

WRITTEN TESTIMONY OF TODD PARFITT
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BEFORE
THE HOUSE NATURAL RESOURCE COMMITTEE
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

HEARING ON:

“Coal Community Protection and Revitalization”

June 9, 2022

Good Morning Chairman Lowenthal, Ranking Member Stauber, and members of the House Subcommittee on Energy and Mineral Resources. My name is Todd Parfitt and I am the Director of the Wyoming Department of Environmental Quality (DEQ).

The mission of the Wyoming DEQ is “to protect, conserve and enhance the quality of Wyoming’s environment for the benefit of current and future generations”. As we carry out this mission, we do so with the understanding that it must be done in a manner that not only protects our natural resources but also strengthens the State’s economy.

I am here to testify on proposed legislation relating to Coal Reclamation Bonding, Self-Bonding, and will also touch on Coal Royalty Fairness and Infrastructure Investment and Jobs Act funding flexibility to address acid mine drainage.

Bonding

The Surface Mining Control and Reclamation Act (SMCRA) was adopted by Congress in 1977 and Wyoming’s Title V program was approved on November 26, 1980. Wyoming has over 40 years of experience in successful coal mine reclamation and coal reclamation bonding. Wyoming’s coal area surface mines are unique nationally and internationally in size and scale. Wyoming currently manages 26 coal permits. These permits represent 195,492 acres of total disturbance, of which approximately 122,374 acres have been backfilled, graded, topsoiled and seeded. In other words, 62% of the lands disturbed have been reclaimed to the point of establishing vegetation. If the acreage for long term onsite facilities (30,153 acres) is subtracted from the cumulative total disturbance, the net active

mine disturbance is 26%. These numbers represent the ongoing contemporaneous reclamation and successful implementation of the Wyoming Title V program.

The active disturbance represents approximately \$2 billion of reclamation bond liability. This bond liability includes the current disturbed acres, plus the next one year of projected disturbance acres, and a margin of safety should a third party need to perform the final reclamation.

Wyoming implements a full-cost reclamation bonding program. In order to provide a foundation for DEQ's reclamation bonding, it is helpful to understand how Wyoming calculates and sets its coal reclamation bonds. The bonds are calculated and adjusted annually as part of the required annual report for each coal permit. The bond calculations are based on a guidance document "Guideline 12, Standardization Reclamation Performance Bond Format and Cost Calculation Methods." Guideline 12 was originally developed by Wyoming DEQ in 1996 for the purpose of standardizing the reclamation performance bond format, cost calculations, and to provide consistent regulatory review standards. Guideline 12 is a living document, and undergoes annual updates based on market, environmental, and economic conditions. Guideline 12 is extensive and utilizes third party data (e.g. Info Mine, the CAT Handbook, and Machine Modular) to support and verify its cost tables. Wyoming takes great pride in Guideline 12 as it is considered a benchmark document that is used by other states and Australia.

In 2014, prior to the filing of any coal bankruptcies, Wyoming began the process of updating its coal reclamation bonding regulations. These updates were prompted by several factors including changing financial markets, more complex corporate structures, banking reform, and a general need to review and update the rules. The need to update the bonding rules was reinforced by the coal industry bankruptcies of 2015 and 2016. Wyoming gained valuable experience during these bankruptcies and applied this information to the 2019 bonding rule revisions. The final updated rules were approved by Wyoming's Environmental Quality Council and signed into Wyoming law by Governor Mark Gordon in May of 2019.

Self-bonding

The self-bonding regulations adopted by OSMRE (30 CFR 800.23) require an operator to qualify based on a five-year continuous operation history and one of three basic options;

- 1) a credit rating of A or higher;

2) a tangible net worth of at least \$10 million, a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater, or

3) the applicant's fixed assets in the United States must total at least \$20 million, and the applicant has a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater.

To address concerns and reduce risk associated with DEQ's and OSM's self-bonding provisions Wyoming modified its self-bond regulations based on risk, and established three tiers of credit rating qualifications. The long-term (greater than one year) credit ratings are:

1) "Aa3" or higher as issued by Moody's or "AA-" or higher as issued by Standard and Poor's Corporation, or "AA-" or higher as issued by Fitch Ratings. In this scenario, the operator is capped at 75% maximum self-bond and the remaining 25% of the required bond must be comprised of an alternate acceptable bond instrument(s);

2) "A2" or higher as issued by Moody's or "A" or higher as issued by Standard and Poor's Corporation, or "A" or higher as issued by Fitch Ratings. In this scenario, the operator is capped at 70% maximum self-bond and the remaining 30% of the required bond must be comprised of an alternate acceptable bond instrument(s);

3) "Baa2" or higher as issued by Moody's or "BBB" or higher as issued by Standard and Poor's Corporation, or "BBB" or higher as issued by Fitch Ratings. In this scenario, the operator is capped at 50% maximum self-bond and the remaining 50% of the required bond must be comprised of an alternate acceptable bond instrument(s).

Wyoming's self-bond rule requirements are protective with today's corporate structures because they require both the ultimate parent and the subsidiary guarantor to satisfy a third-party credit rating test, and require that all self-bond applicants regardless of their financial rating cover a minimum of 25 percent of their total bond obligation through a separate bond instrument. This is demonstrated in practice, as corporate entities that qualified for self-bond under the federal SMCRA provisions prior to the 2015 bankruptcies would not qualify under the Wyoming 2019 revised regulations. With these adjustments Wyoming is also confident in its ability to have adequate notice and replacement of a self-bond before an operator would move to a Chapter Eleven or Seven bankruptcy and forfeiture.

