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Re: Arch Coal Submissions To Bureau of Land Management For Royalty Rate Reduction at West Elk Mine

Dear Director Shoop and Deputy Director Bagley,

The Board of County Commissioners of Gunnison County, Colorado (the "BOCC") – the local government of general jurisdiction for Gunnison County, Colorado – respectfully provides this formal, current objection to Arch Coal's submissions to the U.S. Bureau of Land Management (the "BLM") for royalty rate reductions at the West Elk Mine.

The BOCC is informed that in September 2014, Mountains Coal Company (the "MCC"), a subsidiary of Arch Coal Company, requested that the BLM extend and expand its royalty rate reduction for the years 2015 – 2020 for two coal leases that permits MCC to access federal coal via the West Elk Mine. The BOCC also is informed that such request currently is being evaluated by the BLM – albeit without formal notice to the public and without formal opportunity for public comment.

Among the foundations for the objection of the BOCC are the following:

1. The BLM has not provided to the BOCC or public analysis or documentation that the Proposed Rate Reduction satisfies 43 C.F.R. 3485.2 (c)(1)

   43 C.F.R. 3485.2 (c)(1) states that: "(t)he authorized officer may waive, suspend, or reduce the rental on a Federal lease, or reduce the Federal Royalty, but not advance royalty, on a Federal lease or portion thereof. The authorized officer shall take such action for the purpose of encouraging the greatest

ultimate recovery of Federal coal, and on the interest of conservation of Federal coal and other resources whenever in his judgment it is necessary to promote development, or if he finds that the Federal lease cannot be successfully operated under its terms."

Under the statue, a reduction of royalties and waiver of rentals must be for the purpose of encouraging the greatest ultimate recovery of Federal coal and in the interest of conservation of natural resources, and it must be based on one of two determinations: (1) that such relief is necessary to promote development, or (2) the Federal lease cannot be operated successfully under its existing lease. On this basis of the information submitted by the applicant, "BLM must be able to find there is a reasonable probability operations would cease or development, recovery or conservation of the resource would be jeopardized before it can even consider exercising its discretion to grant relief." Peabody Coal Co., 93 IBLA 317, 327, 93 I.D. 394, 400 (1986). Additionally, "(t)he ultimate issue in the adjudication of any royalty reduction request is whether BLM may properly conclude, on the basis of the material submitted by an appellant, that granting a reduction would best serve the interests of the Government." Peabody Coal Co., supra. At 321, 93 I.D. at 396; see also: State of Wyoming, 117 IBLA 316, 321 (1991).

2. The BLM must disclose to the BOCC and Public – to the greatest degree feasible – the information upon which it rules. The BLM has failed to do so.

43 C.F.R. 3485.07 acknowledges that "(m)any files and records relating to royalty rate reduction applications contain economic data and data from which lease-specific recoverable coal reserve determinations can be calculated. These data are proprietary and must be handled in accordance with the provisions of 43 C.F.R. 3481-3, and BLM Manual Section 1278."

However, as noted in BLM Manual Section 1278.1.6, "The BLM's FOIA policy is based upon the transparency initiative as outlined in the 2007 Open Government Act. Furthermore, the BLM's FOIA policy is committed to the release of records with a 'presumption of openness', as established by the President's Memorandum on Transparency and Open Government 2009."

The BLM has not made disclosures to justify its proposal, nor has the BLM rebutted its "presumption of openness".

The BOCC has been provided with documents BLM released in response to a recent Freedom of Information Act ("FIOA") request; to wit, two Arch Coal submissions in support of the royalty relief request: (1) A January, 2015 document prepared to support the West Elk Mine's 2014 royalty rate request; and (2) a September 2016 Mountain Coal Company Submission responding to BLM's January 2016 request for additional information.

Each of these documents is heavily redacted. Numerous pages, and virtually all data concerning the costs and coal production, are blacked out – making the documents oblique and analysis of them lack utility.

1. <u>The BLM has not provided documentation to the BOCC or Public of consultation with the Colorado Governor or designated official regarding the pending decision</u>.

BLM Manual 3485.23(G) identifies processing procedures for all royalty relief requests. Among the procedures, BLM Manual 3485.23(G)(5)(6) requires that: "Following concurrence by the BLM Director, the BLM State Director shall consult with the appropriate State Governor or designated official on the pending decision. (1) The State Governor shall be provided 30 days for response to such consultation. (2) After obtaining BLM Director's concurrence and State Governor's input the BLM State Director may notify the applicant of the decision on the application." See also: BLM Manual 3485.04(F) which notes that the BLM State Director is responsible for "(c)onsulting with the State Governor regarding...individual royalty rate reductions under any category."

The BLM must – but has not – identified to the BOCC or Public:

1. The date(s) of such consultation;
2. Documentation in writing evidencing such consultation;
3. The content of such consultation;
4. The response by the Colorado Governor or designated official to such consultation;

As has historically been true, the BOCC holds itself ready and willing to engage in dialogue and further comment on this matter. However, the current opaque nature of the application and the process precludes both the BOCC and the public from an opportunity for fully informed participation; because of this, currently the BOCC cannot and does not support any royalty rate reduction at the West Elk Mine.

Respectfully,

Phil Chamberland, Chairperson	Jonathan Houck, Vice Chair	John Messner, Commissioner

cc: Honorable Governor John Hickenlooper