

Committee on Natural Resources

SMCRA Oversight Hearing July 25, 2007

John Corra, Director Wyoming Department of Environmental Quality

Good morning Mr. Chairman. My name is John Corra. I am the Director of the Wyoming Department of Environmental Quality. I wish to thank you and the members of the U.S. House of Representatives Committee on Natural Resources for inviting the State of Wyoming to testify at this hearing today.

I am here to speak about the excellent history and successful implementation of The Surface Mining Control and Reclamation Act of 1977 (SMCRA) and to express a few concerns over the implementation of the recently passed Amendment to that Act. Wyoming is the nations leading producer of coal, and by far the largest contributor to the Abandoned Mine Land reclamation program. Clearly the success of SMCRA and how well it functions in the future is of critical importance to my State.

Although my remarks are somewhat Wyoming centric, they are shared by the other western states and the Reclamation Committee of the Western Interstate Energy Board which is associated with the Western Governor's Association.

With the passage of the Clean Air Act in 1970, Wyoming coal production started a steady increase. Today, Wyoming is the country's largest producer of coal with production approaching 450 million tons per year; more than double that of any other state. Wyoming coal is used to generate over thirty five percent of the county's coal generated electrical power. Over half the nation's coal production comes from the western states.

Coal mining is by far the most stringently regulated mineral extraction industry and yet has seen tremendous growth since the passage of SMCRA. The biggest success of SMCRA has been the ability to accommodate this growth while still achieving compliance with the regulatory requirements. For example, over 134,000 acres have been disturbed by coal mining in Wyoming (an area that is nearly three and a half times the size of the District of Columbia). A true measure of success is the reclamation, and almost half of those acres have been reclaimed. Several innovative approaches to creative reclamation have been developed and implemented in Wyoming and at other western coal mines, resulting in better and more cost effective reclamation. These include the use of variable topsoil replacement depths to achieve specific vegetation goals; the creation of bluff features to replace natural features removed by mining; and the replacement of alluvial valley floors. Coal operators in Wyoming and the western states have won numerous reclamation awards as a result.

An example of successful reclamation is the Dave Johnston Mine in Wyoming where the land has been reclaimed to the point where the untrained eye cannot tell the difference between the native-undisturbed land and the reclaimed land. The attached Photographs 1 thru 4 illustrate some of these reclaimed lands. Notice the abundance of shrubs, a feat that can be extremely challenging in the arid West, particularly in Wyoming where many areas have annual rainfall of less than 15 inches. These shrubs provide important habitat for sage grouse which was considered for listing under the Endangered Species Act. Another example is the designation of part of the reclamation at the Jacobs Ranch Mine in Wyoming as Elk Crucial Winter Range by the Wyoming Game and Fish Department (see attached Photograph 5).

Another success of SMCRA is the maturation of the relationship between the states and the Office of Surface Mining (OSM). Wyoming, as with many other states, had a coal regulatory program in place prior to the passage of SMCRA. Initially, there was a high level of confrontation between the state regulatory agencies and OSM. The states felt that OSM's attitude was "we're here to tell you how to do it right" and the states' attitude was "we know what we're doing as we were doing it long before you were created." There was also a lack of trust as the states felt OSM was primarily interested in catching the states doing something wrong. This relationship diverted energy and resources from the true purpose of SMCRA - that of protecting citizens and the environment from the impacts of coal mining.

This relationship has changed for the better. Most within OSM truly have a desire to assist the states and be responsive to the states' needs. Programs that have exemplified this attitude include the Western Regional Office of Technology Transfer, OSM's National Technical Training Program and the Technical Innovation and Professional Services Program. These programs provide great assistance to the states because of their ability to marshal resources far greater than what individual states could afford. Wyoming has used this assistance to improve our technical capabilities in the area of Global Positioning Systems to track reclamation progress and problem areas in the field. The OSM's technical assistance and training programs have also contributed to staff development. This has allowed Wyoming to respond to ever increasing coal production while reducing the number of staff devoted to coal due to shortfalls in the federal grant.

The heart of any program and the key to its success or failure is the people who implement it. With the maturation of the coal regulatory program is a corresponding maturation of the staff, both in the states and in OSM. The states have been successful in attracting and retaining well-educated staff, many of whom have been with the program for more than 20 years. This experience is a key ingredient in the success of the regulatory program. Many of the environmental issues that we face are long term issues and retaining and developing an experienced staff is therefore a high priority.

