

**Natural Resources Defense Council ▪ Sierra Club ▪ Southern Utah Wilderness  
Alliance ▪ National Parks Conservation Association**

June 13, 2016

Janice Schneider  
Assistant Secretary for Land & Minerals  
Department of the Interior  
1849 C Street NW  
Washington, DC 20240

**Re: Exceptions to Pause in Federal Coal Leasing Pending Completion of  
Programmatic Environmental Impact Statement**

Dear Asst. Secretary Schneider:

We write to clarify the process being used by the Interior Department and its agencies to implement exceptions to the pause in federal coal leasing initiated by Secretarial Order 3338, *Discretionary Programmatic Environmental Impact Statement to Modernize the Federal Coal Program* (January 15, 2016). As explained below, public participation is required in processing any exception to the pause. Many of our groups are particularly concerned with the application for emergency leasing filed by Alton Coal Development, LLC (Alton Coal). No federal coal has been leased in the Alton area of Utah for over 25 years. The Bureau of Land Management (BLM) is currently completing the environmental review to determine if such coal should be leased now. Contrary to Alton Coal's assertions, the emergency leasing regulations do not justify a short-cut around either the normal leasing process or the comprehensive review of the federal coal program provided for in Order 3338.

**A. Public Involvement is Required Prior to Issuing a Lease under Order's Exceptions.**

As repeatedly articulated by the Obama Administration and others, transparency is at the heart of good government. Department of the Interior, *Fact Sheet: Modernizing the Federal Coal Program* (January 16, 2016), at 3 ("The Interior Department is . . . launching a series of good government reforms to improve the transparency and administration of the federal coal program."). *See also, Transparency and Open Government*, 74 Fed. Reg. 4685 (January 21, 2009)(Obama Memorandum for the Heads of Executive Departments and Agencies - "My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration.").

Such transparency is embedded in the regulations governing all federal coal lease sales, including emergency leasing. Both competitive leasing and lease by application (LBA) include the following mandatory requirements: (1) notice of the proposed sale; (2) public hearing; and

(3) consultation with the state, tribes and U.S. Attorney General. 43 C.F.R. §§ 3420.1, 3420.4-2, 3420.4-5. The Department of the Interior's own regulations unambiguously state that emergency leasing must follow the same procedures as any lease by application sale. 43 C.F.R. §3425.4.

The Department should apply the same high standard of transparency required for lease sales to agency decisions regarding exceptions to the leasing pause initiated by Order 3338. Such transparency demands providing public notice and the opportunity to comment on exception applications, as well as making public any guidance issued by the Department applicable to processing of leases during the pause.

Failure to take such actions is inconsistent with the letter and spirit of Mineral Leasing Act, Federal Coal Leasing Amendments Act, the Surface Mining Control and Reclamation Act, and the National Environmental Policy Act. It is inconsistent with the Administration's commitment to good government. Moreover, it conflicts with Secretary Jewell's call for "an honest and open conversation about modernizing the Federal coal program." Secretarial Order 3338, at 2.

## **B. The Department Should Not Grant Alton Coal's Request for Emergency Leasing.**

On behalf of our millions of members and activists, our organizations have consistently opposed federal coal leasing in the area that Alton Coal seeks to mine. The area is less than ten miles from Bryce Canyon National Park and in the heart of Utah's red-rock canyon country, treasured by millions across the country for its aesthetic and recreational opportunities. Alton Coal does not seek to expand an existing federal lease. BLM is currently working to complete the necessary environmental analysis to determine if such federal leasing is appropriate. In the meantime, Alton has filed an application seeking over 8 million tons of coal on an emergency basis.

### **1. Alton Coal Has No Right to an Emergency Lease.**

No automatic right exists to emergency leasing. Even where a company meets the specified criteria, emergency leasing is discretionary. 43 CFR § 3425.1-4 ("An emergency lease sale *may* be held in response to an application under this subpart . . .")(emphasis added). Federal regulations explicitly provide that BLM "shall" reject an emergency lease application when "leasing of the land covered by the application, for environmental or other sufficient reasons, would be contrary to the public interest." 43 C.F.R. §3425.1-8. Note: The regulations require that BLM give the applicant written notice prior to rejecting an emergency leasing application. *Id.* at §3425.1-8(b). The regulations also require that BLM provide "reasonable notice of the rejection of an emergency lease application to the Governor of the affected State(s)." *Id.* at §3425.1-8(c).

