Committee on Natural Resources

Paul Gosar, Chairman
Hearing Memorandum

April 13, 2018

To: All Subcommittee on Energy and Mineral Resources Members

From: Majority Committee Staff – Ashley Nichols (x-59297)
Subcommittee on Energy and Mineral Resources

Hearing: Legislative hearing on H.R. 3846, the Providing Opportunity with Energy Revenues in Counties Act
April 18, 2018 at 2:00 PM; 1324 Longworth House Office Building

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H.R. 3846, POWER Counties Act

Summary of the Bill

On September 27, 2017, Representative Bill Johnson (R-OH) introduced H.R. 3846, the POWER Counties Act. This bill would reduce the percentage of onshore mineral revenues paid into the Reclamation Fund from 40 percent to 20 percent and authorize counties to receive a 20 percent share of the onshore mineral revenues produced on federal lands within their borders.

Witnesses

The Honorable Bill Johnson
Member of Congress
Ohio's 6th Congressional District

Mr. Mark Christensen
Commissioner
Campbell County, Wyoming
Gillette, Wyoming

Mr. Jeffrey Greenley
Superintendent
Switzerland of Ohio Local School District
Columbus, Ohio

Mr. Ian Lyle
Executive Vice President
National Water Resources Association
Washington, DC

Background

Onshore Mineral Revenue Sharing Structure

The Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.) provides for the sharing of onshore mineral revenues between energy-producing States and the federal government. These revenues include payments from rentals, bonuses and royalties on various forms of energy production on federal public lands.[1] 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.[2] Under the Mineral Leasing Act, States receive a 50 percent share of the revenues resulting from the leasing and production of onshore mineral resources on federal land within their borders. However, in 2014, the Mineral Leasing Act was amended to authorize the Secretary of the Interior to charge a 2 percent fee on the collection of these revenues, reducing the States' share to 49 percent.[3]

The Mineral Leasing Act also authorizes 40 percent of onshore mineral revenues, except those produced in Alaska, to be paid into the Reclamation Fund. This Fund was established by the Reclamation Act of 1902 and is administered by the Bureau of Reclamation under the Department of Interior.[4] All remaining revenues not paid to the States or the Reclamation Fund are paid into the Treasury.[5]

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 under the Mineral

[1] Marc Humphries, Energy and Mineral Development on Federal Land (2015). http://www.crs.gov/Reports/IF10127?source=search&guid=ab1ee1f40564437797071c178c8fa2ad&index=
[2] Briefing by Marc Humphries, Specialist in Energy Policy, Congressional Research Service received by Energy and Mineral Resources Subcommittee Majority Staff on August 20, 2017.
[3] 30 U.S.C. 191.
[4] Charles V. Stern, The Reclamation Fund (2015). Congressional Research Service.
[5] 30 U.S.C. 191.

Leasing Act.[6] Once ONRR collects and verifies these revenues, ONRR disperses the appropriate amounts to the States and the Reclamation Fund. [7]

Onshore Mineral Revenue Receipts and Reclamation Fund Contributions (2017)[8]

State	Onshore Mineral Revenue Disbursements	Contribution to the Reclamation Fund
Alabama	$382,865.12	$306,292
Alaska	$11,184,061.95	$8,947,250
Arizona*	$10,045.97	$8,037
Arkansas	$1,151,448.28	$921,159
California*	$33,592,367.91	$26,873,894
Colorado*	$92,039,200.62	$73,631,360
Florida	$593,587.89	$474,870
Idaho*	$5,123,410.64	$4,098,729
Illinois	$54,868.75	$43,895
Indiana	$5,257.35	$4,206
Kansas*	$561,249.47	$449,000
Kentucky	$185,904.48	$148,724
Louisiana	$1,010,739.08	$808,591
Michigan	$77,778.86	$62,223
Minnesota	$11,649.47	$9,320
Mississippi	$706,016.97	$564,814
Missouri	$2,020,169.14	$1,616,135
Montana*	$24,033,546.22	$19,226,837
Nebraska*	$8,113.89	$6,491
Nevada*	$3,904,641.36	$3,123,713
New Mexico*	$455,085,343.29	$364,068,275
North Dakota*	$39,922,536.16	$31,938,029
Ohio	$1,600,454.80	$1,280,364
Oklahoma*	$2,625,438.89	$2,100,351

