

Committee on Resources,

Subcommittee on Energy & Mineral Resources

[energy](#) - - Rep. Barbara Cubin, Chairman

U.S. House of Representatives, Washington, D.C. 20515-6208 - - (202) 225-9297

Witness Statement

"SHORT-TERM SOLUTIONS FOR INCREASING ENERGY SUPPLY FROM THE PUBLIC LANDS "

STATEMENT OF
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ON BEHALF OF
THE NATIONAL MINING ASSOCIATION
Subcommittee on Energy and Mineral Resources
House Committee on Resources
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Madame Chairwoman, my name is Terry O'Connor. I am Vice President of External Affairs for Arch Coal, Inc. I am appearing here on behalf of Arch Coal and the National Mining Association (NMA) to testify on the potential that energy resources on federal lands, specifically coal resources, have to play in solving our nation's short-term energy supply problems. We would like to thank you for your leadership in holding these hearings and working to find ways to increase energy production on federal lands, while at the same time making certain that exploration and production is done in a way that is compatible with protecting the environment in which we live and work.

Summary

Our nation is facing a crisis - a shortage of affordable energy. While this is a long term problem that will only be solved with policies that encourage long term investments in the environmentally sound development of our energy resources, in efficiency and conservation, the problem also requires short term solutions. Domestic, affordable and increasingly clean coal that provides over 20% of all the energy that is used in the United States, the fuel of choice for over 50% of the electricity generated in our nation today, must be part of the short run answer. Nearly 40% of our coal production is from mines located on federal lands. Over one-third of the nation's coal reserves are owned or controlled by the federal government. Forecasts show that over 90% of new production expected to come on line over the next 20 years will be from mines on federal lands. Much of this production can come on line quickly if electric generators can use it. However, policies now in effect discourage modification of existing capacity and construction of new clean coal generating capacity. Policies also have discouraged, or prevented the exploration, development and investments that will be required to bring new coal production on federal lands quickly on line. That is the subject of this hearing today. The Congress, in concert with the Administration, can take action in three areas to allow expansion of coal production from federal lands, dependent upon the demand to use coal.

- The Congress can enact legislation to resolve conflicts involving simultaneous development of coal bed methane and leased federal coal reserves in the Powder River Basin. We thank you Madame Chairman, for the legislation, H.R. 1710, which you introduced for this purpose and which has been referred to this Subcommittee;
- The Administration can extend its review of public lands withdrawals and lease stipulations, announced last week as part of the President's energy policy, to include coal resources as well as oil and gas. In particular, the Administration needs to address changes needed in the Forest Service Roadless Area Conservation Rule; and,
- The Administration can extend its review of federal leasing policies - also announced last week - to include a review of the coal leasing process with the goal of taking the administrative actions necessary to accelerate the leasing process. Legislation is also required to reform federal coal leasing.

Background

By way of background, Arch Coal, Inc., headquartered in St. Louis, is the second largest coal producer in the United States. In 2000, our operating subsidiaries mined more than 112 million tons of coal - approximately 10 percent of the nation's production - from surface and underground mines in Wyoming, Colorado, Utah, Illinois, West Virginia, Kentucky and Virginia. Arch shipped coal to approximately 149 power plants in 30 states providing the fuel for 6 percent of the electricity used by Americans last year. Arch owns or controls approximately 3.2 billion tons of coal reserves including reserves on federal lands.

In 2000 our company mined nearly 65 million tons of low-sulfur, sub-bituminous coal from our two large surface mines in the Powder River Basin ("PRB") of Wyoming, Black Thunder and Coal Creek mines. We also produced 3.4 million tons in our West Elk Mine in Colorado and 9.4 million tons at three mines in Utah. This coal is almost exclusively mined on federal lands, including four mines that operate at least partially on National Forest Service Lands. One of Arch Coal's highest priorities is to operate safe and environmentally responsible mines. Our production and reclamation experience on our mines on federal lands are prime examples of the way that our priorities are met.

The National Mining Association represents producers of coal, metals and non-metal minerals, as well as manufacturers of processing equipment, machinery and supplies, transporters, and engineering, consulting and financial institutions serving the mining industry. The members of National Mining Association produce over 80% of America's coal, a reliable, affordable, domestic fuel choice used to generate over 50% of the electricity used in the nation.

