

TO PROVIDE THAT AN ORDER BY THE SECRETARY OF THE INTERIOR IMPOSING A MORATORIUM ON FEDERAL COAL LEASING SHALL NOT TAKE EFFECT UNLESS A JOINT RESOLUTION OF APPROVAL IS ENACTED, AND FOR OTHER PURPOSES

FEBRUARY 5, 2018.—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

together with

DISSENTING VIEWS

[To accompany H.R. 1778]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1778) to provide that an order by the Secretary of the Interior imposing a moratorium on Federal coal leasing shall not take effect unless a joint resolution of approval is enacted, 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. 1778 is to provide that an order by the Secretary of the Interior imposing a moratorium on Federal coal leasing shall not take effect unless a joint resolution of approval is enacted.

BACKGROUND AND NEED FOR LEGISLATION

The Bureau of Land Management (BLM) administers coal leasing on all federal lands.¹ BLM currently administers 309 federal coal leases on about 474,000 acres on federal public domain lands.² All leasing is done competitively with the exception of cases in

¹30 U.S.C. 181; 43 U.S.C. 1731.

²Michael Ratner, 21st Century U.S. Energy Sources: A Primer 21st Century U.S. Energy Sources: A Primer (2017), http://www.crs.gov/Reports/R44854?source=search&guid=06715c756d3641d48ca9283a44421216&index=7#_Toc483393813.

which a party holds a “prospecting permit” issued prior to the Federal Coal Leasing Amendments Act of 1976 or where contiguous acres are added to existing leases.³ This leasing process is governed by section 2 of the Mineral Leasing Act.⁴ Although coal mines are required to restore mine lands to preexisting condition, coal mines also pay a per ton fee to fund a reclamation fund for abandoned coal mines.

On January 16, 2016, then Secretary of the Interior Sally Jewell announced a moratorium on federal coal leasing for the purpose of examining the federal coal leasing program and to determine whether it requires modernization.⁵ In the interim, the Secretary directed BLM to prepare a programmatic environmental impact statement (PEIS) of the leasing program as the basis for a review. Concerns raised throughout the review included whether the public was getting fair market value for the sale of leases, coal mining operators lease modification abilities, and environmental pollution caused by burning coal.⁶ Alternatively, opponents of the moratorium noted the major negative impacts the leasing moratorium would have on coal communities, coal and energy markets, and reclamation efforts.⁷

In the final days of the Obama Administration, the Department of the Interior finalized a report calling for major changes to the federal coal program.⁸ Despite making final recommendations for the program that included charging a higher royalty rate to companies and taking greater note of environmental concerns, the report recommended continuing the moratorium for further analysis to be conducted.⁹ The report failed to note any negative impact the moratorium itself had on the U.S. coal industry.¹⁰ This year, U.S. coal production is projected to be down by over 25% as compared to 2014.¹¹ The negative impact is especially noteworthy for the state of Wyoming, which serves as the largest producer of coal in the United States.

On March 28, 2017, the Trump Administration issued an executive order lifting all moratoria on federal coal leasing.¹² Ending the moratorium is expected to provide greater certainty to the coal industry and coal miners.¹³ Despite ending the moratorium, Secretary of the Interior Zinke has vowed to continue researching royalty rates in an effort to continue the modernization review.¹⁴

³Marc Humphries, U.S. and World Coal Production, Federal Taxes, and Incentives (2013), http://www.crs.gov/Reports/R43011?source=search&guid=f392b2a0209d4720845e25fe7027cf7&index=0#_Toc351629777.

⁴30 U.S.C. 201.

⁵Dep’t of the Interior Secretarial Order No. 3338, 81 FR 17720 (2016).

⁶Marc Humphries, The Federal Coal Leasing Moratorium (2017), <http://www.crs.gov/Reports/IN10460?source=search&guid=f392b2a0209d4720845e25fe7027cf7&index=1>.

