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The Honorable Sally Jewell
Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Secretary Jewell,

Today, I am releasing the findings of a Government Accountability Office (GAO) report on the federal coal leasing program that, along with additional analysis of non-public Interior Department records conducted by my office, raise serious concerns about the manner in which the Department ensures that it maximizes the benefit to the taxpayer when leasing federally-owned coal. Based on my staff's review of materials provided by the Department, I am concerned that the Department is using extremely outdated information and boilerplate analysis that may fail to accurately assess current market conditions. Based on my staff's examination of the materials, I believe that using appropriate market calculations and assumptions in some recent coal lease sales could potentially have yielded \$200 million more for the American people, and possibly hundreds of millions of dollars more. I write to urge you to take immediate action to reform the Department's coal lease program to ensure that the true value of these natural resources is obtained on behalf of the taxpayers, and to temporarily suspend new coal lease sales until these reforms are completed.

Following coal lease sales in the Powder River Basin (PRB) in Wyoming and Montana in 1982, I asked for a report from the GAO on whether taxpayers had received a proper return on these lease sales. It was this GAO report to me that found that the Interior Department had sold this public coal in the Powder River Basin for \$100 million less than it was worth. I am concerned that similar problems and a lack of competition may persist today at the expense of taxpayers in Massachusetts and around the country.

This is the first GAO audit of the federal coal program since 1994 and it has identified a number of serious deficiencies that need to be addressed by the Department. A non-public version of the GAO report contains additional specificity that serves to further highlight these problems. The GAO has concluded in its public report that:

- Industry competition for federal coal leases is still lacking;
- The process for determining the Fair Market Value of coal leases, which is critical because of the lack of competition, lacks rigor and oversight;

- The Interior Department is not properly considering the potential for coal exports in setting the value of federal coal; and
- The federal coal program lacks transparency for the American people.

I am concerned that until the issues raised by the GAO are addressed, taxpayers cannot be assured that they are getting a fair return on these public coal resources.

In addition, I am concerned about the Department's continued failure to provide Congress with sufficient and complete information to allow proper oversight of Interior's coal program. I first requested documents related to the Department's coal leasing program in July, 2012. While I appreciate the Department working with my staff to provide some of the materials I requested in the past few weeks, critical information has still been redacted from the documents provided to me. In fact, without the information contained in the non-public GAO report conducted for me, the complete review of recent lease sales would not have been possible.

While the Department may have redacted certain information out of a desire to protect the integrity of coal lease sales, the effect is to limit the ability of Congress to oversee this program. It is imperative that we ensure that the American people are receiving a proper return on these tremendously valuable resources and I look forward to working with you to address the issues raised in the GAO reports and my staff's review of non-public documents.

I therefore request that you respond to the following questions regarding issues identified in the public GAO report and the Department's plans to correct them. I am also transmitting a non-public addendum to this letter raising a series of additional questions based on my staff's review of non-public documents provided by the Department relating to coal lease sales.

1. In examining more than 100 recent coal lease sales, the GAO found "a similar lack of competition for federal coal leases" as existed in the 1982 coal lease sales in the Powder River Basin (PRB) that the GAO examined at my request. Specifically, the GAO found in the public report I am releasing today, that roughly 90 percent of federal coal lease tracts received a bid from only a single coal company. The GAO further found that the Department accepted that first coal company bid more than 80 percent of the time. According to the GAO, in the 18 instances where the initial bid was rejected by the Department, coal companies always bid again for the tract and did so at higher levels. This raises the question of whether taxpayers are receiving a proper return on the majority of coal lease sales conducted by the Department.
 - a. Do you believe that the overwhelming lack of industry competition for federal coal tracts and the acceptance of initial coal company bids by the Department is leading to a loss of revenue for the American people? If not, why not? If so, what steps is the Department taking to address this lack of competition and when will those steps be completed?
 - b. Bureau of Land Management (BLM) officials told the GAO that the BLM uses the tract modification process to encourage competition. However, the GAO found that Interior modified the lease tract boundaries to enhance competition in 23 percent of the lease sales examined yet none of these modified leases received multiple bids. It therefore appears that the BLM's attempts to modify coal tracts

to increase industry competition is not working successfully. What steps is the Department taking to improve the tract modification process to increase competition and when will those steps be completed?

