

**Testimony of Kevin Gover
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U.S. Department of the Interior
Before the Committee on Indian Affairs
United States Senate
and the
Committee on Resources
United States House of Representatives
Joint Hearing on S. 1315**

November 4, 1999

Good morning Chairman Young, Chairman Campbell and Members of the Committees. Thank you for the opportunity to present the views of the Department of the Interior on S. 1315, a bill to permit the leasing of oil and gas rights on certain lands held in trust for the Navajo Nation or allotted to a member of the Navajo Nation, in instances where there is consent from a specified percentage of the Indian landowners in the parcel of land under consideration for lease. We commend Senator Bingaman for this legislative initiative to relieve Indian mineral owners of an onerous burden presently imposed by federal law which impedes Indian minerals from being competitive in the mining industry.

The Department sees S. 1315 as a complement to the Department's ongoing efforts to deal with the issue of fractionated ownership of Indian trust and restricted land. We support enactment of S. 1315 if amended.

BACKGROUND

S. 1315 addresses the problems created by a ninety-year old statute, the Act of March 3, 1909 (25 U.S.C. 396) (Act), which requires that the consent of all the owners of a tract of trust or restricted land be obtained prior to the approval of a mineral lease by the Secretary of the Interior.

Because of peculiarities in federal Indian law, title to trust and restricted allotments made to individual Indians has become vested in the heirs of the allottees without division of the land. As each generation passes, their heirs become owners of undivided interests in the allotment. As a consequence of the 1909 Act's requirements, that all owners in a tract consent to a mineral lease, mineral exploration and development firms are less likely to lease Indian lands because of the cost associated with locating and acquiring the consent of all owners. We believe the unintended result of this requirement is that Indian mineral owners are precluded from fully participating in mineral exploration and development and thus, precluded from gaining the maximum economic benefit of their trust lands.

During the 105th Congress and in the first session of this Congress, the Department has provided testimony and letters of support for similar legislation that authorized mineral leasing of certain trust and restricted lands when the consenting mineral owners represented a majority interest in the tract.

Those federal statutes, Public Laws 105-188 and 106-67, provided majority interest lease authority for members of the Fort Berthold Tribe and several Tribes in western Oklahoma.

ANALYSIS OF S. 1315

Our proposed amendments suggest revision of S. 1315 to make it consistent with the relief accorded other restricted and trust mineral owners of the Fort Berthold Tribes and the western Oklahoma Tribes; that of leasing authority when the consenting landowners hold a majority interest in the tract. We believe that this formula provides a realistic and practical approach to the leasing of trust and restricted lands in the competitive mineral markets.

The formula provided in *Section 1. Leases of Navajo Indian Allotted Lands*, subsection *(b) Approval by the Secretary (1) In General* and *(2) Percentage Interest* predicates Secretarial approval of Navajo allotted lands upon a sliding scale based upon the number of Indian owners in a parcel of land. According to this subsection, if there are 10 or fewer owners, 100 percent of the owners must consent to the lease; if there are more than 10 landowners, but fewer than 51, the lessee must obtain 80 percent of the landowners consent; if there are 51 or more, then the lessee must obtain 60 percent of the owners consent. In some circumstances the sliding scale formula set forth in S. 1315 would not adequately relieve the problem S. 1315 seeks to eradicate. Furthermore, under each prong of this formula, an accurate count of the landowners would be required when a lease is approved to defeat the potential for legal challenges to the leasing authority. This requirement is relatively impractical in that notice to the Bureau of Indian Affairs of the death of an undivided interest owner is often months, and sometimes years, after the fact. Finally, under each prong of the formula, landowners who represent a minority interest in the parcel could frustrate the desires of landowners holding the majority interest in the parcel to lease their mineral rights. Lease acquisition costs would remain unacceptably high and as the number of fractional owners increases, within a generation or two, any beneficial effects of this legislation will become, like its predecessor, the Act, invalid.

We propose that subsections *(b) Approval by the Secretary (1) In General* and *(2) Percentage Interest* be deleted in their entirety and the following language be added in lieu thereof, "The Secretary of the Interior may approve any mineral lease affecting individually owned Navajo Indian allotted land if the owners of a majority interest in the trust or restricted land consent to the mineral lease and the Secretary determines that approval of the lease is in the best interest of the Indian owners."

CONCLUSION

We applaud Senator Bingaman's efforts to remove the impediments which currently prevent owners of Indian trust lands from realizing the maximum economic benefits of their lands. We suggest that the standard of requiring consent of those holding over 50 percent of all interest in the parcel, regardless of the number of owners, be applied here and on all allotted Indian lands. A simple

majority would be fair and manageable. Finally, given the fact that the Navajo landowners are not the only Native Americans losing opportunities as a result of the Act, we ask that future legislation look at the broader picture that would include all Tribes who have allotted lands. We also urge passage of S. 1586, the Indian Land Consolidation Act amendments to help stop the problem of continued fractionation and the constraints this imposes on tribal economic development.

This concludes my prepared statement. We look forward to working with the Committee to amend the language of S. 1315. I will be happy to answer any questions you may have.