⁷*Id.*

⁸Bureau of Land Management, *Federal Coal Program: Programmatic Environmental Impact Statement—Scoping Report, Volumes I and II* (January 2017), https://eplanning.blm.gov/epl-front-office/projects/nepa/65353/95059/114965/CoalPEIS_RptsScopingVol1_508.pdf.

⁹*Id.*

¹⁰*Id.*
¹¹U.S. Energy Information Administration, Annual Energy Outlook 2017 (2017), <https://www.eia.gov/outlooks/aeo/>.

¹²White House, “Presidential Executive Order on Promoting Energy Independence and Economic Growth,” <https://www.whitehouse.gov/the-press-office/2017/03/28/presidential-executive-order-promoting-energy-independence-and-economic-growth>.

¹³Devin Henry, Trump Administration Ends Obama’s Coal Leasing Freeze, <http://thehill.com/policy/energy-environment/326375-interior-department-ends-obamas-coal-leasing-freeze>.

¹⁴*Id.*

Since ending the moratorium, the Trump Administration has faced lawsuits from environmentalists and public lands supporters.¹⁵

COMMITTEE ACTION

H.R. 1778 was introduced on March 29, 2017, by Congresswoman Liz Cheney (R-WY). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Energy and Mineral Resources. On July 27, 2017, the Subcommittee held a hearing on the legislation. On November 29, 2017, the Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Congressman Raúl M. Grijalva (D-AZ) offered an amendment designated 001; it fell on a point of order. No further amendments were offered, and the bill was ordered favorably reported to the House of Representatives by a roll call vote of 17 ayes to 12 noes on November 30, 2017, as follows:

¹⁵*Id.*

Committee on Natural Resources

U.S. House of Representatives

115th Congress

Date: 11-30-17

Recorded Vote #: 1

Meeting on / Amendment on: **FC Mark Up on Favorably Reporting H.R. 1778**, To provide that an order by the Secretary of the Interior imposing a moratorium on Federal coal leasing shall not take effect unless a joint resolution of approval is enacted, and for other purposes

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman	X			Mr. Cook, CA			
<i>Mr. Grijalva, AZ, Ranking Member</i>		X		<i>Mr. Soto, FL</i>		X	
Mr. Young, AK, Chairman Emeritus				Mr. Westerman, AR	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. McEachin, VA</i>		X	
Mr. Gohmert, TX, Vice Chairman	X			Mr. Graves, LA			
<i>Ms. Bordallo, Guam</i>				<i>Mr. Brown, MD</i>			
Mr. Lamborn, CO	X			Mr. Hice, GA	X		
<i>Mr. Costa, CA</i>		X		<i>Mr. Clay, MO</i>			
Mr. Wittman, VA	X			Mrs. Radewagen, AS			
<i>Mr. Sablan, CNMI</i>		X		<i>Mr. Gomez, CA</i>		X	
Mr. McClintock, CA				Mr. LaHood, IL	X		
<i>Ms. Tsongas, MA</i>		X		Mr. Webster, FL			
Mr. Pearce, NM	X			Mr. Bergman, MI	X		
<i>Mr. Huffman, CA</i>				Ms. Cheney, WY	X		
Mr. Thompson, PA	X			Mr. Johnson, LA	X		
<i>Mr. Lowenthal, CA</i>		X		Ms. González-Colón, PR			
Mr. Gosar, AZ	X			Mr. Gianforte, MT	X		
<i>Mr. Beyer, VA</i>							
Mr. Labrador, ID	X						
<i>Mrs. Torres, CA</i>		X					
Mr. Tipton, CO	X						
<i>Mr. Gallego, AZ</i>							
Mr. LaMalfa, CA	X						
<i>Ms. Hanabusa, HI</i>		X					
Mr. Denham, CA							
<i>Ms. Barragán, CA</i>		X		TOTAL:	17	12	

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 and the Congressional Budget Act of 1974. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 11, 2017.

