STATEMENT OF ALAN RABINOFF
DEPUTY STATE DIRECTOR, MINERALS AND LANDS
WYOMING STATE OFFICE
BUREAU OF LAND MANAGEMENT
U.S. DEPARTMENT OF THE INTERIOR

HOUSE COMMITTEE ON RESOURCES
SUBCOMMITTEE ON ENERGY & MINERAL RESOURCES
FIELD HEARING: "Coal's Contribution to the United States Economy And the Intermountain West"
GILLETTE, WYOMING
NOVEMBER 24, 2003

Madam Chairman, thank you and members of the Committee for the opportunity to appear today to discuss coal's contribution to the United States economy and the Intermountain West. The Bureau of Land Management (BLM) in Wyoming is responsible for managing the Federal coal reserves in the State. We are committed to managing Wyoming's valuable public resources through sustainable development consistent with our multiple use responsibilities, which include receiving fair market value for coal tracts leased, supporting a strong economy, protecting the environment, and involving the public in decision making.

This hearing comes at an important moment in the Nation's energy history. The Department wants to take this opportunity to recognize the leadership of Chairman Cubin, and Senators Thomas and Enzi, on many of the provisions in H.R. 6, the Energy Policy Act of 2003, particularly those related to coal. We also want to recognize those other members of the Wyoming delegation, and the many members of the House and Senate who worked so hard to deliver the most comprehensive piece of energy legislation that this Nation has seen in over a decade. H.R. 6 contains important provisions that appear to address long-standing concerns associated with the production of coal on Federal lands. Madam Chairman, we appreciate your hard work on this historic legislation and recognize the contribution it will make in improving coal production and the resulting benefits that will accrue to not only to the State of Wyoming, but to the Nation as a whole.

Coal Production on Federal Lands in Wyoming

Wyoming leads the Nation in coal production. Wyoming alone produced almost one-third of all U.S. coal in 2002 and nearly 31 million tons more than the next three largest coal producing states (West Virginia, Kentucky, and Pennsylvania) combined. Wyoming's coal industry mined and sold approximately 389 million tons of coal in fiscal year 2003 with a gross value over $2.5 billion at the minemouth, which is the first point of sale. This was the sixteenth consecutive year of record production levels in the State. In its 2003 fiscal year, the State of Wyoming collected a total of $476 million in bonus and royalty revenue from Federal coal. The coal industry in Wyoming has contributed significantly to the State's operating budget.

Coal is second only to natural gas as the largest contributor to Wyoming's economic revenue and tax base. In 2001, six percent of Wyoming's work force was employed in the coal industry, and the average salary of a coal mine employee was nearly twice the average salary for all other Wyoming industries. Coal mine employment in Wyoming contributed $312 million to the state's economy in 2000.

Wyoming's vast coal reserves are estimated at 68.7 billion tons, with a total estimated resource base of 1.45 trillion tons. At current production rates, Wyoming coal could continue to contribute to the Nation's coal energy needs for another 200 years. Within the Wyoming portion of the Powder River Basin, approximately 95% of the demonstrated coal reserve and resources are under the stewardship of the BLM.

Coal is used almost exclusively to generate electricity. According to the Department of Energy, today, 92% of coal is used to generate electricity. Coal power plants account for over 50% of all U.S. electricity generated, and over 80 percent of the electricity generated in twelve states in the Midwest, Southeast and

West. If future increased U.S. electricity demand is to be met, then coal – and particularly Wyoming coal – must play a significant role.

In Wyoming, there are nine coal-fired power stations with a combined generation capacity of 5,737 megawatt-hours. These nine power stations rely entirely on coal mined in Wyoming as a low cost and reliable source of energy. At least twenty-eight states imported coal produced from the public lands in the Powder River Basin in Wyoming. In 2001 alone, Wyoming coal generated an estimated 18 billion kilowatt-hours of electricity nationwide.

Since the 1970's, the low sulfur and cleaner-burning coal from Wyoming's Powder River Basin, centered here in Gillette, has played an increasingly important role in meeting the Nation's energy needs. In the mid-1970's, coal production from the Wyoming Powder River Basin supplied about five percent of the Nation's needs. Due in part to the passage of the Clean Air Act and a demand for clean coal, Wyoming Powder River Basin coal production has now increased to nearly 360 million tons or about 33% of national demand.