The Nation Has a Long Term Energy Problem, But, Short Term Actions Can Help

Without question our nation is facing the most serious shortage of affordable energy since the 1970's. Gasoline prices are at record or near record highs throughout the country. Refinery capacity cannot keep up with the demand for the many regionally required fuels. Natural gas prices were very high during the winter and are still far above price levels of only 18 months ago. Electricity shortages and rolling blackouts, a reality in California, may also occur this summer in New England, New York City and Texas⁽¹⁾ as the capacity to generate affordable electricity has not kept up with demand. As President Bush pointed out in his report "National Energy Policy" released last Thursday May 17th, there is a fundamental imbalance between supply and demand...that if allowed to continue will inevitably undermine our economy, our standard of

living, and our national security." ⁽²⁾ Our nation's energy infrastructure has an investment deficit. This is a long-term problem that requires the long-term solutions suggested by the President's new energy policy.

But, the effects of this crisis - a shortage of affordable energy - are being felt by our citizens now. We must take short-term actions that will assist in alleviating the crisis even as policies are being developed and implemented to address the longer-term issue. Increasing the supply of energy produced on federal lands, including coal that is produced on federal lands, can be part of the short-term solution.

Coal Is An Important Part of Short and Long Term Energy Policy

Increasing the production and use of coal, our nation's most abundant domestic resource, is an important piece of both short and long term energy policy. In 2000, 1.1 billion tons of coal were produced in mines located in 26 states. Coal, or electricity generated from coal, is used in all 50 states. Last year almost all our production, or 1.026 billion tons of coal, was the fuel that generated nearly 52 percent of all electricity used in the United States. The reason that coal has this market share is straightforward: coal is domestic and reliable; coal is affordable (electric rates in regions dependent upon coal for electricity average at least one-third lower than regions dependent upon other fuels for electricity); and, coal is increasingly clean. Although coal use in 2000 was more than triple the amount of coal used for electrical generation in 1970, emissions have declined by over one-third, a trend that will continue.

As the National Energy Plan so correctly stated: "If rising U.S. electricity demand is to be met, then coal must play a significant role." ⁽³⁾ Coal fired electricity is and will remain the most affordable electricity available. Coal production will increase by at least 25% over the next two decades to meet the increased demand arising from the expected 40% or greater increase in demand for electricity.

Coal On Federal Lands, Is And Will Continue To Be, A Vital Part Of The Nation's Domestic Energy Supply

Coal mined on federal lands provides a vital portion of the nation's domestic energy supply. In 2000 approximately 405 million tons of coal, 37 percent of national production, were mined on federal lands. Considering western production only, nearly 80 percent came from mines on federal lands and, considering that the majority of privately held western reserves are on lands that are effectively controlled by federal land policies, one can assume that 85% or more of the growing western coal industry depends upon federal land management policies. Coal mines on federal lands are found in Colorado (89% of production within the state), Montana (46%), New Mexico (24%), North Dakota (7%), Oklahoma (35%), Utah (88%), Washington (33%) and Wyoming (92%). Less than 0.1 percent of coal production on federal lands - 365,000 tons - was from lands located in the Appalachian states (Alabama and Kentucky).

Coal produced on federal lands contributes directly to local economies in a positive way. In 2000, this coal was worth an estimated \$3 billion. Production activities provided high paying jobs for over 15,000 workers in 2000, paying wages in excess of \$600 million. Considering both direct and indirect economic benefits, coal produced on federal lands provided employment for nearly 150,000 workers with wages of over \$3.5 billion dollars.

Coal produced on federal lands contributed nearly \$400 million to state and local tax revenue. Royalties paid to the Federal Government last year were an estimated \$330 million.

All the benefits of coal mined on federal lands do not remain within the region as this coal is shipped to

electric generators in 30 states. Major destinations outside the western region include generators in Michigan, Minnesota, Illinois, Indiana, Iowa, Wisconsin, Texas, Kansas, and Arkansas with some being shipped as far as Alabama, Mississippi and Georgia. Taken as a whole, coal mined on federal lands is used to generate nearly 40% of all electricity generated from coal, or approximately 20% of all electricity produced in the US. This is not an insignificant amount being enough to supply electricity to the entire South Atlantic census region or to all the customers in the East North Central and West North Central states combined or to 3.2 Californias.

The Federal Government owns about one-third of the Nation's coal resources, which are located on approximately 76 million acres of land principally in the western United States. Western federal lands contain approximately 60 percent of the total western coal reserve base. An additional 20 percent of the coal resources in the West are managed or impacted by the Federal Government by virtue of (1) the commingling of State and private coal reserves with Federal leases and (2) trust responsibilities for Indian lands.

It is important to note that the enormous coal reserves on federal lands include some of the best coal from an environmental standpoint. Many of the reserves, especially those located in Wyoming and Montana, are low in sulfur and also low in inherent NO_x when burned in power plants. These coals are ideally suited to meet the increasingly stringent emission requirements of the Clean Air Act Amendments of 1990 and the regulations that EPA has promulgated.

