Testimony of Steve Charter
Northern Plains Resource Council &
Western Organization of Resource Councils

House Natural Resources Committee,
Subcommittee on Energy and Mineral Resources

Future of the Federal Coal Program
July 11, 2019

My name is Steve Charter. I'm a third-generation Montana cattle rancher. The fourth and fifth generation also live on the ranch. I live in coal country and have lived under the threat of coal mining all my life. Our ranch will soon be undermined by a huge longwall mine that will cause disruption to our ranch operations including major subsidence and possibly damage to our critical water supplies. Thank you for the opportunity to testify about the future of the federal coal program.

Today, I am representing the Northern Plains Resource Council and Western Organization of Resource Councils (WORC) -- both grassroots conservation and family agriculture organizations that organize westerners to protect our water quality, family farms and ranches, and unique quality of life. Northern Plains was formed in 1972 by my parents and other ranch families who owned private surface over federal coal deposits and had grown concerned about the threat that coal mining would have on their property and their ability to make a living from ranching. We have worked ever since to promote coal mine reclamation, protect and restore water and our working rural landscapes, and build a more diversified economy.

We are here to envision the future of the federal coal program, which will play a role in determining the future of this country. Our work today is to make that future the best possible one for all Americans. As we look to the future, it is fitting to examine the program's past. Coal has fueled our economy and has provided many livelihoods. However, the benefits that coal has provided us have come with great costs.

This conversation is increasingly urgent in the West, as the coal industry faces unprecedented financial pressure. Blackjewel is now the sixth western coal company in four years to enter Chapter 11 bankruptcy, and there is a very real prospect that it will be the first coal company in the West to convert to a Chapter 7 liquidation. The company just closed the Eagle Butte and Belle Ayre mines in Wyoming -- mines that are entirely reliant on federal coal and just a few years ago were considered among the "crown jewels" of U.S. coal mines.

The western coal industry, which produces about 40% of the nation's coal, has been stable for decades, especially in the Powder River Basin, but that is no longer the case. The current decline of the western coal industry is unprecedented in its history. The Powder River Basin now attracts small companies and risk-hungry investors, and is vulnerable to sudden mine closures and reclamation bond forfeiture. Coalfield communities are feeling the effects. In some places, people have begun looking for work elsewhere and are moving away. In many communities, tax receipts have dropped dramatically and some are owed millions of dollars in back taxes by bankrupt companies.

Whether we like it or not, this is the growing reality. The future of the federal coal program will be and must be very different from its past. Subsidies and loopholes won't change coal markets and bring the coal industry back to what it was, but they ***have*** led to greater costs for communities, workers and taxpayers, and the entire world, especially now, when we are beginning to experience the real cost and effects of climate change. It is critical that the national laws that regulate coal mining and manage publicly owned coal resources, and the agencies that implement those laws, be adjusted to prepare for this future, in order to serve the interests of public safety, workers and communities, taxpayers, and the environment.

As the Subcommittee considers the future of the federal coal program, we ask you to focus on three things:

1. Ensuring that bonding and reclamation requirements will result in complete and timely restoration of land and water;
2. Updating the federal coal program to adjust to today's markets, energy sources and understanding of coal's impacts; and
3. Cleaning up legacy abandoned mine lands.

Reclamation

Mining operations, especially strip mines, create a significant and growing amount of disturbed acreage, severing groundwater aquifers, compacting topsoil, and polluting air from dust and the use of explosives, as well as both surface and groundwater. With the longwall mine on our ranch, the company will have to reclaim areas affected by subsidence, but we are most concerned about whether they can and will replace the water resources that our ranching operation relies upon. Coal plants and ash ponds have significant impacts on the land, air and water as well.

In the long term, ranchers are most concerned about whether water resources can be restored: After springs and creeks are mined through, will the reclaimed land support cattle and wildlife? Will aquifers contaminated by leaking ash ponds be safe for livestock or irrigation again?

As coal demand and production decline, and mine workers and coal communities face an uncertain future, one potential bright spot is reclamation work. In addition to restoring resources that are critical to future uses of the land and economic activity, reclamation requires a workforce that can help to mitigate the impact of layoffs -- dozens or hundreds of jobs for several years that can provide bridge to retirement or other employment.

While state and federal laws require restoration of mined land and the hydrologic balance, reclamation is not guaranteed, especially if the mining company goes bankrupt in the middle of mining or reclamation operations. It is important that state and federal agencies take action now to help ensure full reclamation occurs by requiring that it is adequately financed by coal companies, and undertaken contemporaneously with mining operations, so that it is more likely to be conducted by mine employees. We have three recommendations:

1. Reclamation bonds must be secure, liquid, and reliable. Not all reclamation bonds are equally secure. If a coal company abandons a mine where reclamation is self-bonded, backed by an overvalued collateral bond, or guaranteed by a surety company that fights paying the full cost of reclamation, or if reclamation costs more than projected, there may not be enough money to finish reclamation. To avoid this situation, self-bonding should be ended, and regulatory agencies should assess the solvency of surety companies and the appraisals backing collateral bonds to ensure that bonds are held in secure and readily liquid instruments.

