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SENATE

{ REPORT
115-318

SAN JUAN COUNTY SETTLEMENT IMPLEMENTATION ACT

AUGUST 15, 2018.—Ordered to be printed

Ms. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 436]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 436) 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, to substitute certain land selections of the Navajo Nation, to designate certain wilderness areas, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

AMENDMENTS

The amendments are as follows: On page 5, strike line 1 and insert the following:

(f) DEADLINE.—

(1) IN GENERAL.—If an existing settlement of coal

On page 5, between lines 6 and 7, insert the following:

(2) DATE OF VALUATION.—For purposes of the valuation process under paragraph (1), the market price of coal shall be determined as of the date of the settlement.

On page 6, between lines 21 and 22, insert the following:

(D) Land identified as “Parcels Excluded from Selection” on the map entitled “Parcels excluded for selection under the San Juan County Settlement Implementation Act” and dated May 11, 2018.

On page 13, after line 10, add the following:

SEC. 6. MAINTENANCE OF ROAD.

The Secretary of the Interior, acting through the Director of the Bureau of Indian Affairs, shall ensure that BIA Route 54 between I-40 and Alamo, New Mexico, is maintained in a condition that is safe for motorized use.

PURPOSE

The purpose of S. 436 is to authorize the Secretary of the Interior (Secretary) to retire coal preference right lease applications for which the Secretary has made an affirmative commercial quantities determination, to substitute certain land selections of the Navajo Nation, and to designate certain wilderness areas.

BACKGROUND AND NEED

S. 436 seeks to resolve a decades-old Department of the Interior (DOI) statutory obligation to the Navajo Nation stemming from provisions of the 1974 Navajo and Hopi Settlement Act (Public Law 93-531). This Act resolved a boundary dispute between the Navajo Nation and the Hopi Tribe. In the settlement, the Navajo Nation ceded acreage from its reservation to the Hopi Tribe, and many Navajo citizens were relocated. In return, the Navajo Nation was allowed to select comparable acreage of Federal lands to be taken into trust for the Navajo Nation.

By the early 1980s, the Navajo Nation selected the Federal lands it wanted to be taken into trust. However, some of the parcels selected in San Juan County, New Mexico, were encumbered by preference right lease applications (PRLAs). Under preference right leasing, established in the Minerals Leasing Act (30 U.S.C. 181 et seq.), the holder of the preference right can apply for an explorative or prospecting permit to determine if mineral resources are present at a public lands site. If the explorative activities are successful, the permittee can then exercise their “preference”—the first right to lease those mineral resources for commercial production.

In the years after the Navajo Nation made its selections, Congress and the Bureau of Land Management (BLM) have subjected the parcels to conservation designations such as the Fossil Forest Resource Natural Area (Public Law 98-603), the Ah-shi-sle-pah Wilderness Study Area, and the Ah-shi-sle-pah Road Area of Critical Environmental Concern.

After decades of litigation, BLM, Arch Coal (the holder of outstanding preference rights), and the Navajo Nation negotiated a settlement to resolve the PRLAs. S. 436 would implement the settlement, designate the Ah-shi-sle-pah Wilderness Study Area as wilderness, and add wilderness-quality lands to the existing Bisti/De-Na-Zin Wilderness.

LEGISLATIVE HISTORY

S. 436 was introduced by Senator Heinrich on February 16, 2017. The Subcommittee on Public Lands, Forests and Mining held a hearing on the bill on July 26, 2017.

Similar legislation, H.R. 2402, was introduced by Representative Lujan in the House of Representatives on May 8, 2017. The Natural Resources Committee’s Subcommittee on Indian, Insular, and Alaska Native Affairs held a hearing on H.R. 2402 on October 4, 2017.

In the 114th Congress, similar legislation, S. 2681, was introduced by Senator Heinrich on March 15, 2016. The Energy and Natural Resources Committee held a hearing on S. 2681 on September 22, 2016.

The Committee on Energy and Natural Resources met in open business session on May 17, 2018, and ordered S. 436 favorably reported as amended.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on May 17, 2018, by a majority voice vote of a quorum present recommends that the Senate pass S. 436, if amended as described herein. Senator Lee asked to be recorded as voting no.

COMMITTEE AMENDMENTS

During its consideration of S. 436, the Committee adopted four joint staff amendments. The amendments added a new paragraph (2) to section (2)(f) to clarify the date for a market price determination and to make a corresponding technical fix. The amendments also added a new subparagraph (D) to section (3)(b)(3) to augment the list of excluded lands not available for selection and added a new section 6 to govern road maintenance. These amendments are further described in the section-by-section analysis.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 contains the short title.

