Subcommittee on Energy and Mineral Resources

Paul Gosar, Chairman

Hearing Memorandum

October 11, 2017

To: All Subcommittee on Energy and Mineral Resource Subcommittee Members

From: Majority Committee Staff, Ashley Nichols (x5-9297)
Subcommittee on Energy and Mineral Resources

Hearing: **Legislative hearing on discussion draft of H.R. ____** To achieve domestic energy independence by empowering States to manage the development and production of oil and gas on all available Federal land, and for other purposes.
October 13, 2017 at 9:00 AM; 1334 Longworth HOB

Discussion Draft of H.R. ____ , *"ONSHORE Act"*

Summary of the Bill

The ONSHORE Act enables States with established permitting and regulatory programs to seek primacy for the implementation of federal permitting and regulatory responsibilities for oil and gas development on Federal lands within their borders. This Act directs the Secretary of Interior to designate preferred leasing areas for oil and gas development and to defer to the States regarding the regulation of hydraulic fracturing practices.

Invited Witnesses

Ms. Cathy Foerster
Commissioner
Alaska Oil and Gas Conservation Commission
Anchorage, Alaska

Ms. Sharon Buccino
Director, Land & Wildlife Program
Natural Resources Defense Council
Washington, D.C.

Mr. Dan Naatz
Senior Vice President of Government Relations and Political Affairs
Independent Petroleum Association of America
Washington, D.C.

Mr. Mark Watson
Director
Wyoming Oil and Gas Conservation Commission
Casper, Wyoming

Background

The Bureau of Land Management (BLM) is responsible for managing the Federal onshore mineral estate, which includes roughly 700 million acres of land held primarily by the BLM and U.S. Forest Service.[1] BLM leases these lands to developers through quarterly lease sales (when parcels are available for lease)[2] and issues the necessary federal permits to leaseholders required for oil and gas development. At the end of Fiscal Year (FY) 2016, the BLM managed a total of 40,143 onshore oil and gas leases covering only 27 million acres, the lowest number of leases since FY 1985.[3]

Onshore Oil and Gas Program Management Under the BLM

In recent years, unnecessary permitting delays, costly regulatory requirements and uncertainty in the leasing process have discouraged oil and gas developers from operating on Federal land.

While the BLM manages a vast mineral estate of 700 million acres, only 113 million acres of onshore Federal land are open and accessible for oil and gas development.[4] In fact, 166 million acres are off limits or inaccessible to oil and gas development altogether.[5] Duplicative environmental reviews under the National Environmental Policy Act, along with frivolous protests on the parcels made available for leasing have resulted in unnecessary delays in the leasing process and an overall decrease in the number of leased parcels. Since 2008, the number of acres of Federal land leased for oil and gas production has decreased by over 40 percent.[6]

Uncertainty associated with the issuance of required permits presents additional challenges to oil and gas producers seeking to develop Federal land. For example, the BLM issued Applications for Permits to Drill (APD) in an average of **257 days** in 2016.[7] By contrast, State agencies are able to issue permits in just 30 days on average.[8]

While oil and gas production has increased in recent years overall, this growth has occurred largely on State and private lands.[9] These unnecessary leasing reductions coupled with lengthy and unpredictable permitting processes have discouraged producers from developing

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[1] Bureau of Land Management. About the BLM Oil and Gas Program. https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/about. (Accessed October 10, 2017).
[2] Bureau of Land Management. Oil and Gas Leasing Instructions. https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/general-leasing. (Accessed October 10, 2017).
[3] Bureau of Land Management. Oil and Gas Statistics. https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/oil-and-gas-statistics (Accessed October 10, 2017).
[4] Marc Humphries. U.S. Crude Oil and Natural Gas Production in Federal and Nonfederal Areas. June 22, 2016. http://www.crs.gov/reports/pdf/R42432
[5] Marc Humphries. U.S. Crude Oil and Natural Gas Production in Federal and Nonfederal Areas. June 22, 2016. http://www.crs.gov/reports/pdf/R42432
[6] Bureau of Land Management. Oil and Gas Statistics. https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/oil-and-gas-statistics (Accessed October 10, 2017).
[7] Bureau of Land Management. Oil and Gas Statistics. https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/oil-and-gas-statistics (Accessed October 10, 2017).
[8] Western Energy Alliance. Permitting. https://www.westernenergyalliance.org/knowledge-center/land/onshore-development/permitting
[9] Michael Ratner. 21st Century U.S. Energy Sources: A Primer (May 19, 2017). http://www.crs.gov/reports/pdf/R44854

