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March 9, 2016

Sally Jewell
Secretary
U.S. Department of the Interior
1849 C St. NW
Washington, D.C. 20240

Re: Steps the Department of the Interior Should Take in Preparing a Programmatic Environmental Impact Statement to Modernize the Federal Coal Program and Protect our Public Lands and the Climate

Dear Secretary Jewell:

We applaud your efforts to modernize the way our publicly owned coal is managed and your commitment to both a pause on new leasing and a rigorous environmental review of the federal coal program. We appreciate your acknowledgment that there is a need to ensure the coal program is consistent with our nation's climate objectives.

It is to this end that we are writing to urge the Department of the Interior to move forward as expeditiously and effectively as possible with its reform and environmental review efforts. As the agency does so, we call on you to ensure this process is guided by a simple, yet critical principle: that to effectively protect our climate and help our nation transition to clean energy, we have to start keeping coal in the ground.

We therefore call on you to explicitly acknowledge that the paramount goal of long-term reform is to chart an orderly and effective path toward ending the federal coal program. This path must be paved with common sense policy changes that address our near-term climate challenges, aid coal-dependent communities to help them emerge from transition more sustainable and prosperous, defend taxpayers and the broader American public interest, and protect our legacy of public lands.

Now is the time to signal to all Americans where our nation needs to be aiming. We call on you to continue to lead and to ensure the process that you've kicked off has the best chance of securing the legacy of success that you have intended and that we all expect, even as future presidential administrations take office.

To ensure that reform efforts get off on the right foot, we strongly urge the Department of the Interior to make key commitments to additional interim reforms and to the environmental review process. Specifically, we call on Interior to undertake the following actions:

- **Additional Interim Reforms**

You have already committed to a pause on most coal leasing and you have signaled that the Bureau of Land Management will issue guidance related to additional interim reforms. These interim reforms are critical to ensure that options for long-term reform are not foreclosed, that the American public interest is fully protected, and that publicly owned resources are not unduly squandered.

In your January 16, 2016 statement regarding coal reform, you indicated that the Bureau of Land Management would be moving forward in the near-term to provide guidance related to transparency, royalty rate reductions, and waste mine methane.¹ We support this effort, but would urge you to add clarity as follows:

- On transparency, Bureau of Land Management state and field offices must be directed to immediately post online pending requests to lease coal, pending applications to reduce royalties, pending lease readjustments, pending lease suspensions and pending proposals to accept advance royalties in lieu of continued operation, and any and all findings that operators are not diligently developing or meeting continued operation requirements. Ensuring that these proposals and findings are made public will be critical for buttressing the integrity that Interior expects to bring to its reform efforts.
- With regards to royalty rate reductions, the Bureau of Land Management must be directed to pause consideration of any pending or new royalty rate reduction requests until completion of the programmatic environmental impact statement. With recent media reports indicating royalty rate reductions are enriching coal companies at the expense of the public, these reductions are uncalled for in the near-term.²
- On waste mine methane, the Interior Department must be directed to pause approval of any coal lease or mining plan that would lead to underground mining activities requiring degasification systems (i.e., systems that vent methane other than normal ventilation air systems) pending completion of Bureau of Land Management regulations meant to address coal mine methane.³

¹ See “Fact Sheet: Modernizing the Federal Coal Program,” available at http://www.blm.gov/style/medialib/blm/wo/Communications_Directorate/public_affairs/news_release_attachments.Par.47489.File.dat/Coal%20Reform%20Fact%20Sheet%20Final.pdf.

² See Rucker, P., “U.S. taxpayer due to subsidize Koch-controlled coal mine,” *Reuters* (Jan. 12, 2016), available at <http://www.reuters.com/article/usa-koch-coal-idUSL2N14W1JJ20160112>.

³ In 2014, the Bureau of Land Management issued an Advanced Notice of Proposed Rulemaking requesting comments to assist in developing a “program to capture, use, or destroy waste mine methane that is released into the mine environment and the atmosphere as a direct consequence of underground mining operations[.]” 79 Fed. Reg. 23,923 (April 29, 2014). The agency has yet to initiate a rulemaking, however.

We also urge you to undertake additional near-term reforms to ensure the integrity of long-term federal coal reform efforts and to demonstrate to the American public the Administration's commitment to success. These near-term reforms must, at a minimum, include:

- A suspension of all self-bonding under the Surface Mining Control and Reclamation Act where mines are extracting coal from federal leases pending the completion of the programmatic environmental impact statement. With large coal companies either filing for bankruptcy or nearing bankruptcy, it is critical that Interior take immediate steps to protect the American taxpayer and suspend its approval of any self-bonding involving the mining of federal coal.⁴ The Office of Surface Mining Reclamation and Enforcement is empowered to exercise oversight with regards to the mining of federal coal, even where states have delegated authority. This oversight authority must be exercised to secure actual surety bonds or other real reclamation guarantees during the pendency of the programmatic environmental impact statement.
- Ensuring that carbon costs (including the costs of methane) are accounted for in each and every leasing and mining plan approval that may move forward as the programmatic environmental impact statement is completed. As you have acknowledged, the moratorium on new leasing does not affect a number of pending leases and does not affect the Interior Department's review and approval of mining plans authorizing the extraction of leased federal coal. To ensure the Department and the American public are informed of the actual costs and benefits of near-term coal approvals and to comply with the National Environmental Policy Act, Interior must, at a minimum, ensure that the social cost of carbon emissions due to coal mining, transportation, and combustion are analyzed and considered. This is already being done in the context of a proposal to open roadless forest to coal leasing in western Colorado.⁵
- A commitment to prioritize providing support and assistance to help communities that are currently heavily reliant upon the federal coal program transition to more sustainable and prosperous economies. The Department of the Interior can play a key role in helping communities secure POWER Initiative grants (or any funding that may be authorized through the President's POWER+ Plan), direct resources to support conservation and research projects in or near communities, and encourage appropriate renewable energy development.

