

108TH CONGRESS  
2D SESSION

# H. R. 4017

To assure that development of certain Federal oil and gas resources will occur in ways that protect water resources and respect the rights of the surface owners, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 2004

Mr. UDALL of Colorado introduced the following bill; which was referred to the Committee on Resources, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To assure that development of certain Federal oil and gas resources will occur in ways that protect water resources and respect the rights of the surface owners, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; FINDINGS; PURPOSE.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Western Waters and Farm Lands Protection Act”.

6       (b) FINDINGS.—The Congress finds the following:

1           (1) Domestic oil and gas resources, including  
2           coalbed methane, are an important part of the Na-  
3           tion's energy supply portfolio and their development  
4           in appropriate locations and in appropriate ways can  
5           help reduce dependence on imported energy supplies.

6           (2) In many areas of the Western United  
7           States, federally owned minerals, including oil and  
8           gas, are in lands where the surface estate belongs to  
9           non-Federal parties whose interests can be adversely  
10          affected if the development of the minerals is not  
11          done in an appropriate manner.

12          (3) Development of oil and gas—and especially  
13          coalbed methane—often involves removal of a sig-  
14          nificant volume of groundwater.

15          (4) Some of the water extracted in connection  
16          with this development is reinjected into the ground,  
17          while some is retained in surface holding ponds or  
18          released on the surface and allowed to flow into  
19          streams or other waterbodies, including ditches used  
20          for irrigation.

21          (5) The quality of these extracted waters varies  
22          from one location to another. Some of these waters  
23          are of good quality, but they often contain dissolved  
24          minerals (such as sodium, magnesium, arsenic, or  
25          selenium) that can contaminate other waters as a re-

1       sult of leaks or leaching from holding ponds or dis-  
2       charge of extracted waters. In addition, extracted  
3       waters often have other characteristics, such as high  
4       acidity and temperature, that can adversely affect  
5       agricultural uses of land or the quality of the envi-  
6       ronment.

7           (6) Clearer requirements for proper disposal of  
8       these extracted waters is necessary in order to avoid  
9       adverse effects on the quality of ground and surface  
10      waters as well as the productivity of surrounding ag-  
11      ricultural lands.

12          (7) To reduce the chance of potential harm to  
13      water supplies, agricultural production, and the envi-  
14      ronment that otherwise could result from disposal of  
15      water extracted in connection with coalbed methane  
16      development or the development of other oil or gas  
17      resources, the Congress should act to ensure that  
18      such disposal is subject to regulation under the Fed-  
19      eral Water Pollution Control Act (33 U.S.C. 1251 et  
20      seq.) and the Mineral Leasing Act (30 U.S.C. 181  
21      et seq.).

22          (8) Under the Stock-Raising Homestead Act  
23      (43 U.S.C. 291 et seq.) and other laws, the Federal  
24      Government has transferred to other parties the sur-  
25      face estate in millions of acres in Western States

1 where ownership of coal, oil, gas, and other minerals  
2 has been retained by the Federal Government.

3 (9) Under current Federal law, the leasing of  
4 federally owned coal on lands where the surface es-  
5 tate is not owned by the United States is subject to  
6 the consent of the surface estate owners, but neither  
7 this consent requirement nor the operating and  
8 bonding requirements applicable to development of  
9 federally owned locatable minerals applies to the  
10 leasing or development of oil or gas in similar split-  
11 estate situations.

12 (10) To better balance the need for develop-  
13 ment of oil and gas resources (including coalbed  
14 methane) with the rights and interests of the owners  
15 of the surface estate of affected lands, current law  
16 should be revised so as to increase the involvement  
17 of the surface estate owners in developing and imple-  
18 menting plans for such development and to provide  
19 clearer and more adequate standards for such devel-  
20 opment.

21 (c) PURPOSE.—The purpose of this Act is to provide  
22 for the protection of water resources and the rights of sur-  
23 face estate owners in the development of oil and gas re-  
24 sources, including coalbed methane.

1           **TITLE I—PROTECTION OF**  
2                   **WATER RESOURCES**

3   **SEC. 101. MINERAL LEASING ACT REQUIREMENTS.**

4           Section 17 of the Mineral Leasing Act (30 U.S.C.  
5   226) is amended by adding at the end the following:

6           “(p) WATER REQUIREMENTS.—

7                   “(1) An operator producing oil or gas (includ-  
8           ing coalbed methane) under a lease issued under this  
9           Act shall—

10                           “(A) replace the water supply of a water  
11                   user who obtains all or part of such user’s sup-  
12                   ply of water for domestic, agricultural, or other  
13                   purposes from an underground or surface  
14                   source that has been affected by contamination,  
15                   diminution, or interruption proximately result-  
16                   ing from drilling operations for such produc-  
17                   tion;

18                           “(B) assure that any reinjection of water  
19                   produced by drilling in connection with oper-  
20                   ations under the lease will return the water into  
21                   the same aquifer from which it was extracted or  
22                   an aquifer of no better water quality; and

23                           “(C) comply with all applicable require-  
24                   ments of Federal and State law for discharge of

1 any water produced under the lease that is not  
2 reinjected.