The science of reclamation is still young and progress takes time and people who are willing to devote their time and energy to the work. When SMCRA was passed 30 years ago, achieving successful revegetation in arid and semi-arid areas with less than 15 inches of average annual precipitation was considered to be nearly impossible. The mines have

demonstrated revegetation is possible. Over the past 30 years, dedicated individuals with the state and the mines have developed new reclamation techniques and seed mixes to enhance reclamation. Not only to achieve success at the end of the ten year bond liability period, but beyond.

Another of the key elements in our maturing programs is the development of a cooperative relationship with the industry that we regulate. In the early years of our program there was a great deal of distrust, animosity and a generally adversarial relationship all around. Over the years we have come to understand the value of being responsive to each other's needs. In order for our programs to be effective and efficient we have learned that open and honest communication is essential. The industry needs to understand the regulators' concerns and vice versa. The industry and the agencies have learned that we are truly partners in protecting the environment. Partnership is founded on mutual trust and respect. An adversarial relationship is not generally effective for either side. This partnership has been crucial as our staffing levels have decreased.

The biggest challenge facing the states is funding and this is also the biggest failure of SMCRA. Section 705 authorizes the Secretary to make annual grants to states with approved State Programs for 50% of the cost of the program. This amount is increased for states with cooperative agreements for federal lands by an amount not to exceed the amount the Federal Government would have expended if the state had not entered into a cooperative agreement. This has not happened and Title V Grants to the states have not kept pace with inflation.

Attached Figure 1 shows the rise of western production along with the level of Title V grants to the western states. The grants have been adjusted to constant 1994 dollars to account for inflation. The chart shows that, adjusted for inflation, grants to western states have actually decreased. Western programs are typically small in size even though coal production is equal to or greater than eastern or mid continent states. For example, Wyoming has the largest staff with 24 employees, while other states have less than 20 people. And, there are some state staffs with fewer than ten people. A small shortfall in funding can have a huge impact on our programs.

States are faced with two choices. One is to use state funds to make up the shortage in the federal grant. While this has occurred, states at times are faced with budget constraints of their own. Even for states with robust economies, there is little desire by state legislatures to accept unfunded federal mandates. The other option is to reduce the size of their programs and operate at lower levels of service. Vacancies go unfilled and staff is transferred to other programs. The loss of one or two staff positions due to grant shortages can mean a five to ten percent reduction in the program effectiveness. This can be devastating to a small program. Montana, Utah and Wyoming have all experienced a reduction in coal program staffing levels due to grant shortfalls. This trend cannot continue without significant impacts to the quality of the programs, i.e., permitting and compliance responsibilities and mine site reclamation. In Wyoming, coal production is soon expected to reach 500 million tons per year. We will not be able to maintain our permitting, inspecting and enforcement capabilities at current levels if the downward

trend in staffing continues (see Figure 2). Building on the success of SMCRA over the past 30 years will be very difficult, perhaps impossible, unless federal funding policies are changed.

The experience in Tennessee highlights the importance of OSM adequately funding state programs. Tennessee relinquished its state program and it is now a federal program state where OSM is the regulatory authority. In FY 2005, 2.98 million tons of coal was produced in Tennessee. OSM spent \$3.37 million on this program for a regulatory cost of \$1.13 per ton. For the same year, coal production in neighboring Virginia was 29.64 million tons. The total cost of Virginia's program was \$6.8 million or \$0.23 per ton. OSM's grant share of that cost is a mere 11 cents per ton! There is a huge difference between the cost of OSM implementing a coal program and the states doing so. By extrapolation, it is estimated the cost of running federal programs in the western states would be \$56 million. By contrast the western states are only asking for \$9 million in their grants for the federal cost share of their programs. SMCRA anticipated issuing grants to the states to pay for implementing the coal program as if OSM were to implement the program. The states are requesting an amount far less than that. The federal government is getting a fantastic return for the money spent on state grants, but the ability to sustain high quality programs into the future is jeopardized. For the continued success of SMCRA, the shortfall in the federal grants to the states must be addressed.

