Senators Ask if Coal Exports Skirt Royalties

MATTHEW BROWN,Associated Press

BILLINGS, Mont. (AP) — Lawmakers asked the U.S. Department of Interior on Friday to review whether companies are shortchanging federal and state governments out of millions of dollars in royalties on coal exported to foreign markets.

The request from Oregon Sen. Ron Wyden and Alaska Sen. Lisa Murkowski comes as U.S. coal exports hit record levels last year — an estimated 124 million tons, according to projections from the Department of Energy.

That includes increasing quantities of steam coal used in power plants, which is being shipped to Asia from the Powder River Basin of Montana and Wyoming by companies including Arch Coal Inc., Peabody Energy Corp. and Cloud Peak Energy Inc.

The senators want to know if companies violated federal leasing law by paying royalties based on the coal's mine price, then selling it overseas at a higher price through affiliated brokers.

Interior officials said Friday they are looking into the issue. Montana Gov. Brian Schweitzer said he has seen no evidence that companies are dodging what they owe.

"If somebody's pulling some shenanigans, we want to get to the bottom of it, but I don't think they are," the Democratic governor said Friday in an interview with The Associated Press. "I haven't seen any evidence that they are shortchanging us at all."

Wyden is the incoming Democratic chairman of the Senate Energy and Natural Resources Committee, and Murkowski is the panel's ranking Republican. They said the rise in export volumes makes it crucial that proper royalties are collected on coal mined from federal land.

"Taxpayers must be confident that (the Interior Department has) stringent royalty collection and auditing controls in place as coal markets become increasingly oriented toward international buyers," they wrote in a letter to Interior Secretary Ken Salazar. "If the department's regulations are inadequate to ensure that full royalty value is returned, those regulations must be reformed."

The senators asked Salazar to respond by Feb. 4.

Representatives of Peabody and Cloud Peak said the companies were fully compliant with federal royalty rules. A spokeswoman for Arch declined comment.

The concerns over royalties on coal exports were first reported by Reuters.

Powder River Basin coal is sold domestically for roughly $10 a ton. That compares with prices in countries such as Japan that can top $100 per ton.

Some mining companies, particularly in the West, sell their coal at the mine price to brokers or marketing agents that are affiliated with the company making the sale, said National Mining Association spokeswoman Carol Raulston. The broker then sells the coal to overseas customers at a higher price that factors in other costs, such as transporting the fuel across the country by train, loading it onto ships and delivering it to locations like Taiwan and South Korea.

Raulston and other industry representatives said that still can amount to an arm's-length transaction, with royalties paid on the mine price, as long as the original sales price to the broker was not discounted.

A spokesman for Wyoming Gov. Matt Mead, a Republican, said state officials there also had seen no evidence that companies had failed to pay their proper royalties.

Nevertheless, officials from Wyoming, Montana and the federal government are auditing coal sales made over the last several years to make sure companies complied with royalty rules. Those audits could take a year or longer to complete, according to Interior Department officials.

"We will pursue this and make sure they are paying the proper royalties," said Patrick Etchart, a spokesman for Interior's Office of Natural Resources Revenue.

More than 460 million tons of coal was mined from federal lands last year, primarily in the Powder River Basin and in other western states. The federal government collected $875 million in royalties in 2012 on coal sales of more than $8.1 billion. About half of federal royalties are returned to states.

Exports from western states totaled almost 22 million tons in 2011, the most recent figure available. That compares with a little more than 6 million tons exported from western states in 2009.

The Interior Department is working on changes to federal coal royalty regulations that Etchart said will help ensure taxpayers get a fair return on federally owned coal.

As part of that rule-making process, Wyoming's state auditor submitted comments in 2011 saying the definition of arm's-length transactions should be changed to establish that coal company affiliates are not treated as separate entities as far as royalties are concerned.

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