

108TH CONGRESS
1ST SESSION

H. R. 3698

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

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 8, 2003

Mr. UDALL of Colorado (for himself and Mr. UDALL of New Mexico) 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

A BILL

To assure that development of certain Federal oil and gas resources will occur in ways that protect water resources and surface owner rights, 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 Surface Owners 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 surface estate
23 owners in the development of oil and gas resources, includ-
24 ing 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 relevant requirements of
3 this Act, and to ensure that waters extracted from
4 a subsurface formation in connection with develop-
5 ment of oil or gas, including coalbed methane, will
6 be subject to appropriate requirements to minimize
7 adverse effects 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—

24 (A) shall cooperate with the Secretary of
25 Agriculture and the States with respect to the

1 Federal lands covered by the program are lo-
2 cated; and

3 (B) shall consult with the Secretary of En-
4 ergy and the Interstate Oil and Gas Compact
5 Commission.

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

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

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

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

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

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

1 to the Committee on Resources of the House of Represent-
2 atives and the Committee on Energy and Natural Re-
3 sources of the Senate.

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

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

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

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

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

22 (e) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated to the Secretary of the
24 Interior \$5,000,000 for each of fiscal years 2005 through
25 2006 to carry out this section.

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

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

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

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

22 (1) mechanisms to facilitate identification of re-
23 sponsible parties;

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

1 (3) information and training programs regard-
2 ing best practices for remediation of different types
3 of sites.

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

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