

United States Senate Committee on Indian Affairs
Oversight Field Hearing on
"Empowering Indian Country: Coal, Jobs, and Self-Determination"
April 8, 2015

Testimony of Crow Nation Chairman Darrin Old Coyote

I. Introduction

Good morning. On behalf of the Crow Nation, I want to thank Chairman Barrasso, Vice-Chairman Tester, Senator Daines and the members of the Senate Committee on Indian Affairs for holding this Oversight Field Hearing on Empowering Indian Country. My name is Darrin Old Coyote and I am the Chairman of the Crow Nation. I appreciate this invitation to provide testimony from the Crow Nation's perspective on coal development, an area central to my administration and a topic that has unlimited potential to improve the ongoing substandard socioeconomic conditions of the Crow people and the surrounding communities in southeastern Montana (the northern portion of the Powder River Basin) and northern Wyoming.

I have served as an elected official of the Crow Nation for over 10 years. Over the past 2 years, with the help of our coal partners and the Crow Nation Legislative Branch, we have taken several meaningful steps toward the successful development of our coal resources and look forward to completing, in the next few years, projects that will positively transform my community. My purpose today is to provide a brief history of the Crow Nation's resources, to summarize my administration's efforts to develop Crow coal in the northern Powder River Basin, and to share the benefits and challenges of Crow coal development.

II. Brief Overview of Crow Reservation, Land Issues and Resources

A. Brief History of Land and Development Challenges

The Crow Nation is a sovereign government located in southeastern Montana. The Crow Nation has three formal treaties with the federal government, concluding with the Fort Laramie Treaty of May 7, 1868. The Crow Reservation originally encompassed most of Wyoming (including the Powder River Basin) and southeastern Montana, totaling 38.5 million acres. Through a series of treaties, agreements and unilateral federal laws over a 70 year span, Crow territory was reduced by 94% to its current 2.2 million acre area.

In addition to substantial land loss, the remaining tribal land base within the exterior boundary of the Crow Reservation was carved up by the 1920 Crow Allotment Act. In 1919, prior to the Allotment Act, there were 2,453 allotments (individual Crow ownership), consisting of 482,584 acres. By 1935, there were 5,507 Crow allotments, consisting of 2,054,055 acres (218,136 acres were alienated by 1935). The Big Horn and Pryor Mountains were not allotted and still remain reserved for the Crow Nation and its citizens.

Because of allotment and federal probate of Indian property (with many Indians dying without wills), the phenomenon of fractionated land ownership arose - where several (sometimes

hundreds of) owners might have varying interests in a single parcel. By 1928, the *Meriam Report* declared the federal allotment policy to be one of the most disastrous federal policies of all time. During discussions leading up to the *Indian Reorganization Act* of 1934, one congressman explained the fractionating effects of allotment in this fashion:

“It is in the case of the inherited allotments, however, that the administrative costs become incredible.... On allotted reservations, numerous cases exist where the shares of each individual heir from lease money may be 1 cent a month. Or one heir may own minute fractional shares in 30 or 40 different allotments. The cost of leasing, bookkeeping, and distributing the proceeds in many cases far exceeds the total income. The Indians and the Indian Service personnel are thus trapped in a meaningless system of minute partition in which all thought of the possible use of land to satisfy human needs is lost in a mathematical haze of bookkeeping.” 78 Cong.Rec. 11728 (1934), cited in *Hodel v. Irving*, 481 U.S. 704 (U.S.S.D. 1987).

The Crow land base had been decimated by fractionated ownership of various allotments. The Department of the Interior (“DOI”) estimated that over 10% of all fractionated lands within Indian country are actually within the Crow Reservation (with numerous parcels of allotted lands that have more than 10 owners and sometimes more than 100 owners).

Recently, the Crow Nation partnered with DOI and meaningfully addressed the fractionation issue through implementation of the *Cobell Settlement*. As of March 2016, the Crow Land Buy-Back Program (“LBBP”) had a willing buyer – willing purchaser success rate of 64% (Crow allottees sold their interests in various parcels of land to DOI in trust for the Crow Nation). The Crow LBBP resulted in more than \$130 million paid out to Crow landowners, with more than 240,000 equivalent acres purchased for the Crow Nation. The original intent of reducing fractionation was accomplished and, simultaneously, the Crow Nation can make more of the Crow homeland productive for both residential and energy development purposes.

However, the overall loss of the Crow land base and allotment have collectively resulted in checkerboard ownership of reservation lands, giving rise to overlapping governmental authority in Indian country (federal, state, tribal and local). Sometimes, the land issues become cost prohibitive for some project developers. As discussed later, tax incentives are critical in order to level the playing field for Indian energy projects.

