



March 15, 2019

The Honorable Secretary of State, Edward Buchanan  
Secretary of State's Office  
2020 Carey Avenue, 6<sup>th</sup> Floor  
Cheyenne, Wyoming 820021

RE: Veto of HB0251/HEA No. 0117 Coal export terminal litigation

Dear Secretary Buchanan,

Article 1, Section 8 of the United States Constitution clearly articulates that only the Congress shall have the power "To regulate Commerce with foreign Nations and among the several States..." It is also clear that coal produced in Wyoming has played an important role in fueling our nation's economy. Wyoming and her people have benefitted from coal produced in, used in, and exported from our state. Moreover, Wyoming coal is generally better for the environment than many other coals currently being burned around the world especially in the Asian markets. In fact, Powder River coal has helped to reduce harmful emissions from coal-fired electric generating facilities domestically and abroad. Moreover, it should not be forgotten, companies mining coal in the Powder River Basin have restored the land after mining in a way that is far superior to the practices of any other nation on this planet.

Wyoming's ability to market one of its most abundant natural resources is fundamental to our state's economy. Wyoming has never shirked her responsibilities to assure her industries have unrestricted access to the global marketplace. The importance of trade to our nation's and several state's economic health lies at the center of Article 1, Section 8 and is essential to our state's future.

I agree with the declaration in House Bill 251 that the unhindered export of coal is critical to the economic and proprietary interests of the state of Wyoming as well as the economic wellbeing of Wyoming citizens. Indeed I specifically mentioned my belief that the improper use of regulation by Washington State constituted a restraint of trade in my State of the State address in January. Thus, I likewise share the view that "the production, sale, and consumption of coal contributes greatly to Wyoming's economy," and is furthermore a vital component of interstate commerce, the global economy, and an important part of overall energy supply.

For the record, the State of Wyoming, acting through its executive branch, has a long history of recognizing the importance of the coal industry to the State. Previous governors and the Attorney General's Office have undertaken numerous efforts to protect Wyoming's interests related to coal. For example, among other actions, Wyoming was significantly involved in the coalition to challenge the Clean Power Plan and received an unprecedented stay of the Obama Administration's greenhouse gas emissions regulation from United States Supreme Court. The State of Wyoming additionally intervened in a challenge by several environmental groups to the Bureau of Land Management's coal leasing program. The district court ruled in Wyoming's favor, dismissing the challenge and the State continues to participate on appeal. The State has pursued cases supporting the lifting of the Obama administration's coal moratorium, defending mine plan amendments related to Wyoming coal operations and numerous other coal and "coal adjacent" matters such as Waters of the United States and Stream Protection. I have highlighted just a few examples, but it is fair to say that as the assaults on the coal industry have increased, so have our efforts to protect Wyoming's interests through legal action. My administration will vigorously defend our State's industry and economy in concert with that tradition.

Currently, the State is actively involved in litigation regarding coal export terminals. In 2018, following various state-level permit denials related to the proposed Millennium Bulk Terminal in Washington State, Lighthouse Resources filed suit in the United States District Court for the Western District of Washington alleging, among other things, that various Washington State officials improperly exercised political influence in an attempt to effectively kill the Millennium coal export facility. Specifically, Lighthouse alleges that Washington State decision-makers were biased against coal. One of the primary arguments is that Washington State officials violated the Dormant Commerce Clause of the United States Constitution by discriminating against out-of-state commerce, i.e., coal's access to markets.

Currently, Wyoming is leading a coalition of landlocked states defending our right to trade freely. Along with several other state partners, Wyoming filed an amicus curiae (friend of the court) brief in support of Lighthouse on March 11. Rest assured, efforts are already underway to assert that Washington State officials have violated the Dormant Commerce Clause and emphasize the harm to interior states from exclusionary policies against disfavored commodities like coal. Our efforts are well regarded by our peers and indeed constitute an important part of a potentially decisive issue because of our work assembling this coalition of affected states.

In this regard and with due respect to the eagerness evinced by the Wyoming Legislature this past session, it is, nonetheless, essential that the State of Wyoming speak with one voice at this critical

juncture in the coal export case. Giving courts the impression that two branches of Wyoming's government might be second-guessing one another – in fact potentially litigating over the top of one another – would be counterproductive to our best efforts to protect Wyoming's interests. It is unclear whether dueling legal claims would yield a better result for Wyoming than if these matters were handled as they have been traditionally by the executive whose responsibility it is to execute the laws the legislature passes. Furthermore, dividing the limited resources of Wyoming's Attorney General between two potentially contemporaneous cases would do a disservice to both at the expense of Wyoming.

I understand and applaud the desire of the legislature to be ever vigilant in protecting the economic interests of the State and its citizens. I share that same dedication and zeal for assuring that Wyoming is not harmed by the actions of other states. Even so, I can see no compelling reason for potentially confusing the courts, complicating matters at hand, disrupting the coalition of states friendly to our perspective, or introducing reasons to delay an expeditious hearing of the case currently before the court. Consequently, I am vetoing HB 251.

Nothing in Wyoming's or the coalition's current approach precludes the state from pursuing the remedy the legislature requests in due course should the present action not yield a remedy sufficient to Wyoming's cause. We are united, the legislature and the executive, in our desire to do our best to protect Wyoming's interests. Rest assured if the efforts already underway are unsuccessful, I will be tireless in exercising every legal option to assert Wyoming's access to markets worldwide.

This bill, however, carves an unprecedented path -- absent compelling reason -- encouraging the legislature to take a potentially different course from that that the State is already pursuing. The obvious confusion this could engender is at best problematic at worst fatal.

I am unaware of another instance where the legislature has undertaken litigation of this sort. Indeed, I question the legislature's authority to prosecute this type of legal action which has nothing to do with the exercise of its plenary power. It is the responsibility of the executive branch to carry out the laws the legislature passes and that includes pursuing legal actions related to Wyoming's laws and interests. Furthermore, separately prosecuting this course of action would present significant practical and constitutional challenges for Wyoming's proudly part-time citizen legislature to navigate.

I commend your recognition of the importance of the coal industry to the State of Wyoming. I admire and share your commitment to pursuing all legal avenues available to the State to ensure

our right to interstate commerce is not impeded. It is clear that we all understand the importance of this issue and are unwavering in our determination to protect Wyoming's economic interests and prevent the harm created by interference with interstate commerce.

Sincerely,



Mark Gordon  
Governor

cc: The Honorable Steve Harshman, Speaker of the House  
The Honorable Drew Perkins, President of the Senate  
Chief Clerk, Wyoming House of Representatives  
Chief Clerk, Wyoming Senate