

Subcommittee on Indian, Insular and Alaska Native Affairs
Doug LaMalfa, Chairman
Hearing Memorandum

October 2, 2017

To: All Subcommittee on Indian, Insular and Alaska Native Affairs Members

From: Majority Committee Staff,
Subcommittee on Indian, Insular and Alaska Native Affairs (x6-9725)

Hearing: **Legislative hearing on H.R. 2402 (Rep. Ben Ray Lujan)**, 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, and for other purposes.
Wednesday, October 4, 2017, at 2:00 p.m. in 1334 Longworth HOB

H.R. 2402 (Rep. Ben Ray Lujan), “San Juan County Settlement Implementation Act”

Summary of the bill

H.R. 2402 was introduced by Rep. Ben Ray Lujan on May 8, 2017. The bill would authorize the Secretary of the Interior to retire coal preference right lease applications in San Juan County, NM for which the Secretary has made an affirmative commercial quantities determination. It would also cancel specified land selections made by the Navajo Nation pursuant to the Navajo-Hopi Land Settlement Act of 1974¹ and authorize the Navajo Nation to make new selections equal in value to those cancelled. Gaming pursuant to the Indian Gaming Regulatory Act² is not expressly prohibited on any of the Navajo Nation replacement lands under the bill. The map of the land selections made by the Navajo referenced in Section 3 of the bill is attached to this memo.

Cosponsors

Rep. Liz Cheney (R-WY), Rep. James Comer (R-KY), Rep. Doug Lamborn (R-CO), Rep. Scott Tipton (R-CO), Rep. Tom O’Halloran (D-AZ).

Invited Witnesses

The Honorable Ryan Zinke
Secretary
U.S. Department of the Interior
Washington, D.C.

¹ 25 U.S.C. §640d et seq.

² 25 U.S.C. §2701 et seq.

The Honorable Russell Begaye
President
Navajo Nation
Window Rock, AZ

Background

H.R. 2402 resolves a decades-old Department of the Interior statutory obligation to the Navajo Nation stemming from provisions of the Navajo Hopi Settlement Act of 1974³ (“Settlement Act”) and the resolution of mineral rights dating to the 1960s. The Settlement Act brought resolution to a boundary dispute between the Navajo Nation and the Hopi Tribe.

In the Settlement Act, the Navajo Nation lost acreage from their reservation to the Hopi and many Navajo citizens were relocated. The Navajo-Hopi Land Commission Office⁴ (NHLCO) was enacted by the tribes as a response to the inadvertent, yet adverse, effects of the Settlement Act.

The Navajo Nation could select comparable acreage of federal land to be taken into trust for the Navajo in return for the land lost under the Settlement Act. By the early 1980’s, the Navajo Nation had selected the federal lands to be taken into trust for them; however, some of the parcels selected were encumbered by ‘preference rights lease applications’ (PRLAs).⁵

Until the PRLAs are processed, the selected parcels of federal land cannot be taken into trust for the Navajo. H.R. 2402 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 in another state, and make ‘state share’ payments to the state where the new leases are issued.

The Settlement Act provides that up to 250,000 acres under the jurisdiction of the BLM can be used for the tribes’ land selection in Arizona and New Mexico. Under the Act, the Navajo Nation selected approximately 12,000 acres of land in Arizona and New Mexico that overlap with the PLRAs, which will be cancelled under H.R. 2402.

Complicating the resolution to the issue is that subsequent to the Settlement Act, certain land use protections were included for the Fossil Forest and Ah-shi-sle-pah Wilderness Study Area on which the private mineral rights exist and where the Navajo Nation selected parcels.

Section-by-Section Analysis of H.R. 2402

Section 1. Short Title. Provides the short title of the bill.

Section 2. Exchange of Coal Preference Right Lease Applications. This section would authorize the Secretary to retire coal PLRAs by granting bidding rights in exchange for relinquishment of the lease applications. Also, it outlines how the bidding rights can be used in lieu of cash for part

³ 25 U.S.C. §640d et seq.

⁴ See: <http://www.opvp.navajo-nsn.gov/wp-content/uploads/2017/08/NAVAJO-HOPI-LAND-COMMISSION.pdf>

⁵ See: <http://www.blm.gov/style/medialib/blm/es/minerals.Par.33013.File.dat/Preference%20Right%20Leases.pdf>

of a winning bid in an ensuing coal lease sale. Calculation of payments owed to the relevant states are based on the combined value of the bidding rights plus the amounts received.

Section 3. Certain Land Selections of the Navajo Nation. This section cancels out land selections that were made pursuant to the Navajo-Hopi Land Settlement Act of 1974. It would also authorize the Navajo Nation to make land selections that are equal in value to the cancelled selections. The bill also states that all land within a unit of the National Landscape Conservation System, the Glad Run Recreational Area, the Fossil Forest Research Natural Area, or any “special management area or area of critical concern” in a plan developed under the Federal Land Policy and Management Act of 1976⁶ (FLPMA) cannot be made as a land selection.

Cost

In the 114th Congress, a similar bill to H.R. 2602, was introduced by Rep. Lujan. The CBO estimated that H.R. 1820 would increase direct spending by \$34 million over the 2017-2021 period.⁷

Administration Position

On July 26, 2017, the Senate Energy and Natural Resources Committee held a hearing on S. 436, a substantially similar bill except it also has two sections included related to wilderness designation that are not included in H.R. 2402. The BLM testified in support the bill's proposed resolution to longstanding issues concerning mineral development and tribal land selection, however it believed that the wilderness designation components could be best achieved through standalone legislation.⁸ The administration did not contemplate whether the tribe would be able to conduct gaming pursuant to the Indian Gaming Regulatory Act⁹ on any replacement lands selected.