B. Present Land, Population, and Education

The statistical land ownership resulting from the above described legal history (and successful fraction reduction efforts) is approximately: 32% Crow allotments; 33% Crow Nation trust and fee land; and 35% non-Indian fee land (basically 2/3 of surface land is owned by the Crow Nation and individual Crows). However, overall, the pattern of surface ownership generally is “checkerboard” with interspersed Crow Nation trust and fee lands, Crow allotments and non-Indian fee lands. At times, the checkerboard nature of the surface ownership creates challenges, summarized later, for developing the subsurface minerals (almost all of which is owned by the Crow Nation).

Today, there are more than 13,000 enrolled citizens of the Crow Nation, with approximately 9,000 of those residing within the exterior boundaries of the Reservation. Our goal is to invite more of our citizens to return home to live and resume tribal relations, but we must be able to offer homes, jobs, and a place to find their dreams. Our current unemployment rate is 47%. The Crow Nation has always emphasized higher education and we currently have more than 400 annual applications for higher education assistance. Because of federal funding limitations and internal budget constraints, however, we can only partially fund 90 students each year.

In addition to providing financial support for education, we have a separately chartered tribal college (Little Bighorn College, "LBHC") that started operations in 1981. Among the hundreds of LBHC graduates, many are employed on and around the Crow Reservation in a variety of positions including teachers' aides, computer technicians, office managers and administrative assistants. At least sixty have completed bachelor's degrees and are pursuing professions in education, social work, human services, science, nursing, technology, accounting and business. As we move forward in developing our coal resources, LBHC can help to provide our citizens with training in fields for new job opportunities.

C. Coal - Past and Present

The Crow Nation has very substantial undeveloped coal resources. In fact, today, the Crow Indian Reservation contains 2 million acres in subsurface mineral rights, including an estimated 9 billion tons of coal. The Crow Nation has developed a limited amount of its resource, by leasing a portion of its coal reserves for 40 continuous years to Westmoreland Resources, Inc. ("WRI"). WRI owns and operates the Absaloka Mine ("Mine"), a 15,000-acre single pit surface coal mine complex near Hardin, Montana, on the northern border of the Crow Reservation.

The Absaloka Mine was developed to supply Powder River Basin coal to Midwestern utilities and it has produced over 180 million tons of coal since 1974. From the Mine's 5-7 million tons per year of coal production, it provides production taxes and royalties to the Crow Nation – exceeding \$20 million in 2010 when the Mine was operating at full capacity. **The revenue generated from the Mine represents as much as two-thirds of the Crow Nation's non-federal budget.**

Furthermore, WRI employs a 70% tribal workforce, with an average annual salary of over \$66,000, and a total employment expense of approximately \$18.6 million dollars. The Absaloka Mine is the largest private employer within the Crow Reservation. The importance of the Mine to the economy of the Crow Reservation cannot be overstated. Without question, it is a critical source of jobs, financial support and domestically-produced energy. WRI has been the Crow Nation's most significant private partner over the past 40 years.

A recent example demonstrates the importance of the Absaloka Mine to the Crow people. A major unplanned outage at the Mine's largest power plant customer during 2011-2013 resulted in a 50% reduction in tribal coal revenue and numerous employment layoffs. This recent outage reinforced the need for the Crow Nation to pursue multiple coal projects to diversify our revenue base.

III. My Administration's Vision on Energy Development: Potential Benefits

Given our vast mineral resources, the Crow Nation can, and should, be self-sufficient. My goal is clear. My administration desires to develop our mineral resources in an economically sound, environmentally responsible manner that is consistent with Crow culture and beliefs. More than anything, I desire to improve the Crow people's quality of life, create a future with good-paying jobs and employment benefits within the Crow Reservation, and provide hope and prosperity for the next seven generations of Crow citizens.

My larger vision is to become America's energy partner and help reduce America's dependence on foreign oil. Over the next 40 years, the World Energy Council predicts that the world will need to double today's level of energy supply to meet increased demand. Primary energy sources, such as coal, oil and gas, have a finite life and therefore we must have an all-of-the-above energy development strategy to meet America's needs as well as global demand.

My administration stands ready to meet the global energy challenge, but the future both near and long term, must have coal in its equation. With President Obama's recent speech on climate change, we are mindful of the increased efforts, policy and otherwise, to restrict coal as a domestic fossil fuel source to generate electricity (with domestic coal produced electricity being reduced from approximately 50% to 40% in less than a decade). Our coal partners and our coal economist consistently remind us of the difficult environment for domestic coal production.

Despite the challenging environment, the Crow Nation has intensified its efforts to develop its coal resources to diversify its revenue streams. With respect to the Absaloka Mine, the Crow Tribal Legislature approved and I executed an agreement with WRI in March 2013 to expand its mining operations with a lease of an estimated 145 million tons of Rosebud-McKay seam coal resources located adjacent to the Mine. This new lease will provide the Crow Nation with long-term revenues and employment and sustain the operations of the Mine past 2020.