No federal coal has been leased in the Alton area in over 25 years. *See attached map.* It should not be leased now. Alton never had any guarantee that it would get federal coal and began its private surface/private mineral operation with full knowledge that it might not. It cannot use the emergency leasing regulations to gain access to federal coal that might not otherwise be leased. Emergency leasing is limited to circumstances where the applicant's "need

for coal shall have resulted from circumstances that were either beyond the control of the applicant or could not have been reasonably foreseen and planned for in time to allow for consideration of leasing.” 43 CFR § 3425.1-4(a)(2). In issuing the relevant final rules, the BLM explicitly stated, “No operator who opened a mine with insufficient reserves in the expectation of acquiring a Federal lease [will] be considered to have a legitimate need for the coal.” 47 Fed. Reg. 33114, 33124 (1982). *See also*, DOI, *Federal Coal Management Report* (1979) at 115-16.

The absence of an existing federal lease precludes Alton’s right to emergency leasing even if: (1) the existing mine on private land would have to shut down without the federal coal or (2) federal coal would be bypassed. These two criteria are only relevant if the applicant for emergency leasing satisfies 43 CFR § 3425.1-4(a)(2) (need for coal resulted from circumstances beyond applicant’s control) (Applicant must satisfy (a)(1)(i) *or* (ii) *and* (a)(2)). Here, Alton does not.

Contrary to Alton Coal’s claim, the issuance of Order 3338 itself cannot satisfy 43 CFR § 3425.1-4(a)(2). The regulation requires that the “need for the coal” result from circumstances beyond the applicant’s control. In Alton Coal’s case, its need for federal coal after the pause was the same as it was before the pause. The company has done exactly what the regulations were intended to prevent – open a mine with insufficient reserves in hope of securing a federal lease later to keep it open. *See* 47 Fed. Reg. 33114, 33124 (1982). Alton Coal relies on March 9, 2016, Interior Department guidance to support its emergency application. This guidance appears to have been issued before adequate research on the limited intent of the emergency leasing regulations had been completed.

## **2. Emergency Leasing is Inconsistent with the Federal Coal Leasing Amendments Act.**

The Mineral Leasing Act as amended requires competitive leasing. 30 U.S.C. § 201. Only two statutory exceptions exist to the requirement for competitive bidding for coal leases. These exceptions are: (1) the modification of up to 160 acres to an existing lease and (2) a sale of federal coal necessary to the exercise of a right-of-way. 30 U.S.C. §§ 201, 203. Neither of these circumstances applies in the Alton Coal case.

In fact, the lawfulness of the emergency leasing regulations themselves is questionable since passage of the Federal Coal Leasing Amendments Act in 1976. The emergency leasing criteria by their nature preclude competition. Federal Coal Management Report (1979) at 112; *see also*, Pariser, *Current Issues Related to Emergency Federal Coal Leasing*, 89 W.Va.L.Rev. 593, 607 (1987)(“To enable the Interior Department to respond quickly to the unique leasing needs of operating mines, planning for emergency lease sales must be applied site-specifically, rather than on a regional basis, as practiced under the competitive leasing process.”). None of the emergency leasing criteria fall within the two narrow statutory exceptions to competitive leasing. Consequently, the Secretary of the Interior lacks authority to grant any leasing under the emergency leasing regulations without further Congressional action. *See* GAO, *Legislative Changes Are Needed to Authorize Emergency Federal Coal Leasing* (Aug. 2, 1984), at 12.

