

Testimony of Montana Attorney General Tim Fox
Senate Committee on Indian Affairs Field oversight hearing

“Empowering Indian Country: Coal, Jobs, and Self-Determination.”

Crow Agency, Montana

April 8, 2015

Senator Daines, members of the committee, thank you for inviting me to speak here today. I’m Tim Fox, attorney general of the state of Montana.

I grew up in Hardin, and have a deep appreciation for the history, culture, but most important, the people of the Crow Nation. Like most other Montanans, one thing the Crow people treasure is the land they were born and raised in. And like most other Montanans, among the things they would most like to see, for themselves and their children, are opportunities for jobs that will allow them to make a reasonable living in the place they grew up, so they can stay rather than having to move elsewhere of necessity.

The Crow Nation, like the rest of our State, is rich in resources. Those resources, including coal, are currently providing opportunity for Montanans, including the Crow people, and, wisely used, will continue to do so. I am concerned, though, that we are today seeing political and regulatory developments which, though not intentionally targeting the Crow Nation and, more generally, all of Montana, will, if unchecked, destroy present and future opportunities for our people. I would like to talk briefly about a couple of those developments.

One of those developments is the U.S. Environmental Protection Agency’s June 18, 2014 existing source proposal under section 111(d) of the Clean Air Act. I joined the attorneys general of sixteen other states in comments on that proposal, but I also filed separate comments with Chairman Darrin Old Coyote of the Crow Nation, and I want to talk just a minute about those comments.

The Crow Nation’s coal resources are still largely undeveloped, but there is currently one operating mine, the Absaloka Mine, and just that one mine provides two-thirds of the Crow Nation’s annual non-federal budget, and is by far the largest private employer on the reservation.

Unfortunately, one of the very likely effects of EPA’s existing source rule would be to kill the market for the coal produced by the Absaloka Mine, which is nearly all sold to Minnesota utilities. This will in turn kill the mine, causing drastic loss of services and employment on the Crow Reservation.

EPA has a legal duty under Executive Order 13175 to ensure meaningful and timely input by tribal officials in the development of regulatory proposals that affect tribes. In the development of its existing source rule proposal, EPA went through the motions, issuing two “Dear Tribal Leader” form letters, but nobody from the agency contacted the Crow Nation directly in a government-to-government contact, saying, “excuse me, but this proposal could, as implemented

in the State of Minnesota, kill the market for the output from the Absaloka Mine, and we'd like to talk to you about that." The executive Order requires that EPA "ensure" meaningful and timely input. The agency didn't get that job done before it promulgated its proposal, and the agency needs to withdraw the proposal and do the consultation it is required to do.

The second development I wanted to talk about is the importance of keeping open the avenues of interstate commerce which coal mined in Montana needs to travel to reach markets outside our State. As a landlocked state, we are dependent on port facilities in our sister states for shipping Montana-produced bulk commodity products to international markets. There is currently an international market for coal mined in the Northern Powder River Basin, and some coal is in fact being exported from Montana mines to that market. For example 4.7 million tons of coal was shipped in 2013 from the Spring Creek Mine, through Westshore Terminals in British Columbia. But that terminal is at capacity, meaning more port capacity is needed to ensure open markets for our coal.

There are three active proposals to construct terminals which would provide capacity for shipment of coal from the Northern Powder River Basin to international markets, two in the State of Washington, and one in Oregon. The two in Washington, the Millenium Terminal Project at Longview and the Gateway Pacific Terminal at Cherry Point, are in the permit review and environmental analysis stage. The Coyote Island Terminal project in Oregon, which would provide a terminal to take coal from rail at Boardman, Oregon, for transport by barge down the Columbia to Port Westward for loadout onto ocean-going vessels, was denied a fill permit by the Oregon Department of State Lands, and an administrative appeal of that decision is pending.

My office has been involved in the scoping process for the environmental analysis of the Gateway Pacific Project and we are actively tracking the process for the Millenium Project. We have actually intervened in the appeal of the permit denial for the Coyote Island Terminal, along with the State of Wyoming. The reason we have taken these steps is to ensure, as our sister states make their decisions regarding these port proposals, that our State's constitutional right not to have the avenues of interstate commerce unduly burdened is fully protected.

I know from discussions I have had with Chairman Old Coyote, that the Crow Nation shares these concerns. As I mentioned a minute ago, one of the effects of EPA's proposed existing source rule would be to close the power plants which are the market for the Absaloka Mine, and with that possibility looming, the Asian market is the obvious alternative market for coal from that mine. But our coal can't reach those markets without suitable port facilities in our sister states.

This is a very big concern to our State and for the Crow Nation. For the year 2013, the tax revenues collected by the State of Montana on coal mined in Montana totaled \$78,134,334. I have already told you of the economic benefits the Absaloka Mine provides to the Crow Nation. As domestic markets for Montana and Crow coal are diminished by the impacts of political trends and federal regulatory initiatives, access to international markets in Asia will become critical to the economic welfare of our State and the Crow Nation.

Senator Daines, members of the committee, thank you again for giving me some time here today to speak on behalf of the people of Montana. I'm happy to answer any questions you may have.

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