Similarly, in June 2013, the BIA approved another tribally-approved agreement with Cloud Peak Energy ("CPE") to explore, with options to lease and develop an estimated 1.4 billion tons of Crow coal in the southeastern corner of the Crow Reservation. This long-term agreement will also provide much needed revenue to the Crow Nation, increase employment opportunities for Crow and Montana citizens, and diversify Tribal revenue sources. However, the CPE project – named Big Metal (www.bigmetalcoal.com), is largely dependent on coal exports through the Northwest.

As such, I have directed my administration to investigate and pursue coal exports, given the increased coal demand in the Pacific Rim. Since 2013, I have sent three Crow delegations to the Northwest to meet and work with other tribal nations, investigate proposed coal export projects, and then to analyze and follow-up on these recent diplomatic discussions and fact-finding trips about possible relationships involving Crow coal, transportation, and export terminal partners. During the last two trips, which I attended, I invited present and potential project partners, as well as tribal leaders from Northwest tribal nations, to visit my homeland to see first-hand Crow coal development and listen to their concerns.

The last two summers I have hosted a Crow Nation Coal Summit to answer questions about coal transportation issues (coal dust and train traffic), jobs (viewing Crow citizens at the Absaloka Mine), reclamation and the potential for future export development. We worked with our coal partners to provide mine tours of CPE's Spring Creek and WRI's Absaloka mine, to provide coal transportation information from BNSF Railway (BNSF) representatives, and to have coal export terminal questions answered by representatives from SSA Marine, the project developers of the proposed Gateway Pacific Terminal marine export facility.

We have been made aware of local concerns regarding coal export projects expressed by citizens in the Northwest. That is the reason I brought industry, tribal nations and local citizens together to inform, educate, and work with each other to address any substantive issues. I will continue to work with everyone and respect tribal treaty rights and local concerns. However, I strongly feel that non-governmental organizations cannot and should not tell me to leave Crow coal in the ground; I was elected to provide basic services and jobs to my citizens and I will steadfastly and responsibly pursue Crow coal development to achieve my vision for the Crow people.

Finally, with a substantial Crow coal resource, I would like to continue to build the first coal-to-liquids ("CTL") plant in North America with carbon capture and utilization. In fact, in 2008, the Crow Nation and our partner signed a project agreement to develop Many Stars, a planned coal-to-liquids project that sought to produce up to 50,000 barrels or more per day of ultra-clean jet and diesel fuel. Crow sought to contract with the U.S. Air Force and other local industries to supply clean diesel fuel that would meaningfully reduce carbon emissions throughout the world, reduce America's dependence on foreign oil, and provide a safe and secure domestic fuel supply to our national defense.

Unfortunately, the economic recession hit and an uncertain national energy policy made it difficult for the proposed project to proceed. We remain hopeful that the Administration can and will support clean coal, that technology advancements can create a smaller scale project, and that clean coal legislation (discussion draft entitled, "Native American Clean Coal Economic Development Act of 2015") to provide for bonding authority with incentives to industry partners will be introduced and passed in this Congress. I am pursuing an all-of-the-above energy development strategy (hydropower, wind, coal export and CTL) but I will need some help in order to effectuate my energy vision.

VI. Challenges and the Need to Level the Playing Field

A. EPA's Clean Power Plan

The Crow Nation and the Montana Attorney General sent joint comments to the EPA on December 1, 2014, to express grave concern about the substantial negative impact that the EPA's Proposed Rule, dated June 18, 2014, and titled, "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," will have on the Crow Nation, its citizens and resources, and their collective future. In sum, both the Proposed Rule dated June 18, 2014, and the subsequent and separate proposed Clean Power Plan Rule for Indian country dated November 4, 2014, simply ignore the Crow Nation's concerns.

The lack of meaningful government-to-government consultation, as required by Executive Order 13175, in developing the aforementioned Proposed Rules is telling. Despite minimal tribal outreach (and no direct contact with elected Crow Nation officials before the rule was proposed), significant substantive policy prescriptions are likely to cause serious setbacks to the Crow Nation, potentially over multiple generations. The longstanding trust responsibility between the federal government and the Crow Nation may be violated unless an exception and/or mitigation of the rule is provided to us.

The Proposed Rule is a major problem for the Crow Nation. The EPA did not consult with the Crow Nation, did not consider the economic impacts on the Crow Nation, and did not provide a less intrusive alternative to the severe effect on the Crow Nation of this Proposed Rule. In sum, the EPA violated its trust responsibility to the Crow Nation and must provide a substantive alternative and/or mitigation of the Proposed Rule.

