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Lead NEPA Story: Interior fast-tracks leases to beat slump

(Greenwire, 11/1/2018) **Dylan Brown, E&E Reporter**

The Trump administration has put a request for mining 5 million tons of North Dakota coal on a fast track that has coal companies cheering and environmentalists contemplating legal action.

The Interior Department has turned a small federal coal lease application into the "pilot project" for a stripped-down approach to the National Environmental Policy Act. Tweaking the bedrock environmental review process comes as President Trump has been unable to snap the national coal leasing slump despite ambitions of "energy dominance."

North American Coal Corp. applied to mine 320 acres of federal land in North Dakota, hoping to connect tracts already under lease at the company's Coyote Creek mine.

The Bureau of Land Management and the Office of Surface Mining Reclamation and Enforcement started a joint environmental assessment (EA) last month for expanding the lignite coal mine near Beulah, N.D.

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Endangered Species Act: Trump order aims to accelerate water deliveries for farmers

(Greenwire, 10/22/2018) **Jeremy P. Jacobs, E&E Reporter**

President Trump moved Friday to reduce environmental reviews in a bid to deliver more water to farmers in California and the West.

Trump's executive memorandum marked his most significant step yet into California's politically charged water issues and toward fulfilling his campaign promise to Central Valley farmers.

It also sets the stage for further conflict with California over the management of the state and federal water projects.

The president ordered enhanced coordination between agencies that oversee Endangered Species Act reviews and promised to finalize biological opinions for state and federal projects that move water from California's wet north to farms in the arid south.

"This will move things along at a record clip," Trump said at the signing. "And you'll have a lot of water. I hope you'll enjoy the water you'll have."

Though the memorandum focuses mainly on California, Trump signed it in Arizona. He was flanked by California Republicans, including House Majority Leader Kevin McCarthy, as well as Reps. Devin Nunes, David Valadao, Jeff

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Denham and Tom McClintock. Trump handed the pen he used to sign the order to Nunes.

The memorandum aims to improve coordination between the Interior and Commerce departments, which house the Fish and Wildlife Service and NOAA Fisheries, respectively.

Trump said environment reviews have bogged down new water projects that farmers need.

"So the big problem was the federal approvals," Trump said. "They were un-gettable and now they're very gettable. We're going to have them in very fast time because of the gentlemen standing behind me. Nobody else brought it up to my attention; it was them."

It was unclear what new water infrastructure projects are at issue in the order. It gives Interior and Commerce a 30-day deadline to identify major California water projects and designates one official to coordinate their Endangered Species Act and National Environmental Policy Act reviews.

It also directly addresses California's Sacramento-San Joaquin River Delta. The ecologically sensitive area is the state's water hub; all water that passes from the north to the south must move through the delta to a complex system of pumps, canals and reservoirs.

The order requires agencies to speed up the drafting of the ongoing biological opinion for the operation of those pumps, which has stretched on more than two years.

It doesn't, however, directly address California's recent controversial proposed water standards that would curtail deliveries from the San Joaquin River to farms in order to leave more water for threatened fish.

The state may finalize that plan as soon as next month, and the Trump administration has signaled it may sue if it does.

Denham, who is locked in one of the tightest congressional races in the country, has called the proposed standards a "water grab."

"Taking away our water takes away our jobs, takes away the economy and the largest agriculture industry in the country," Denham said Friday.

Trump's order directs Interior and Commerce to issue biological opinions by the end of next January.

A biological opinion for the Columbia River basin in the Pacific Northwest — home to more than a dozen threaten salmon and steelhead species — is due by 2020 under the order. And it also sets a 2019 deadline for review of the irrigation project on the Klamath River, which runs from southern Oregon into Northern California.

Trump also said that EPA will be tasked with moving more quickly under the order.

"We're also speaking to the EPA, and they're all ready to go," he said. "As soon as I sign this, they're ready to go."

McCarthy, the Bakersfield Republican, said at the signing that Trump was following through on a campaign promise with the order.

"This could bring more than a million acre-feet of water, just within the valley itself," McCarthy said. An acre-foot is 326,000 gallons of water, or about as much as a Los Angeles family of four uses in a year.

The order follows up on Interior Secretary Ryan Zinke's August memo calling for maximizing water deliveries to Central Valley farmers.