Currently there are no coal self-bonds in Wyoming and there have been no instances of a post SMCRA bond forfeiture on a coal mine in Wyoming.

Summarizing additional 2019 updates to the Wyoming financial assurance rules, the following amendments were made: 1) removal of standby letters of credit; 2) the elimination of the use of equipment as property collateral; and 3) the establishment of provisions to allow for the use of real property collateral (large ranch land tracts).

In 2022 Wyoming passed legislation that created a voluntary irrevocable assigned trust financial assurance instrument. The assigned trust creates an account managed by the state for each individual permit. The assigned trust is a cash backed instrument that is held and invested by the state treasurer. The use of this instrument reduces risk to the state and provides immediate access by the state to the cash reserves of the bond in the event of a forfeiture. The assigned trust also provides industry with a known fixed cost structure that is invested to ensure 100% protection of the corpus of each individual assigned trust account. This financial instrument is resilient to the risk of bankruptcy and changes a reclamation liability to an asset as the trust becomes fully funded.

Wyoming's process for developing these coal financial assurance changes included meaningful engagement of all stake-holders and incorporates several different and diverse financial instruments. This broad stakeholder engagement resulted in better rules, more comprehensive regulation, and reduced risk to the State. The final rules were endorsed by all parties including industry, NGO's, and the public.

Wyoming believes that rather than eliminating select bond instruments, Wyoming's updated bonding program provides an alternative blue print of how to retain and use instruments such as self-bond. The more diversification of bonding instruments available under ever changing financial market conditions will serve to minimize risk.

Coal Royalty Fairness

The topic of Coal Royalties was addressed by Governor Gordon's Chief Energy Advisor, Randall Luthi in his October 27, 2021 testimony to this subcommittee, emphasizing that the federal coal program has been, and continues to be, a success for both federal taxpayers and the citizens of Wyoming. As such, no changes to the program are necessary.

When evaluating the current federal royalty rate of 12.5% one must also factor in the rate per ton paid on the bonus bid. The 12.5% royalty is based on actual tons mined. The bonus bid is paid on total tons within a leased coal block as defined by the Bureau of Land Management (BLM). If the average bonus bid rate of 8% (based on a \$12/ton sale price) is added to the federal royalty rate of 12.5%, the actual return on the federal mineral is 20.5% per ton.

The bonus bid is an additive and additional payment to the 12.5% royalty paid to the federal government. Coal bonus bid lease payments are split between the state and federal government and paid out in equal installments over a five-year period. The bonus bid payments are made prior to any revenue received from mined coal because of the required time to obtain state and federal permits needed prior to mining. This is an upfront capital cost that is borne solely by the coal operators. When the 12.5% base royalty is added to the bonus bid fee the federal revenue from Wyoming coal received by the U.S. taxpayers has been \$6.5 billion (based on BLM and EIA data) since 1990. In addition to the federal royalty and the bonus bid, current coal taxation includes state taxes and severance payments and Abandoned Mine Land Fund (AML) payments.

Coal is an important source of income for Wyoming and is the second largest source of tax revenue for state and local governments, after natural gas. The current regulatory framework functions efficiently and fairly, considers the needs of all interested stakeholders, including U.S. taxpayers, and thus does not need to be revised. Proposed changes that result in an increase in federal royalties or leasing bonus bid requirements that are based on three year market index pricing on the final sale point would result in increased cost to electricity consumers. Increasing the federal royalties would also act as an impairment to any potential future coal leasing actions. This outcome would not benefit the U.S. taxpayer and would adversely impact AML program funding and coal communities.

Wyoming is a leader in CCS/CCUS law, policy, regulation and projects. More than a decade ago the Wyoming Legislature separately enacted a statutory framework for CCS and CCUS projects, including permitting. Wyoming is home to: (1) one of the U.S. Department of Energy's (DOE) Carbon Storage Assurance Facility Enterprise (CarbonSAFE) projects; (2) the Wyoming Integrated Test Center, a CCUS test facility; and (3) CO₂ pipeline infrastructure. In January 2021, BLM issued the record of decision for the Wyoming Pipeline Corridor Initiative, which envisions the eventual build-out of thousands of miles of CO₂ pipelines throughout Wyoming for carbon management purposes. Wyoming is also one of only two states that has primacy for Class VI of the Underground Injection Control Program, which is the regulatory core of CCS. Earlier this year Wyoming announced a goal of making the State net-negative in CO₂ emissions. Consequently, Wyoming generally supports continued, robust, predictable and dedicated federal funding for CCS projects, that include coal and gas fired utilities and enhanced oil recovery.

Likewise, with the contraction of the coal markets in the U.S., Wyoming supports meaningful programs, supported by federal funds, that assist and reinvest in coal communities. Particularly, Wyoming would be interested in investments that create high paying jobs and are in alignment with the development of new industries that repurpose existing infrastructure.

IIIA Funding Flexibility for AMD

As conveyed in the statement by the Interstate Mining Compact Commission “the AML programs of the states where AMD is a problem unanimously support the STREAM Act. The AML programs of the other states support providing this flexibility to their sister state programs. That being said, Wyoming suggests that similar flexibility be provided to all states to address other unique environmental reclamation needs.

Thank you for the opportunity to testify today and I look forward to any questions that you might have.