

Statement for the Record
U.S. Department of the Interior
House Natural Resources Subcommittee on Indian, Insular, and Alaska Native Affairs
H.R. 2402, San Juan County Settlement Implementation Act
October 4, 2017

Thank you for the opportunity to present the views of the Department of the Interior (Department) on H.R. 2402, 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 and authorize the Navajo Nation to substitute certain land selections in northern New Mexico.

The Department appreciates the work of Representative Luján to address concerns on previous versions of this legislation. We support the bill's proposed resolution to longstanding issues concerning mineral development and tribal land selection. We would also like to continue discussions with the sponsors and the Subcommittee 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The Federal Coal Leasing Amendments Act of 1976 repealed the Secretary’s authority to issue prospecting permits and terminated the preference right leasing program for coal, subject to valid existing rights.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.

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. H.R. 2402 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. 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 H.R. 2402 would allow the Navajo Nation to finalize its land selections authorized under the Settlement Act.

H.R. 2402

Exchange of Coal Preference Right Lease Applications

H.R. 2402 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.

H.R. 2402 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 H.R. 2402, 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 H.R. 2402 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 Department 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 of H.R. 2402 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. H.R. 2402 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 Subcommittee on language to ensure consistency with the original intent of the Navajo-Hopi Settlement Act and to update certain technical references.

Conclusion

Thank you for this opportunity to present testimony on H.R. 2402. The Department thanks the sponsors and the Subcommittee for their dedication to this issue. We look forward to continuing to work with the sponsors to achieve these goals.