2. BLM's guidance lays out two approaches for developing an estimate of Fair Market Value – one that looks at past sales and one that takes into account revenue from mining - - but found that not all states use both evaluations, as recommended by the appraisal organizations GAO interviewed. GAO concluded that states that only use past sales “may not be fully considering current or new trends in coal markets when estimating Fair Market Value.”
 - a. Do you agree with GAO's conclusion that states that only use past sales to determine an estimate of FMV may not be considering current or new trends in coal markets and therefore may be generating a deficient estimate of Fair Market Value? If not, why not?
 - b. Do you intend to require that all state offices use both of these types of evaluations as recommended by appraisal organizations interviewed by the GAO and, if so, when will such a requirement be put in place? If not, why not?
3. The GAO found that DOI is using coal lease sales that are outdated in setting an estimate of Fair Market Value, that some states did not even update these outdated sales to account for inflation and one state that did not prepare a formal appraisal report to justify setting the FMV at the lowest possible level.
 - a. The GAO found that several comparable sales being used were more than five years old and that an appraisal organization interviewed by the GAO suggested such a sale might not reflect current market conditions. Do you believe that DOI should not use comparable sales that are five or more years old in generating an estimate of FMV? If not, why not? If so, what actions is the Department taking to ensure that states do not use outdated lease sale information and when will those actions be implemented?
 - b. The GAO found that some states did not even adjust outdated sales information to account for inflation. Do you believe that lease sale information should always be adjusted for inflation in calculating the FMV estimate? If not, why not? If so, what steps are you taking to ensure that all BLM offices adjust this information to account for inflation?
 - c. The GAO found three related lease sales in Oklahoma where a formal appraisal report was not prepared at all to justify setting the Fair Market Value at the lowest level allowed in law. Do you believe that the procedures in place in Oklahoma and all state offices should be reviewed to ensure that proper justification for the Fair Market Value estimate is completed for every lease sale? If not, why not? If so, when will such a review be completed?
4. In response to the problems uncovered with the 1982 PRB sales, it was recommended that Interior conduct periodic independent reviews of coal leasing.
 - a. The GAO found that Interior is not using an independent third party office within Interior with appraisal expertise. Do you believe that all federal coal lease sales should be reviewed by Interior's Office of Valuation Services or another

- independent entity? If not, why not? If so, when will such a requirement be implemented?
- b. The GAO found that BLM headquarters currently only reviews a tiny percentage – between five and ten percent – of appraisal reports prior to lease sales. As a result, the GAO concluded that appraisal reports “may not be receiving the scrutiny they deserve.” Do you believe that BLM headquarters officials should review every appraisal report prior to lease sales? If not, why not? If so, what actions will the Department take to ensure that this review by top BLM officials occurs prior to lease sales?
5. BLM’s guidance states that appraisal reports determining Fair Market Value should consider specific markets for the coal being leased, including export potential. But the GAO found that some offices, such as Wyoming, typically contained only “generic boilerplate statements about the possibility of coal exports in the future and the uncertainty surrounding them.” Further, many other states did not consider coal exports at all when valuing federal coal, according to the GAO. What steps are you taking to protect taxpayers by ensuring that the BLM follows its guidance to conduct a meaningful consideration of the possibility of coal exports in determining the Fair Market Value of public coal resources, given that coal leases are issued for a period of at least 20 years?
 6. The GAO also found that the Interior Department is providing limited information to the public about federal coal leasing activities. It is vital that there is transparency in the federal coal program so that the American people can be assured that they are receiving a proper return.
 - a. Although BLM guidance states that Interior should prepare and release a public version of the Fair Market Value appraisal reports that removes all proprietary or confidential information, the GAO found that the BLM is not following this guidance. Do you disagree with the agency guidance that states that public versions of appraisal reports should be disseminated? If so, why? If not, what steps are you taking to ensure that such documents are prepared and released by BLM?
 - b. The GAO found that the main BLM webpage does not post consolidated information on federal coal lease sales and that most BLM state offices do not maintain information on past lease sales on their state webpages. Do you believe that this information should be posted in an easily accessible and searchable fashion on BLM websites for the public? If not, why not? If so, what actions are you taking to ensure that this information is posted on government websites and when will those actions be completed?
 7. The GAO report highlights the outdated fees coal companies are paying on public lands.
 - a. Rental rates were set decades ago at \$3 per acre. The GAO found that in fiscal year 2012, we generated \$1.4 million in rent revenue from federal coal leases, comprising 0.1 percent of the annual revenue related to coal. Do you believe the rental rates should be updated to account for current market conditions or inflation? If not, why not? If so, what actions does the Department plan to take to update these rates?

- b. The minimum bid that Interior can accept for a coal lease is \$100 per acre. Do you believe that this minimum bid amount should be updated to reflect current market conditions or inflation? If not, why not?
8. Are there any other recommendations made by the GAO in its report with which you disagree? If so, why? If not, what steps will you take to implement those additional reforms and when will those actions occur?

It is critical that we ensure there are proper protections in place for taxpayers in Massachusetts and across the country to receive a fair return on this incredibly valuable federal resource. Until the issues identified by the GAO can be addressed, I do not believe that we can provide that assurance to the American people. I therefore believe that the Department should temporarily suspend further coal leasing until it has addressed the issues identified by the GAO and raised in this letter and the non-public addendum I am transmitting to you today.

Please respond to me in writing regarding the questions raised in this public letter and the non-public addendum by 12:00 p.m. on Friday, February 28, 2014. Should you have any questions, please have your staff contact Morgan Gray or Michal Freedhoff in my office at (202) 224-2742.

Thank you for your attention to this matter.

Sincerely,



Edward J. Markey
United States Senator