Environmental and fishing groups lambasted Trump's order.

"With today's announcement, the Trump administration is poised to ram another ill-founded biological opinion down our throats," said Noah Oppenheim of the Pacific Coast Federal of Fishermen's Associations in a statement.

"Why such a short timeline?" he said. "Seems like things are getting desperate at the Department of the Interior and a few Central Valley congressional races to me."

The *Presidential Memorandum on Promoting the Reliable Supply and Delivery of Water in the West*, October 19, 2018, may be viewed at https://www.whitehouse.gov/presidential-actions/presidential-memorandum-promoting-reliable-supply-delivery-water-west/.

Clean Air Act and EO 13771: EPA's carbon rule sparks debate over cost-benefit analyses

(Greenwire, 10/22/2018) Niina Heikkinen, E&E News reporter

Robin Lovett-Owen attended EPA's Chicago public hearing on the proposed replacement for the Obama-era Clean Power Plan to remind the Trump administration that the plan's projected increases in premature mortality and asthma attacks were more than numbers.

The student at the Lutheran School of Theology at Chicago recalled in the Oct. 1 hearing the two children she had met while working as a chaplain in a city hospital's pediatric unit — a teenage athlete and a nonverbal 8-year-old — who both died from asthma attacks.

"It's hard to imagine what those numbers mean when you read them from the comfort of your desk. It's all too easy to imagine what they mean when you've met and mourned children like Xander and Trey," Lovett-Owens said at the only hearing EPA has scheduled on its proposed Affordable Clean Energy rule.

"The deaths of black children in Chicagoland may seem like a far cry from the deaths of white coal miners and their families in Appalachia, but they point to the same truth: The true cost of polluting our air is the deaths of the most vulnerable people in our country, whether they be children of color in urban areas or workers in the hollers of the Smoky Mountains."

Lovett-Owen — a native of coal mining country in east Tennessee — was among many people to point to the 1,400 premature deaths the EPA's analysis says the rule would cause by 2030. How, they asked, could the Trump administration approve a rule that increased the risk of harm?

The answer lies in how the Trump administration has been weighing the costs of implementing the rule against its potential benefits.

As President Trump presses to reduce regulations across the government, EPA has been reworking how it tallies regulatory costs and benefits. Last week, the White House released its report on its rule-slashing efforts that showed EPA planning to proceed with a plan to "clarify interpretations" of cost-benefit analysis with a notice of proposed rulemaking next May.

William Buzbee, a law professor at Georgetown University Law Center, said the administration is targeting a widely held assumption that regulations should prevent an increase in harm.

"It is rare that you see agency policy shifts that increase a risk," he said in a telephone interview.

Usually, federal agencies face legal hurdles to relaxing health protections. And states like California, known for strict environmental rules, tend to contradict any assertions that stricter standards aren't feasible.

Even businesses, Buzbee said, can undermine efforts to weaken standards by meeting pollution targets more cheaply and easily than expected.

"Why might you still see it? The reason why regulatory choices could lead to increased risks is that many statutes require consideration of a handful of factors, with health among them," he said.

"Health isn't the only criterion driving regulation," he said, but it "often is so central or an overarching goal that most agencies true to their congressionally assigned missions would on their own reject such a change."

Front and center in the Trump administration: the cost of regulating.

EPA released the proposed Affordable Clean Energy rule as the administration was in the midst of a sweeping effort to rein in regulatory spending.

Under Neomi Rao, the administrator of the White House Office of Information and

Regulatory Affairs (OIRA), agencies have aggressively looked to cut regulatory costs in line with Trump's Executive Order 13771, which calls for eliminating costs of two regulations for every new rule enacted.

This fiscal year, agencies that succeeded at meeting that standard are being called on to push for even deeper reductions, cutting costs for three regulations for every rule enacted.

While not all federal agencies have kept that pace, the White House recently announced that in fiscal 2018, agencies cut about four significant regulations for every new significant rule put in place.

In a background press briefing last week, a senior administration official said the White House was "expressly focused" on reviewing significant rules that impose the greatest costs on the public.

Playing up costs

Critics of Trump's executive order say it undercuts the cost-benefit analysis process by pushing agencies to focus on cost but saying nothing about preserving rules that provide vital public health and environmental protections.