⁶ 43 U.S.C. §171.

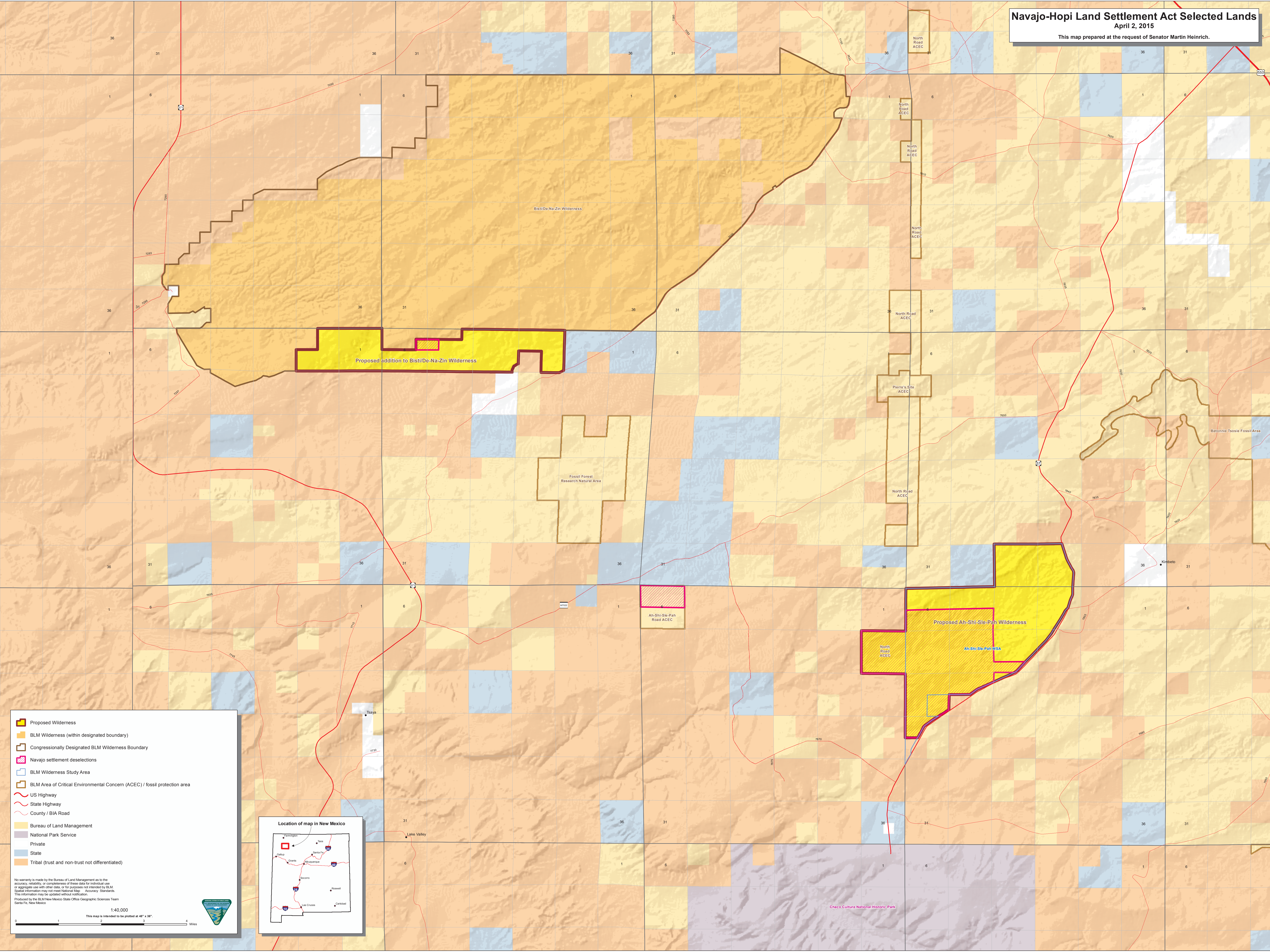
⁷ <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr1820.pdf>.

⁸ See: https://www.energy.senate.gov/public/index.cfm/files/serve?File_id=94209AC7-A695-4C68-8CBF-386974DA9793.

⁹ 25 U.S.C. §2701 et seq.

Navajo-Hopi Land Settlement Act Selected Lands
 April 2, 2015

This map prepared at the request of Senator Martin Heinrich.



Legend

- Proposed Wilderness
- BLM Wilderness (within designated boundary)
- Congressionally Designated BLM Wilderness Boundary
- Navajo settlement deselections
- BLM Wilderness Study Area
- BLM Area of Critical Environmental Concern (ACEC) / fossil protection area
- US Highway
- State Highway
- County / BIA Road
- Bureau of Land Management
- National Park Service
- Private
- State
- Tribal (trust and non-trust not differentiated)

No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data, or for purposes not intended by BLM. Spatial information may not meet National Map Accuracy Standards. This information may be updated without notification.
 Produced by the BLM New Mexico State Office Geographic Sciences Team Santa Fe, New Mexico

1:40,000
 This map is intended to be plotted at 48" x 36".

Location of map in New Mexico

The inset map shows the state of New Mexico with major cities (Albuquerque, Santa Fe, Las Cruces, El Paso, etc.) and highways. A red box in the northwest corner indicates the location of the main map's study area.