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1778, a bill to provide that an order by the Secretary of the Interior imposing a moratorium on Federal coal leasing shall not take effect unless a joint resolution of approval is enacted, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeff LaFave.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 1778—A bill to provide that an order by the Secretary of the Interior imposing a moratorium on Federal coal leasing shall not take effect unless a joint resolution of approval is enacted, and for other purposes

H.R. 1778 would require a joint resolution of the Congress to approve any proposal by the Secretary of the Interior to impose a moratorium on coal-leasing activities on federal lands. A moratorium on mineral leasing activities on federal land could delay or reduce receipts collected by the government from permitting those activities.

On January 16, 2016, the Secretary of the Interior issued an order prohibiting the issuance of coal leases or lease modifications on federal lands until the Bureau of Land Management completed a programmatic environmental impact statement under the National Environment Policy Act. On March 29, 2017, the Secretary of the Interior revoked that order.

CBO's baseline estimate of receipts from mineral leasing activities has no expectation that either the current or a future Administration will propose a moratorium on federal coal-leasing activities. Therefore, CBO estimates that enacting H.R. 1778 would not affect the federal budget.

Enacting H.R. 1778 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 1778 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1778 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to provide that an order by the Secretary of the Interior imposing a moratorium on Federal coal leasing shall not take effect unless a joint resolution of approval is enacted.

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. This bill does not contain any directed rule makings.

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.

DISSENTING VIEWS

We oppose H.R. 1778 because it needlessly ties the hands of a federal agency from taking steps to pause and review the federal coal program. The fact that the federal coal program is currently a mess is hardly in dispute—reports in 2013 from the Interior Department’s Office of Inspector General¹ and the U.S. Government Accountability Office² produced 21 recommendations for improving the Bureau of Land Management’s coal program, with most designed to ensure that American taxpayers are getting the proper value for the sale of publicly-owned coal.

In January 2016, Secretary of the Interior Jewell ordered a moratorium on coal leasing to allow the Department of the Interior to conduct a comprehensive and public review of the federal coal program, and noted that previous comprehensive coal program reviews in 1983 and 1973 had both been accompanied by halts in leasing. The Department also pointed out that coal companies had 20-years-worth of coal already under lease, and that the moratorium included a number of exceptions to ensure that coal mining operations on federal land weren’t unnecessarily halted.

In January 2017, the first phase of the review was completed, with recommendations to increase transparency, provide additional protection for surface owners, and capture methane leaking from coal mines. The next phase of the review was to focus on ensuring a fair return for taxpayers and making sure companies were held financially responsible for repairing environmental damage, but the study was prematurely halted, and the leasing moratorium lifted, by President Trump and Secretary Zinke in March 2017. We strongly disagree with these decisions, which will keep taxpayers and the environment at risk from a broken coal leasing system—a risk exacerbated by the Administration’s goal of expanding coal development.

Regardless of the decisions made by this Administration, there is no question that the Secretary of the Interior holds a discretionary right to choose whether or not to lease federal coal. When systemic problems are identified in the coal program that require a halt in leasing, as we believe is the situation today, the Secretary should be allowed to exercise that discretion until the problems are corrected. Since H.R. 1778 takes away that discretion, it increases the chances that flaws in the federal coal program continue and millions of tons of coal are leased at rates far below market value, and for that reason we oppose the legislation.

¹U.S. Department of the Interior Office of the Inspector General, *Coal Management Program, U.S. Department of the Interior*, Report No. CR–EV–BLM–0001–2012, June 2013.

²U.S. Government Accountability Office, *COAL LEASING: BLM Could Enhance Appraisal Process, More Explicitly Consider Coal Exports, and Provide More Public Information*, GAO–14–140, December 2013.

8

RAÚL M. GRIJALVA,
*Ranking Member, Committee
on Natural Resources.*

GRACE F. NAPOLITANO.

JARED HUFFMAN.

COLLEEN HANABUSA.

DARREN SOTO.

MADELEINE Z. BORDALLO.

ALAN S. LOWENTHAL.

NANETTE DIAZ BARRAGÁN.

A. DONALD MCEACHIN.

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