The other important part of SMCRA that I want to discuss is Title IV – Abandoned Mine Lands. Although much success has been experienced, this success is spotty. The intent of SMCRA not only was to address the impacts from active mines but also pre-law mined areas that were never reclaimed. Many of these sites not only severely impact the environment but posed dangerous risks to human health and safety. To address these issues, SMCRA imposed a fee on coal production to fund the intent of Title IV. The Act requires that 50% of all abandoned mine land fees collected by the federal government be returned to the states for use in reclaiming abandoned mines, and to deal with the environmental consequences and legacy from mining conducted prior to enactment of SMCRA in 1977.

State level Abandoned Mine Land Programs have had great success as evidenced by the large amount of work completed. This has been possible through the excellent efforts of state personnel and the cooperation from OSM over the years. In Wyoming, since 1983, AML has closed 1,500 hazardous mine openings, reclaimed over 32,000 acres of disturbed land, abated or controlled 25 mine fires and thirty eight miles of hazardous highwalls have been reduced to safer slopes. Additionally, over \$80 million has been spent to mitigate and prevent coal mine subsidence in residential and commercial areas of five Wyoming communities, and \$84 million have been invested in infrastructure projects in communities impacted by past mining. We also maintain an active partnership with federal agencies to eliminate mine-related hazards on federal lands.

The AML program's failure is that much of the state share of the fee collected was never returned to the states, thus postponing the important work that was intended to be

completed by Congress at the time of passage of SMCRA. Using Wyoming as a case in point, over \$500 million has been withheld over the years. Meanwhile, impacts to the environment continue and lives continue to be lost in old mine workings.

With respect to AML non-coal work, I want to point out that over the past 20 years OSM has recognized the importance of providing support to western states to clean up the overwhelming number of abandoned non-coal sites. Speaking for Wyoming, we have been very pleased with the balance of support from OSM. At this time, however, we cannot predict that the future will be as productive as the past, primarily due to current rulemaking that will implement the changes to SMCRA from the recently passed Surface Mining Control and Reclamation Act Amendments (Amendments). Although OSM has been very kind in allowing the states to provide their viewpoints on the rulemaking, I am compelled to inform this Committee of some very serious concerns.

From Wyoming's perspective, the OSM appears to be using old tools to implement the requirements of the new Act, primarily in the form of the existing grant process, to manage and distribute fee collections. The Amendments specifically state otherwise. The new language in the recent amendments requires that certified states such as Wyoming will receive their un-appropriated balance in seven equal payments beginning in FY 2008. It further requires that the state's share of annual fee collections going forward be in the form of a payment from the U.S. Treasury in lieu of an actual distribution from current fees collected.

The traditional administrative process which consists of the state applying for and the OSM approving and authorizing projects and grants does not serve the intent of the Act and would be seriously flawed. The Act does not specify a grant process, and very clearly does say that payments will be made. Indeed, §401(f)(3)(B) excludes certified states from receiving grants. The Act also specifies that these funds are to be used for purposes as established by the state legislature with priority given to addressing the impacts of mineral development. Our legislature has already moved to position itself to take on this task. A law creating an abandoned mine land funds reserve account was passed earlier this year. All funds received from the federal government from the Surface Mining Control and Reclamation Act Amendments of 2006 must flow into this account and remain there until appropriated by the legislature. The Wyoming Legislature has a long history of successfully fulfilling its fiduciary responsibilities and competently managing funds distributed from federal accounts. The capability exists to do the same with the fee payments that the Act calls for.

Western states are committed to completing the abandoned coal mine reclamation work, and fulfilling the original intent of SMCRA. But they are also faced with significant threats to the environment and to human health and safety from abandoned non-coal mines. Current rulemaking efforts by OSM must allow discretion to these states so that this serious problem can be addressed. Each state is unique, and the OSM should be flexible and provide a regulatory framework that meets the needs of each state. We believe that the core Mission of OSM, and the original intent of SMCRA will not be compromised by doing so.

I conclude by reinforcing the key variables to ensuring that we build on our past success and avoid the mistakes. First is to ensure that the professional relationships that have been built between the regulated community, the states and the federal government continue to be nurtured. Second, the serious funding shortfalls must be addressed to ensure that we maintain efficiency and not lose effectiveness. Last, we need to take great care in drafting the rules that will implement the Amendments to SMCRA. This is an opportunity to truly leverage what we have learned over the years, and ensure that the pressing reclamation needs across the country are addressed.