[6] U.S. Department of Interior. Office of Natural Resources Revenue. Highlights. https://www.onrr.gov/about/pdfdocs/Fact%20Sheet_ONRR%20Highlights_July%202016.pdf
[7] U.S. Department of Interior. Office of Natural Resources Revenue. Natural Resources Revenue Data. https://revenuedata.doi.gov/explore/#federal-disbursements
[8] Natural Resources Disbursements FY2003-2017. Data provided by CRS. April 4, 2018.

Oregon*	$45,539.86	$36,432
Pennsylvania	$23,914.02	$19,131
South Dakota*	$396,178.04	$316,942
South Carolina	$775.06	$620
Texas*	$4,725,825.41	$3,780,660
Utah*	$73,496,260.76	$58,797,009
Virginia	$28,181.89	$22,546
Washington*	$5,057.67	$4,046
West Virginia	$108,373.09	$86,698
Wyoming*	$669,010,220.24	$535,208,176

*Denotes States eligible for reclamation projects funded by the Reclamation Fund

The Reclamation Fund

The Reclamation Act of 1902 established the Reclamation Fund as a special fund within the U.S. Treasury to fund irrigation projects in 17 Western States.[9] The Act authorized three sources of funding for the Reclamation Fund: land and timber sales in the West, reclamation project repayment, and reclamation project contracts and sales.[10] Projects funded with these revenues are managed by the Bureau of Reclamation within the Department of the Interior.

The fund was originally intended to function as a revolving fund, with receipts from existing projects serving to fund new projects. However, receipts were often insufficient to support Bureau of Reclamation activities and Congress opted to provide sizable advances to the Reclamation Fund to maintain its solvency. In an effort to prevent the need for future advances, Congress subjected funds expended from the Reclamation Fund to the Congressional appropriations process in 1914.[11] Even so, the Fund remained inadequate to fully fund the infrastructure projects managed by the Bureau. In response, Congress authorized two additional revenues sources for the Fund: 40 percent of onshore mineral revenues collected under the Mineral Leasing Act and 100 percent of reclamation project power revenues.[12]

Major Sources of Reclamation Fund Revenue[13]

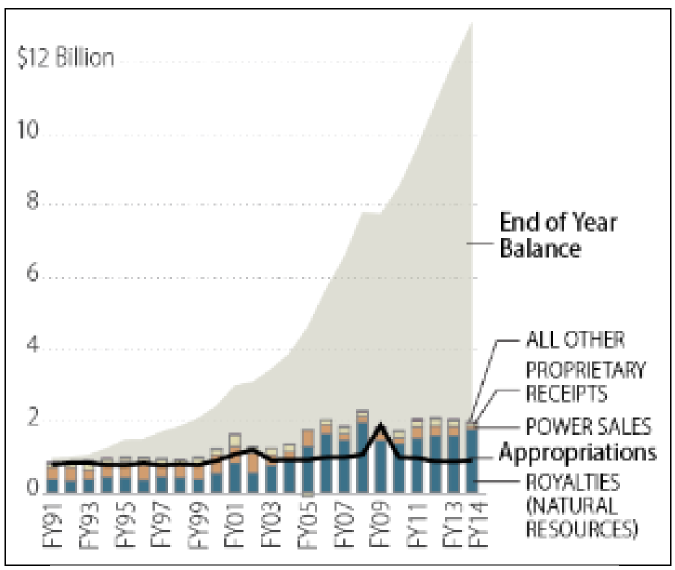
Source	**Description**	**Year Authorized**