   The highest priority is eliminating self-bonds. Coal mining is the only energy or mineral sector that allows self-bonding. Montana does not allow self-bonds, but several other states do. The State of Colorado has disallowed new self-bonds as a matter of department policy, and the State of Wyoming has pass rules that significantly limit self-bonding. On the federal level, the Office of Surface Mining Reclamation and Enforcement (OSMRE) initiated a rulemaking to reconsider self-bonds in 2016, but that effort appears to have been paused or discontinued. In 2018, the Government Accountability Office recommended that Congress amend SMCRA to eliminate the use of self-bonding.

2. Regulatory agencies should have bond forfeiture contingency plans and emergency response plans. In light of the unfolding decline of the western coal industry, state and federal regulators must be prepared for bond forfeiture of large strip mines with unambiguous and transparent protocols. OSMRE should assess state regulators' readiness to respond to bond forfeiture.

3. Regulators should require explicit closure plans for mines, with opportunities for the public to review and comment on the adequacy of these plans. Closure plans should address what will happen to workers and what will happen to the mine, including who will own the land afterward, and what is the anticipated land use.

<u>The Federal Coal Program</u>

Western coal mining is inextricably intertwined with the federal government's coal program because about 85% of western coal is owned by the federal government. Virtually all western coal mines rely on federal coal. However, not all federal coal lies beneath public land. The federal government owned all of the coal under the Bull Mountains until the 1880s when the Northern Pacific Railroad was given both surface and mineral rights for every other square mile for 50 miles north and south of the railroad. As a result of the checkerboard pattern of surface ownership from the railroad land grants, the mining company is our landlord on every other square mile on our Bull Mountain ranch, and the federal government owns most of the rest of the coal. This has put us in some very tough positions when we try to advocate for fair royalty values and strong protections. We could've sold out years ago, but we have chosen to stay because of our deep ties to land and our commitment to protect it.

The federal coal program was last updated in the 1970s and 1980s, when the country was recovering from an energy crisis and focused on expanding domestic energy supplies as quickly as possible and subsidizing development to keep costs down. The government intentionally kept coal valuations and royalty rates low, and shifted from a system designed to manage coal supply, to one in which coal companies control the rate of leasing and generally lease as much coal as they want.

The coal under my ranch in the Bull Mountains is a good example of how the federal government has either outright given coal away, or sold or traded it for very little.
In the early 1990s, the federal government traded millions of tons of the rest of the coal in the Bull Mountains away for a fishing access site, valuing the coal for less than one and a half cents per ton. Then, in 2013, the rest of the coal was leased in a non-competitive bid of 30 cents per ton. The BLM claimed that how they determine the fairness of the bid was proprietary information and we had no right to know how this price was calculated.

Half of the lost income from these leases goes to the federal government and the other half goes to the state of Montana to support our schools and other vital needs, so the valuation of the coal itself and the royalty rates affects coal producing states and communities.

Today, we still have an interest in promoting domestic energy production and keeping costs down, but we have other energy sources and other challenges as well. Our understanding of coal's environmental, socioeconomic and climate impacts has grown considerably. The measures to subsidize the coal industry are no longer appropriate, but the federal coal program is still being managed for a different era.

Northern Plains and WORC called for and supported the 2016 Programmatic Environmental Impact Statement and pause on coal leasing to give the Department of Interior time to consider how the program should be improved and modernized. In reality, by that time the outdated federal system had already leased more coal than the market required, resulting in an oversupply whose impacts we see today. We still support a comprehensive review to update the federal coal program to:

1. Balance the nation's energy needs with the effects of coal mining, transportation and burning on air, land, water, wildlife resources and the global climate, as well as the latest information on the availability of coal reserves and other energy sources,
2. Ensure a fair return to the American public for the leasing and mining of our publicly owned mineral resources and minimize the financial impact on communities and states as leasing and mining decline as much as possible, and
3. Increase transparency and public participation.

<u>Abandoned Mine Lands</u>

Finally, we ask the Subcommittee to make it a priority to reclaim the tens of thousands of abandoned coal mine sites across the country. As long as coal mining continues in the U.S., the Abandoned Mine Land fee needs to remain in place to fund this cleanup, so that coal's legacy is not one of barren or polluted sites that cannot support agriculture, wildlife or other uses and limit the community's economic development opportunities.

We also support the RECLAIM Act, which would expedite the distribution of Abandoned Mine Land Fund dollars. By committing $1 billion in existing funds to clean up abandoned coal mine sites and impacted lands and waters, the RECLAIM Act will provide an economic boost to communities where coal has historically been the backbone of the local economy.

Thank you for the opportunity to testify.