

EXCHANGE OF COAL PREFERENCE RIGHT LEASE
APPLICATIONS

MARCH 10, 2016.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 1820]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1820) to authorize the Secretary of the Interior to retire coal preference right lease applications for which the Secretary has made an affirmative commercial quantities determination, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 1820 is to authorize the Secretary of the Interior to retire coal preference right lease applications for which the Secretary has made an affirmative commercial quantities determination.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 1820 resolves a decades-old Department of the Interior statutory obligation to the Navajo Nation stemming from provisions of the Navajo and Hopi Settlement Act of 1974 (Public Law 93-531). This Act brought resolution to a boundary dispute between the Navajo Nation and the Hopi Tribe. In the settlement, the Navajo Nation lost acreage from their reservation to the Hopi Tribe, and many Navajo citizens were relocated. In return, the Navajo Nation was allowed to select comparable acreage on federal lands to be taken into trust for the Navajo Nation.

By the early 1980s the Navajo Nation selected the federal lands they wanted to be taken into trust; however, some of the parcels

selected were encumbered by preference rights lease applications (PRLAs). Under preference right leasing, established in the Minerals Leasing Act (30 U.S.C. 181 et seq.), a person could apply for an explorative or prospecting permit to determine if mineral resources were present at a public lands site. If the explorative activities were successful, the permittee could then exercise their “preference”—the first right to lease those mineral resources for commercial production.

Until the PRLAs are processed, the selected parcels of federal land cannot be taken into trust for the Navajo Nation. Further complicating the transfer of the selected parcels with PRLAs are subsequent conservation designations that prohibit mineral development, such as the Fossil Forest Resource Natural Area (Public Law 98–603, Section 103), and the Ah-shi-sle-pah Wilderness Study Area.

H.R. 1820 provides a mechanism for the Secretary of the Interior to retire the PRLAs, provide the mineral owner a credit to be used in leasing minerals, and make “state share” payments to the state where the new leases are issued.

COMMITTEE ACTION

H.R. 1820 was introduced on April 15, 2015, by Congressman Ben Ray Luján (D–NM). The bill was referred to the Committee on Natural Resources. Within the Natural Resources Committee, the bill was referred to the Subcommittee on Energy and Mineral Resources. On October 7, 2015, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. No amendments were offered and the bill was ordered favorably reported on October 8, 2015, by unanimous consent.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources’ oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 1820—A bill to authorize the Secretary of the Interior to retire coal preference right lease applications for which the Secretary has made an affirmative commercial quantities determination, and for other purposes

Summary: H.R. 1820 would authorize the Secretary of the Interior to provide Ark Coal Company (Ark) with bidding credits to acquire federally-owned mineral rights if Ark agrees to relinquish its rights to acquire noncompetitive coal leases on certain federal lands. Bidding credits are assigned a dollar value and can be used in lieu of cash to make certain payments to the federal government. The bill also would authorize the Secretary to make payments to any states where the bidding credits are used. Those payments would equal 50 percent of the total value of the credits expended.

Based on information provided by the Bureau of Land Management (BLM) and coal industry representatives, CBO estimates that enacting H.R. 1820 would increase direct spending by \$34 million over the 2017–2021 period; therefore, pay-as-you-go procedures apply. Enacting the bill would not affect revenues.

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 1820 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 1820 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—													
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016–2021	2016–2026	
CHANGES IN DIRECT SPENDING														
Estimated Budget														
Authority	0	7	7	7	7	7	0	0	0	0	0	34	34	
Estimated Outlays	0	7	7	7	7	7	0	0	0	0	0	34	34	

Note: Amounts may not sum to totals because of rounding.

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted by the end of fiscal year 2016.

CBO estimates that enacting H.R. 1820 would increase direct spending by \$34 million over the 2017–2021 period. That estimate reflects the amount of payments CBO expects the Secretary would make to states if Ark used bidding credits issued under the bill to make certain payments to the federal government. That estimate also accounts for the uncertainty associated with the range of possible outcomes under current law and under the bill.

Background: Prior to 1976, the Mineral Leasing Act authorized the Secretary to allow firms to prospect for coal on federal lands. Under that act, any prospector who discovered commercial quantities of coal could apply for a noncompetitive lease to mine the affected lands. In 1976, the Congress repealed the Secretary's authority to issue leases in that manner; however, prospectors who tiled for noncompetitive leases prior to that date still have valid claims that require adjudication by BLM.