Section 2. Exchange of coal Preference Right Lease Applications

Subsection (a) contains definitions.

Subsection (b) authorizes the Secretary to retire a coal PRLA under the Mineral Leasing Act (MLA, 30 U.S.C. 181 et seq.) by issuing a bidding right in exchange for the application's relinquishment. The bidding right may then be used in lieu of 50 percent of the amount owed for monetary payment of a bonus in a coal lease sale, or rental or royalty under a Federal coal lease. This subsection further requires the Secretary to calculate a payment of amounts owed to a relevant State under section 35(a) of the MLA based on the combined value of the bidding rights and the amount received; only a bidding right shall be considered amounts received.

Subsection (c) directs the Secretary to make payments to a relevant State from the monetary payments received by the Secretary when bidding rights are exercised under this Act.

Subsection (d) specifies that payments to a State under this section are to be treated as a payment under section 35(a) of the MLA.

Subsection (e) authorizes the transfer of a bidding right issued for a coal PRLA, and requires the transferor to notify the Secretary of such transfer. This subsection further terminates a bidding right seven years from issuance but tolls the effective period during any time in which exercise of the bidding right is precluded.

Subsection (f) requires the Secretary to complete the bidding rights valuation process no later than 180 days after the Act's enactment if an existing settlement of a coal PRLA has not yet been

implemented. This subsection further clarifies that the market price of coal shall be determined as of the date of the settlement.

Section 3. Certain land selections of the Navajo Nation

Subsection (a) cancels land selections made by the Navajo Nation pursuant to the 1974 Navajo-Hopi Land Settlement Act, as depicted on the April 2, 2015, map entitled “Navajo-Hopi Land Settlement Act Selected Lands.”

Subsection (b) authorizes the Navajo Nation to make new land selections to replace cancelled land selections and limits the selection to 15,000 total acres. This subsection also excludes from selection any land within the National Landscape Conservation System; within the Glade Forest Recreation Area; within the Fossil Forest Research Natural Area; within a special management area or area of critical environmental concern identified in a land use plan under section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1712) in effect as of the Act’s enactment; land subject to a lease or contract under the MLA or the Materials Act of 1947 (30 U.S.C. 601 et seq.) as of the date of the selection; and land identified on the May 11, 2018, map entitled “Parcels excluded for selection under the San Juan County Settlement Improvement Act.” This subsection also requires that selections be made within seven years from the Act’s enactment and specifies that any selected lands shall be withdrawn from disposal, leasing, and development until the selected lands can be placed into trust for the Navajo Nation.

Subsection (c) requires that the selected land and the cancelled selections be equal in value, based upon appraisals conducted in accordance with applicable standards. This subsection further specifies that appraisals for cancelled selections be completed within 18 months of the Act’s enactment, while appraisals for new land selections are to be completed as the Navajo Nation finalizes those selections.

Subsection (d) specifies that the present boundary of the Navajo Reservation is depicted on the November 16, 2015, map entitled “Navajo Nation Boundary.”

Section 4. Designation of Ah-Shi-Sle-Pah Wilderness

Subsection (a) designates approximately 7,242 acres of land, as depicted on the April 2, 2015, map entitled “San Juan County Wilderness Designations,” as wilderness and as a component of the National Wilderness Preservation System to be known as the “Ah-shi-sle-pah Wilderness” (Wilderness).

Subsection (b) authorizes the BLM Director to administer the Wilderness subject to valid existing rights, and in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.). This subsection makes clear that the designation of the Wilderness does not create a protective perimeter or buffer zone around the Wilderness and that the designation does not preclude the conduct of non-wilderness activities or uses outside the boundary that can be seen or heard from the Wilderness areas. The subsection also requires any land or interest in land within the Wilderness boundary and acquired by the United States to become part of the Wilderness, and to be managed in accordance with the Wilderness Act and applicable laws. The subsection further permits the continuation of existing live-

stock grazing in the Wilderness conditioned on compliance with section 4(d)(4) of the Wilderness Act and the guidelines set forth in the report accompanying H.R. 5487 of the 96th Congress (H. Rept. 96–617).

Subsection (c) releases land within the Ah-shi-sle-pah Wilderness Study Area not designated as wilderness from section 603(c) of FLMPA.

Section 5. Expansion of Bisti/De-Na-Zin Wilderness

Subsection (a) designates approximately 2,250 acres of Federal land as depicted on the April 2, 2015, map entitled “San Juan County Wilderness Designations” as wilderness and as a component of the National Wilderness Preservation System and incorporates the land into the Bisti/De-Na-Zin Wilderness.

