Impacts of Regulatory Environment on Western Economy and Job Creation

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Good afternoon and thank you for the opportunity to appear before you today. My assigned topic is the impacts of the regulatory environment on the western economy and job creation. I plan on speaking today on some specific issues that have impacted our industry. Arch Coal, Inc. is the second largest coal company in the United States. We produce high quality thermal and metallurgical coal, the vast majority of which is very low sulfur.

Roadless Areas

This regulatory initiative was started near the end of Clinton Administration, culminating in the 2001 Roadless Area Conservation Rule. This rule ultimately applies to about 58.5 million acres of Forest Service lands throughout the United States. The rule has gone through years of litigation with the current state of play being that the 2001 rule is currently in effect. The 2001 rule has now been submitted to the U.S. Supreme Court for consideration.

During the Bush Administration the 2001 RACR was stayed by the courts, and in its place the Administration allowed states to petition the Forest Service on how lands are to be administered as roadless areas. Only two States have followed through to a complete roadless area rule through the petition process; those being Idaho and hopefully Colorado in the very near future. The promulgation of the Idaho roadless rule allows for the continued mining of phosphate and preserves high quality jobs in the area.

The lack of a final rule in Colorado has created a great deal of uncertainty and delay in approving projects. The petition process yielded a rule that allows for an exception to the prohibition on construction or reconstruction of temporary roads associated with the mining of coal on a limited number of acres in western Colorado. This exception will preserve nearly 1,000 high paying jobs in a rural part of Colorado. To provide for certainty and flexibility, the Colorado Roadless Rule needs to be promulgated as soon as possible.

For those States that that have Forest Service lands that contain minerals and have not addressed roadless areas, such as Wyoming, Montana, Utah, New Mexico etc., there will be continued uncertainty, delays and potential downward pressure on jobs.

NEPA

NEPA continues to result in delay, uncertainty and confusion. In a recent mineral leasing process, the Forest Service (surface owner) adamantly insisted that an EA was all that was needed for NEPA review for a simple consent to lease. Meanwhile, the project proponent was willing to agree to an EIS due to the increased scrutiny from anti-coal environmental groups such as Sierra Club, Earthjustice and Wild Earth Guardians. The 2011 WEG Annual Report states:

> *Wild Earth Guardians believes that the best way to create a new clean energy framework is to force industry to internalize more of its costs, thereby increasing the price of fossil fuels.*

True to form the final EA was appealed, and ultimately was retracted by the Forest Service. The Forest Service solution is to start over and do an EIS. After three years of work on this coal leasing issue, it is back to square one. This shortens the life of the mine and puts pressure on employment if the exception is not available and the coal cannot be mined. In the mean time since the EA was withdrawn, Wild Earth Guardians is entitled to reimbursement from the federal government for their attorney's fees. In the WEG 2011 Annual Report, they show that income from legal was over $303,000, which is then presumably used to fund additional litigation.

Air Rules

Perhaps the most egregious example of example of job killing rules comes from EPA, who is using these rules to drive power generation away from coal by dramatically raising the cost of coal-fired electricity. The courts are beginning to take note that EPA is over-reaching its authority. An example is the Spruce permit which was legally issued over three years ago, and then EPA suddenly vetoed that permit. The courts have since reinstated the rule.

Another example of their agenda is the issuance of the mercury and air toxics rule (MATS). In this rule is a new source performance standard which is the emission limit for new sources. This standard is widely held to be unachievable for new coal-fired generation.

A third example is the implementation of AB32 in California. AB32 has two main components that create a great deal of uncertainty. The first is the fact that AB32 is a cap-and-trade program that is not fully developed and is anti-coal. The second is the import of electricity from outside the borders of California is limited to those sources that meet the greenhouse gas output equivalent of a natural gas plant. One industrial consumer in California was originally looking for a three year coal contract, but due to the uncertainties introduced by AB32 they pulled that back to a one-year contract. Further, the import of electricity standard has had the result of the likely switching of the Intermountain Power Authority from coal to natural gas. This means that Utah power rates will increase and California will be dictating energy policy in Utah. The sacrifice here is the loss of primary and secondary jobs in the Utah coal industry.

Coal Mining

Perhaps one of the most revealing outcomes of job and wealth creation associated with coal mining is the permitting and ultimate development of the Otter Creek Mine in Montana. The Montana Contractor's Association commissioned an economic study through the University of Montana. The study showed the following:

- 2,648 jobs would be created during the peak year of the construction phase as the mine facilities and the railroad are built;

- $103.5 million of new personal income, and $87.7 million in after-tax income would occur during the peak construction year statewide;
- As a result of the continuing operations of the mine, 1,740 new permanent, year round jobs would be created in the Montana economy, increasing household income by $125.4 million per year;
- Mine operations would increase state and local tax revenue by more than $91.6 million per year, due to both coal specific taxes as well as growth in the overall base for Montana’s other taxes.