Wyoming's coal production has generally been increasing faster than the total national demand for coal since 1970. The rapid increase in demand for Wyoming coal is due to several factors. It is a result of increasing economies of scale in coal production practices from the extraordinary coal deposits in the Powder River Basin, greater railroad penetration into eastern markets, and increased Powder River Basin transport efficiency, mine productivity, and demand for clean coal. Since 1990, growth in Wyoming's coal production has averaged seven percent per year.

As stated earlier, the development of Federal coal reserves provides significant revenue to the U.S. Treasury and the State of Wyoming, resulting from Federal fees and royalties required under the terms and conditions of Federal coal leases and State fees and taxes.

Lease by Applications

The BLM Wyoming presently has ten pending applications for coal leases. Eight of these applications, better known as Lease by Applications (LBAs), are in the Powder River Basin. The two remaining LBAs are in the Rock Springs and Kemmerer areas. These Wyoming LBAs contain 2.16 billion tons of coal and encompass nearly 21,000 acres. The BLM Wyoming plans to hold six coal lease sales proposed by these LBAs in the Powder River Basin during 2004. These sales would include approximately 1.6 billion tons of coal underlying over 14,000 acres.

The BLM Wyoming helped initiate a cooperative Environmental Impact Statement (EIS) for four applicants encompassing five tracts that are relatively close to each other. This document, known as the Southern Powder River Basin Coal EIS, addresses the impacts of leasing and mining these tracts. The five tracts are the North Antelope-Rochelle (NARO) South, NARO North, Little Thunder Creek, West Roundup, and West Antelope. The BLM is planning to issue the final EIS later this month.

A second EIS document for the West Hay Creek Coal tract in the northern part of the Powder River Basin will be finalized this winter. In early 2004, our Rock Springs Field Office expects to issue the draft environmental document for the Ten Mile Rim LBA.

Federal Coal Production Authorities

The Mineral Leasing Act (MLA), as amended, provides the statutory authority to lease Federal coal reserves and to collect and distribute fees and royalties. Under the MLA, the revenues on a Federal coal lease include: 1) an annual rental payment of $3 per acre; 2) royalties in the amount of 12.5% of the gross value of the coal mined using surface mining methods and 8% for coal mined using underground mining methods; and 3) a bonus payment based on the fair market value of the lease. The per-acre rental value is based on regulation. The determination of gross value for payment of royalties is handled by the Minerals Management Service. The determination of fair market value for the lease rights to a coal tract falls under the BLM's jurisdiction.

The MLA mandates that half of the royalty and bonus bid revenues be returned to the state in which the lease is located. Forty percent of the revenue goes to the Reclamation Fund and the last ten percent is deposited into the U.S. Treasury's General Fund.

All coal leases are sold on a competitive basis through a sealed bid process. The decision to accept or reject a particular bid is based on whether the bid meets or exceeds the BLM's pre-sale estimate of fair market value. Fair market value is defined as the competitive market value of the lease. The MLA further requires that at least half of all the leases sold in any year be offered with a deferred bonus payment option. The deferred bonus payment option has been established through regulation as a cash payment of 20% of the total bonus bid that is payable at the time of the lease sale. For the first four years of the lease, additional installments of 20% of the total bonus bid are payable annually.

Bonus Bids & Bonding for Federal Coal Leases in Wyoming

As noted above, the MLA provides that at least half of the acreage offered for coal leasing in any given year is leased under a system of deferred bonus payments. The MLA further requires that any unpaid coal bonus payments be immediately payable if the lease is canceled or the lessee defaults on the terms and conditions of the lease. Currently, the BLM requires a bond for the unpaid balance of the bonus bid.

In accordance with current coal leasing regulations (43 C.F.R. subpart 3474), the bonds for Federal coal lease obligations may be in the form of a surety bond written by an approved surety company or by a personal bond secured by a guaranteed remittance of cash or U.S. Treasury Securities.

