

Subcommittee on Energy and Mineral Resources

Doug Lamborn, Chairman

Hearing Memorandum

July 11, 2016

To: All Subcommittee on Energy and Mineral Resources Members

From: Majority Committee Staff—Andrew Vecera
Subcommittee on Energy and Mineral Resources (x5-9297)

Hearing: **Legislative hearing on H.R. 2663 (Rep. Paul Gosar)**, To promote the development of renewable energy on public land, and for other purposes.
Wednesday, July 13, 2016, 2:00 PM, 1324 Longworth House Office Building

H.R. 2663, “Public Land Renewable Energy Development Act of 2015”

Summary of the Bill

On June 4, 2015, Congressman Gosar introduced H.R. 2663, the “Public Land Renewable Energy Development Act of 2015.” This bill streamlines the permitting process for wind, solar, and geothermal energy generation on federal land. It establishes a Renewable Energy Resource Conservation Fund (Fund) to be used to conserve land affected by renewable development, and directs revenues, including royalties and rental payments, collected by the Secretary to counties, the states, and the Fund.

Cosponsors

Rep. Amodei (R-NV), Rep. Benishek (R-MI), Rep. Beyer (D-VA), Rep. Blum (R-IA), Rep. Cardenas (D-CA), Rep. Cartwright (D-PA), Rep. Coffman (R-CO), Rep. Comstock (R-VA), Rep. Connolly (D-VA), Rep. Cook (R-CA), Rep. Cooper (D-TN), Rep. Costa (D-CA), Rep. Cramer (R-ND), Rep. DeFazio (D-OR), Rep. DeGette (D-CO), Rep. DelBene (D-WA), Rep. Denham (R-CA), Rep. Duncan (R-SC), Rep. Fattah (D-PA), Rep. Franks (R-AZ), Rep. Gallego (D-AZ), Rep. Grijalva (D-AZ), Rep. Hardy (R-NV), Rep. Hastings (D-FL), Rep. Heck (R-NV), Rep. Honda (D-CA), Rep. Huffman (D-CA), Rep. Kirkpatrick (D-AZ), Rep. Labrador (R-ID), Rep. LaMalfa (R-CA), Rep. Lee (D-CA), Rep. Loeb sack (D-IA), Rep. Love (R-UT), Rep. Lowenthal (D-CA), Rep. Lujan Grisham (D-NM), Rep. Lujan (D-NM), Rep. McGovern (D-MA-2), Rep. McMorris Rodgers (R-WA), Rep. McSally (R-AZ), Rep. Napolitano (D-CA), Rep. Newhouse (R-WA), Rep. Pearce (R-NM), Rep. Perlmutter (D-CO), Rep. Peters (D-CA), Rep. Peterson (D-MN), Rep. Pocan (D-WI), Rep. Polis (D-CO), Rep. Rokita (R-IN), Rep. Ruiz (D-CA), Rep. Salmon (R-AZ), Rep. Schrader (D-OR), Rep. Schweikert (R-AZ), Rep. Simpson (R-ID), Rep. Sinema (D-AZ), Rep. Stefanik (R-NY), Rep. Stewart (R-UT), Rep. Stivers (R-OH), Rep. Thompson (D-CA), Rep. Tipton (R-CO), Rep. Titus (D-NV), Rep. Tsongas (D-MA), Rep. Valadao (R-CA), Rep. Young (R-AK), Rep. Zinke (R-MT)

Invited Witnesses (in alphabetical order)

Mr. Ian Dowdy (Minority Witness)
Program Director Sun Corridor Legacy Program
Sonoran Institute
Phoenix, Arizona

Mr. Buster Johnson
Mohave County Supervisor, District III
(on behalf of National Association of Counties)
Lake Havasu City, Arizona

Mr. Steve Moyer
Vice President Government Affairs
Trout Unlimited
Washington, D.C.

Mr. Josh Nordquist
Director of Business Development
Ormat Technologies, Inc.
Reno, Nevada

Background

Renewable generation comprises one of the many facets of the Committee on Natural Resources “all-of-the-above” energy strategy to ensure American energy independence. As such, the Committee supports “expanding opportunities for renewable energy production . . . on both onshore and offshore federal lands.”¹ H.R. 2663 achieves this goal by encouraging the development of renewable generation on federal land through the expediting of the permitting process, while ensuring states and their respective taxpayers receive fair value for the energy produced.

No Existing Statutory Leasing Program for Solar or Wind Generation on Federal Land

Presently, the BLM has an approved capacity of 16,335 megawatts (MW) of geothermal, wind, and solar generation.² This number could be much higher, as the BLM has identified 20.6 million acres of public land with wind potential, and over 19 million acres with solar potential.³ However, the current lack of a regulatory and statutory structure governing renewable access to

¹ House Committee on Natural Resources, All-Of-The-Above Energy Approach, available at <http://naturalresources.house.gov/energy/>.

² U.S. Bureau of Land Management, Renewable Energy Resources: New Energy for America, available at http://www.blm.gov/wo/st/en/prog/energy/renewable_energy.html.