Sally Katzen, the former head of OIRA under the Clinton administration, notes that the order mentions costs 17 times but never mentions the word "benefits."

"That's not analytically sound," she said. "Not surprisingly, this has energized the left as well as conventional conservative economists to say this is wrong — cost-benefit analysis includes consideration of both sides of the equation, benefits as well as costs."

The administration's focus on cutting regulations also could have an influence on how OIRA reviews EPA's analysis of the power plant rule, according to another former chief of OIRA, which is responsible for reviewing agencies' draft and final regulations.

"At OIRA, the regulatory-policy guidance from cost-benefit analysis will always take a back seat to presidential priorities that relate to specific campaign commitments," John Graham, who led OIRA under President George W. Bush, said in an email.

One of OIRA's "key objectives" was to ensure that agencies honored presidential priorities and policy preferences.

"Thus, the premature deaths that might be induced by a deregulatory action are more of a concern in the judicial review of a regulatory action than they are in OIRA review of a White House-urged deregulatory action," Graham said.

Georgetown University's Buzbee also warned that regulatory revisions that would increase pollution or increase health threats compared with a previous rulemaking are "at high risk of flunking judicial arbitrary and capricious review."

Alan Krupnick, senior fellow at Resources for the Future and former senior economist on the President's Council of Economic Advisers under President Clinton, suggested that critics focusing on the increased risk of premature death under Trump's proposed power plant rule were taking a "strictly public health perspective," rather than looking at a cost-benefit assessment of whether the rule should go forward.

EPA in this case, he said, would look at the increased risk of death and put a dollar figure on it based on an estimate of "value of statistical life." Then that value, along with any other forgone benefits like reductions in emergency room visits or school absences, is compared with the cost savings of the rule to the power sector.

Those skeptical of the use of cost-benefit analysis to justify regulatory cuts say the administration's current approach has further eroded faith in that assessment tool.

"What we have seen in the economic analysis under this administration is that economic cost-benefit analysis is very easy to manipulate. That has been a clear takeaway," said Amit Narang, regulatory policy advocate at Public Citizen.

Narang suggested cost-benefit analysis should be used in an advisory way and agencies should use risk assessments that don't put a monetary value on life, because the methods of calculating that value are "barely transparent."

But Katzen stands by the analytical approach.

"Cost-benefit analysis is like democracy. It may have flaws, but it is better than anything else," she said. "It makes the decisionmaker consider all the consequences of a proposal in roughly comparable terms: apple and apples."

For Lovett-Owen, the woman preparing to be a Lutheran pastor, her hope was to make her testimony personal for the three EPA officials who oversaw the hearing.

Did she think her approach had an impact?

"When I said was from Appalachia, the man sitting in the middle gave me a thumbs-up and mouthed, 'Me, too,'" she said.

NEPA: Army Corps of Engineers picks $14 billion ‘Ike Dike’ plan

(Greenwire, 10/26/2018) **Mike Lee, E&E reporter**

The Army Corps of Engineers plan for the Texas coastline calls for improving the existing seawall along the beach in Galveston. Mike Lee/E&E News

GALVESTON, Texas — The Army Corps of Engineers is moving forward with a long-awaited plan to protect the Houston area from hurricanes — at a cost of at least $14 billion.

The Army Corps chose the most extensive of four alternatives for its coastal restoration project: a system of levees and seawalls along Galveston Island and the Bolivar Peninsula, combined with massive floodgates designed to keep storm surge out of Galveston Bay. The Houston metro area, with a population of 6.3 million and a concentration of petrochemical plants, stretches along the west side of Galveston Bay and extends inland.

The walls and gate would be part of a multilayered system that would include beach and dune restoration and landscaping along the rest of the Texas coastline. The full project is expected to cost $23 billion to $31 billion, and the Texas General Land Office said the Galveston-area wall project will cost $14 billion to $19 billion.

Local officials have been pushing for the plan since 2008, when Hurricane Ike narrowly missed making a direct hit on Houston. The Army Corps rejected other alternatives that called for barriers farther to the north, which would have protected Houston but left some smaller coastal communities exposed to future storms.

"If you do it right, nobody's on the wrong side of it," said William Merrell, an engineering professor at Texas A&M University, Galveston, who helped develop the plan.