Photo 1 - Reclamation at the Dave Johnston Mine



Photo 2 - Reclamation at the Dave Johnston Mine



Photo 3 - Sage Grouse on reclaimed land
Dave Johnston Mine



Photo 4 - Sage Grouse on reclaimed land
Dave Johnston Mine



Photo 5 - Elk Utilizing Reclaimed Land at the Jacobs Ranch Mine

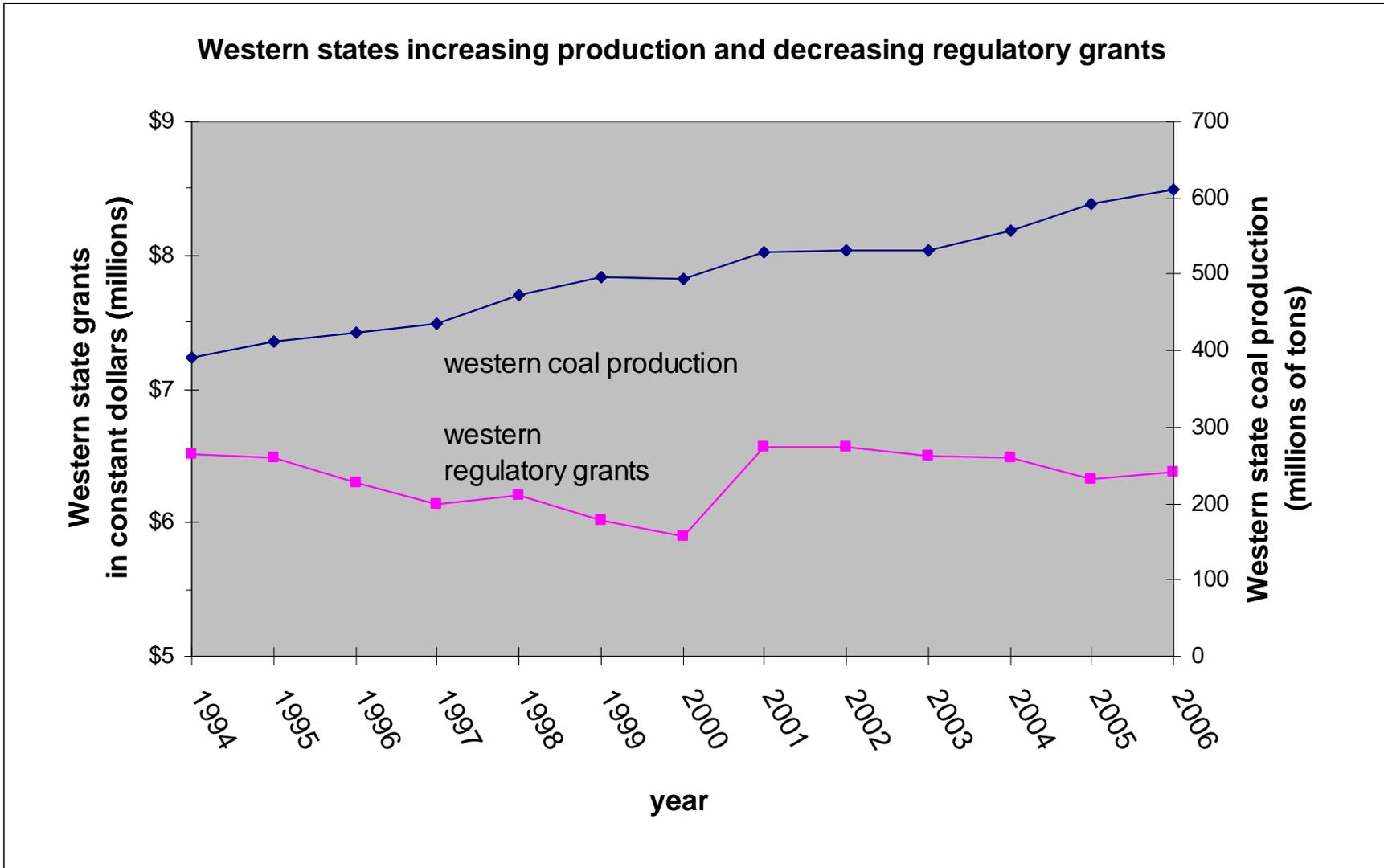


Figure 1
 Western Coal production Increasing
 Western Regulatory Grants Decreasing