3 “(2) An application for a lease under this sub-  
4 section shall be accompanied by a proposed water  
5 management plan including provisions to—

6 “(A) protect the quantity and quality of  
7 surface and ground water systems, both on-site  
8 and off-site, from adverse effects of the explo-  
9 ration, development, and reclamation processes  
10 or to provide alternative sources of water if  
11 such protection cannot be assured;

12 “(B) protect the rights of present users of  
13 water that would be affected by operations  
14 under the lease, including the discharge of any  
15 water produced in connection with such oper-  
16 ations that is not reinjected; and

17 “(C) identify any agreements with other  
18 parties for the beneficial use of produced waters  
19 and the steps that will be taken to comply with  
20 State and Federal laws related to such use.”.

21 **SEC. 102. CLEAN WATER ACT REQUIREMENTS.**

22 Section 402(b) of the Federal Water Pollution Con-  
23 trol Act (33 U.S.C. 1342) is amended by adding at the  
24 end the following:

1           “(10) To issue permits that comply with sub-  
 2           section (a) and any other requirements of this Act,  
 3           for waters extracted from a subsurface formation in  
 4           connection with oil and gas, including coalbed meth-  
 5           ane, and to subject such extracted waters to the re-  
 6           quirements of this Act in order to minimize the ad-  
 7           verse impacts on any lands or waters that would be  
 8           affected by disposal or other uses of such extracted  
 9           waters.”.

#### 10 **SEC. 103. RELATION TO STATE LAW.**

11           Nothing in this Act or any amendment made by this  
 12 Act shall—

13           (1) be construed as impairing or in any manner  
 14 affecting any right or jurisdiction of any State with  
 15 respect to the waters of such State; or

16           (2) be construed as limiting, altering, modi-  
 17 fying, or amending any of the interstate compacts or  
 18 equitable apportionment decrees that apportion  
 19 water among and between States.

## 20 **TITLE II—SURFACE OWNER** 21 **PROTECTION**

#### 22 **SEC. 201. DEFINITIONS.**

23           As used in this title—

24           (1) the term “Secretary” means the Secretary  
 25 of the Interior;

1           (2) the term “lease” means a lease issued by  
2           the Secretary under the Mineral Leasing Act (30  
3           U.S.C. 181 et seq.) or any other law, providing for  
4           development of oil and gas resources (including coal-  
5           bed methane) owned by the United States;

6           (3) the term “lessee” means the holder of a  
7           lease; and

8           (4) the term “operator” means any person that  
9           is responsible under the terms and conditions of a  
10          lease for the operations conducted on leased lands or  
11          any portion thereof.

12 **SEC. 202. POST-LEASE SURFACE USE AGREEMENT.**

13          (a) IN GENERAL.—Except as provided in section 203,  
14          the Secretary may not authorize any operator to conduct  
15          exploration and drilling operations on lands with respect  
16          to which title to oil and gas resources is held by the United  
17          States but title to the surface estate is not held by the  
18          United States, until the operator has filed with the Sec-  
19          retary a document, signed by the operator and the surface  
20          owner or owners, showing that the operator has secured  
21          a written surface use agreement between the operator and  
22          the surface owner or owners that meets the requirements  
23          of subsection (b).

24          (b) CONTENTS.—The surface use agreement shall  
25          provide for—



1           (1) the use of only such portion of the surface  
2       estate as is reasonably necessary for exploration and  
3       drilling operations based on site-specific conditions;

4           (2) the accommodation of the surface estate  
5       owner to the maximum extent practicable, including  
6       the location, use, timing, and type of exploration and  
7       drilling operations, consistent with the operator's  
8       right to develop the oil and gas estate;

9           (3) the reclamation of the site to a condition ca-  
10      pable of supporting the uses which such lands were  
11      capable of supporting prior to exploration and drill-  
12      ing operations; and

13          (4) compensation for damages as a result of ex-  
14      ploration and drilling operations, including but not  
15      limited to—

16           (A) loss of income and increased costs in-  
17      curred;

18           (B) damage to or destruction of personal  
19      property, including crops, forage, and livestock;  
20      and

21           (C) failure to reclaim the site in accord-  
22      ance with this paragraph (3).