Whether viewed as an environmental, an economic or as a domestic energy security and reliability issue, continued coal production from reserves on federal lands is critically important to the economy and the well being of the United States. Energy, especially electricity would not be as readily available or as affordable if it were not for coal from federal lands.

Coal from federal lands is projected to increase over the next two decades. The EIA Annual Outlook 2001 forecasts shows that over 90% of the expected 250 million tons increase in US coal production will come from coal reserves located on federal lands. Clearly, coal resources on federal lands not only can, but must play a major role in meeting the demands of the future.

What Is Needed to Make the Coal Production Forecast A Reality ?

Expansion of coal fired electric generating capacity is a condition precedent.

First and foremost, coal will not be mined unless it can be used. The future demand for coal depends upon the capability of the electric generating industry to continue operation of its existing fleet and to expand with construction of new plants using advanced clean coal technologies. Maximum efficient use of generating capacity in turn depends upon a reliable nation wide transmission network with greater capability than exists today. President Bush has suggested several policies that will allow existing generating capacity to operate at maximum efficiency, new capacity to be built, and the transmission network to be expanded without impact on the environment. Although these policy proposals are beyond the scope of this hearing today, it is important to note that the capacity to use coal, the capability to turn coal into electricity efficiently with minimum impact on the environment, is a necessary precedent to expanding coal production capacity. National Mining Association supports the provisions included in the President's energy plan to expand research to continue development of advanced clean coal technologies. We also believe that legislation to implement a new energy policy must include a provision for incentives to assist companies building new clean coal plants by assuming part of the financial risks associated with commercializing new technologies.

Coal production on federal lands can increase rapidly but not without changes in federal policy.

As pointed out, coal production on federal lands is a large and growing portion of production in the United States. Over the next four years, the 405 million tons produced in 2000 can certainly increase to meet demands throughout the nation but most particularly in the west and southwest.

For example, coal production from reserves located in Utah on Forest Service lands, or on lands controlled by the Forest Service, fuels several plants that in turn generate affordable electricity for the California market. The potential power plant expansions in Utah could increase demand for coal mined in Utah by as much as 40 percent in the short term. Production in Wyoming, now at 340 million tons could continue to grow rapidly in both the short and the long term to fuel demand from electric generators in the Mountain states, but also in the Mid west, Texas and in the Southeastern states.

The rate at which the coal industry operating on federal lands can respond however, depends on several changes in policy. Interpretations of legislation over a long period of time added to the regulatory policies of the previous Administration over the last eight years have acted to discourage or actually prevent responsible development of coal resources on federal lands. Although there are several issues that need to be considered, rapid increases in coal production in the short term will depend upon action in three areas.

- Resolution of conflicts involving simultaneous development of coal bed methane and leased federal coal reserves in the Powder River Basin;

Increased access to the resources located on federal lands for responsible exploration and development activities. Large reserve blocks have already been effectively removed from development by actions of the Federal Government. [\(4\)](#) *The Forest Service Roadless Area Conservation Rule will remove even larger portions of the coal reserves located on federal lands from responsible development; and,*

- Reform of the federal coal leasing process.

Coal/Coal Bed Methane Conflict in the Powder River Basin

It is important that the Congress act quickly to enact legislation that provides for orderly development of energy resources located on federal lands to ensure that development of one resource does not preclude economic development of a co-located resource. Madame Chairman, you have sponsored and introduced H.R. 1710 to address this problem. A companion bill, S. 675, has been introduced in the Senate.

The Powder River Basin of Wyoming and Montana is one of the world's richest energy resource regions and includes the largest reserves of low sulfur coal in the United States. Virtually all of the coal, and about 50 percent of the oil and gas reserves in the Basin, are owned by the federal government and managed by the Bureau of Land Management (BLM) under the Mineral Leasing Act of 1920. Problems have arisen because BLM has issued federal coal leases and federal oil and gas leases for the same locations in the Basin. In many cases when these oil and gas leases were issued coal bed methane resource development was not contemplated.

In those areas leased both for coal and for oil and gas, disputes over timing of mineral development have arisen. The sequence of development frequently becomes a critical issue because the production of any one of the minerals can result in the loss of another. For safety and operational reasons, concurrent development typically is impossible. No clear statutory direction exists to resolve disputes over the sequence of mineral

development in these areas where the federal government has "double leased" its minerals. BLM has not provided effective guidance or included conditions in its leases that would provide a resolution to these disputes.