- i. The agency failed in its duties to consult with the Crow Nation and to consider the economic effects of the proposal on the Crow Nation.*

As mentioned above, the Crow Nation receives revenues equaling 66 percent of its annual non-federal budget from severance taxes and royalties paid for the mining of coal owned by the Crow Nation at the Mine, near Hardin, Montana. Ninety percent of the coal mined from the Mine is sold to, and burned at, electrical generating units (EGU) in Minnesota. The Proposed Rule strongly encouraged the State of Minnesota to demand retirement of the older units of the power plant to meet the carbon reduction goals set by the EPA

The Proposed Rule also sets higher renewable standards for the State of Minnesota to meet by 2030, despite Minnesota law already requiring higher levels of renewable energy to be produced by 2020. Because the Proposed Rule will unfairly penalize Minnesota and other Midwest customers that currently buy and rely on production of Crow coal for its mix of energy production, and since the Minnesota EGU have already taken action to reduce carbon emissions, the result will be a substantial loss of that market for Crow coal.

That in turn will mean drastic hits to the Crow Nation's operating revenues, which will directly cause the loss of services and employment on the Crow Reservation. Despite Executive Orders requiring federal agencies to engage in substantive consultation with Indian Tribes affected by agency proposals, and to consider the impact of proposals on economic growth and job creation, the EPA utterly failed to do so with respect to the effect of this proposal on the Crow Nation.

Executive Order 13175 requires agencies to ensure meaningful and timely input by tribal officials in the development of regulatory policies that affect tribes. In this case, that simply didn't happen. Despite representations at Section III.A.5 of the Proposed Rules that the "EPA conducted significant outreach to tribes," the actual extent of the agency's effort was minimal, at best. Other than a letter purportedly sent to the Tribe (a form letter stating, "Dear Tribal Leader"), no one in the agency contacted the Crow Nation directly – government-to-government – as is required in the aforementioned Executive Order and Presidential Memo that implements EO 13175.

The lack of meaningful consultation is perplexing in light of the fact that the Crow Nation is one of only four tribes nationwide that owns merchantable coal deposits, and is one of only three tribes (out of 566 federally recognized tribes) for whom the mining of coal burned in electrical generating units impacted by the proposal is a hugely significant piece of the Tribal economy. Because the Crow Nation only produces coal with its longstanding development partner and there is not a coal-fired power plant on the Crow Reservation, the EPA Proposed Clean Power Plan for Indian country (those tribes with EGUs within their reservation boundaries) also does not apply.

The November 4, 2014, Clean Power Plan Rule simply provides an option for a tribe to develop its own Section 111(d) plan and, if they choose not to, then the EPA would develop a federal plan necessary to achieve the EPA's suggested carbon emission reductions in Indian country. Since the Crow Nation does not have an EGU on its reservation, the Clean Power Plan Rule is inapplicable to the Crow Nation. Therefore, both sets of the EPA's Proposed Rules do not address the Crow Nation's significant interests impacted as a result of federal agency action.

Furthermore, Executive Order 13563 requires federal agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs and to tailor its regulations to impose the least burden on society consistent with regulatory objectives. It requires that regulations be based on an open exchange of information and perspectives among State, local and Tribal officials. Any open exchange with Crow Tribal officials would have brought to light the impact of the proposal on the Crow Nation and would have highlighted the unfairly prejudicial impact of the proposal on the Minnesota customer of Crow coal.

B. Practical Challenges

In addition to the EPA's Clean Power Plan, numerous practical problems consistently arise with each proposed Indian coal project. The lease approval and development process is burdensome, slow, and complicated. Federal regulatory requirements for appraisals, surface access approvals and environmental assessments to conduct exploration within the Reservation often create significant delays. Further, incomplete land records (in some cases BIA records for surface and mineral ownership are erroneous, missing and out of date), inadequate BIA staffing (e.g., the BIA area office in Billings, Montana, has one primary individual to work on environmental issues for eight tribal nations), and surface land fractionation (described above) create uncertainty that discourages investment and significantly impedes project development.

It is extremely difficult to compete with off-reservation development because of these problems. Many companies view these additional regulatory and practical burdens as cost prohibitive, even with the best efforts of particular BIA employees and the Crow Nation. Based on our experience in working with current and prospective coal partners, we strongly recommend a two-prong approach to leveling the playing field for energy development in Crow country: (i) eliminate regulatory obstacles (we provided written support for H.R. 1548, Native American Energy Act); and (ii) permanently extend existing tax incentives to offset the extra development burdens.