23      (c) PROCEDURE.—(1) An operator shall notify the  
24      surface estate owner or owners of the operator's desire to  
25      conclude an agreement under this section. If the surface

1 estate owner and the operator do not reach an agreement  
2 within 90 days after the operator has provided such notice,  
3 the matter shall be referred to third party arbitration for  
4 resolution within a period of 90 days. The cost of such  
5 arbitration shall be the responsibility of the operator.

6 (2) The Secretary shall identify persons with experi-  
7 ence in conducting arbitrations and shall make this infor-  
8 mation available to operators.

9 (3) Referral of a matter for arbitration by a person  
10 identified by the Secretary pursuant to paragraph (2)  
11 shall be sufficient to constitute compliance with paragraph  
12 (1).

13 (d) ATTORNEYS FEES.—If action is taken to enforce  
14 or interpret any of the terms and conditions contained in  
15 a surface use agreement, the prevailing party shall be re-  
16 imbursed by the other party for reasonable attorneys fees  
17 and actual costs incurred, in addition to any other relief  
18 which a court or arbitration panel may grant.

19 **SEC. 203. AUTHORIZED EXPLORATION AND DRILLING OP-**  
20 **ERATIONS.**

21 (a) AUTHORIZATION WITHOUT SURFACE USE  
22 AGREEMENT.—The Secretary may authorize an operator  
23 to conduct exploration and drilling operations on lands  
24 covered by section 202 in the absence of an agreement  
25 with the surface estate owner or owners, if—

1           (1) the Secretary makes a determination in  
2       writing that the operator made a good faith attempt  
3       to conclude such an agreement, including referral of  
4       the matter to arbitration pursuant to section 202(c),  
5       but that no agreement was concluded within 90 days  
6       after the referral to arbitration;

7           (2) the operator submits a plan of operations  
8       that provides for the matters specified in section  
9       202(b) and for compliance with all other applicable  
10      requirements of Federal and State law; and

11          (3) the operator posts a bond or other financial  
12      assurance in an amount the Secretary determines to  
13      be adequate to ensure compensation to the surface  
14      estate owner for any damages to the site, in the  
15      form of a surety bond, trust fund, letter of credit,  
16      government security, certificate of deposit, cash, or  
17      equivalent.

18      (b) SURFACE OWNER PARTICIPATION.—The Sec-  
19      retary shall provide surface estate owners with an oppor-  
20      tunity to—

21          (1) comment on plans of operations in advance  
22      of a determination of compliance with this title;

23          (2) participate in bond level determinations and  
24      bond release proceedings under this section;

1           (3) attend an on-site inspection during such de-  
2 terminations and proceedings;

3           (4) file written objections to a proposed bond  
4 release; and

5           (5) request and participate in an on-site inspec-  
6 tion when they have reason to believe there is a vio-  
7 lation of the terms and conditions of a plan of oper-  
8 ations.

9       (c) PAYMENT OF FINANCIAL GUARANTEE.—A sur-  
10 face estate owner with respect to any land subject to a  
11 lease may petition the Secretary for payment of all or any  
12 portion of a bond or other financial assurance required  
13 under this section as compensation for any damages as  
14 a result of exploration and drilling operations. Pursuant  
15 to such a petition, the Secretary may use such bond or  
16 other guarantee to provide compensation to the surface  
17 estate owner for such damages.

18       (d) BOND RELEASE.—Upon request and after inspec-  
19 tion and opportunity for surface estate owner review, the  
20 Secretary may release the financial assurance required  
21 under this section if the Secretary determines that explo-  
22 ration and drilling operations are ended and all damages  
23 have been fully compensated.

24 **SEC. 204. SURFACE OWNER NOTIFICATION.**

25       The Secretary shall—

1           (1) notify surface estate owners in writing at  
2           least 45 days in advance of lease sales;

3           (2) within ten working days after a lease is  
4           issued, notify surface estate owners of regarding the  
5           identity of the lessee;

6           (3) notify surface estate owners in writing con-  
7           cerning any subsequent decisions regarding a lease,  
8           such as modifying or waiving stipulations and ap-  
9           proving rights of way; and

10          (4) notify surface estate owners within five  
11          business days after issuance of a drilling permit  
12          under a lease.