Subsection (b) authorizes the BLM Director to administer the land in accordance with the Wilderness Act and the 1984 San Juan Basin Wilderness Protection Act (Public Law 98–603).

Subsection (c) clarifies that the designation of the land as wilderness does not create a protective perimeter or buffer zone around the land and that the wilderness designation does not preclude the conduct of non-wilderness activities or uses outside the boundary that can be seen or heard from the wilderness areas.

Subsection (d) incorporates any land or interest of land within the wilderness boundary as part of the Bisti/De-Na-Zin Wilderness and directs that it be managed in accordance with the Wilderness Act and the 1984 San Juan Basin Wilderness Protection Act.

Subsection (e) permits the continuation of existing livestock grazing in the land designated as wilderness conditioned on compliance with section 4(d)(4) of the Wilderness Act and the guidelines set forth in the report accompanying H.R. 5487 of the 96th Congress (H. Rept. 96–617).

Section 6. Maintenance of road

Section 6 directs the Secretary, acting through the Director of the Bureau of Indian Affairs (BIA), to maintain BIA Route 54 between I–40 and Alamo, New Mexico, in a condition that is safe for motorized use.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 436. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 436, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 436, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Department of the Interior at the July 26, 2017, hearing on S. 436 follows:

STATEMENT OF JOHN RUHS, ACTING DEPUTY DIRECTOR FOR OPERATIONS, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to present the views of the Department of the Interior (Department) on S. 436, 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; authorize the Navajo Nation to substitute certain land selections; and designate wilderness areas in northern New Mexico.

The Department appreciates the work of Senators Heinrich and Udall to address concerns on previous versions of this legislation. While we support the bill's proposed resolution to longstanding issues concerning mineral development and tribal land selection, we believe that its wilderness designation components could be best achieved through standalone legislation. The Department notes that this type of approach could accommodate additional stakeholder perspectives concerning the most appropriate method of protecting the important resources and uses on these lands. We would also like to continue discussions with the sponsors and the Committee 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 non-competitive, 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. 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 Ah-shi-sle-pah Road Areas of Critical Environmental Concern (ACECs). These areas are not an ideal site for commercial development of the coal because they have cultural, archaeological, paleontological (dinosaur fossils), and primitive recreational significance. 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. S. 436 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 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. The new legislative authority in S. 436 would allow the Navajo Nation to finalize its land selections authorized under the Settlement Act.

Ah-Shi-Sle-Pah WSA & Bisti/De-Na-Zin Wilderness. The Ah-Shi-Sle-Pah Wilderness Study Area (WSA), comprising 6,563-acres located about 40 miles south of Farmington, New Mexico, is rich in petrified wood, fossils, and exposed geologic formations and is popular for day hikers and photographers who enjoy its unique geologic history.

The Bisti/De-Na-Zin Wilderness, an area of approximately 41,170-acres located 28 miles south of Farmington, New Mexico, offers some of the most unusual scenery found in the Four Corners Region. 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. 436 Exchange of Coal Preference Right Lease Applications (Section 2). S. 436 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.

S. 436 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 S. 436, 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 S. 436 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 BLM 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). Section 3 of S. 436 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. S. 436 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 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 (Secs. 4 & 5). Section 4 of S. 436 would designate approximately 7,250 acres of BLM-managed

lands in northwestern New Mexico as the Ah-shi-sle-pah Wilderness, including nearly all of the existing Ah-shi-sle-pah WSA and releasing the remainder from WSA status. Section 5 of the bill would enlarge the existing Bisti/De-Na-Zin Wilderness by adding approximately 2,250 acres of BLM-managed lands directly south of the area.

The Department supports Congressional action to resolve wilderness designation and WSA release issues on public lands across the West, and we welcome opportunities to further those efforts. Only Congress can determine whether to designate WSAs as wilderness or to release them for other multiple uses. We stand ready to work cooperatively with Congress to achieve this goal.

We believe that the wilderness designations proposed by S. 436 could be best achieved through a standalone legislative proposal, similar to the approach taken in the bipartisan Washington County, Utah, and Owyhee County, Idaho, public lands legislation advanced during the 110th Congress. Secretary Zinke is focused on restoring full collaboration and coordination with local communities and making the Department a better neighbor. We recognize the significant work of the sponsors on this proposal. As a general matter, the Department believes that wilderness decisions are best made as part of a locally driven process that incorporates the views of a wide range of stakeholders. In reaching consensus, stakeholders could ultimately determine that alternative management approaches are the best mechanism for protecting important resources of these areas while still accommodating the broad number of uses and activities permitted on other BLM-managed lands.

Conclusion. Thank you for this opportunity to present testimony on S. 436. 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.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill as ordered reported.