C. Leveling the Playing Field

There are a few federal tax incentives that encourage investment and development in Indian country, but their utility is diminished by their short-term nature. Accelerated depreciation and the Indian employment tax credit are two examples of such incentives (the latter needs some modifications to enhance its effectiveness). These incentives, originally enacted in the 1993 Budget Reconciliation Act, have been extended year-to-year in the tax extenders package and, as such, generally are not relied upon by potential investors with large Indian energy projects because of the extended length of time (often 5-10 years for large coal projects) that development takes before the energy commodity is produced. The Crow Nation supports the permanent extension of these tax incentives, with modifications, but another more specific tax incentive is the most important for Crow coal development.

The Indian coal production tax credit ("ICPTC"), originally enacted in the 2005 Energy Policy Act, has kept the Absaloka Mine open and competitive since 2006. This credit neutralized the threat of a potential mine closure and also continued WRI's ability to provide critical employment and revenue for essential Crow governmental functions. Like the aforementioned tax incentives, it expired on December 31, 2014, and continues to be part of the overall tax extenders package.

In order to overcome all of the additional regulatory costs and land transaction issues described above, the Crow Nation seeks a permanent extension of ICPTC, with a few modifications. We would like for the ICPTC to be used against the alternative minimum tax, to extend the placed in service date to include the aforementioned projects, and to eliminate the unrelated person requirement in the original credit (to allow for a CTL project in the future). With these tax incentives made permanent, the Crow Nation would have the opportunity to compete with others on a level playing field.

V. Market Access for Crow Coal

A. Crow Tribe Interest in Infrastructure

The Crow Nation has carefully examined its options for providing future economic opportunity for its members and has elected to monetize its coal asset by continuing to selling it for domestic power generation and exporting it to international markets. The existing and future growth in the international energy markets for coal provides the opportunity for the Crow Nation to obtain full value for their resource and would offset their loss of revenue caused by the EPA's decisions.

In pursuit of exporting Crow coal, the Crow Nation is engaging in interstate commerce and international trade. Crow Nation has partnered with CPE, BNSF and SSA Marine to gain access to international markets and compete with other nations in supplying a secure source of energy to meet global demand to United States trading partners.

Powder River Basin coal is exported out of Canadian ports in British Columbia today. In the absence of U.S. port capacity, British Columbia ports have been expanding to receive U.S. cargoes. The Crow Nation recognizes the national importance of the Gateway Pacific Terminal as the best potential new site to ship U.S. cargoes through U.S. ports.

B. The Big Metal Mine Project

The Crow Nation is partnered with CPE on the Big Metal Project. The agreement is for the exploration and the option to lease up to 1.4 billion tons of coal from the Crow Reservation's southeast corner. CPE has demonstrated their commitment to both safety and the environment, and we appreciate their leadership as one of this country's largest coal producers. In addition, CPE has been a good partner with the Crow Nation, providing college scholarships to more than 40 Crow students and supporting those in need. All of this has happened while CPE has worked with the Tribe to complete exploratory drilling, which has been ongoing since June of 2014.

In developing the Big Metal Mine project on Crow lands, the Crow Nation has a vital interest in a fact-based, timely decision on the Gateway Pacific Terminal project in Whatcom County, Washington as an export terminal for Crow coal. While not directly related to the development of the Big Metal Mine, a marine export facility is necessary infrastructure for supporting the full realization for the Crow Nation of the economic opportunity for its coal. Crow recognizes attaining full economic value for the Crow coal resource requires meeting existing and future international coal energy demand; to that end, Crow interests are aligned with Gateway Pacific Terminal's success and the connecting rail infrastructure.

C. Energy Poverty and the Global and Asian-Pacific Coal Demand

Let me address a few key issues pertaining to coal and its place in the world's energy portfolio and in the amelioration of energy poverty. According to the International Energy Agency, 1.3 billion people are without access to electricity. That is 18-percent of the world's population or nearly 1 in 5 people. For many of these people, coal-fueled, low-cost, reliable electricity represents an opportunity to climb out of the misery of poverty.

Coal is an important component of the world's energy portfolio until better solutions are arrived at, especially in those countries that are in need of electrification to resolve poverty. A key goal of the Copenhagen Accord of 2010 is to provide energy to these impoverished populations. For the time being, coal is simply an essential source of fuel.

According to the International Energy Agency, global demand for coal will increase to more than 9 billion tons of coal by 2019 with much of that growth fueled by demand from Asia and India. Since the beginning of the 21st century, coal has been the fastest-growing global energy source worldwide. According to the U.S.'s Energy Information Administration, "Japan imported nearly 211 million short tons of coal in 2013, up from 204 million short tons in 2012, after more coal capacity came online." In addition, the Japanese are funding coal-fueled power plants in Japan and throughout Asia, leading to increased demand.

