy Outlook 2010 Report (EIA, May 2010) presents an electrical and coal demand forecast to the year 2035. The EIA's forecast (which includes the 2009 downturn in electric demand) indicates that by the year 2035, 44 percent of the domestic electric generation portfolio will continue to be from coal-fired electric generation. So as long as existing coal-fired electric generators can operate in accord with the regulatory and cost factors in effect in the future, they should be able to acquire necessary supplies of coal from national and international coal markets. While EIA projects coal imports to increase from about 2 percent of total supply in 2009 to 4 percent of the total supply in 2035, this is still small in comparison to 90 percent of coal supply in 2035 projected to be consumed for electric generation. Therefore, the demand for domestic coal supplies, and in particular coal from the PRB, is expected to continue.

Further, each NEPA analysis for PRB coal leasing assumes that if the PRB mines are not able to sufficiently produce coal in the future, then more non-PRB coal would be produced to compensate for any market shortfall. Historically, the PRB coal has been favored in many coal markets because of its low cost and it is low sulfur compliant. The potential for regulation of GHG emissions as an air pollutant, and the effect on coal demand is discussed in all BLM coal LBA environmental impact statements (EIS) and decisions (e.g., see Caballo West Record of Decision, page 8). Further, in coal LBA NEPA documents and decisions the BLM acknowledges the movement toward electric generation capacity not reliant on hydrocarbon fuels is positive and that any resultant reduction of GHG emissions would help lessen any effects the GHG emissions may be causing to the global climate system.

Specific regulated levels have not yet been established for GHG emissions. In each NEPA analysis, the BLM discloses that given the state of the science, it is not yet possible to associate specific actions with the specific global impacts such as potential climate effects (see [www.whitehouse.gov/sites/default/files/microsites/ceq/20100218-nepa-consideration-effects-ghg-draft-guidance.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/20100218-nepa-consideration-effects-ghg-draft-guidance.pdf)). Since tools necessary to quantify incremental climate changes associated with specific GHG emissions are presently unavailable, the analysis cannot reach conclusions as to the magnitude or significance of the emissions on climate.

Electric generation activity is directly influenced by consumer demand. In 2005, the PRB provided coal to 35 states (West Antelope II FEIS at 4-104). If electricity cannot be supplied to meet demand and if electric consumer demand remains steady, electric power prices will rise until the electric power markets achieve a new balance of supply and demand. Measures to reduce GHG releases are best applied at the place where the coal is consumed because the coal

consumer must comply with regulatory and price constraints, which in turn affects fuel choices. Attempting to allocate GHG emissions to the many scattered areas where it is consumed as far in the future as 2035 is speculative. Infrastructure, equipment availability, incentives, and cost also determine the potential for switching to non-carbon-based electric generation. Limiting one or even several points of fuel supply will not affect coal use because of the diverse group of national and international suppliers.

## 6.0 Renewable Energy

The petition suggests that rather than continue Federal coal leasing, the BLM should promote renewable energy development in the PRB. The BLM Wyoming is considering several renewable energy project applications on public lands. However, within the PRB, the BLM manages the Federal coal reserves under predominantly private land surface. For the currently pending LBAs in the PRB, only 3 percent of the land area has Federal ownership of the surface estate. Although there are many wind and solar resources that can be used for energy development, the BLM does not have authority to regulate the use or development of privately held surface estate in appropriate places where BLM manages surface resources, the BLM has prioritized review of Renewable Energy projects.

## 7.0 Carbon Fees

The petition also requests the Department to consider a new carbon fee that would be applicable to new coal leases. This new carbon fee would be established pursuant to FLPMA as a reasonable charge to reimburse the BLM for the costs of addressing the global warming impacts from coal leasing. Under the BLM's interpretation, the FLPMA establishes that the BLM can charge reasonable filing fees to defer the BLM's administrative costs associated with coal lease processing. The BLM already assesses fees to the applicant for the BLM's administrative costs associated with coal LBA processing. Carbon and any other fees dedicated to raising monies to fund other initiatives would require legislation allowing that authority to the BLM.

The FLPMA cost recovery fee authority is limited to reasonable cost actually incurred by the BLM in processing applications for special use. The BLM has no authority to establish funding sources outside of appropriations from Congress, regardless of the cause. Establishing a Global Warming Impact Fund is outside the scope of FLPMA and the MLA, as amended. Therefore, the BLM cannot consider this suggestion.

## Conclusion

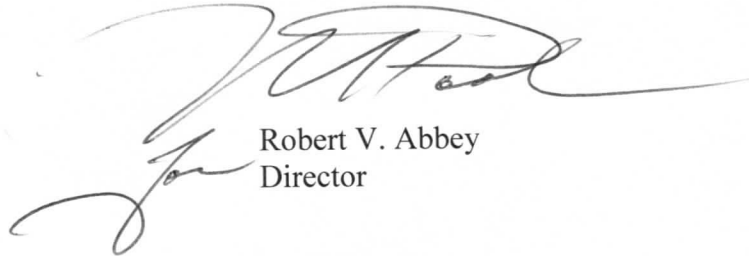
Review of the recent leasing activity in the PRB area of Wyoming and Montana indicates that the BLM continues to effectively manage the PRCPR as a decertified coal region. This is consistent with the following facts:

- All the mines in the PRB have been in place for decades,
- The LBA process provides coal reserves for leasing at a level approximately equal to the depletion by mining thereby assuring an optimum return to the public,
- The LBA process has effectively prevented speculation and bypass of Federal coal resources,

- The LBA process supports competition for Federal coal leases, and
- The BLM has and continues to manage the LBA process consistent with the criteria and conditions that led to decertification of the PRCPR in 1990.

Therefore, and for the reasons outlined in this response, the Department respectfully elects to not “recertify” the PRB as a Coal Production Region, and will not entertain imposing a “carbon fee” to establish a Global Warming Impact Fund.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert V. Abbey", is written over a printed name and title. The signature is fluid and cursive, with a large initial "R" and "A".

Robert V. Abbey  
Director

Enclosure

cc: Official; 320 M. Leverette 501LS; 320 B. Martin 501LS; 320RF/hold 501LS  
320:BLESAGE:mfw:x912-7116:112210:Locator: 320/Coal/FY2011/Correspondence not IMs-  
IBs Filename: WEG Petition Response ver3 (10-12-10)