⁴ Peabody Energy, the nation's largest coal company and largest holder of federal coal leases is facing imminent bankruptcy, yet self-bonds virtually all of its mining operations involving the extraction of federal coal. See, T. Loh, "The \$1.47 Billion Problem Threatening Peabody's Finances," *Bloomberg Business* (Feb. 17, 2016), available at <http://www.bloomberg.com/news/articles/2016-02-17/the-1-47-billion-problem-threatening-peabody-s-balance-sheet>.

⁵ As part of a proposal to lift protections on National Forest Service lands in western Colorado to allow new federal coal leasing, the U.S. Forest Service, with the Bureau of Land Management and Office of Surface Mining Reclamation and Enforcement as cooperating agencies, issues a draft Environmental Impact Statement in November purporting to analyze the carbon costs of new leasing and mining. See USDA Forest Service, "Rulemaking for Colorado Roadless Areas Supplemental Draft Environmental Impact Statement" (Nov. 2015) available at http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd485194.pdf. While this analysis was flawed and underestimated the social cost of greenhouse gas pollution, it was a start.

- **The Programmatic Environmental Impact Statement Process**

Your commitment to preparing a new programmatic environmental impact statement as a means for analyzing, assessing, and ultimately modernizing the federal coal program is historic. Although similar efforts have been undertaken in the past, at no time has a programmatic environmental impact statement been called for to address the climate impacts of the federal coal program and the need for such extensive reforms.

To ensure the programmatic environmental impact statement moves forward expeditiously and in the right direction, we urge you to make specific commitments to the general goals and near-term procedure around the environmental review. Specifically, we call on you to:

- Publish a notice of intent to prepare a programmatic environmental impact statement in the Federal Register as quickly as possible. Consistent with the National Environmental Policy Act, this notice of intent must make clear that the proposed action under consideration is to adopt long-term reforms that ensure an orderly end to the federal coal program and help our nation transition away from coal.
- In publishing the notice of intent, we request that you provide at least a 60-day public comment period and, at a minimum, we urge you to schedule public hearings in key areas impacted by the federal coal program. We urge you to hold hearings in Billings, MT, Denver, CO, Farmington, NM, and Salt Lake City, UT, and in other locations where federal coal management and/or federal oversight of coal mining is a significant issue, including, but not limited to, Chicago, IL, Pittsburgh, PA, Tulsa, OK, and Charleston, WV. We also strongly urge you to hold hearings in Seattle, WA and Oakland, CA, both areas impacted by the export of publicly owned coal. Finally, we urge you to consider holding hearings in areas of our country already or soon to be hit strongly by coal's climate impacts; place like New York City, Miami, and New Orleans.
- Ensure that other key Interior Department agencies are cooperating agencies in the development of the programmatic environmental impact statement, including the Office of Surface Mining Reclamation and Enforcement, Office of Natural Resource Revenue, and Geological Survey. We also urge you to request that the U.S. Department of Energy, U.S. Department of Labor, U.S. Environmental Protection Agency, and White House Council on Environmental Quality participate as cooperating agencies pursuant to the National Environmental Policy Act.
- In the interest of transparency, we urge you to create a website dedicated to providing information and updates regarding the development and progress on the programmatic environmental impact statement. This website should, at a minimum, provide an opportunity for the public to provide their e-mail address to receive updates, provide reports as they are developed, provide public notice of public

hearings or of the availability of key documents, and provide access to any and all comments submitted.

- Explicitly commit to completing the programmatic environmental impact statement and issuing a final decision on coal reforms within three years. Although we understand that such commitments are often eschewed by federal agencies, given the stakes involved, namely the future of many communities, the fate of our climate, the patience of the American public, and integrity of our energy systems, we believe that offering this commitment is a reasonable request.

We also strongly urge that as you undertake reforms to modernize the way federal coal is managed, that you also give considerations to the way tribal coal is managed. We understand there are significant differences between the management regimes and fully support the sovereign authority of tribal nations. At the same time and recognizing the broader impacts of coal, we urge Interior and tribal nations to work together to ensure the management of tribal coal is also modernized with full consideration of climate impacts. At a minimum, we urge you to ensure that tribal interests are consulted as federal coal reforms are undertaken. The concerns raised during last summer's listening sessions highlight the impacts of the federal coal program to tribal interests, and the corresponding need for consultation.

We appreciate your attention to our concerns and our requests. Above all, as Interior moves to reform the federal coal program, it is critical that irreversible commitments of resources are not made that foreclose options for protecting our health, our environment, our public lands, our economy, and our future. We look forward to engaging further as the programmatic environmental impact statement process unfolds and reforms are fully considered.

Sincerely,

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