[9] Charles V. Stern, The Reclamation Fund (2015). Congressional Research Service. http://www.crs.gov/Reports/IF10042?source=search&guid=0f97e0813ab3457b863908582e195367&index=0
[10] Charles V. Stern, The Reclamation Fund (2015). Congressional Research Service. http://www.crs.gov/Reports/IF10042?source=search&guid=0f97e0813ab3457b863908582e195367&index=0
[11] Charles V. Stern, The Reclamation Fund (2015). Congressional Research Service. http://www.crs.gov/Reports/IF10042?source=search&guid=0f97e0813ab3457b863908582e195367&index=0
[12] Charles V. Stern, The Reclamation Fund (2015). Congressional Research Service. http://www.crs.gov/Reports/IF10042?source=search&guid=0f97e0813ab3457b863908582e195367&index=0
[13] Charles V. Stern, The Reclamation Fund (2015). Congressional Research Service. http://www.crs.gov/Reports/IF10042?source=search&guid=0f97e0813ab3457b863908582e195367&index=0

Public Land Sales	95% of proceeds from public land sales in Western States	1902
Reclamation Project Repayments	100% of receipts	1902
Reclamation Project Water Contracts/Sales	100% of proceeds	1902
Reclamation Project Power Revenues	100% of proceeds	1938
Natural Resource/Mineral Royalties	40% of bonuses, royalties, and rentals from onshore public lands	1920

For decades, the Fund was stable, as annual receipts and appropriations from the Fund remained relatively even. However, in the 1990s, receipts began outpacing appropriations by more than $100 million per year. Between fiscal year (FY) 2005 and FY 2014, receipts exceeded appropriations by an average of $920 million.[14] As of FY 2017, the Reclamation Fund's balance reached roughly $13.8 billion.[15]

Reclamation Fund Receipts and Appropriations, FY1990-FY2014[16]



Source: CRS, with Bureau of Reclamation data.

This imbalance is largely attributed to increasing contributions to the Fund from hydropower revenues and onshore mineral revenues. In recent years, onshore mineral revenues have contributed 70-80 percent of receipts paid into the fund, totaling $1-2 billion in some

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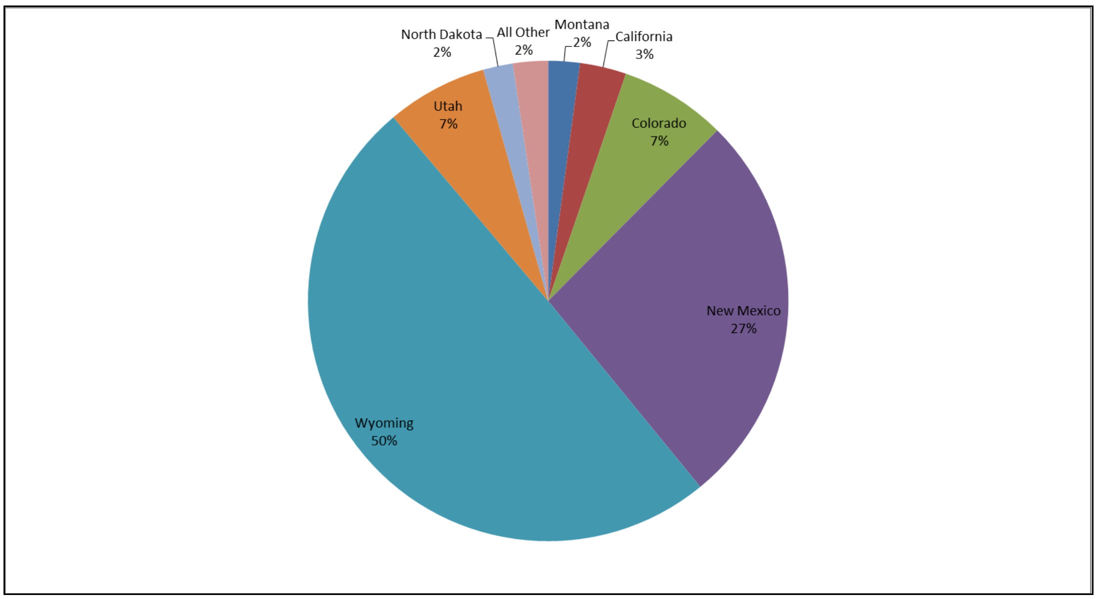
[14] Department of the Interior. Budget for Fiscal Year 2019. Reclamation Fund.
[15] Department of the Interior. Budget for Fiscal Year 2019. Reclamation Fund.
[16] Charles V. Stern, The Reclamation Fund (2015). Congressional Research Service. http://www.crs.gov/Reports/IF10042?source=search&guid=0f97e0813ab3457b863908582e195367&index=0