## 13       **TITLE III—RECLAMATION AND** 14       **BONDING**

### 15       **SEC. 301. RECLAMATION STANDARD AND BOND.**

16          Section 17 of the Mineral Leasing Act (30 U.S.C.  
17       226) is amended by adding at the end the following:

18          “(p) RECLAMATION REQUIREMENTS.—An operator  
19       producing oil or gas (including coalbed methane) under  
20       a lease issued pursuant to this Act shall—

21               “(1) at a minimum restore the land affected to  
22               a condition capable of supporting the uses that it  
23               was capable of supporting prior to any drilling, or  
24               higher or better uses of which there is reasonable  
25               likelihood, so long as such use or uses do not present

1 any actual or probable hazard to public health or  
2 safety or pose any actual or probable threat of water  
3 diminution or pollution, and the permit applicants'  
4 declared proposed land use following reclamation is  
5 not impractical or unreasonable, inconsistent with  
6 applicable land use policies and plans, or involve un-  
7 reasonable delay in implementation, or is violative of  
8 Federal, State, or local law;

9 “(2) ensure that all reclamation efforts proceed  
10 in an environmentally sound manner and as contem-  
11 poraneously as practicable with the oil and gas drill-  
12 ing operations; and

13 “(3) submit with the plan of operations a rec-  
14 lamation plan that describes in detail the methods  
15 and practices that will be used to ensure complete  
16 and timely restoration of all lands affected by oil  
17 and gas operations.

18 “(q) RECLAMATION BOND.—An operator producing  
19 oil or gas (including coalbed methane) under a lease issued  
20 under this Act shall post a bond that covers that area of  
21 land within the permit area upon which the operator will  
22 initiate and conduct oil and gas drilling and reclamation  
23 operations within the initial term of the permit. As suc-  
24 ceeding increments of oil and gas drilling and reclamation  
25 operations are to be initiated and conducted within the

1 permit area, the lessee shall file with the regulatory au-  
2 thority an additional bond or bonds to cover such incre-  
3 ments in accordance with this section. The amount of the  
4 bond required for each bonded area shall depend upon the  
5 reclamation requirements of the approved permit; shall re-  
6 flect the probable difficulty of reclamation giving consider-  
7 ation to such factors as topography, geology of the site,  
8 hydrology, and revegetation potential; and shall be deter-  
9 mined by the Secretary. The amount of the bond shall be  
10 sufficient to assure the completion of the reclamation plan  
11 if the work had to be performed by the Secretary in the  
12 event of forfeiture.

13 “(r) REGULATIONS.—No later than one year after  
14 the date of the enactment of this subsection, the Secretary  
15 shall promulgate regulations to implement the require-  
16 ments of subsections (p) and (q).

17 “(s) STUDY BY THE GENERAL ACCOUNTING OF-  
18 FICE.—(1) The Comptroller General shall conduct a re-  
19 view to assess the adequacy of the regulations issued by  
20 the Secretary pursuant to subsection (r) to ensure that  
21 operators will meet the requirements of subsection (p).

22 “(2) A report of the results of the review required  
23 by paragraph (1) shall be transmitted to the Committee  
24 on Resources of the House of Representatives and the  
25 Committee on Energy and Natural Resources of the Sen-

1 ate no later than 180 days after the date on which the  
 2 Secretary promulgates regulations pursuant to subsection  
 3 (r).

4 “(3) The report required by paragraph (2) shall in-  
 5 clude findings and conclusions by the Comptroller General  
 6 of the United States, and any recommendations the Comp-  
 7 troller General may make with respect to any legislation  
 8 or administrative actions the Comptroller General deter-  
 9 mines would be appropriate to ensure compliance with the  
 10 requirements of subsection (p).”.

## 11 **TITLE IV—ABANDONED WELLS**

### 12 **SEC. 401. DEFINITION.**

13 As used in this title, the term “abandoned well”  
 14 means any well drilled for the purpose of exploring for  
 15 or developing oil or gas resources (including coalbed meth-  
 16 ane) that—

17 (1) has not been in operation for a period of 12  
 18 continuous months, unless the owner or operator has  
 19 notified the Secretary of the Interior (for wells  
 20 drilled to explore for or develop minerals owned by  
 21 the United States) or the relevant State regulatory  
 22 agency (for wells drilled to explore for or develop  
 23 minerals not owned by the United States) that the  
 24 well has been temporarily shut down; or



1           (2) has not been operative for more than 60  
2           continuous months after the owner or operator has  
3           notified the Secretary of the Interior (for wells  
4           drilled to explore for or develop minerals owned by  
5           the United States) or the relevant State regulatory  
6           agency (for wells drilled to explore for or develop  
7           minerals not owned by the United States) that the  
8           well has been temporarily shut down.

