

**Statement of
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Department of the Interior
House Natural Resources Committee
Subcommittee on Energy & Mineral Resources
H.R. 5176, To Authorize the Secretary of the Interior to Retire Coal Preference Right
Lease Applications
September 17, 2014**

Thank you for the opportunity to present the views of the Department of the Interior (Department) on H.R. 5176, which would authorize the Secretary of the Interior (Secretary) to retire a certain type of Federal coal lease rights – “preference right lease applications” or PRLAs – in exchange for coal bidding rights elsewhere on Federal lands. The Department appreciates the work of the co-sponsors and supports the goal of seeking resolution to long-standing unresolved mineral development issues. We would like to continue discussions with the sponsors and the Subcommittee on how best to achieve the intent of this bill while minimizing the cost to taxpayers and ensuring continued protection of environmental and cultural resources.

Background

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 The Federal Coal Leasing Amendments Act of 1976 repealed the Secretary’s authority to issue prospecting permits and terminated the preference right leasing program, subject to valid existing rights.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

To date, all 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 Historic Park and in the Ah-shi-sle-pah Wilderness Study Area (WSA), Fossil Forest Research Natural Area, and North Road and Ash-shi-sle-pah Road Areas of Critical Environmental Concern (ACECs). These areas have cultural archaeological, paleontological, primitive recreational, and environmental significance, and are not an ideal site for commercial development of the coal. In the interest of protecting the important cultural and environmental resources in the area, in 2012, after extensive investigation, litigation and negotiation, the BLM New Mexico State Office and Ark Land signed a settlement agreement that would seek to exchange the eleven PRLAs for an equal value in Federal bidding credits for Federal coal within the borders of the State of Wyoming. While this exchange can currently be completed through existing regulations (43 CFR Subpart 3435), further authority is necessary to meet a condition of the settlement agreement that requires taxpayers pay the share of sums that would have otherwise been paid from bonus bid receipts to the State of Wyoming or any other party under the bid-sharing formula.

In addition, 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 currently included in protected areas such as the Ah-shi-sle-pah WSA and the North Road and the Ah-shi-sle-pah Road ACECs. 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. In the absence of new legislative authority, the sensitive lands currently under discussion would continue to be available for development.

H.R. 5176

H.R. 5176 would authorize the Secretary of the Interior to retire coal PRLAs by issuing bidding rights in exchange for relinquishment of the PRLAs. The bill would define a “bidding right” as an appropriate legal instrument that may be used in lieu of a monetary payment for a bonus bid in a coal sale under the MLA, or as monetary credit against a rental or royalty payment due under a Federal coal lease. Thus, a bidding right could be used in lieu of cash for part or all of a winning bonus bid in a subsequent coal lease sale, or for rental or royalty owed under a Federal coal lease. H.R. 5176 further provides for payment of 50% of the amount of the bidding right

used to the state in which the newly-issued coal lease – or in which the lease under which a royalty payment is made – is located. The payments to the state would be made from revenues received under the MLA that otherwise would be deposited to miscellaneous receipts. Under H.R. 5176, 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 5 years, unless the rights could not be exercised within the 5-year period under certain conditions outlined in the bill.

The Department supports the goal of H.R. 5176 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 of 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 would likely fall between \$53 million and \$240 million, which provides challenges for identifying suitable offsets. If enacted, the BLM, consistent with 43 CFR Subpart 3435, using standard appraisal practices and in coordination with the Department's Office of Valuation Services, will determine on the fair market value of the resources.

In addition, the Department notes that if the bill is enacted as currently written and the PRLAs are relinquished, the Navajo Nation would hold the 12,000 selected acres in fee, and would have the authority to develop the resources – including coal – as the tribe sees fit. The Navajo Nation has indicated that it is interested in deselection of these lands and selecting other lands to fulfill its entitlement. If legislation is to be enacted to resolve the status of PRLAs in this area, the Department would like to ensure that the resolution also provides for permanent protection of these resources from future impacts.

In order to ensure that the cultural and environmental resources in this area are fully protected, the Department encourages the Congress to work with the Navajo Nation to effectuate the deselection of these lands as part of this legislation. Should this deselection occur, the land would revert to the BLM. If that occurs, the BLM would welcome the opportunity to manage these valuable lands to protect their resource values in a manner consistent with the Ash-shi-sle-pah WSA, and the North Road and the Ah-shi-sle-pah Road ACECs.

Conclusion

Thank you for this opportunity to present testimony on H.R. 5176. The Department thanks the sponsors for their dedication to this issue. We look forward to continuing to work with the sponsors to achieve these goals.