years.[17] Because expenditures from the Fund are subject to the annual appropriations process, these expenditures must compete with other programs for funding allocations within the budget caps adopted by Congress in annual budget agreements. Congressional appropriators may choose to increase spending from the Reclamation Fund in any fiscal year, but such increases would come at the expense of other Congressional spending priorities under the current process. As a result, the balance in the Reclamation Fund will likely continue to increase over time.

State Contributions to the Reclamation Fund

A total of 32 States contribute mineral revenues to the Reclamation Fund.[18] However, the majority of mineral receipts to the Fund are contributed by just seven States: California, Colorado, Montana, New Mexico, North Dakota, Utah, and Wyoming. Specifically, Wyoming contributes roughly 50% of receipts and New Mexico contributes approximately 27%, with all other States contributing the remaining quarter.[19]

The Seven Largest State Contributors to the Reclamation Fund
Based on Estimated Average Contributions from 2003-2017



Source: CRS estimates based on analysis of ONRR data (excluding Alaska)

Reclamation Fund monies are appropriated by Congress on an annual basis and are expended through three primary accounts. Within the Bureau of Reclamation, the Water and Related Resources Account provides funding for reclamation projects, while the Policy and

[17] Charles V. Stern, Reclamation Fund: Natural Resource Royalty Receipts and State Project Expenditures (2018). Congressional Research Service.
[18] Charles V. Stern, Reclamation Fund: Natural Resource Royalty Receipts and State Project Expenditures (2018). Congressional Research Service.
[19] Charles V. Stern, Reclamation Fund: Natural Resource Royalty Receipts and State Project Expenditures (2018). Congressional Research Service.

Administration Account funds the administrative expenses of the Bureau.[20] The Western Area Power Administration's (WAPA) Construction, Rehabilitation, Operations and Maintenance Account provides funds for expenditures on hydropower infrastructure associated with certain reclamation projects.[21]

Most of the funding provided to the Bureau is administered through the Water and Related Resources Account, which received $908 million in FY 2017.[22] In the same fiscal year, the Policy and Administration Account received $58 million and WAPA received $88 million.[23] Of the funds allocated to the Water and Related Resources Account for reclamation projects and programs, $686 million was allocated for geographic-specific and non-regional projects.[24] Approximately 71 percent of this total was disbursed to just five States in FY 2017. California received $179 million, or 26 percent of project level funding, while New Mexico, Montana, Arizona, and Colorado projects also received significant shares.[25]

State Shares of Reclamation Appropriations for Projects, FY2017

State Project Totals for Non-Programmatic/Non-Regional Allocations

[20] Charles V. Stern, Reclamation Fund: Natural Resource Royalty Receipts and State Project Expenditures (2018). Congressional Research Service.