Bill Gates, himself a climate change activist, offered this observation on the present need for the use of fossil fuels in developing countries: "[People in poor countries] desperately need cheap sources of energy now to fuel the economic growth that lifts families out of poverty. They can't afford today's expensive clean energy solutions, and we can't expect them to wait for the technology to get cheaper." *Gatesnotes, The Blog of Bill Gates, June 25, 2014*

Independent experts at places like Stanford University state that U.S. coal exports will not increase the usage of coal in Asia, but will likely replace inferior sources of coal from other countries. As well, they have concluded that exporting U.S. coal will not increase greenhouse gas emissions and may actually reduce them.

As long as coal is to be utilized, from an environmental perspective, Powder River Basin coal is a preferred alternative (and has been called “clean coal” by the USGS), because it is lower in sulfur, ash, and other contaminants. As well, it is mined under the world’s highest labor and environmental standards.

Cloud Peak Energy is the largest U.S. supplier of coal for electricity to South Korea. Last year alone, Cloud Peak Energy shipped 4 million tons to Asian utilities, many of whom are constructing the world’s most-advanced coal-fueled power plants. According to the U.S. Energy Information Administration, “[c]oal consumption in South Korea increased by 55% between 2005 and 2012, driven primarily by growing demand from the electric power sector.” South Korean utilities are currently adding even more coal-fueled power plants to meet the country’s increasing need for electricity.

The increasing demand for power from coal has raised questions about air quality impacts, both locally and globally. It is important to note that Powder River Basin coal from Crow mines is lower in sulfur dioxide and nitrogen oxide, which is better for the environment than the coal that is currently mined in Asian countries. Together with modern power plant technology being developed in Asia, use of Powder River Basin coal may reduce, and not raise, global emissions of air pollutants and carbon emissions.

D. Rail Transportation

BNSF is the leading railroad in the U.S. with a network of 32,500 route miles, 48,000 employees and 8,000 locomotives. Montana and Wyoming are home to over 4,000 BNSF employees and their families. Payroll for these two states exceeds \$300 million. BNSF is aggressively investing to preserve, maintain, and grow capacity across its 28-state network with a capital investment plan of over \$5 billion in 2014 and \$6 billion in 2015. Much of this investment is dedicated along its major coal routes.

BNSF Railway serves the Powder River Basin (PRB) region, transporting coal to customers throughout the Midwest and southern regions of the U.S., as well as to the west coast for export. Since 2000, BNSF has doubled coal delivery to Eastern customers from 50 to 100 million tons. In addition, BNSF delivers more coal than any other US company, including 57% from the PRB region.

The Federal Railroad Administration determined that 2013 and 2014 were the safest in US history for freight railroads. With major investment in infrastructure, safe operating practices, and a comprehensive safety culture, BNSF continues to make great strides in their highest priority of safety.

E. Gateway Pacific Terminal

The Terminal developer, SSA Marine, is a Washington State corporation founded in 1949 in Bellingham, Washington. They have grown to be the largest privately held terminal operating company in the world. In 1991, SSA Marine's subsidiary, Pacific International Terminals, Inc., secured the property at Cherry Point, Washington State. Since then, they have taken thoughtful steps to develop the 1,500-acre property located in Whatcom County, 17 miles south of the U.S.-Canadian border. Pacific International Terminals has committed to develop the Terminal while ensuring that the environment, the community and shippers' interests all benefit.

Pacific International Terminals submitted an application for project permits in February 2011 to develop and operate the proposed Gateway Pacific Terminal ("Terminal") as a multi-commodity bulk terminal for transshipment of dry bulk commodities between rail and marine transportation systems. It is intended to meet the need for a West Coast marine shipping facility to serve the transpacific market.

The Terminal is designed to process up to 54 million tons of dry bulk commodities annually, including up to 48 million tons of coal. Other potential cargoes are grains, potash and wood bio-fuels. It will be the fourth pier at Cherry Point, a designated Heavy Impact Industrial zone, located next to the existing BP Cherry Point Refinery, the ALCOA – Intalco Works aluminum smelter and Phillips 66 Ferndale Refinery.

Cherry Point is an ideal location for the Terminal. The existing heavy industrial utilities and existing rail line are essential for efficient operation of the marine shipping facility. Even more important is the naturally occurring deep water requiring no dredging to construct a wharf that will accommodate deep-draft "Capesize" bulk cargo vessels. The Terminal is adjacent to a designated international shipping corridor that is highly regulated by a Vessel Traffic System jointly operated by the U.S. and Canadian Coast Guards for over 40 years with great success.

The economies of scale of Capesize vessels allows them to be more fuel, carbon, and cost-efficient than smaller ships in moving a ton of product. Approximately 75% of the cost of landing U.S. bulk cargo in Asia is related to transportation. Shipping U.S. commodities in Capesize vessels can cut overall ocean transportation costs by 20-30%. This is an important factor allowing Crow and other U.S. producers to be competitive in the growing Asian markets.

