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Why coal mines close

The risky business decisions and excessive executive salaries are far more to blame for the coal industry's decline than any federal regulation. Federal regulations regarding mining are not the reason that coal mines close and jobs are lost in coal country. In fact, the federal government is doing even more than they should to prop up the industry. The federal government provides this industry with tax subsidies, sells these companies' coal at a price far below market value, allows them to skirt insurance requirements by permitting "self-bonding," and fails to enforce environmental clean-up laws. The federal government has allowed coal companies to take advantage of our outdated federal coal program for too long. But even all of these favorable decisions and outdated regulations couldn't help save coal companies from their excessive spending and reckless business investments.

Where did the money go?

Since May of 2015, five of the United States' major coal companies filed for bankruptcy: Walter Energy, Patriot Coal, Alpha Natural Resources in August 2015, Arch Coal in January 2016, and most recently Peabody Energy in April 2016.[1] Over the past decade, those five companies funneled $100 million to DC lobbyists and politicians to protect the coal industry's $167 million annual federal taxpayer subsidies.[2] Also over the last decade, those companies plus Cloud Peak, Foundation Coal, Consol Energy, and Westmoreland have spent over $1 billion on executive compensation.[3]

Now-bankrupt Peabody Energy has spent $3 million on DC lobbyists over the past year,[4] while paying its outgoing CEO more than $10 million, even as it closes mines,[5] lays off hundreds of workers, and cuts retiree health benefits by $70 million.[6] In fact, former Peabody CEO Greg Boyce, who oversaw the decision making that led to bankruptcy, has collected $100 million alone over the past decade.[7] During that time, Peabody spent $55 million lobbying Congress to oppose climate change policies, contributed almost $1 million to mostly Republican political candidates, and misled investors in public disclosures while funding climate denial groups.[8]

This is a pattern with fledgling coal companies. As they were going through the bankruptcy process in early 2016, Arch Coal cut benefits for retired workers by $3 million, while at the same time approving an executive bonus package of $12 million.[9]

Why has the money dried up?

As these coal companies have gone bankrupt, there has been almost no demand for their assets. This is not because of any perceived regulatory burden that exists for the industry, but rather because there is simply not the demand for coal that coal companies had banked on. Coal companies loaded themselves up with debt in an effort to take advantage of a market that they perceived to be growing almost limitlessly. In reality, however, the demand for coal slowed in favor of cleaner and more renewable sources of power. This debt is a large part of what caused these companies to go bankrupt. Most of Peabody's mines are still profitable, "they're just not profitable enough to take care of the debt [Peabody and others] have run up," Matt Preston said in March, a research director at consultancy Wood Mackenzie.[10]

With all that debt on the books of coal companies, there have been fewer and fewer investors willing to back the industry. Many of these banks have stated that their unwillingness to invest in coal projects is the result of a renewed focus on climate change. "We believe the financial services sector has an important role to play as governments implement policies to combat climate change," said JP Morgan in a statement announcing that they would end their support for new coal plants.[11] Bank of America, Citigroup and Morgan Stanley have all made similar moves to withdraw their support for coal projects.

As these banks have withdrawn their support for coal projects, companies have been forced to turn towards less-traditional—and far riskier—sources of funding. Utah's largest coal company, Bowie Partner Resources may demonstrate how investors are attempting to keep coal investments at arms-length to avoid responsibility for environmental remediation liabilities. Bowie is a Master Limited Partnership

(“MLP”)[12] backed by a Cayman-islands private equity fund run by a Swiss investment firm called Galena Asset Management SA. MLPs are formed primarily to avoid taxation and liability, and Bowie is no different.[13] Taxpayers in Utah, where Bowie owns three underground mines, will lose $7.5 million over the next ten years because of the tax loophole created for coal MLPs like Bowie. Further, private equity firms are notorious for saddling up investments with debt in the short-term in attempts to turn businesses around, but funneling exorbitant fees to its management-investors regardless of the success of the underlying venture. Indeed, Bowie is predicted to be the next coal bankruptcy once Galena sucks it dry with an expected $15.7 million annual fee by June 30th,[14] after loading the company up with debt for years and laying off workers already.[15] If that happens, its private equity investors are only on the hook for $5 million in environmental remediation liabilities while its mines are already underbonded to the tune of $6 million.[16]

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What is the federal government doing?

To listen to the rhetoric coming from the coal industry, one would think that the private sector was excited about the future of coal, but that optimism was being strangled by the federal government. However, quite the opposite is true. As major banks have withdrawn support for coal projects, the federal government has actually done a lot to support the coal industry financially.

Over the next 10 years, the federal government is projected to give the coal industry over $2.6 billion in tax preferences.[17] In addition to these formal tax preferences, the federal government has also allowed states to set up programs allowing companies to “self-bond.” Instead of setting aside money to ensure that the lands they are mining are cleaned up, companies have been allowed to use their own finances as collateral. The coal industry currently has $3.6 billion in self-bonding obligations.[18] One report estimates that the bankruptcies of just two coal companies could cost taxpayers nearly a $1 billion: “Together, Arch and Alpha had $896 million in outstanding reclamation liabilities when they declared bankruptcy. Since then, bankruptcy courts have reduced their liability to just $136 million, leaving roughly $760 million in cleanup costs that could fall to taxpayers."[19]

Instead of carve-outs for environmental remediation, reports suggest that coal companies have instead been handsomely rewarding their executives even as they have "careened towards bankruptcy," saddling taxpayers with higher liabilities in the process.[20] The New York Times recently wrote: "Taxpayers can only hope the bankruptcy courts there and elsewhere hold Big Coal to its obligations to fully pay for its decades of severe damage to the environment."

In fact, even as coal companies are failing and slipping into bankruptcy, there is no serious claim to be made that this is the fault of government regulation. In 2015, Peabody's last fiscal year before filing for bankruptcy, the company reported that their cost per ton in the United States had actually improved by 5%, even as their volume fell.

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What Does This Mean for Coal Communities?

As these coal companies have gone bankrupt, they have made it clear where their priorities lie. As they continue to receive enormous federal tax breaks and are allowed to cut corners on environmental reclamation costs, they have continued to prioritize debt fueled acquisitions and CEO pay over workers benefits and jobs in coal country.

A hallmark of each coal company's bankruptcy has been to cry foul at the burden of benefits for their retired workers. In 2013 Patriot Coal, a subsidiary of Peabody Coal, filed for bankruptcy for the first time. Before filing for bankruptcy, they assumed responsibility for the workers benefits of ALL Peabody coal miners. When they filed for bankruptcy, those accrued benefits totaled $1.3 billion. As part of the bankruptcy proceedings, those benefits were slashed to less than a than a third of that sum—only $400 million.[22] That year, Patriot Coal paid its executives $6.9 million in bonuses.[23] The company filed for bankruptcy a second time just two years later—putting even that insufficient sum of $400 million that was promised to retirees in question.

These attacks on worker benefits as executive bonuses continue apace are standard procedure for coal companies as they fail. Last year, Alpha Natural Resources asked for permission from a bankruptcy judge to cut medical and life insurance benefits for their retirees while also asking the court to approve $11.9 million in executive bonuses. Both the cuts to benefits and the executive bonuses were approved.[24]

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