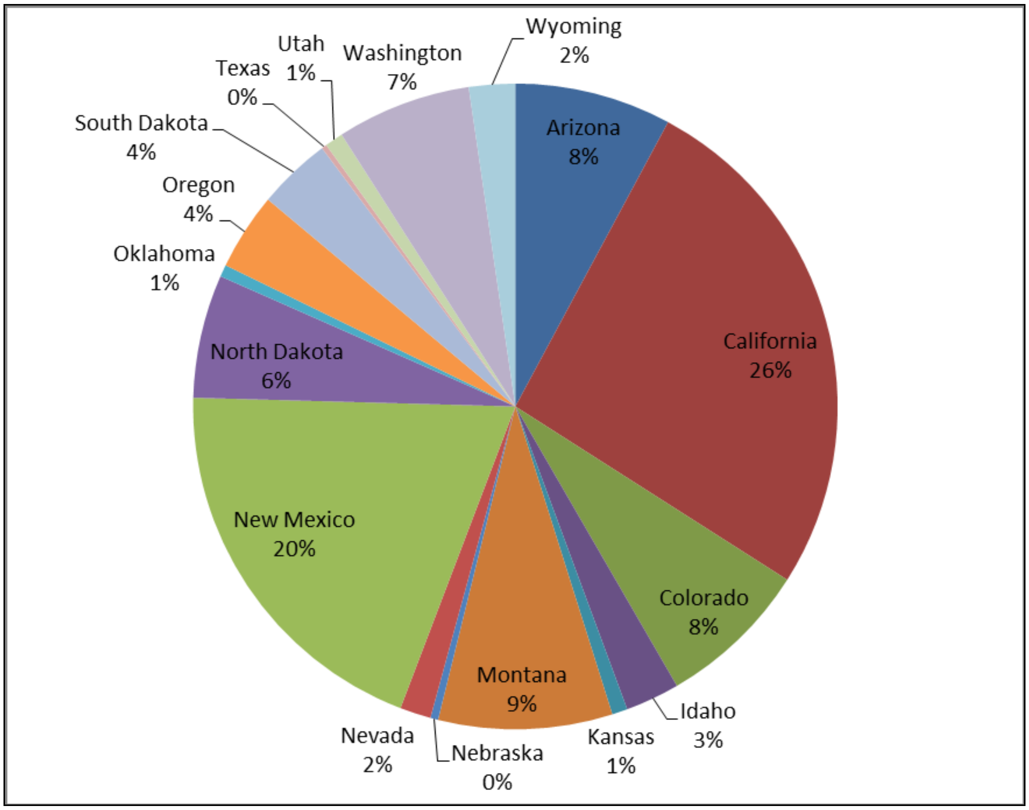
[21] Charles V. Stern, Reclamation Fund: Natural Resource Royalty Receipts and State Project Expenditures (2018). Congressional Research Service.

[22] Charles V. Stern, Reclamation Fund: Natural Resource Royalty Receipts and State Project Expenditures (2018). Congressional Research Service.

[23] Charles V. Stern, Reclamation Fund: Natural Resource Royalty Receipts and State Project Expenditures (2018). Congressional Research Service.

[24] Charles V. Stern, Reclamation Fund: Natural Resource Royalty Receipts and State Project Expenditures (2018). Congressional Research Service.

[25] Charles V. Stern, Reclamation Fund: Natural Resource Royalty Receipts and State Project Expenditures (2018). Congressional Research Service.



Source: CRS estimates based on analysis of FY2017 enacted appropriations and the Bureau of Reclamation's Work Plan for FY2017.
Notes: Expenditures for Texas and Nebraska were less than 1%. Analysis does not reflect regional programs that benefit multiple states (e.g., the Colorado River Basin Salinity Control Project), grants, or other programmatic areas that may be awarded by the Administration to geographically-specific areas.