### **3. Proceeding with the Alton Coal Lease Would Thwart the Purpose of the Programmatic Review.**

Even if emergency leasing is lawful, it is not justified in Alton Coal's case. Questions like whether to lease federal coal in the Alton area are precisely why the leasing pause and comprehensive review of the program Secretary Jewel initiated is needed. No federal coal has been leased in the area in over 25 years. A critical part of the review now being conducted is to evaluate whether any more federal coal should be leased and if so, how much. It would make little sense to open up a completely new area of federal coal pending this review.

Located near Bryce Canyon National Park and Grand Staircase Escalante National Monument, the proposed leasing of federal coal to expand the Alton Coal Mine generated more than 200,000 public comments from around the nation urging BLM to reject Alton's lease by application. The Hopi Tribe has also opposed the lease application.

As articulated in detailed comments submitted as part of the environmental review conducted on Alton Coal's lease application, the proposed federal lease threatens the air, water and other natural wonders of Southern Utah. Federal coal mining in the area also threatens the state's recreation tourism industry. The State of Utah has spent millions in advertising promoting the beauty of this area. After a five-year span of record setting growth, travel and tourism is now Utah's largest "export" industry. "Tourism Spending in Utah Grew to Nearly \$8 Billion," *Deseret News* (May 25, 2016). While the state lost 1,000 jobs in the natural resource sector last year, the leisure and hospitality industry added 7,000. Utah Economic Council, *Economic Report to the Governor* (2016), at i.

The Alton proposal (including the emergency lease area) would likely destroy the southern-most population of sage grouse in North America. In recommending that BLM select the "no action" alternative, the U.S. Fish & Wildlife Service urged BLM to "reject the lease application" in large part because, "mining activity under any of the action alternatives will result in . . . the extirpation of the Alton-Sink Valley greater sage-grouse lek and the Alton greater sage grouse population." FWS Letter to BLM (January 27, 2012). In its Supplemental Draft Environmental Impact Statement, BLM itself admitted that this population of sage grouse is "highly susceptible to extirpation" and that any action alternatives would be inconsistent with current provisions in the Kanab Field Office Resource Management Plan. SEIS 3-88 to 3-89; SEIS 4-285.

Finally, Alton Coal has established a record of poor performance in satisfying its responsibilities at its existing mine under its state permits. Alton Coal's current operation has received eight Notices of Violation from the State of Utah in the last two years. Four of these have occurred since Alton Coal submitted its emergency lease application in March 2016.

## CONCLUSION

As explained above, the Department's authority to conduct any emergency leasing subsequent to passage of the Federal Coal Leasing Amendments Act is questionable. Even if some emergency leasing were lawful, the circumstances under which Alton Coal seeks to bypass normal leasing procedures and the Secretary of the Interior's review of the coal leasing program do not justify an exception.

We would appreciate a chance to meet to discuss these matters. In the meantime, we request receiving via email: (1) a copy of the BLM guidance document issued on March 9, 2016, *Federal Coal Lease by Application and Lease Modification Application Interim Processing Policy*; and (2) a list of any requests received by BLM for an exception to the pause in leasing announced by Secretary Jewell on January 15, 2016.

Thank you for your attention to this matter.

Sincerely,



Sharon Buccino  
Michelle White  
Natural Resources Defense Council  
[sbuccino@nrdc.org](mailto:sbuccino@nrdc.org)  
[mwhite@nrdc.org](mailto:mwhite@nrdc.org)

Athan Manuel  
Director, Lands Protection Program  
Sierra Club  
[athan.manuel@sierraclub.org](mailto:athan.manuel@sierraclub.org)

Steve Bloch  
Legal Director  
Southern Utah Wilderness Alliance  
[steve@suwa.org](mailto:steve@suwa.org)

Ani Kame'enui  
Director, Legislation and Policy  
National Parks Conservation Association  
[akamecenui@npca.org](mailto:akamecenui@npca.org)

Cc: Niel Kornze, Director, Bureau of Land Management  
Brandi Colander, Deputy Assistant Secretary  
Jack Haugrud, Deputy Solicitor

