

United States Senate
WASHINGTON, DC 20510

May 27, 2016

The Honorable Sally Jewell
Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington DC 20240

Dear Secretary Jewell:

We write to commend the steps you are taking to reform the federal coal leasing program. Beginning with your call for an “honest and open conversation about modernizing the federal coal program” last year, you have proceeded thoughtfully and firmly. The changes you have set in motion may be regarded by future generations as one of your most significant actions.

One of the benefits of living in a nation with so much public land is that occasionally we have the opportunity to rethink how to be good stewards of entire swaths of a continent. Stewardship cannot take place on autopilot.

Your Secretarial Order 3338 belongs in a consequential line of executive actions dating back to President Theodore Roosevelt’s 1906 withdrawal of coal lands from fraudulent settlement. His action led eventually to the Mineral Leasing Act of 1920. The act ended the privatization of federal energy fuels. It changed coal mining on public lands from a right to a privilege.

Fifty years later, in the wake of widespread speculative leasing, Secretary Rogers Morton issued a moratorium on new coal prospecting permits and most new leases. Secretary Morton promised that “the new leasing policy will combine a sound approach to development with an environmental ethic,” along with “whatever regulations need to be revised to put teeth into this approach.” Congress eventually responded with legislated reform, raising the minimum royalty rate and making fair market valuation an explicit requirement of new leases.

We are at a point again in history when regulations need to be revised “to put teeth into this approach.” As the Bureau of Land Management (BLM) works to implement your order, consider new leasing and royalty models, gather extensive public input, and ensure that taxpayers get a fair return, we believe it should be guided by three imperatives.

First, get the science right. We strongly believe that the United States cannot continue to lease coal without taking into account that it is the most significant source of power sector greenhouse gas emissions. The current Programmatic Environmental Impact Statement (PEIS) under which federal coal is leased predates the first congressional hearings on climate change and the creation of the Intergovernmental Panel on Climate Change. Every one of our hottest years on record occurred at least 20 years after that PEIS was finalized. The BLM must ground the new PEIS in the new reality.

Second, reconsider the government's market role. The fact that 90 percent of federal lease sales since 1990 had single bidders suggests that western coal markets are structurally non-competitive. The federal government readily leases tracts nominated by the mining company that submits the only bid. Confidential appraisals and sealed bids introduce an imperfect proxy for competition, but the government has too often been a passive auctioneer rather than a steward. No law requires the BLM to sell coal as requested and nearly at cost, turning the government into the supplier of first resort. Given the diverse sources of electricity generation available today and the high costs of climate change, what may have been a wise policy in the context of fuel shortages and disruptions in the 1970s is now unwise and outdated.

Third, reconsider how to balance multiple uses over time. The U.S. has relied on fuels extracted from public lands since its founding. The Federal Land Policy and Management Act requires the BLM to balance extractive uses against other uses of public lands. As part of that responsibility, BLM must take into account the long-term needs of future generations. What has become clear is that coal mining doesn't merely compete as one use among others. Coal combustion without carbon sequestration ultimately destabilizes and degrades the conditions that make those other uses possible. Given the long atmospheric lifetime of carbon dioxide, the effects of mining a ton of public coal today may rebound on public lands for centuries, damaging opportunities for recreation, water supply, wildfire resilience, and even other extractive uses like grazing and timber. A huge disparity exists between the high, long-term costs of burning the public's coal and the low, short-term return from selling it. The BLM needs to address the disparity.

By following the bipartisan precedents established by your predecessors, you have ensured the pause on new leasing will not disrupt the power sector. The preparation of a new PEIS will not affect the 20-year supply of federal coal already under lease or the opportunity to renew leases, obtain emergency leases, and make minor lease modifications. There is time to get this right, and we look forward to reviewing the BLM and the Department's more detailed proposals in light of the imperatives above.

Finally, we note our continued commitment to fixing other aspects of federal coal programs. These include deficient financial assurance rules, such as self-bonding; accelerated mine reclamation; miners' pension and health care funds; and assistance for coal country to diversify, transition, and rebuild.

Thank you again for your leadership and your consideration.

Sincerely,

Maria Cantwell

Barbara Boxer

Dianne Feinstein

Al Franken

W. H. ...

Edward J. Markey

Jeffrey A. Merkley

Patty Murray

Brian Schatz

Elizabeth Warren

Shirley ...

Ron Wyden

Mazie Hirono

Tom Udall