

**Statement of
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U.S. Department of the Interior
Senate Energy and Natural Resources Committee
Subcommittee on Public Lands, Forests, and Mining
S. 436, San Juan County Settlement Implementation Act
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Thank you for the opportunity to present the views of the Department of the Interior (Department) on S. 436, which would authorize the Secretary of the Interior to retire a certain type of Federal coal lease rights – preference right lease applications (PRLA) – in exchange for issuance of equivalent value coal bidding rights which the PRLA holder could use elsewhere on Federal lands; authorize the Navajo Nation to substitute certain land selections; and designate wilderness areas in northern New Mexico.

The Department appreciates the work of Senators Heinrich and Udall to address concerns on previous versions of this legislation. While we support the bill's proposed resolution to long-standing issues concerning mineral development and tribal land selection, we believe that its wilderness designation components could be best achieved through standalone legislation. The Department notes that this type of approach could accommodate additional stakeholder perspectives concerning the most appropriate method of protecting the important resources and uses on these lands. We would also like to continue discussions with the sponsors and the Committee on a few remaining issues.

Background

Exchange of Coal Preference Right Lease Applications

Prior to 1976, the Secretary was authorized by the Mineral Leasing Act (MLA) to issue permits to prospect for coal on public lands in areas where no known coal deposits existed. If coal was discovered, the prospector could file a preference right lease application (PRLA). If commercial quantities of coal were demonstrated, the prospector was entitled to a “preference right lease,” – a noncompetitive, exclusive right to mine coal on these public lands for an initial 20-year term.

The Federal Coal Leasing Amendments Act of 1976 repealed the Secretary’s authority to issue prospecting permits and terminated the preference right leasing program for coal, subject to valid existing rights. However, coal prospecting permittees who had filed a PRLA prior to 1976 continue to be recognized as having valid existing rights that require adjudication by the BLM. In 1982 and 1987, the BLM promulgated regulations exclusively for processing these pre-1976 PRLAs.

To date, all coal PRLAs have been processed, except for eleven held by the Ark Land Company (Ark Land), covering approximately 21,000 acres in northern New Mexico. These PRLAs are within three miles of Chaco Culture National Historical Park and in the Ah-shi-sle-pah Wilderness Study Area (WSA), Fossil Forest Research Natural Area, and North Road and Ah-shi-sle-pah Road Areas of Critical Environmental Concern (ACECs). These areas are not an

ideal site for commercial development of the coal because they have cultural, archaeological, paleontological (dinosaur fossils), and primitive recreational significance. In the interest of protecting the important resources in the area, in 2012, after extensive investigation, litigation and negotiation, the BLM and Ark Land signed a settlement agreement that would seek to exchange the eleven PRLAs for an equal value in Federal bidding rights for Federal coal within the border of the State of Wyoming. S. 436 clarifies that the bidding rights would be applied to 50 percent of a bonus bid or a royalty payment. This language seeks to ensure that use of the Federal bidding rights will not interfere with payment of the State's share of bonus, rentals, or royalties that would be paid from Federal receipts to the State of Wyoming or any other State under the bid-sharing formula in the Mineral Leasing Act (30 U.S.C. 191).

Navajo-Hopi Land Settlement Act

As part of the Navajo-Hopi Land Settlement Act (P.L. 93-531), the Navajo Nation selected approximately 12,000 acres of lands which overlap the PRLAs and are within protected areas such as the Ah-shi-sle-pah WSA and south of the Bisti/De-Na-Zin Wilderness and the Ah-shi-sle-pah Road ACEC. These selections have not yet been completed due to the encumbrance of the PRLAs. The Navajo Nation has sought to "deselect" these lands and select others, but is unable to complete the action without further legislation. The new legislative authority in S. 436 would allow the Navajo Nation to finalize its land selections authorized under the Settlement Act.

Ah-Shi-Sle-Pah WSA & Bisti/ De-Na-Zin Wilderness

The Ah-Shi-Sle-Pah Wilderness Study Area (WSA), comprising 6,563-acres located about 40 miles south of Farmington, New Mexico, is rich in petrified wood, fossils, and exposed geologic formations and is popular for day hikers and photographers who enjoy its unique geologic history.