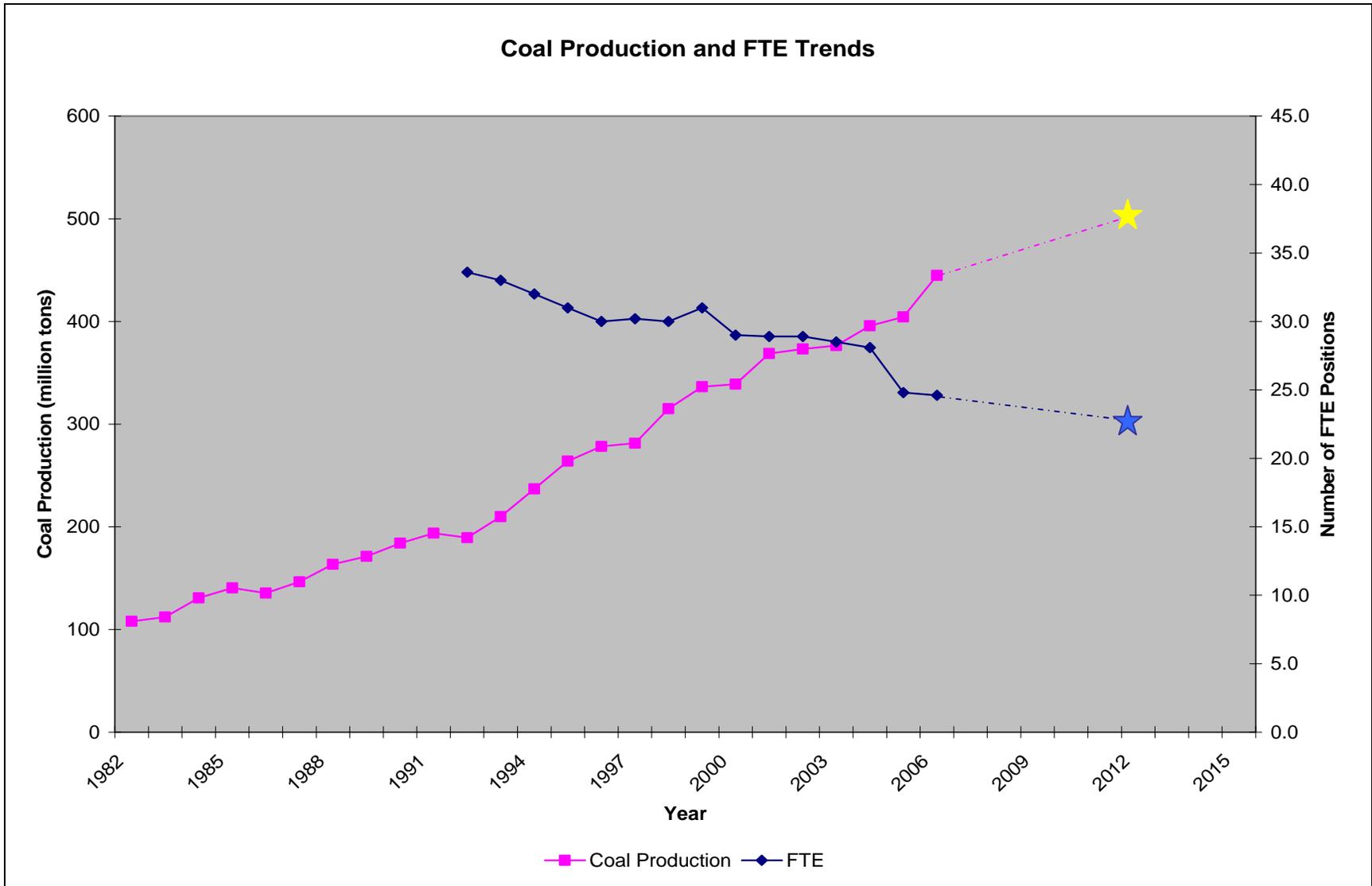


Figure 2 – Wyoming Coal Production and FTE Trends
Note: Projected coal production and FTE's are based on current trends.