State Onshore Revenue Disbursements and Usage of Mineral Revenues

Energy-producing States rely on federal mineral revenues to offset losses in private tax revenue due to the tax-exempt status of federal land.[26] Each year, States carefully budget these resources to improve local communities and provide critical public services. Specifically, these revenues are utilized to mitigate the environmental impacts of mineral development, fund roads and other infrastructure projects,[27] and support public school systems and community colleges.[28]

For example, Wyoming allocates mineral revenues to local governments, school construction, the Wyoming Highway Fund, the University of Wyoming, community colleges, and county road construction, among other purposes.[29] Montana utilizes mineral revenues to

[26] Marc Humphries, Mineral Royalties on Federal Lands: Issues for Congress (2015). http://www.crs.gov/reports/pdf/R43891
[27] Marc Humphries, Mineral Royalties on Federal Lands: Issues for Congress (2015). http://www.crs.gov/reports/pdf/R43891
[28] The United States Extractive Industries Transparency Initiative. Explore Data, Wyoming. https://useiti.doi.gov/explore/WY/#disbursements (Accessed August 29, 2017).
[29] U.S. Department of Interior. Office of Natural Resources Revenue. Natural Resources Revenue Data. Wyoming. https://revenuedata.doi.gov/explore/WY/#revenue

support schools, local governments, the Montana University System, cultural projects, environmental quality activities and several other State and local activities.[30]

Additionally, many States that depend on these revenues to provide critical services have established permanent mineral trust funds to ensure resources remain relatively stable across boom and bust cycles. Colorado, for example, saves a portion of its mineral revenues in its Local Government Permanent Fund, Higher Education Maintenance and Reserve Fund, and School Trust Permanent Fund.[31] Similarly, Alaska distributes mineral revenues to its State General Fund, Alaska Permanent Fund, Constitutional Reserve Fund and Public School Trust Fund.[32]

The POWER Counties Act and County Revenue Sharing

H.R. 3846 would amend the Mineral Leasing Act to divert a portion of the mineral revenues currently directed to the Reclamation Fund to energy-producing counties. Specifically, counties would receive 20 percent of the revenues produced on federal land within their borders. The State share of onshore revenues would remain at 50 percent (less the 2 percent administrative fee) and the Reclamation Fund would receive 20 percent of all revenues. The currently balance of the Reclamation Fund would not be impacted by this legislation.

The concept of revenue sharing between States, the federal government and counties is not unprecedented. In fact, under the Geothermal Steam Act of 1940, revenues from geothermal energy leasing and production are distributed to both producing States and counties. States receive 50 percent of the revenues generated within their borders and counties receive 25 percent.[33]

By directing a portion of onshore revenues to energy-producing counties, H.R. 3846 would create a dedicated source of revenue for these localities to invest in public services. Counties that receive federal mineral revenues would have the opportunity to use these funds to support schools and road construction, two of the most critical, yet underfunded, services provided by local governments.

Mineral revenues are produced by hardworking citizens in regions across the country. H.R. 3846 seeks to invest a portion of these revenues in strengthening their local workforce and making their communities attractive and accessible for new economic development opportunities.

<u>Cost</u>

CBO has not scored this legislation.

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[30] U.S. Department of Interior. Office of Natural Resources Revenue. Natural Resources Revenue Data. Montana. https://revenuedata.doi.gov/explore/MT/

[31] U.S. Department of Interior. Office of Natural Resources Revenue. Natural Resources Revenue Data. Colorado. https://revenuedata.doi.gov/explore/CO/

[32] U.S. Department of Interior. Office of Natural Resources Revenue. Natural Resources Revenue Data. Alaska. https://revenuedata.doi.gov/explore/AK/

[33] 30 U.S.C. §1019

Administration Position

Unknown.

Major Provisions of H.R. 3846

- Amends the Mineral Leasing Act to change the percentage of onshore mineral revenues paid to the Reclamation Fund established by the Reclamation Act of 1902 from 40 percent to 20 percent.

- Requires 20 percent of onshore mineral revenues to be paid to the counties in which the revenues were produced.