In the 2nd Session of the 106th Congress, the entire Wyoming delegation sponsored legislation (The Powder River Basin Resource Development Act of 2000 - S. 1950 and H.R. 4297) to resolve these conflicts. The proposed legislation (which was reintroduced this year as H.R. 1710 and S. 675) would require competing mineral developers to negotiate first, and urges the BLM to use its regulatory authority to achieve a possible resolution to each conflict. If both negotiations and regulatory efforts fail, either the coal developer or the oil and gas developer could invoke the formal resolution process established by the legislation by filing a petition in the local federal district court and with the Secretary of the Interior. The bill's process then would require a public interest determination first by the Secretary, then by the court, as to which mineral will be developed first. There would follow a temporary suspension or termination of rights to develop the conflicting mineral. The court, with the aid of an expert panel, would determine the amount to be paid to the non-prevailing mineral developer.

The proposal is the result of lengthy negotiations between the previous Administration, coal producers and oil and gas developers and should be quickly considered and passed by this Congress. Until legislation is passed, conflicts involving simultaneous development of competing fossil fuel resources in the PRB will continue to threaten or delay orderly development of much needed environmentally favorable domestic energy resources.

Forest Service Roadless Conservation Areas

The Administration can extend its review of public lands withdrawals and lease stipulations, announced last week as part of the President's energy policy, to include coal resources as well as oil and gas. The Forest Service Roadless Conservation Area Rule must be part of this review.

This Committee knows well the history and the effects of the last Administration's Roadless Area Conservation rule that was published on January 12, 2001. Due to the lack of detailed information, Forest Service significantly underestimated the rule's impact on energy supplies in the western United States. Industry analysis however, showed that the implementation of this rule could sterilize over 40% of the coal production in Colorado and Utah.

And, according to the Department of Energy:

"The roadless initiative will have an impact on coal reserves in Colorado and Utah, including both the expansion of existing mines and tracts of coal of near-term commercial interest. While these resources are recovered using underground mines, roads are needed to build ventilation shafts and for safety, e.g., to fight underground fires. The mines would not be built or expanded if roads cannot be constructed.

Existing leases may also be affected... "[\(5\)](#)

In Colorado, one of the mines in the Grand Mesa-Uncompahgre Forest is my company's, West Elk Mine where 200 million tons of coal could become unrecoverable because of the rule. This loss of reserves will result in the premature abandonment of the mine and its \$100 million infrastructure.

The Bowie Mine in the Grand Mesa-Uncompahgre Forest will be blocked from developing 50 million tons

of high quality coal reflecting over \$2.5 billion in economic activity. The Oxbow Mine, adjacent to the Bowie leases is surrounded on the east and north by roadless areas. These roadless prohibitions will thwart future development at this operation.

The Forest Services Final Environmental Impact statement for the roadless rule declares that in Utah's Manti-La sal Forest three tracts alone account for 185 million tons of high Btu coal that are prejudiced by the rule. Further investigations of coal resources in the area indicate the impact could be much greater.

The Forest Service chose to accept these severe prescriptions even though mine roads are temporary and the Surface Mining Control and Reclamation Act (SMCRA) mandates that these roaded areas be reclaimed to a condition as good or better than they were before mining. It should be noted that surface coal mines cannot be permitted on Forest Service administered lands unless the Secretary of Interior "finds that there are no significant recreational, timber, economic, or other values which may be incompatible with such surface mining operations..." In other words, the values the rule is supposed to safeguard have already been considered and protected by an existing statute. Yet, millions of tons of low sulfur coal have been sterilized by this needless and unlawful regulation.

The reserves removed from development by this rule will have an effect on the ability of the coal industry mining on Forest Service lands to meet demand in the short term as well as over the longer run. The Forest Service delayed implementation of this rule until May 12 as part of the Bush Administration's overall assessment of rules issued at the end of the previous Administration. However, on May 10 a federal judge's ruling blocked implementation of the rule pending further review and amendment.

Secretary Ann Veneman has announced that the Department of Agriculture intends to propose amendments to the rule in June. We would urge this Committee to do all it can to encourage a rapid review of these amendments with a view toward allowing industry to continue responsible development of coal, and other energy, resources on Forest Service lands as quickly as possible. Coal production on lands affected by the Forest Service Rule can increase rapidly, but only after resolution of this issue.

Federal Leasing

The Administration can extend its review of federal leasing policies - also announced last week - to include a review of the coal leasing process with the goal of taking the administrative actions necessary to accelerate the leasing process. Legislation is also required to reform federal coal leasing.

