

**Statement of
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U.S. Department of the Interior, Bureau of Land Management
Senate Energy and Natural Resources Committee
S. 2681, 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. 2681, 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; substitute certain land selections of the Navajo Nation, and designate two wilderness areas in northern New Mexico.

The Department appreciates the work of Senator Heinrich (D-NM) and Senator Udall (D-NM), and generally supports the goal of seeking resolution to long-standing unresolved mineral development and tribal land selection issues. The Department also supports the designation of the Ah-Shi-Sle-Pah Wilderness and the expansion of the existing Bisti/De-Na-Zin Wilderness. We would like to continue discussions with the sponsors and the Committee on how best to achieve the intent of this bill while minimizing the cost to taxpayers of such a resolution and ensuring continued protection of environmental and cultural resources.

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 The Federal Coal Leasing Amendments Act of 1976 repealed the Secretary’s authority to issue prospecting permits and terminated the preference right leasing program, subject to valid existing rights.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 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 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 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. While this exchange can currently be completed through existing regulations (43 CFR Subpart 3435), further authority is needed to ensure that use of the Federal bidding rights will not require taxpayers to 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 the Mineral Leasing Act.

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. With new legislative authority allowing the Navajo Nation to reselect lands, these sensitive lands currently under discussion would receive protection.

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

The approximately 6,563-acre Ah-Shi-Sle-Pah WSA, located about 40 miles south of Farmington, New Mexico, features a unique badlands landscape of sandstone cap rocks and rolling, water-carved clay hills. This special place is rich in petrified wood, fossils, and exposed geologic formations and contains soft colors rarely seen elsewhere. On the valley floor, petrified stumps can be found standing up out of the ground. The area is popular for day hikers and photographers who enjoy its unique geologic history.

The approximately 41,170-acre Bisti/ De-Na-Zin Wilderness, which is about 28 miles south of Farmington, offers some of the most unusual scenery found in the Four Corners Region. Time and the elements have etched an almost fantasy world of strange rock formations made of interbedded sandstone, shale, mudstone, coal, and silt throughout this remarkable area. 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.

S. 2681

Coal Preference Right Lease Applications (Section 2)

S. 2681 would authorize the Secretary 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. S. 2681 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 as miscellaneous receipts. Under S. 2681, 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 generally supports the goal of S. 2681 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. We are aware that the New Mexico delegation has been working on alternative language to minimize these costs. We appreciate these efforts and would like to work with the sponsor to incorporate such provisions in the bill as it moves forward.

Finally, the BLM would also like to work with the sponsors and the Committee on language regarding the timing of the valuation of the coal within the PRLAs, and to ensure the Department's Office of Valuation Services will determine the fair market value of the resources consistent with standard valuation practices.

Navajo Nation Land Selection (Section 3)

Section 3 of S. 2681 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. The bill excludes certain lands eligible for selection, including land within BLM's National Conservation Lands and certain ACECs.

The Department supports the bill's provisions to allow for new land selections while also protecting many areas with significant natural and cultural resources, and supports the bill's provisions for the deselection of these lands. We would like to work with the sponsors and Committee on the bill's exclusion areas to ensure all of the Special Management Areas and ACECs within the area continue to be managed by the BLM to ensure their protection. We would also like 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 (Sections 4 & 5)

Section 4 of S. 2681 would designate approximately 7,242 acres of BLM-managed lands in northwestern New Mexico, as the Ah-shi-sle-pah Wilderness, including the entire existing WSA. Section 5 of the bill would enlarge the Bisti/De-Na-Zin Wilderness by adding approximately 2,250 acres of BLM-managed lands directly south of the area. The BLM supports both of these designations. These wild and rugged areas are rich with paleontological resources and provide an opportunity for those wishing to explore and enjoy rare, prehistoric treasures and experience the outstanding backcountry.

Conclusion

Thank you for this opportunity to present testimony on S. 2681. 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.