The Bisti/ De-Na-Zin Wilderness, an area of approximately 41,170-acres located 28 miles south of Farmington, New Mexico, offers some of the most unusual scenery found in the Four Corners Region. Natural sandstone weathering has created hoodoos – tall, thin spires of rock rising up out of the ground – pinnacles, cap rocks, and other unusual formations. This area recently received national attention following the discovery of two fossilized Pentaceratops dinosaur skeletons.

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Exchange of Coal Preference Right Lease Applications (Section 2)

S. 436 would authorize the Secretary to retire coal PRLAs by issuing bidding rights in exchange for relinquishment of the PRLAs. The bill defines a "bidding right" as an appropriate legal instrument that may be used in lieu of a monetary payment for 50 percent of a bonus bid in a coal sale under the MLA, or as monetary credit against 50 percent of a rental or royalty payment due under a Federal coal lease. Thus, a bidding right could be used in lieu of cash for part of a winning bonus bid in a subsequent coal lease sale, or used in lieu of cash for part of rental or royalty owed under a Federal coal lease.

S. 436 further provides for payment in cash of 50 percent of the amount of the bidding right used in the state where the new coal lease is issued – or where the royalty payment is made. The

revenue sharing obligation of the MLA to the state would be made from the cash payments received by the Secretary when bidding rights are exercised under this Act. Under S. 436, bidding rights would be fully transferrable to any other person and the bidding rights holder would have to notify the Secretary of the transfer. The bidding rights would terminate after seven years, unless the rights could not be exercised within the 7-year period under certain conditions outlined in the bill.

The Department supports the goal of S. 436 to provide legislative authority for a solution to the long-standing coal PRLA issue in northern New Mexico. However, the Administration is concerned about the likely costs associated with this legislation as drafted. Based on the terms of the legislation, and in the context of the Ark Land settlement agreement, it appears these costs could be substantial, which raises significant challenges for identifying suitable offsets. The BLM would like to work with the sponsors and the Committee on language regarding the timing of the valuation of the coal within the PRLAs, and ensure the Department's Office of Valuation Services and BLM will determine the fair market value of the resources consistent with standard valuation practices.

Navajo Nation Land Selection (Section 3)

Section 3 of S. 436 would cancel certain land selections made by the Navajo Nation pursuant to the Navajo-Hopi Land Settlement Act of 1974, and would authorize the Navajo Nation to make new selections of equal value to replace those canceled. S. 436 adds the Fossil Forest Outstanding Natural Area (formerly known as the Fossil Forest Research Natural Area) to the lands ineligible for selection.

The Department supports the bill's provisions to allow for new land selections by the Navajo Nation and providing for the deselection of the lands now encumbered by the PRLAs. We would like to continue to work with the sponsors and Committee on language to ensure consistency with the original intent of the Navajo-Hopi Settlement Act.

Ah-Shi-Sle-Pah Designation & Bisti/De-Na-Zin Wilderness Expansion (Secs. 4 & 5)

Section 4 of S. 436 would designate approximately 7,250 acres of BLM-managed lands in northwestern New Mexico as the Ah-shi-sle-pah Wilderness, including nearly all of the existing Ah-shi-sle-pah WSA and releasing the remainder from WSA status. Section 5 of the bill would enlarge the existing Bisti/De-Na-Zin Wilderness by adding approximately 2,250 acres of BLM-managed lands directly south of the area.

The Department supports Congressional action to resolve wilderness designation and WSA release issues on public lands across the West, and we welcome opportunities to further those efforts. Only Congress can determine whether to designate WSAs as wilderness or to release them for other multiple uses. We stand ready to work cooperatively with Congress to achieve this goal.

We believe that the wilderness designations proposed by S. 436 could be best achieved through a standalone legislative proposal, similar to the approach taken in the bipartisan Washington County, Utah, and Owyhee County, Idaho, public lands legislation advanced during the 110th Congress. Secretary Zinke is focused on restoring full collaboration and coordination with local

communities and making the Department a better neighbor. We recognize the significant work of the sponsors on this proposal. As a general matter, the Department believes that wilderness decisions are best made as part of a locally driven process that incorporates the views of a wide range of stakeholders. In reaching consensus, stakeholders could ultimately determine that alternative management approaches are the best mechanism for protecting important resources of these areas while still accommodating the broad number of uses and activities permitted on other BLM-managed lands.

Conclusion

Thank you for this opportunity to present testimony on S. 436. The Department thanks the sponsors and the Committee for their dedication to this issue. We look forward to continuing to work with the sponsors to achieve these goals.