The Terminal is being designed and engineered to meet Washington State's high environmental standards and is already undergoing a rigorous evaluation of the environmental, social, and economic benefits and impacts in an Environmental Impact Statement (EIS). The State Environmental Policy Act (SEPA) EIS, led by Whatcom County and the Washington Department of Ecology. The U.S. Army Corps of Engineers is the Federal lead agency for the National Environmental Policy Act (NEPA). The State and Federal EIS's will provide the basis for making informed decisions on the Terminal project.

The privately funded Terminal will provide a big lift to the local economy during construction, and a permanent boost in Whatcom County's industrial sector with hundreds of new, permanent family-wage jobs. Construction will generate approximately 4,430 direct and indirect jobs and nearly \$92 million in state and local taxes over two years. When operating at full capacity, the

Terminal will sustain approximately 1,250 permanent direct and indirect jobs and generate about \$11 million annually in local and state tax revenues. Altogether, with the tax revenue and wages during two years of construction plus 10 years of full operations, the Terminal would bring more than \$1.8 billion in revenue to the region.

V. Conclusion

Today, the Crow Nation desires to develop its vast coal resources not only for itself, but for our energy partners, the surrounding communities and for the United States. By developing Crow coal via domestic markets, export terminals and coal conversion, we firmly believe we can help ourselves while simultaneously meeting national energy goals -- achieving energy independence, securing a domestic supply of valuable energy, and reducing the country's dependence on foreign oil. My administration has been very busy in working to develop our coal resources and to remove obstacles to successful development.

I simply desire for the Crow Nation to become self-sufficient by developing its own coal resources and to provide basic services for the health, hopes and future of the Crow people. With help from you - our historic treaty ally – in leveling the energy development playing field, we can achieve my vision and both benefit immensely.

Mr. Chairman and Committee members, thank you again for the opportunity to testify on this critical subject before you today. I would be happy to answer any questions.

Addendum

Additional Crow Nation Perspective on World Energy Demand and Coal Exports

The Crow Nation has carefully examined its options for providing economic opportunity for its members and has elected to monetize its coal asset for export to Pacific Rim countries.

Global climate issues are an administration priority and the Crow people share the President's concern. Coal is an important component of the world's energy portfolio until better solutions are arrived at, especially in those countries that are in need of electrification to resolve poverty.^{1 2} A key goal of the Copenhagen Accord of 2010 is to provide energy to these impoverished populations. For the time being, coal is simply an essential source of fuel.³

Bill Gates offered this observation on the present need for the use of fossil fuels in developing countries: “[People in poor countries] desperately need cheap sources of energy now to fuel the economic growth that lifts families out of poverty. They can't afford today's expensive clean energy solutions, and we can't expect them wait for the technology to get cheaper.” *Gatesnotes*, The Blog of Bill Gates, June 25, 2014

U.S. coal exports will not increase the usage of coal in Asia⁴, but will likely replace inferior sources of coal from other countries. As long as coal is to be utilized, from an environmental perspective, Powder River Basin coal is a preferred alternative (and has been called “clean coal” by the USGS), because it is lower in sulfur, ash, and other contaminants.^{5 9} As well, it is mined under the world's highest labor and environmental standards.

Exporting U.S. coal will not increase greenhouse gas emissions and may actually reduce them.⁶ If the U.S. does not build the port capacity to export its own coal, then Canada and/or Mexico are likely to do so.⁷

The Crow need the option of shipping their product through an efficient west coast port. The proposed Gateway Pacific Terminal in northwest Washington would have a maximum coal exporting capacity of 48 million metric tons per year. (The facility is being proposed by Washington-based SSA Marine, which is the nation's leading shipping terminal operator with 125 locations worldwide.) Although this would be an economically transformative activity for the Crow people, it would constitute a tiny fraction of coal consumption in Asia.⁸

Crow coal exports will support the purposes of the administration's National Export Initiative and NEI/NEXT, and help to increase trade with other countries. As well, it is consistent with national policies (such as those articulated in the National Defense Authorization Act) that aim to support our Asian allies, who need affordable and geo-politically stable sources of fuel.

Freedom of interstate commerce and reservation of power to regulate commerce (national and tribal nations) to the Congress (as opposed to individual states) are foundational principles embedded in Article I, Section 3 of the U.S. Constitution. That same section reserves to the Congress the exclusive power to regulate commerce "with the Indian tribes." The governments of North Dakota, Wyoming, and Montana have expressed concerns that the environmental review processes for west coast coal export projects are being used to interfere with constitutionally protected interstate commerce.

The export of Crow coal supports the people of the Crow Nation and is consistent with the federal government's constitutional and treaty trust obligations to the tribe.