9   **SEC. 402. FEDERAL REMEDIATION PROGRAM.**

10          (a) ESTABLISHMENT OF PROGRAM.—(1) The Sec-  
11       retary of the Interior, in cooperation with the Secretary  
12       of Agriculture, shall establish a program to ensure to the  
13       maximum extent feasible the remediation, reclamation,  
14       and closure of abandoned wells that—

15                (A) are located on lands administered by an  
16       agency of the Department of the Interior or the For-  
17       est Service; or

18                (B) were drilled to explore for or develop min-  
19       erals owned by the United States located on lands  
20       with respect to which the surface estate is not owned  
21       by the United States.

22          (2) In implementing the program, the Secretary of  
23       the Interior—

1 (A) shall cooperate with the Secretary of Agri-  
2 culture and the States with respect to the Federal  
3 lands covered by the program are located; and

4 (B) shall consult with the Secretary of Energy  
5 and the Interstate Oil and Gas Compact Commis-  
6 sion.

7 (3) The Secretary of the Interior shall establish the  
8 program by no later than 3 years after the date of enact-  
9 ment of this section.

10 (b) PROGRAM ELEMENTS.—The program established  
11 under subsection (a) shall—

12 (1) provide for identification of abandoned wells  
13 to be covered by the program;

14 (2) establish a means of ranking critical sites  
15 for priority in remediation based on potential envi-  
16 ronmental harm, other land use priorities, and pub-  
17 lic health and safety; and

18 (3) provide as far as possible for identifying any  
19 lessees or other persons responsible for abandoned  
20 wells, and for recovering the costs of remediation to  
21 the maximum extent feasible.

22 (c) PLAN.—Within 6 months after the date of enact-  
23 ment of this section, the Secretary of the Interior, in co-  
24 operation with the Secretary of Agriculture, shall prepare  
25 a plan for implementing the program established under

1 subsection (a). A copy of the plan shall be transmitted  
2 to the Committee on Resources of the House of Represent-  
3 atives and the Committee on Energy and Natural Re-  
4 sources of the Senate.

5 (d) REVIEW AND REPORT.—(1) No later than 3 years  
6 after the date of enactment of this section, the Secretary  
7 of the Interior, in consultation with the Secretary of Agri-  
8 culture, shall complete a review of the status of remedi-  
9 ation, reclamation, and closure actions under the program.

10 (2) Upon completion of the review required by para-  
11 graph (1), the Secretary of the Interior shall provide to  
12 the Committee on Resources of the House of Representa-  
13 tives and the Committee on Energy and Natural Re-  
14 sources of the Senate—

15 (A) a report on the results of the review;

16 (B) information regarding any wells on lands  
17 covered by the program that have been abandoned  
18 since the date of enactment of this section; and

19 (C) any recommendations the Secretary may  
20 choose to make regarding legislative or administra-  
21 tion steps to further the purposes for which the pro-  
22 gram was established.

23 (e) AUTHORIZATION OF APPROPRIATIONS.—There  
24 are authorized to be appropriated to the Secretary of the

1 Interior \$5,000,000 for each of fiscal years 2005 through  
2 2006 to carry out this section.

3 **SEC. 403. ASSISTANCE TO STATES AND TRIBES.**

4 (a) STATE PROGRAM.—The Secretary of the Interior,  
5 in consultation with the Secretary of Energy, shall estab-  
6 lish a program to provide technical assistance to facilitate  
7 State efforts to develop and implement practical and eco-  
8 nomical remedies for environmental problems caused by  
9 abandoned wells on lands that are not owned by the  
10 United States. The Secretary shall work with the States,  
11 through the Interstate Oil and Gas Compact Commission,  
12 to assist the States in quantifying and mitigating environ-  
13 mental risks of onshore abandoned wells on State and pri-  
14 vate lands.

15 (b) TRIBAL PROGRAM.—The Secretary of the Inte-  
16 rior, in consultation with the Secretary of Energy, shall  
17 establish a program to provide technical assistance to fa-  
18 cilitate efforts by Indian tribes to develop and implement  
19 practical and economical remedies for environmental prob-  
20 lems caused by abandoned wells on Indian lands, including  
21 lands held in trust by the United States.

22 (c) PROGRAM ELEMENTS.—So far as possible, the  
23 programs established under this section shall include—

24 (1) mechanisms to facilitate identification of re-  
25 sponsible parties;

1           (2) criteria for ranking critical sites based on  
2           factors such as other land use priorities, potential  
3           environmental harm and public visibility; and

4           (3) information and training programs regard-  
5           ing best practices for remediation of different types  
6           of sites.

7           (d) AUTHORIZATION OF APPROPRIATIONS.—There is  
8           authorized to be appropriated to the Secretary of the Inte-  
9           rior for activities under this section \$5,000,000 for each  
10          of fiscal years 2005 through 2007.

