

Subcommittee on Energy and Mineral Resources  
Doug Lamborn, Chairman  
Hearing Memorandum

June 13, 2016

To: All Subcommittee on Energy and Mineral Resources Members

From: Majority Committee Staff—Michael Freeman, Josh Hoffman  
Subcommittee on Energy and Mineral Resources (x5-9297)

Hearing: **Legislative hearing on H.R. 5259 (Rep. Ryan Zinke)**, To direct the Secretary of the Interior to reestablish the Royalty Policy Committee in order to further a more consultative process with key Federal, State, tribal, environmental, and energy stakeholders, and for other purposes.  
**Tuesday, June 14, 2016, 1324 Longworth HOB**

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**H.R. 5259, “Certainty for States and Tribes Act”**

**Summary of the Bill**

H.R. 5259, the Certainty for States and Tribes Act, would reconstitute the Department of the Interior’s Royalty Policy Committee, which was established in 1995 to advise the Secretary on royalty management issues, as well as other mineral-related policies. In addition, the bill would create a “State and Tribal Resources Board” to assess the economic impact of proposed policies and regulatory changes on state and tribal budgets and governmental services, which are often supported by revenues from mineral production. The bill is intended to create an open and transparent process to ensure a fair return to the American taxpayer and to ensure that states relying on proceeds from federal land are treated fairly.

**Invited Witnesses:**

*Ms. Jillian Balow*  
Superintendent, Wyoming Department of Education  
Member, Education Commission for the States  
Cheyenne, WY

*Mr. Mike Johnson*  
Business Agent, International Union of Operating Engineers Operators Local 400  
Helena, MT

*Prof. Mark Squillace*  
University of Colorado School of Law  
Boulder, CO

*Mr. Alex Kean*

Administrator, Wyoming Department of Administration & Information  
Economic Analysis Division  
Cheyenne, WY

*Ms. Amanda Leiter*

Deputy Assistant Secretary  
Land and Minerals Management  
U.S. Department of the Interior  
Washington, D.C.

**Cosponsors:**

Rep. Lummis, Cynthia M. [R-WY-At Large], Rep. McKinley, David B. [R-WV-1], Rep. Tipton, Scott R. [R-CO-3], Rep. Gosar, Paul A. [R-AZ-4], Rep. Cramer, Kevin [R-ND-At Large], Rep. Westerman, Bruce [R-AR-4], Rep. Johnson, Bill [R-OH-6], Rep. McClintock, Tom [R-CA-4], and Rep. Smith, Jason [R-MO-8]

**Background**

Revenues from economic activities on federal lands play a central role in how states with federal land fund essential government services. Education, public safety, and infrastructure all rely heavily on the stream of revenue provided by mining, oil and gas development, and other activities on federal land pursuant to the Mineral Leasing Act of 1920.<sup>1</sup> In Wyoming, coal mining alone is the second largest source of tax revenue for state and local government.<sup>2</sup> Colorado, Montana, New Mexico, Utah and many other states also generate significant revenues from the federal lands within each state.<sup>3</sup> As a result, federal policies have an outsized impact on these states compared to states without federal land, which can rely on state and private lands to generate needed revenues. As such, these “public-land” states have a unique relationship with the federal government, making increased transparency, openness, and collaboration essential.

According to the Energy Information Agency’s *International Energy Outlook 2016*, coal will remain “the second-largest energy source worldwide—behind petroleum and other liquids—until 2030.”<sup>4</sup> This is the case even with the implementation of the EPA’s Clean Power Plan. Domestically, even with strong competition from natural gas, coal still accounts for a large percentage of domestic base-load energy<sup>5</sup>, with coal production from federally managed lands accounting for over 40% of national production.<sup>6</sup> Even if coal plays a lesser role than it has in the past, it will remain an essential part of our nation’s energy portfolio for decades to come.

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<sup>1</sup> 30 U.S.C. § 181 et seq.

