County and Prosecuting Attorney's Office
Campbell County, Wyoming
500 South Gillette Avenue, Suite B200
Gillette, Wyoming 82716
(307) 682-4310
FAX: (307) 687-6441

COUNTY ATTORNEY
Ron Wirthwein

DEPUTY ATTORNEYS
Carol J. Seeger
Charlene R. Edwards
Brooke K. Undeberg
Dan E. Reade
Nathan Henkes
Glen Assay
Jeani Stone
Cameron Geeting
Kyle Ferris
Angela Dougherty

May 7, 2015

Department of the Interior
Office of Natural Resources Revenue
Att: Armand Southall, Regulatory Specialist
P.O. Box 25165
MS 61030A
Denver, CO 80225

RE: RIN #1012-AA13

Dear Mr. Southall:

The following comments are submitted on behalf of the Board of County Commissioners in and for Campbell County, Wyoming.

Campbell County government appreciates ONRR's desire to increase effectiveness and efficiency to its rules for determining royalties on federally owned coal with the stated purposes of (1) offering greater simplicity, clarity and consistency on determining federal coal valuation; (2) greater understandability; (3) decrease industry and ONRR's cost of compliance; and (4) provide early certainty to industry and ONRR regarding royalties owed; respectfully, the proposed rules do not achieve the stated purposes.

It is our understanding that no changes are proposed for valuing arm's length coal sales. With regard to non-arm's length coal sales, there is currently a system in place to value those sales using a bench mark system. The first bench mark (transfer price) can apply to a mine with sales to both arm's length and non-arm's length sales with reference to comparable arm's length sales with appropriate documentation. It is our understanding that this bench mark is the most commonly used and the most accurate method for determining the value of the produced coal. Under the new rules, the "net back" method will effectively become the most used method for determining value. Currently, the "net back" method is the method of last resort because it is the least reliable method for determining the value of coal.

Using the net back system under the current proposed rules will introduce increased uncertainty due to a lack of adequate definition of allowed deductions. It is significant that ONRR is inviting comments on creating standard "schedules" for transportation, washing and other costs recognizing that, at present, valuations are made on a case-by-case basis. Increasing the use of the net back system without addressing how costs and deductions will be handled does little to increase clarity, simplicity and consistency to the process.

The net back method increases opportunities for discretion as opposed to objective criteria to determine value. It also increases the opportunity for coal to be valued at something other than the true value of coal which is the value the established royalty rate is supposed to be applied. The value of coal is its value at the mouth of the mine; not later in time after processing and transportation costs have been incurred. For instance, a mine that sells to a buyer that requires transportation to a distant port has incurred a cost to get that coal to market. Those risks and costs are incurred by the mine and the selling price may be adjusted to capture those costs but those costs do not add value to the coal.

The proposed rule is discriminatory in that is will value coal differently depending on the type of sale which has nothing to do with the value of the coal. The royalty on federal lease coal sold to a power plant will be the mine mouth sales price. If the utility has and uses its own federal lease coal, the royalty will be based on the value of the electricity generated. In this instance, you are not valuing the coal but rather electricity. These are two entirely different commodities. If the federal lease coal is shipped and sold to China, the royalty is proposed to be applied to the value of a sale that will take place thousands of miles away and that sales cost is going to have very little to do with the mine mouth value of coal but rather costs incurred in the sale at a distant port.

The proposed rule is alleged to be revenue neutral but real concern exists regarding the impact of implementation of the proposed rule. Coal contributed over $1.22 billion in revenue to the State of Wyoming and local governments in Wyoming in 2012 alone. Campbell County, Wyoming, depends heavily on revenue generated from coal production. Forty percent of the nation's coal is produced in Campbell County accounting for 10.6 quadrillion BTU's annually providing ten percent of the nation's energy. Severance and ad valorem taxes are paid by industry to the State of Wyoming and Campbell County, respectively. Campbell County relies upon this revenue to provide services to its citizens and build schools for its children. Federal and state royalties are deducted out of the taxable value of coal for purposes of calculating severance and ad valorem taxes, therefore, any increase in royalty payments to the federal government will be a direct deduct from revenue to the county.

The notice in the Federal Register regarding the proposed rule admirably invites comments from those in industry of the potential impacts of the rule both financially and administratively. It also invites comments on other methodologies that might be used to value coal. It is our understanding that the proposed rule negatively impacts industry and contrary to the stated purposes for the rule, increased uncertainty and administrative costs will result. Additionally, and certainly not insignificantly, a decrease in coal production could result. A decrease in the production of coal would be in direct conflict to the responsible development of natural resources held by the federal government in trust for all Americans.

Those who have been engaged in the responsible mining of our coal resources for decades believe that the current rules have worked fairly and effectively. Campbell County urges ONRR to proceed carefully in making changes to the existing rules and ensure that any changes truly accomplish the stated purposes. Those in industry have voiced considerable concerns regarding the proposed changes and have offered suggestions for ONRR to explore to better achieve its stated purposes. We would respectively request that you carefully consider those concerns.

We thank you for your consideration and the opportunity to provide comment.

Sincerely,

Carol Seeger

Carol Seeger
Deputy Campbell County Attorney

cc: Office of Campbell County Commissioners