Federal lands. Instead, they have opted to do business on State and private lands where higher royalty rates exist.[10]

States rely on mineral revenues to fund their schools, universities, infrastructure projects and a host of other necessary public programs and services.[11] The overly burdensome leasing, permitting and regulatory processes facing oil and gas producers have resulted in lost revenue for the Federal government and energy producing States. This means lost opportunities for economic development and job creation in communities across the country.

Delegation of Authority to the States

The ONSHORE Act allows the Secretary of the Interior to delegate authority to the States for permitting and regulatory responsibilities for onshore oil and gas development on Federal lands within their borders. The current one-size-fits-all regulatory scheme is burdensome for States and producers alike and fails to recognize the unique challenges in each State.

States have extensive and sufficient regulatory frameworks for permitting oil and gas development that have been in place for decades.[12] Delegating certain functions currently performed by BLM to the States would ensure the responsible development of oil and gas resources while eliminating the uncertainty and significant costs associated with the Federal regulatory process.

Enabling States to assume these functions for oil and gas development will result in greater certainty for producers and allow the BLM to focus its limited resources on the agency's core mission of managing federal lands. These much-needed reforms will encourage oil and gas development on Federal land and promote economic development and diversification in energy producing States across the West.

Administrative Fees Assessed on Mineral Revenues

The Mineral Leasing Act of 1920 provides for States to receive a 50 percent share of the revenues resulting from the leasing and production of onshore mineral resources on Federal land within their borders.[13] Alaska, which receives 90 percent of revenues, is the only exception. These revenues include payments from rentals, bonuses and royalties on various forms of energy production on Federal public lands.[14] Specifically, revenues are generated by payments related to oil, gas, coal leasing, as well as the leasing of certain minerals, including phosphates, sulfur, sodium and potash.[15]

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[10] Center for Western Priorities. A Fair Share: The Case for Updating Oil and Gas Royalties on Our Public Lands. Page 2. June 18, 2015. http://www.westernpriorities.org/wp-content/uploads/2015/06/Royalties-Report_update.pdf

[11] The United States Extractive Industries Transparency Initiative. Explore Data, Montana. https://useiti.doi.gov/explore/MT/#disbursements (Accessed October 10, 2017).

[12] Western Energy Alliance. Comments on Bureau of Land Management Regulatory Reform, DOI-2017-0003-0003. August 10, 2017.

[13] 30 U.S.C. §181

[14] Marc Humphries, Energy and Mineral Development on Federal Land (2015). http://www.crs.gov/Reports/IF10127?source=search&guid=ab1ee1f40564437797071c178c8fa2ad&index=

[15] Briefing by Marc Humphries, Specialist in Energy Policy, Congressional Research Service received by Energy and Mineral Resources Subcommittee Majority Staff on August 20, 2017.

Within the Department of the Interior, the Office of Natural Resources Revenue (ONRR) manages onshore and offshore Federal and Indian mineral revenues associated with the leasing and production of oil, natural gas, solid minerals and renewable energy resources. ONRR is responsible for the collection, verification, and disbursement of revenues according to the Mineral Leasing Act.[16] Once ONRR collects and verifies these revenues, the agency disperses the appropriate amounts to the States.

While the law provides for mineral revenues to be shared evenly between the Federal government and the States, the Department of the Interior (DOI) has assessed an administrative fee on mineral revenue collection since 2007.[17] In 2014, the Mineral Leasing Act was amended to make this fee assessment authority permanent.[18] This 2 percent fee is used by DOI to cover the cost of collecting bonuses, rents and royalties and dispersing revenues to the States. In Fiscal Year 2016, this fee amounted to approximately $25 million.[19]

The ONSHORE Act would enable States to administer the collection of their share of mineral revenues produced on their lands, eliminating the need for this administrative fee charged by the Federal government. Specifically, this legislation would amend the Mineral Leasing Act to remove the authorization for the 2 percent administrative fee for States with approved regulatory programs under the ONSHORE Act. This will enable States with approved regulatory programs to receive the entirety of their 50 percent share of Federal mineral revenues. If enacted, States can still choose to forego this option and continue to receive their revenue disbursements through the current process administered by ONRR.