<sup>2</sup> Wyoming Mining Association, *The 2015-16 Concise Guide to Wyoming Coal*, available at:

<http://www.wyomingmining.org/wp-content/uploads/2015/10/2015-16-Concise-Guide-to-Wyoming-Coal.pdf>

<sup>3</sup> Office of Natural Resources Revenue, Statistical Information; available at: <http://statistics.onrr.gov/Default.aspx>

<sup>4</sup> *International Energy Outlook 2016*, U.S. Energy Information Administration, May 11, 2016. Available at:

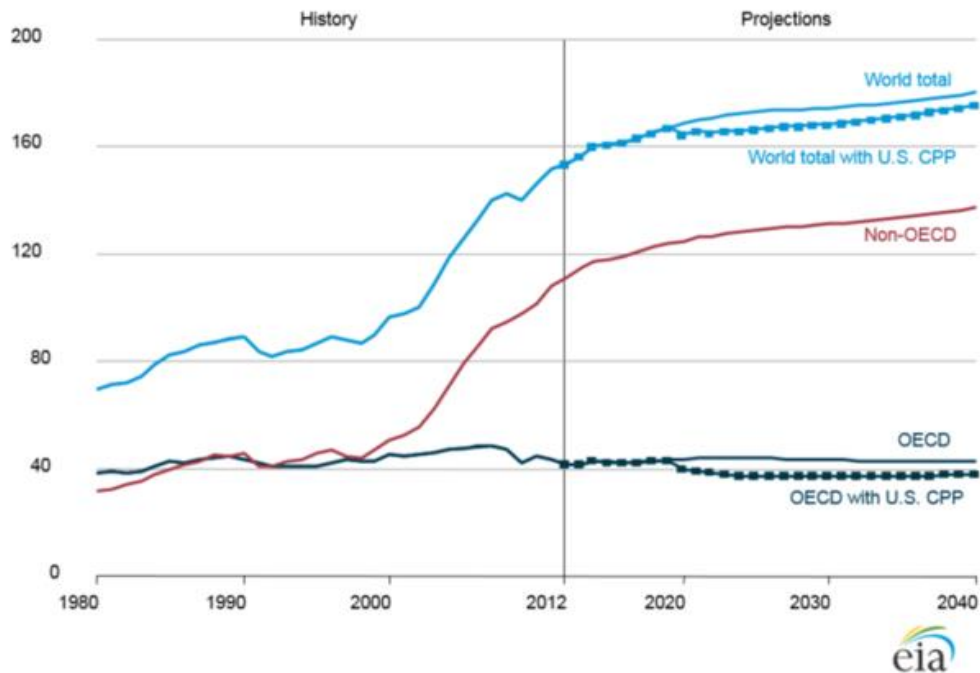
<http://www.eia.gov/forecasts/ieo/coal.cfm>

<sup>5</sup> U.S. Energy Information Administration, Net Generation for All Sectors, available at:

<http://www.eia.gov/electricity/data/browser/?src=home-fl>

<sup>6</sup> Secretarial Order 3338. January 15, 2016.

Figure 4-1. World coal consumption by region, 1980–2040  
quadrillion Btu



Despite our current and projected need for reliable electricity produced by coal, on January 15, 2016, Secretary Jewell placed a moratorium on all new federal coal leases in Secretarial Order 3338. In this order, Secretary Jewell instructed the Bureau of Land Management (BLM) to prepare a Programmatic Environmental Impact Statement (PEIS) to consider the impacts of potential leasing and management reform of federally managed coal.<sup>7</sup> In her order, Secretary Jewell stated concerns as to whether the federal coal leasing program generated fair return to the taxpayer, despite several BLM statements that the program “has ensured fair market values are received for LBA tracts ... [m]eanwhile the coal resource is managed to avoid bypass and encourage competition.”<sup>8</sup>

Other concerns included whether changes to the federal coal program would cause job losses and reduced local revenues, and whether the current leasing program conflicts with the Administration’s climate change objectives.

The intent of H.R. 5259 is *not* to prevent the completion of the PEIS; rather, the intent of the legislation is to ensure that the communities and families that are impacted by the federal land management policies have a voice in the decision-making process. Communities that are specifically affected by certain policies should have a greater voice in the development of those policies. H.R. 5259 provides the means to achieve collaboration on policies that affect or are related to the generation of revenues to states and tribes, including onshore and offshore development. This bill is intended to augment the PEIS process, ensure that it is completed in a

<sup>7</sup> Secretarial Order No. 3338.

<sup>8</sup> Letter from Robert Abbey, BLM Director, to Jeremy Nichols, WildEarth Guardians, Jan 28, 2011.

reasonable amount of time, and that no unnecessary burdens are imposed on American families that live in states with federal land.