- Authorizes the counties which receive a 20 percent share of onshore mineral revenues to utilize those revenues to support schools and roads

Effect on Current Law (Ramseyer)

Showing Current Law as Amended by H.R. 3846

[text to be added highlighted in yellow; text to be deleted bracketed and highlighted in blue]

Section 35 of the Mineral Leasing Act (30 U.S.C. 191)

§191. Disposition of moneys received

(a) In general

All money received from sales, bonuses, royalties including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982 [30 U.S.C. 1701 et seq.], and rentals of the public lands under the provisions of this chapter and the Geothermal Steam Act of 1970 [30 U.S.C. 1001 et seq.], shall be paid into the Treasury of the United States; and, subject to the provisions of subsection (b), 50 per centum thereof shall be paid by the Secretary of the Treasury to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this chapter, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, [40 per centum] 20 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and 20 per centum thereof shall be paid to the county within the boundaries of which the leased lands or deposits are or were located and may be used by such county for its schools and roads, and of those from Alaska, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided*, That all moneys which may accrue to the United States under the provisions of this chapter and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by section 7433(b) of title 10. All moneys received under the provisions of this chapter and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts. Payments to States under this section with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, except for any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute. Such warrants shall be issued by the United States Treasury not later than 10 days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined to be payable to a State shall be made not later than the last business day of the month in which such dispute is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the dispute is resolved.

(b) Deduction for administrative costs

In determining the amount of payments to the States under this section, beginning in fiscal year 2014 and for each year thereafter, the amount of such payments shall be reduced by 2 percent for any administrative or other costs incurred by the United States in carrying out the program authorized by this chapter, and the amount of such reduction shall be deposited to miscellaneous receipts of the Treasury.

(c) Rentals received on or after August 8, 2005

(1) Notwithstanding the first sentence of subsection (a), any rentals received from leases in any State (other than the State of Alaska) on or after August 8, 2005, shall be deposited in the Treasury, to be allocated in accordance with paragraph (2).

(2) Of the amounts deposited in the Treasury under paragraph (1)-

(A) 50 percent shall be paid by the Secretary of the Treasury to the State within the boundaries of which the leased land is located or the deposits were derived; and

(B) 50 percent shall be deposited in a special fund in the Treasury, to be known as the "BLM Permit Processing Improvement Fund" (referred to in this subsection as the "Fund").

(3) Use of fund.-

(A) In general.-The Fund shall be available to the Secretary of the Interior for expenditure, without further appropriation and without fiscal year limitation, for the coordination and processing of oil and gas use authorizations on onshore Federal and Indian trust mineral estate land.

(B) Accounts.-The Secretary shall divide the Fund into-

(i) a Rental Account (referred to in this subsection as the "Rental Account") comprised of rental receipts collected under this section; and

(ii) a Fee Account (referred to in this subsection as the "Fee Account") comprised of fees collected under subsection (d).

(4) Rental account.-

(A) In general.-The Secretary shall use the Rental Account for-

(i) the coordination and processing of oil and gas use authorizations on onshore Federal and Indian trust mineral estate land under the jurisdiction of the Project offices identified under section 15924(d) of title 42; and

(ii) training programs for development of expertise related to coordinating and processing oil and gas use authorizations.

(B) Allocation.-In determining the allocation of the Rental Account among Project offices for a fiscal year, the Secretary shall consider-

(i) the number of applications for permit to drill received in a Project office during the previous fiscal year;

(ii) the backlog of applications described in clause (i) in a Project office;

(iii) publicly available industry forecasts for development of oil and gas resources under the jurisdiction of a Project office; and

(iv) any opportunities for partnership with local industry organizations and educational institutions in developing training programs to facilitate the coordination and processing of oil and gas use authorizations.

(5) Fee account.-

(A) In general.-The Secretary shall use the Fee Account for the coordination and processing of oil and gas use authorizations on onshore Federal and Indian trust mineral estate land.

(B) Allocation.-The Secretary shall transfer not less than 75 percent of the revenues collected by an office for the processing of applications for permits to the State office of the State in which the fees were collected.