Federal mineral revenues are a crucial source of income for the States, serving to offset losses in private tax revenue due to the tax-exempt status of Federal land.[20] States utilize these funds to mitigate the environmental impacts of mineral development, support infrastructure projects,[21] and fund public services and programs, including public school systems and community colleges.[22] Allowing the States to receive the entirety of their 50 percent share of Federal mineral revenues will contribute to the provision of these and other necessary public services.

Hydraulic Fracturing Regulations

In 2015, the Obama Administration finalized regulations that would impose federal requirements on hydraulic fracturing practices related to oil, gas or geothermal production on Federal land.[23] In 2016, the U.S. District Court of Wyoming invalidated the regulations, noting

[16] U.S. Department of Interior. Office of Natural Resources Revenue. Highlights. https://www.onrr.gov/about/pdfdocs/Fact%20Sheet_ONRR%20Highlights_July%202016.pdf
[17] Pub. L. No. 110-161 (2007).
[18] Pub. L. No. 113-67 (2013).
[19] United States Department of Interior. Budget Justifications and Performance Information Fiscal Year 2018. Office of the Secretary Department-Wide Programs. https://www.doi.gov/sites/doi.gov/files/uploads/fy2018_os_budget_justication.pdf
[20] Marc Humphries, Mineral Royalties on Federal Lands: Issues for Congress (2015). http://www.crs.gov/reports/pdf/R43891
[21] Marc Humphries, Mineral Royalties on Federal Lands: Issues for Congress (2015). http://www.crs.gov/reports/pdf/R43891
[22] The United States Extractive Industries Transparency Initiative. Explore Data, Wyoming. https://useiti.doi.gov/explore/WY/#disbursements (Accessed August 29, 2017).
[23] Devin Henry, Court dismisses lawsuit over Obama-era fracking rule (September 21, 2017). http://thehill.com/policy/energy-environment/351771-court-dismisses-lawsuit-over-obama-era-fracking-rule

that Congress has not authorized the Department of the Interior to regulate hydraulic fracturing practices.[24] The Obama Administration appealed this decision to the 10th Circuit Court of Appeals, which dismissed the case in September of 2017 based on the Bureau of Land Management's announcement that the agency would repeal the rule in July of 2017. [25]

The ONSHORE Act prohibits the Department of the Interior from enforcing federal regulations regarding hydraulic fracturing relating to oil, gas, or geothermal production activities in any State that has corresponding regulations. Instead, the Department must defer to the States' requirements concerning hydraulic fracturing on Federal land.

The bill would also prevent DOI from enforcing any Federal regulations governing the hydraulic fracturing process relating to oil, gas, or geothermal production on land held either in trust or restricted status for the benefit of Indians except with the consent of the relevant beneficiaries.

Major Provisions of the Bill

Section 1: Short Title: "Opportunities for the Nation and States to Harness Onshore Resources Act" or "ONSHORE Act."

Section 2: State Primacy in Oil and Gas Permitting on Available Federal Land

- Amends the Mineral Leasing Act to allow the Secretary of the Interior to delegate to the States authority for permitting and regulation of oil and gas activities on Federal land within that State. Specifically, States may seek approval to process Applications for Permit to Drill (referred to in the bill as permits to drill) or drilling plans.

- A State seeking to assume these responsibilities may submit an application for approval of a State regulatory program to the Secretary containing: 1) a description of the State regulatory program that the State proposes to establish and administer under State law and 2) a statement from the attorney general of the State that the laws of such State provide adequate authority to carry out the State regulatory program.

- The Secretary must approve or disapprove of an application within 180 days of receipt. The Secretary may approve an application if the Secretary has: 1) determined that the State would be at least as effective as the Secretary in issuing and enforcing permits; 2) determined that the State applicant's program complies with this Act and provides for the termination of permits if a violation warrants such action; 3) determined that the State applicant has sufficient personnel and funding to carry out the State regulatory program; 4) provided public notice, opportunity for public comment, and held a public hearing within the State; and 5) determined that approval of the application would not result in decreased royalty payments to the State.