The project, dubbed the Ike Dike, is a long way from construction. The Army Corps' action, identifying a tentatively selected plan and publishing a draft environmental impact statement, kicks off a period of public comment and review by other agencies. The final plan won't be ready until 2021, at which point Congress will have to search for funds.

Still, Gov. Greg Abbott (R), Houston Mayor Sylvester Turner and much of the state's congressional delegation have said the project is vital to protecting the city.

Hurricane Ike produced a storm surge between 15 and 20 feet in the areas east of Houston, according to National Hurricane Center data. Researchers at Rice University have warned that if a similar storm surge hit the city, it would kill hundreds of people and could devastate the oil refineries that are the region's economic lifeblood.

The Houston region is also asking for billions of dollars in funding to help it improve its interior flood control in the wake of Hurricane Harvey last year. While it didn't produce a tidal surge, Harvey dumped record-setting amounts of rain, causing high water that affected about 10 percent of buildings in the area.

The Ike Dike would expand and strengthen parts of the existing 114-year-old seawall in Galveston, which is on a narrow barrier island. A similar barrier would be built on the Bolivar Peninsula to the northeast of Galveston.

The floodgates would be built in the channel that separates Galveston and Bolivar, which is more than 1.5 miles wide.

Texas officials, including state Land Commissioner George P. Bush, have argued the plan will be cost-effective. The National Hurricane Center estimates the damage from Ike at about $30 billion and pegged Harvey's damage at $125 billion.

"One storm can cost many lives and billions of dollars in damage, so the expense of doing nothing far outweighs the investment to protect and enhance our coast," Bush said in a news release.

The Army Corps of Engineers is moving forward with a plan to build barriers on the Texas coast designed to protect the Houston area from hurricanes. Claudine Hellmuth/E&E News;Snazzy maps/© 2018 Google (base map)

NEPA: Interior approves massive, once abandoned, California project

(Greenwire, 11/1/2018) **Scott Streater, E&E reporter**

The Interior Department has issued formal approval for a massive solar power project in the Southern California desert, completing a wild odyssey that saw the project left for dead two years ago after its Spain-based developer went bankrupt.

The Bureau of Land Management on November 2, 2018, will publish a notice of its record of decision (ROD) in the *Federal Register* (83 FR 55199-55200) granting right of way approval for the Palen Solar Power Project covering roughly 3,100 acres of federal land in Riverside County. The complete ROD and NEPA documents may be viewed at https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&currentPageId=98931.

The ROD will include an approved amendment to the California Desert Conservation Area plan that's needed to allow for the commercial-scale project, according to a notice in today's Register.

The $1 billion photovoltaic solar power project, proposed by San Diego-based EDF Renewable Energy Inc., would have a capacity to produce about 500 megawatts of electricity — enough to power roughly 130,000 homes and businesses.

Palen is the second utility-scale solar power project approved by the Trump administration, joining First Solar Inc.'s 210-MW White Wing Solar Project in Arizona, though BLM's involvement there was limited to a right of way grant allowing a 3.5-mile transmission line to cross federal land.

While BLM conducted the supplemental environmental impact statement on which the Palen decision document is based, Joe Balash, Interior's assistant secretary for land and minerals management, signed the ROD on Oct. 29, according to the notice.

The signature by Balash, a senior Interior Department official, is significant because it means the ROD is a final agency decision and is not subject to administrative challenges to the Interior Board of Land Appeals (IBLA). Any challenges to the ROD would now have to be filed in federal court, a source said.

Balash said in a statement that the Palen project's approval is consistent with Interior Secretary Ryan Zinke's priority to develop all of the nation's energy resources.

"President Trump and Secretary Zinke have called for an all-of-the-above energy strategy that will ensure America's energy security, while also strengthening our infrastructure in support of the economy," Balash said. "The Palen Solar Project will provide benefits to the local community and the region both now and in the future, demonstrating the critical role multiple-use public lands play for the BLM's neighbors and the nation as a whole."

It's not clear whether any groups plan to file lawsuits challenging Interior's approval of the Palen project.

But Ileene Anderson, a senior scientist with the Center for Biological Diversity, said having Balash sign the ROD "limits the options" of those concerned about the project, although she added "we've had little success at IBLA and end up going to federal court anyway."

