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## US Suspends Coal Leasing on Federal Lands

### *Legal challenges to moratorium likely as US Department of Interior considers reforms.*

On Friday, January 15, 2016, US Department of the Interior Secretary Sally Jewell announced that the US will “pause” federal coal leasing while it studies coal program reforms pursuant to newly-issued Order No. 3338 (Order). The Order directs the Department’s Bureau of Land Management (BLM) to prepare a discretionary Programmatic Environmental Impact Statement (PEIS) to analyze potential reforms to the federal coal program Secretary Jewell further instructs BLM to suspend the issuance of new federal coal leases and lease modifications while the Department completes its programmatic review.

Approximately 41% of all US coal is mined on federal lands, with significant resources in Wyoming and Montana. Under the moratorium, BLM will not issue new federal coal leases or lease modifications during the programmatic review. According to the Order, the moratorium will not affect applications for coal exploration licenses, existing coal mining operations on federal lands, coal leasing on tribal lands or pending leases that have a final record of decision by the DOI’s Bureau of Land Management approving the operations. There are also limited exceptions for metallurgical coal (the type of coal used in steel production), modifications to small leases, and emergency leasing. Further, the Order does not apply to actions of the Office of Surface Mining Reclamation and Enforcement (OSMRE) (which regulates surface coal mining and reclamation operations) or the Office of Natural Resources Revenue (ONRR) (which administers the coal royalty payment program).

Criticisms of the federal coal leasing royalty program (along with other federal mineral leasing regimes) have been gathering steam for the past year, including arguments that the royalty rates are outdated. BLM conducted several “listening sessions” during the summer of 2015 to solicit public feedback on the federal coal program, and received over 92,000 written comments. The Order indicates that comments focused primarily on three areas of concern: (1) whether US taxpayers are receiving a fair return on public coal resources; (2) whether the federal coal program conflicts with the Obama Administration’s climate policy; and (3) concerns regarding reform of the program given poor market conditions, including impacts to coal markets, coal-dependent communities and the reclamation of mined lands.

The Order directs BLM to prepare a PEIS under the National Environmental Policy Act (NEPA) that will analyze a number of issues including:

- Whether the federal coal program should be changed to improve decision-making regarding the “how, when and where” of leasing
- Whether taxpayers receive a fair return from the current royalty system

- Climate impacts of federal coal production and combustion
- Whether the current program accounts for environmental and social externalities associated with federal coal production
- Whether leasing decisions should include an evaluation of whether the produced coal would be for domestic use or exported internationally
- The degree to which federal coal supports, or should support, the US's energy needs

The Order states that no regulatory action is being proposed at this time. The Secretary also announced that the Department will adopt several other reforms to improve transparency and administration of the federal coal program, including (1) creating a public database to disclose information regarding carbon emitted from fossil fuels developed on public lands; (2) requiring BLM to post online pending requests to lease coal or reduce royalties; and (3) facilitating the capture of waste mine methane.

As expected, opposition to the Secretary's announcement and Order was immediate and legal challenges are likely.

Affected parties should review the Order to consider the impact these actions could have on their businesses and, if adversely affected, companies should carefully evaluate available legal avenues to potentially challenge the Department's actions. Additionally, companies should monitor any future activities by BLM and the Department, including any potential changes that BLM may be required to undertake in response to any potential litigation challenging the Order. Due to the amount of time typically required to prepare a PEIS, the next Administration will ultimately oversee the environmental review.

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