[24] Timothy Cama, Obama-appointed judge strikes down federal fracking rule (June 21, 2016) http://thehill.com/policy/energy-environment/284388-judge-strikes-down-federal-fracking-rule
[25] Devin Henry, Court dismisses lawsuit over Obama-era fracking rule (September 21, 2017). http://thehill.com/policy/energy-environment/351771-court-dismisses-lawsuit-over-obama-era-fracking-rule

- States may voluntarily terminate an approved State regulatory program after providing 60 day notice to the Secretary. The Secretary will then resume any authorities delegated to the State.

- Permit applicants may appeal any permit to drill or drilling plan application denied by the State to the BLM.

- If a State is not adequately enforcing permits to drill or drilling plans, the Secretary may provide for the Federal enforcement of such permits or plans.

- Defines available Federal land as Federal land that is located within the boundaries of a State, is not held in trust for a federally recognized Indian Tribe, is not a unit of the NPS or National Wildlife Refuge System and is not a Congressionally approved wilderness area under the Wilderness Act, and has been identified as land available for lease for exploration, development and production of oil and gas by the BLM under a Resource Management Plan or Integrated Activity Plan, or by the Forest Service under a Forest Management Plan.

Section 3: Conveyance to Certain States of Property Interest in State Share of Royalties and other Payments

- Amends the Mineral Leasing Act of 1920 to provide that the 2 percent administrative fee charged by the Federal government on mineral revenue collection is only assessed on States without approved State regulatory programs.

- Upon request, the Secretary of the Interior must convey to a State all right, title, and interest in and to a percentage of the amounts required to be paid into the Treasury from sales, bonuses, royalties, and rentals for public land or deposits located in that State, so long as that State has an approved regulatory program. Once the Secretary has conveyed the right, title and interest to a State, mineral revenue payments will be made directly to the State rather than to the Treasury.

- The Secretary must notify lease holders of public land in such States that right, title and interest in and to the amounts they owe have been conveyed to the State and that they must pay those amounts directly to the State.

Section 4: Permitting on Non-Federal Land

- Amends the Mineral Leasing Act of 1920 to clarify that permitting for operations on State or private lands accessing any size portion of federally owned oil and gas resources will not be considered a Federal action and shall not require a Federal permit. States are responsible for all permitting, inspection and enforcement of oil and gas operations on non-Federal land.

- Amends the Mineral Leasing Act of 1920 to clarify that permitting for oil and gas operations on non-Federal surface concerning non-Federal minerals that may have potential drainage impacts on Federal minerals is not a federal action and shall not require a Federal permit.

Section 5: Preferred Oil and Gas Leasing Areas.

- Directs the Secretary to update existing land use plans and designate preferred oil and gas leasing areas with each plan. Conducting a lease sale or processing a permit for oil and gas development within preferred oil and gas leasing areas shall not be considered a Federal action under the National Environmental Policy Act.

- Directs the Secretary to conduct lease sales and issue leasing stipulations according to existing land use plans and shall not base leasing activities on revised land use plans until such plans are finalized and approved by the Secretary.

Section 6: State and Tribal Authority for Hydraulic Fracturing Regulations

- Amends the Mineral Leasing Act to require the Secretary to defer to State regulations, permitting, and guidance for all activities regarding hydraulic fracturing relating to oil, gas, or geothermal production activities on Federal land.

- Requires each State to submit to the Bureau of Land Management a copy of its regulations that: 1) apply to hydraulic fracturing operations on Federal land, and 2) require disclosure of chemicals used in hydraulic fracturing operations on Federal land. The Secretary of the Interior must make such State regulations available to the public.

- Prohibits the Department from enforcing any federal regulation, guidance, or permit requirement governing the hydraulic fracturing process, or any of its components, relating to oil, gas, or geothermal production activities on land held either in trust or restricted status for the benefit of Indians except with the express consent of the beneficiary on whose behalf such land is held in trust or restricted status.

Section 7: Review of Integrated Activity Plan for the National Petroleum Reserve in Alaska

- Directs the Secretary to review the areas open to leasing within the National Petroleum Reserve in Alaska (NPR-A) to determine which lands within the NPR-A should be made available for oil and gas leasing.

Administration Position

Unknown at this time.

Cost

CBO has not scored the legislation.