The approved Palen project footprint of about 3,100 acres is scaled back from EDF's original proposal that covered about 4,200 acres and raised concerns among some groups about potential impacts to sensitive desert washes and to Mojave fringe-toed lizard habitat.

BLM should have chosen a second alternative analyzed in the supplemental EIS released in May that would have reduced the project footprint to 1,600 acres but cut power output to no more than 230 MW, Anderson said.

Choosing this option, she said, "would have avoided most of the impacts to this remote habitat area for this project. Of course, the best alternative is to put solar panels on the already-built environment adjacent to energy consumers, not in these far-flung areas with massive transmission line losses of energy."

A long process

Still, the ROD is a major milestone for a project left for dead at least twice in the last seven years after two different project backers went bankrupt — most recently Seville, Spain-based Abengoa Solar in 2016.

Solar Millennium first proposed the Palen project in 2007 using solar trough technology. BLM issued a final EIS in 2011 and was set to issue a ROD approving the project when the company declared bankruptcy and project approval was never issued.

Oakland, Calif.-based BrightSource Energy Inc. then purchased the rights to the Palen project at a 2012 bankruptcy auction. BLM the next year prepared a draft supplemental EIS analyzing the cumulative environmental and visual impacts of the newest plan, which proposed using solar thermal technology.

BrightSource Energy backed out, and Abengoa took over. It proposed building a 750-foot-tall power tower and 85,000 heliostat mirrors that would move with the sun, heat water and create steam to drive electric generators.

But Abengoa filed for bankruptcy protection, and EDF in December 2015 acquired Abengoa's interest in the project.

EDF in 2016 filed a permit application with BLM to revive the project, this time using photovoltaic solar panels.

The proposed project also includes construction of a 6.7-mile, 230-kilovolt power line that would connect the project to the Southern California Edison Red Bluff substation.

BLM is currently evaluating a number of additional large-scale solar projects.

Those include the 450-MW Desert Quartzite Solar Project and the 450-MW Crimson Solar Project — both of which are in Riverside County.

BLM has targeted both projects to be approved by next year.

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BLM and OSMRE typically conduct separate analyses of coal leasing, but the Interior agencies are "co-leads" on the Coyote Creek analysis — in step with the "one federal decision" goal Trump outlined for NEPA work governmentwide in an executive order last year (Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure, August 15, 2017).

The mine EA must be completed within one year, a deadline that Deputy Interior Secretary David Bernhardt imposed on all department NEPA work with a secretarial order meant to help achieve Trump's directive (Secretarial Order 3355).

Bernhardt's order also limited EAs and more complex environmental impact statements (EISs) to 150 pages in the drafting stage — 300 pages for unusually complex projects. EISs regularly run into the thousands of pages.

Streamlining NEPA comes after decades of coal industry complaints about leasing delays.

"We're talking four, five, six years of paperwork with no results, so we're very excited and hopeful," North American Coal spokesman David Straley said. The expedited process "helps us make our coal more competitive and the electricity for consumers on the other end of that line more economical."

Last year, all 2.1 million tons of coal mined at Coyote Creek went to the power plant next door, Coyote Station, which had no other suppliers. The new lease would add more than two years of production at current levels.

BLM and OSMRE have already finished a 14-day public comment period on the scope of the review, promising to publish a draft EA before winter.

But Straley said the quick process will not shortchange environmental protection, arguing the new lease will have minimal impact as it lies within the existing mine footprint.

"We're just excited to be part of the new frontier of reducing paperwork and reducing waste," he said.

'A significant step'

Coal companies blame bureaucracy for delays, but companies themselves often request to put their applications on hold.

Bernhardt's one-year deadline forced Cloud Peak Energy Inc. to ask for a pause on the second-largest pending application in the country: 441 million tons at the Antelope mine in Wyoming.

In a May 29 letter to BLM, the company backed the "intent" of timing and page limits but said it needed more time to collect baseline data and consult with American Indian tribes.

That work continues, but Cloud Peak spokesman Rick Curtsinger could not provide a timeline for further action. Despite the delay, Cloud Peak appreciates the administration's efforts.

"This is a significant step toward utilizing America's energy resources, creating good-paying jobs and generating significant tax revenue for the American people," Curtsinger said.