In particular, members of this Committee are concerned about the unexpected moratorium on new federal coal leases that was included in Order 3338. In 2013, BLM Director Neil Kornze stated that “coal leasing continues to be an important economic benefit at local and national levels with revenues bonuses, rental fees, and production royalties that are shared equally with the state in which the lease is located.”<sup>9</sup> In 2014, Mr. Kornze stated again that the coal program should *not* be suspended while BLM updated its policies.<sup>10</sup> In other programmatic reviews, the programs have continued while the BLM reviewed its policies.<sup>11</sup> The decision to halt all new leasing while BLM conducts the PEIS warrants scrutiny.

In addition, the NEPA process in general is fraught with uncertainty<sup>12</sup>, leading to concerns that the PEIS may take much longer than the 3 years specified in the order. Secretary Jewell assured members of the Senate Appropriations Committee earlier this year that the PEIS will be completed in three years. H.R. 5259 would ensure that it would not take longer than three years.

H.R. 5259 sets forth a process to ensure that the taxpayer receives fair return on revenues from federal land, would ensure that states and tribes that rely on federal revenues to fund essential government services have a meaningful voice in royalty discussions, and would avoid a lengthy and unpredictable moratorium on new federal leases.

### **Major Provisions/Section-by-Section Analysis of H.R. 5259**

#### **Sec. 1 – Short Title**

#### **Sec. 2 – Reconstitution of the Royalty Policy Committee (RPC)**

This section requires the Secretary of the Interior to reconstitute the Royalty Policy Committee with certain specified changes, including changes to the membership structure and meeting frequency of the RPC. The legislation will require the committee to meet at least once a year and specifies that membership of the committee must include:

- Not fewer than 5 members representing Governors of States that each receive more than \$10,000,000 annually in royalty revenues from federal leases; and
- Not more than 5 members representing Indian tribes that are mineral-producing Indian tribes, as specified.

#### **Sec. 3 – Review of Regulations and Policies the Royalty Policy Committee Advisory Activities Should Include**

This section lays out the task of the Royalty Policy Committee, which is to produce a report following the issuance of any regulation or policy related to mineral leasing policy for land that

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<sup>9</sup> Letter from Neil Kornze, BLM Director, to Hal Quinn, National Mining Association, Jun 24, 2013.

<sup>10</sup> Letter from Neil Kornze, BLM Director, to Sen. Edward J. Markey, August 14, 2014.

<sup>11</sup> BLM Solar PEIS, available at: <http://solareis.anl.gov/eis/index.cfm>; BLM Wind PEIS, available at: <http://windeis.anl.gov/eis/index.cfm>

<sup>12</sup> GAO Report, National Environmental Policy Act: Little Information Exists on NEPA Analyses, April 2014.

specifies the impacts of such a rule. Before such a rule can be finalized, the RPC shall publish a determination of those impacts to school funding, public safety, and other services. The RPC can also request a delay of the rule, not to exceed 180 days. The section goes on to provide the Secretary with an opportunity to revise the regulations to avoid those negative impacts, and if the Secretary chooses not to revise the regulations, the Secretary must provide an explanation as to why the recommendations were or were not adopted.

#### Sec. 4 – Special Review of Programmatic Environmental Impact Statement

This section directs that the Secretary, in carrying out the PEIS in Sec. Order 3338 shall take into consideration the views of a board comprised of specified representatives of Governors of States that collect more than \$10,000,000 in revenues from federal lands. It also requires that the PEIS be completed in a 3 year period, and specifies that the moratorium shall be terminated on January 16, 2019.

#### Sec. 5. - Grandfathering of Coal Leases on Application and Coal Lease Modifications

Sec. 5 states that nothing in Sec. Order 3338 shall restrict the issuance of any coal lease or coal lease modification already on application with the BLM, so long as the BLM has begun its review under NEPA.

#### Sec. 6 – Deadline for Coal Leases Sales and Modifications

This section requires the Secretary to conduct lease sales and approve modifications currently on application with the BLM within one year of completing the related NEPA analysis. This section would prevent needless delays for leases and modifications already in the BLM process.

#### **Effect on Current Law (Ramseyer)**

This bill will not have any effect on current law.