Footnote References--World Energy Demand and Coal Exports

¹ The Global Energy Network Institute has confirmed, “Every single one of the United Nations’ Millennium Development Goals requires access to electricity as a necessary prerequisite.” The International Energy Agency’s (IEA) Faith Birol, agrees and states, **“The importance of coal in the global energy mix is now the highest since 1971. It remains the backbone of electricity generation and has been the fuel underpinning the rapid industrialization of emerging economies, helping to raise living standards and lift hundreds of millions of people out of poverty.”**

Letter from National Mining Association to Export-Import Bank of the U.S., November 8, 2013

² **“Like it or not, coal is here to stay for a long time to come... Coal is abundant and geopolitically secure, and coal-fired plants are easily integrated into existing power systems.”**

--*Maria van der Hoeven, the International Energy Agency’s executive director, Paris Presentation of the IEA’s Medium-Term Coal Market Report 2013, December 16, 2013*

³ According to Frank Clemente, a retired Pennsylvania State University professor, **“Coal is the only fuel that can sustainably meet growing global demand at such a scale.”** *China has seen the future, and it is coal*, The Washington Post, December 30, 2010

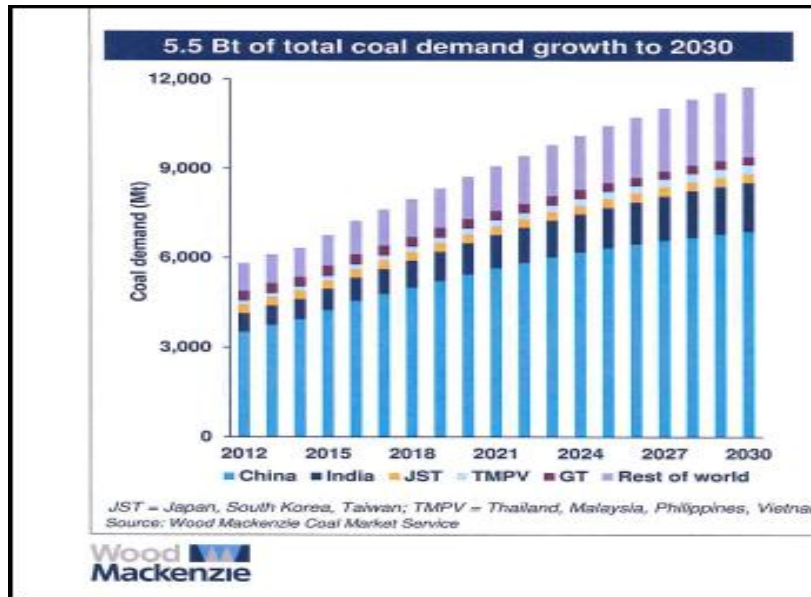
⁴ **“By importing U.S. coal, China is not changing the amount of coal that it burns.** I understand why on an emotional level people don’t like it. But if you actually understand the economics, and you understand how climate change works, it’s a non-issue.” *Richard Morse, director of research on coal and carbon markets at Stanford University, Trading Markets, December 27, 2010*

⁵ **“Not all coal is created equal. The proposed export terminals in the Northwest would ship coal that is better for the environment in almost every way than the coal mined in East Asian countries like China,** particularly with regard to sulfur dioxide and nitrogen oxide levels.” --*Fred Thompson, professor of public management and policy at Willamette University, Exporting coal to China is the greenest option, The Register-Guard, March 12, 2013*

⁶ **“If Pacific Coast states construct sufficient coal export facilities, the United States is likely to sell heaps of coal to Asia in the years ahead, but that should cut – not raise – global emissions of greenhouse gases,** according to Frank Wolak, professor of economics at Stanford University and director of Stanford's Program on Energy and Sustainable Development.” *Reduce greenhouse gas by exporting coal? Yes, says Stanford economist, The Stanford Report, January 15, 2013*

⁷ **“This demand for coal in China appears to be long lived. The coal-fired power plants are expensive to build and are designed to last a long time, at least 30 years. If the United States does not build West Coast ports to ship western coal to Asia, Canada will likely do so.”** *Reduce greenhouse gas by exporting coal? Yes, says Stanford economist, The Stanford Report, January 15, 2013*

⁸ Wood Mackenzie forecasts a worldwide coal demand growth of 5.5B tons from 2012 to 2030. [See also IEA data at <http://www.iea.org/aboutus/faqs/coal/>]
The U.S. Energy Information Administration (EIA) projects world energy consumption will increase 56% from 2013-2040.



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⁹Chapter PQ COAL QUALITY AND GEOCHEMISTRY, POWDER RIVER BASIN, WYOMING AND MONTANA, By G.D. Stricker and M.S. Ellis in U.S. Geological Survey Professional Paper 1625-A, 1999