In August 1976, the Federal Coal Leasing Amendments Act ("FCLAA") was enacted. FCLAA imposed for the first time a series of radically more stringent requirements upon federal coal lessees, the compliance with which forced such lessees to make a host of major financial and operational commitments, many of which made good policy sense but others were counterproductive. Over the past 25 years, those federal coal lessees who have managed to stay in business have fully complied with both the rational and the questionable requirements.

Federal coal lessees are not today calling for major reform of the FCLAA program, although over time certain of FCLAA's provisions ultimately may need to be revisited and modified. Even where modifications ultimately may be needed, in most instances, the debate on such modifications can be deferred to a later time when adverse impacts become more focused and imminent. There are two areas that need immediate attention however.

1. Advanced Royalty Provisions

The first issue that must be addressed is a segment of FCLAA's current "advanced royalty" provisions, which call for early legislative reform by Congress. The current advance royalty provisions provide, among other items, that:

- Advance royalties may not be paid for more than an aggregate of 10 years,
- Advance royalties paid during the initial 20 year term of a lease may not be carried over past the 20th year, and
- The Secretary of Interior may unilaterally cease to accept advance royalties.

With the progressive deterioration of U.S. coal market prices, several federal coal lessees have been forced temporarily to curtail production and idle mines. Without the option of extending the lease by paying advanced royalties, producers will be forced to prematurely terminate leases. Once leases are terminated, the probability of the location being mined again is small. The federal coal and federal revenues associated with it will be lost.

We recommend that narrowly drafted, surgical changes be made to FCLAA's advance royalty provisions which would:

- Extend the aggregate entitlement to pay advance royalty in lieu of continued operations from 10 years to 20 years;
- Delete the current prohibition on the carry-over of advance royalty payments made during the initial 20-year period of the lease;
- Delete the current authorization for the Secretary unilaterally to cease to accept advance royalties in lieu of continued operations; and
- Delete the last sentence of Section 39 of the MLLA of 1920 (Section 14 of FCLAA) prohibiting the waiver, suspension, or reduction of advance royalties.

5. Address the Need to Move Expeditiously on Lease-By Applications

The Federal Coal Leasing Amendments Act of 1976 ("FCLAA") requires that all leases for federal coal be conducted by a competitive leasing process. One of the mechanisms for initiating competitive leasing is through a lease-by application ("LBA") procedure, which allows an existing coal mining operation to nominate a tract for the expressed purpose of prolonging the life of the existing mine. The LBA process has been effectively used in Utah, Colorado and Wyoming for over a decade now. In the Powder River Basin ("PRB") of Wyoming, which is called by many the "Saudi Arabia of coal", since that area is producing in excess of 1/3 of all U.S. coal, the LBA process has been critical to the orderly development of federal coal reserves.

As pointed out, coal production in the PRB has jumped dramatically since the Clean Air Act Amendments of 1990 primarily because western coals are typically very low in sulfur and also very low in inherent NOx when burned in power plants. With this dramatic increase in demand for low sulfur western coal has come

the need for continued access to Federal coal reserves. Western coal producers clearly recognize this need and make their leasing plans accordingly. Unfortunately, the Bureau of Land Management now is only processing and holding one Federal coal lease sale per year in the Wyoming PRB. Thus, the most recent coal lease applications filed may not be offered for sale for eight years. Permitting requirements will then add another approximately three years. As a consequence, it is readily apparent that there is an excessive backlog of Federal coal lease applications on file and that the timeframe for processing LBAs and issuing leases has become unacceptable to orderly development of this most important domestic energy resource.

There are several administrative opportunities to address this backlog. The first opportunity is to consolidate the NEPA process instead of conducting separate EIS's for each lease application. Several LBAs should be combined into one document. Second, and even more importantly, the Department of Interior expeditiously should evaluate the workload of other BLM offices to determine if there are any personnel available to help work through this backlog. Finally, and of relevance to this hearing, Congress should give favorable consideration to supporting additional federal funding for the processing of these lease applications in order to short the intolerable backlog.

This concludes my statement Madame Chairwoman and I would be please to answer any questions you may have.

¹ North American Electric Reliability Council, *2001 Summer Assessment*, May 15, 2001

² National Energy Policy, Report of the National Energy Policy Development Group, May 17, 2001

³ Ibid. p. 5-14

⁴ For example, the unsuitability provisions under SMCRA (the Surface Mine Control and Reclamation Act of 1977) and land use planning policies under FLPMA (the Federal Land Policy Management Act) have removed some 53 billion tons of federal coal from future leasing; the previous Administration's use of the Antiquities Act to create National Monument designations removed additional blocks of reserves from development.

⁵ Department of Energy Report to the Forest Service, William Hochheiser (November, 2000)

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