Ark currently holds all remaining applications for those non-competitive leases. If granted, those leases would encompass 21,000 acres of federal land in northern New Mexico, including lands adjacent to or overlapping with areas designated for protection by the Department of the Interior. Because of those designations, BLM does not want to allow mining on the lands. CBO expects that, under current law, a resolution could be reached between BLM and Ark under which Ark's noncompetitive lease rights would be terminated and the firm would receive compensation, either through litigation or some administrative action.

To that end, BLM and Ark entered into an agreement in 2012 that would allow the agency to terminate Ark's applications for noncompetitive leases in exchange for bidding credits. To execute that particular agreement:

- The Congress would need to pass legislation, similar to H.R. 1820, providing BLM with the authority to issue bidding credits,
- Ark and BLM would need to agree on the value of the bidding credits, and
- The legislation would need to include the authority to make payments to the states where those credits would be used.

Direct spending: Based on information in the 2012 agreement CBO estimates that, if the parties reached an agreement, the agency would provide Ark with bidding credits valued at \$134 million, which the firm would be required to use within a 5-year period. The 2012 agreement contains a framework for negotiating the value of bidding credits BLM would provide to Ark that is based on the amount of the bonus bid necessary to acquire leases on the affected lands today. That framework stipulates that the affected lands contain 267 million tons of commercially mineable coal. The market value of that coal is between \$20 and \$30 per ton, and bonus bids for coal in New Mexico typically range from 1 percent to 3 percent of the market price of coal. Our estimate of the value of the bidding credits is derived by multiplying 267 million by the expected bonus bid per ton.

CBO estimates that any resolution reached under current law will cost \$134 million. That is the same amount that CBO estimates Ark would receive under H.R. 1820, which would implement the 2012 agreement. There is some probability that BLM and Ark will not be able to agree on the value of the bidding credits or other compensation and that Ark will resort to litigation to resolve its claims. The cost of settling that litigation would be the same under current law as under the bill. Because the expected cost of compensating Ark for the value of its claims under the bill would be equal to the expected cost of compensating Ark for those claims under current law, CBO estimates that authorizing BLM to provide bidding credits to Ark would have no budgetary effect.

Under, the bill the Secretary would be required, as part of the agreement, to make cash payments to states equal to 50 percent of the value of any bidding credits used in those states. Such payments are not authorized under current law. Based on our estimate of the value of the bidding credits, CBO estimates that the full value of those payments would total \$67 million. Because BLM and Ark would still have to negotiate after the bill is enacted, CBO ex-

pects that, under the bill, there could be two outcomes, which would be equally likely:

- The parties could reach an agreement under which BLM would terminate Ark’s applications for noncompetitive leases, the agency would provide Ark with bidding credits, and the Secretary would make payments to states, or
- The parties could fail to reach an agreement, BLM would deny Ark’s applications for noncompetitive leases on the affected lands, the firm would pursue litigation or some other resolution, and the Secretary would not make payments to states.

After accounting for the uncertainties under the bill and under current law, CBO estimates that enacting H.R. 1820 would cost \$34 million for payments to states (50 percent of the full value of payments to states where the credits are used). Those costs could be incurred anytime over the 2017–2021 period, so CBO distributed the total cost evenly over that period (about \$7 million a year).

Pay-as-you-go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO Estimate of Pay-As-You-Go Effects for H.R. 1820, as ordered reported by the House Committee on Natural Resources on October 8, 2015

	By fiscal year, in millions of dollars—													
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016–2021	2016–2026	
NET INCREASE IN THE DEFICIT														
Statutory Pay-As-You-Go Impact	0	7	7	7	7	7	0	0	0	0	0	34	34	

Increase in long term direct spending and deficits: CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

Intergovernmental and private-sector impact: H.R. 1820 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Jeff LaFave; Impact on State, Local, and Tribal Governments: Jon Sperl; Impact on the Private Sector: Amy Petz.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures. According to the Congressional Budget Office, implementation of this bill would increase direct spending by \$34 million over the 2017–2021 period.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of Rule XIII, the general performance goal or objec-

tive of this bill is to authorize the Secretary of the Interior to retire coal preference right lease applications for which the Secretary has made an affirmative commercial quantities determination.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman believes that this bill does not direct an executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.