Rushing to lease more coal, however, could land the Trump administration in court.

Shannon Anderson, an attorney with the Powder River Basin Resource Council, which represents landowners in the nation's dominant coal region, pointed to federal agencies' divergent missions.

BLM sells coal if it is in the public interest — "though they always forget" that last part, Anderson said — while OSMRE regulates mining to minimize impacts.

"While it's both about coal mining, the agency actions are very different," she said. "You have a whole different purpose, a different need, potentially different impacts."

Another problem is timing, Anderson said. OSMRE is supposed to review mine plans, which are filed only after a lease is issued and, therefore, after a NEPA analysis is complete.

"BLM always tells us they can't possibly analyze all the impacts of coal leasing because they don't know all the details behind the mining plan," WildEarth Guardians' Jeremy Nichols said.

OSMRE shouldn't try to rely on another agency's work either, he said.

"We've already beat them in court several times when they attempted to rely solely on BLM leasing documents, rather than their own independent reviews and approvals," Nichols said. "If they go down this road, we'll beat them in court again."

'Small acreage, small mines'

What keeps the debate out of the courtroom is a dearth of new coal lease applications despite Trump's bombastic attempts to save the industry.

Interior lifted an Obama-era moratorium on federal coal leasing within months of Trump's inauguration, but the amount of coal up for lease has fallen since then from 2.8 billion tons to 1.9 billion tons. Virtually the entire drop comes from companies withdrawing five requests that totaled about 900 million tons.

Only seven new applications for leases or lease modifications have arrived since Trump took office. They total less than 40 million tons, although tonnage for three applications remains unknown.

BLM also has managed to sell seven leases containing 43.8 million tons of coal. In May, the agency leased an additional 3.37 million tons at the Pollyanna No. 8 mine in eastern Oklahoma.

BLM is trying to sell more. A lease sale for 2.4 million tons at the Center mine in North Dakota was reportedly held Oct. 10, and a second offering for 469,000 tons in Alabama is scheduled for Nov. 29.

But like all but one Trump-era sale, both sales were approved by the Obama administration and exempt from the moratorium.

"Small acreage, small mines, small amounts of coal," WildEarth Guardians' Nichols said. "Once again, the lifting of the moratorium has had no impact on the sale of federal coal."

Other pending lease applications are tied to idle or abandoned coal proposals. Rhino Resource Partners LP gave up on the Red Cliff mine in 2015, but a 102-million-ton lease application for the Colorado project is still on the books.

A lease application for 18.7 million tons of coal at the New Elk mine is still in process, despite the Colorado mine not producing coal since 2012 and Cline Mining Corp. filing for bankruptcy in 2014.

Westmoreland Coal Co. has recently taken two lease applications — 5.9 million tons at the Rosebud mine in Montana and 1.4 million at the Buckingham mine in Ohio — with the company into bankruptcy.

The Powder River Basin Resource Council is focused on a "lingering" proposal to expand the Black Thunder mine in Wyoming. At 467.5 million tons, the application is the biggest pending lease left in the country, but owner Arch Coal Inc. has repeatedly delayed a sale, and BLM says it must now complete a "new NEPA" analysis for the lease approved back in 2013.

Arch abandoned another 440.4-million-ton application at Black Thunder last year, but coal companies are also relinquishing existing leases as they struggle to compete with natural gas.

In 2017, Peabody Energy Corp. returned 2,740 acres at the Caballo mine. The top American coal producer reported the quality of coal at the Wyoming operation was "un-economical in current market conditions," according to a letter recently obtained by the Powder River Basin Resource Council.

"After years of speculative coal leasing in the Powder River Basin, it seems that Peabody is quietly pulling up stakes," council Vice Chairman Bob LeResche said. "One hopes that the company would at least have the decency to tell their employees and the community directly instead of quietly sneaking out the back door."

Peabody spokesman Vic Svec said the "relinquishment was a very small fraction of tons that were not economical to mine based on their location or coal quality."

As for the withdrawal of a lease for 26.6 million tons at the Rawhide and Caballo mines, Peabody said the action was "administrative in nature" and did not represent any change in the company's commitment to the Power River Basin as it did not include any of 2.5 billion tons of proven and probable reserves in the region.

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