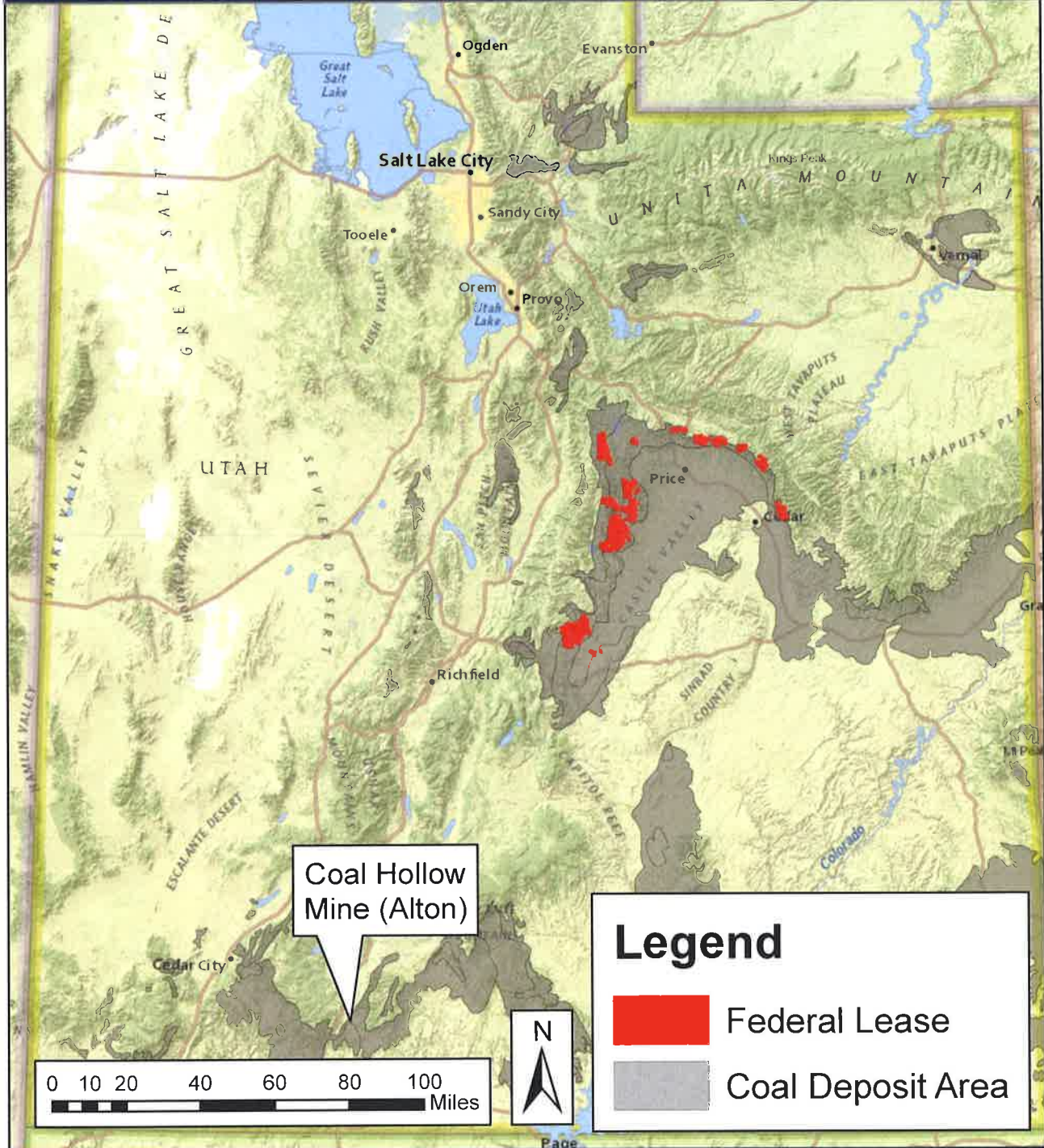




NRDC





# Federal Coal Leases in Utah



Coal Hollow Mine (Alton)

## Legend

-  Federal Lease
-  Coal Deposit Area

Data Source: State of Utah Automated Geographic Reference Center (AGRC)  
<http://gis.utah.gov/data/energy/coal>