Federal coal lessees under current regulations are required to provide bonds for each lease in an amount equal to the annual rental payment and up to three months of royalty obligations (43 C.F.R. 3474). These bonds range in value from $5,000 to $7 million. Lessees also must bond for unpaid bonus bids and in the past ten years, these bond requirements for coal leases issued in Wyoming have varied from a low of $1.5 million to a maximum of $303.6 million in the last competitive coal sale, held in January 2002.

The availability of surety bonds has changed significantly as a result of numerous factors. Disaster-related losses arising from the events of September 11, 2001, and the recent forfeitures of major corporations, have had a significant impact on the surety industry. Because of these losses, surety companies have become more cautious and are reducing their exposure to financial risks. Section 425 of H.R. 6 addresses this issue by prohibiting the Secretary from requiring a surety bond or any other financial assurance to guarantee payment of deferred bonus bid installments when the lessee has a history of timely payment of coal royalties and advance royalty payments in lieu of production and bonus bid installment payments. Further, the bill authorizes the Secretary to waive the requirement that a coal lessee post a surety bond or other financial assurance for a coal lease issued prior to enactment of the Energy Policy Act of 2003 if the Secretary determines that the lessee has a history of making timely payments. While we have concerns about a broad prohibition on the use of surety bonds to ensure full payment of bonus bids to the government, we believe we can continue to work effectively with the changes codified in H.R. 6 if it is enacted.

Other Impacts of the Energy Policy Act of 2003 on Coal Production

The President's National Energy Policy notes that statutory, regulatory, and administrative difficulties may limit or prevent the production of some coal resources. H.R. 6, the Energy Policy Act of 2003, contains a number of significant provisions pertaining to the development of coal resources on Federal lands designed to address these concerns. If enacted, these changes will positively impact coal production in Wyoming and elsewhere in the United States.

First, the bill amends the MLA by increasing the 160-acre lease modifications limitation to 1280 acres for coal production provided the Secretary finds, among other things, that the lease would be in the interest of the United States and would not displace a competitive interest in the land. We support this provision. We believe the current limitation has unintentionally caused the bypass of some otherwise recoverable coal reserves.

Second, it authorizes the Secretary to establish a period of more than 40 years for a mining plan if the Secretary determines that the longer period will ensure the maximum economic recovery of a coal deposit or is in the interest of the orderly, efficient, or economic development of a coal resource. We support this provision because the current 40-year limitation does not, in some cases, reflect actual mining practice, particularly where incremental parcels are being added to established logical mining units. There may also be cases where the size of a reserve in an original logical mining unit is large enough to require more than 40 years for development.

Finally, H.R. 6 increases the number of years that advance royalties can be paid in lieu of production and eliminates the requirement that a lessee submit a mine plan within 3 years of lease issuance. Under current law, the Secretary may suspend the condition that a lessee continually operates upon payment of advance royalties. However, the aggregate period of the lease for which advanced royalties may be accepted cannot exceed 10 years. H.R. 6 would extend that to 20 years. We support eliminating the 3-year mine plan submission requirement because most mine plans submitted to meet this requirement do not reflect the actual mine plan submitted under the Surface Mining Control and Reclamation Act (SMCRA) and, therefore, are a wasted effort for both the lessee and the BLM. The ultimate mining plan is reflected in the application for a permit submitted under SMCRA.

If H.R. 6 is enacted, the Department will develop guidelines for carrying out the determinations required under the MLA related to the provisions mentioned above that recognize the importance of the competitive leasing process, a fair return to the taxpayer, and the efficient and orderly development of coal resources. These amendments to the Mineral Leasing Act, we believe, appear to address many of the long-standing problems associated with coal leasing operations on Federal lands.

Conclusion

Madam Chairman, we want to reiterate our appreciation for your hard work on H.R. 6. BLM is committed to pursuing its multiple use mission to be good stewards of our Nation's public lands, while also working cooperatively with Wyoming's mining industry and interested stakeholders. Thank you for the opportunity to appear before you and testify on this very important subject for both the State of Wyoming and the Nation as whole. I welcome any questions the Subcommittee may have.