³ *Id.*

federal land has hindered the rapid development of renewables, reflected by the fact that only 1.4% of installed wind energy capacity in 2012 was found on public lands.⁴

Unlike the statutory leasing processes governing oil and gas,⁵ or geothermal production,⁶ there exists no leasing authority to encourage the disbursement of federal land for the use of wind or solar energy. Rather, a land use planning statute, the Federal Land Policy and Management Act (FLPMA), governs the process to develop wind and solar on federal land. Specifically, Title V of FLPMA authorizes the acquisition of rights-of-way over federal lands for “systems for generation, transmission and distribution of electric energy.”⁷

Applying for a right of way is an often lengthy and cumbersome process requiring environmental review under the National Environmental Policy Act (NEPA), as well as compliance with any additional terms and conditions the authorizing agency deems appropriate.⁸ These modifications and additional terms may take years to develop, and include potential route or facility changes.⁹

Furthermore, the BLM retains many rights over the land once a right-of-way has been authorized. For instance, the BLM may access the lands covered by the right-of-way at any time, may change the terms and conditions of the right-of-way pending future regulatory or statutory changes, or require common use of the land.¹⁰ As such, holders of rights-of-way typically have less control over the rented land than would a lessee seeking the production of natural resources.

One additional concern is the lack of any royalty structure that would ensure a fair return to the states and counties affected by the development of renewable generation. Whereas geothermal currently has a revenue structure ensuring fair payment to states and counties, there is no similar revenue sharing structure for wind and solar facilities. As such, the rental fees paid by the renewable developer are returned directly to the U.S. Treasury.

The BLM recognized these inefficiencies in part, and issued a proposed rule on September 30, 2014 with the goal of creating a competitive lease process for solar and wind energy on federal land.¹¹ However, this rule has faced strong opposition, as both the solar and

⁴ American Wind Energy Association, Public Lands and Wind Energy, available at <http://www.awea.org/Issues/Content.aspx?ItemNumber=858>.

⁵ Mineral Leasing Act of 1920, 30 U.S.C. § 181 *et seq.*

⁶ Geothermal Steam Act of 1970, 30 U.S.C. § 1001 *et seq.*

⁷ 43 U.S.C. § 1761(a)(5).

⁸ See U.S. Bureau of Land Management, BLM Fact Sheet – Renewable Energy: Solar, available at http://www.blm.gov/style/medialib/blm/wo/MINERALS_REALTY_AND_RESOURCE_PROTECTION/energy/solar_and_wind.Par.99571.File.dat/fact_Solar.pdf and BLM Fact Sheet – Renewable Energy: Wind, available at http://www.blm.gov/style/medialib/blm/wo/MINERALS_REALTY_AND_RESOURCE_PROTECTION/energy/solar_and_wind.Par.38552.File.dat/fact_Wind.pdf.

⁹ See U.S. Bureau of Land Management, BLM California Solar Applications, available at <http://www.blm.gov/style/medialib/blm/ca/pdf/pa/energy/solar.Par.84447.File.dat/BLM%20Solar%20Apps%20and%20Auths.pdf> (highlighting the number of years between the date of application and date of final authorization).

¹⁰ 34 C.F.R. § 2804.15.

¹¹ 79 Fed. Reg. 59022.

wind industry view the regulations as adding “time, uncertainty, complexity, and expense to a permitting process that is already substantially more difficult to pursue than permitting on private lands.”¹²

H.R. 2663 Expedites the Permitting Process and Ensures a Fair Return to States

The purposes of H.R. 2663 are two-fold: first, to provide certainty to the right-of-way process currently faced by renewable developers on federal land; and second, to establish a fair revenue structure that benefits the states and counties affected by renewable development.

H.R. 2663 achieves certainty for developers by limiting the environmental review required by NEPA through the use of programmatic environmental impact statements (PEIS), which exist for each type of renewable generation. This bill would require the Department of the Interior to review and modify each PEIS, and grant interested developers the ability to rely on the respective PEIS. As such, developers would not need to initiate environmental review for projects that would be covered by such PEIS.

To address the lack of a royalty and revenue structure, H.R. 2663 imposes a new revenue structure. First, it requires the Secretary of the Interior to develop royalty rates through a rulemaking that will “encourage production of solar or wind energy”; “ensure a fair return to the public”; and “encourage the maximum energy generation while disturbing the least quantity of covered land and other natural resources, including water.”¹³ The royalties generated, as well as bonus bids, rentals, fees, or other payments returned to the treasury, will then be disbursed in the following manner: 25% to the affected state, 25% to the affected counties, 15% to the treasury, and 35% to a new fund – the “Renewable Energy Resource Conservation Fund”, which the bill establishes to mitigate the impacts of renewable development.¹⁴

Major Provisions/Section-by-Section Analysis of H.R. 2663

Section 1: Short title; table of contents

This section defines the short title as the “Public Land Renewable Energy Development Act of 2015”, and separates the bill into two titles. The first title addresses a fix to the Energy Policy Act of 2005 regarding geothermal energy. The second title is comprised of two subtitles, Subtitle A addresses the permitting process for renewable resources, while Subtitle B establishes the royalty and revenue portion.

¹² See Solar Energy Industries Association, Comments Regarding Competitive Processes, Terms and Conditions for Leasing Public Lands for Solar and Wind Energy Development and Technical Changes and Corrections; Proposed Rule, Dec. 16, 2014, available at <https://www.regulations.gov/contentStreamer?documentId=BLM-2014-0002-0028&attachmentNumber=1&disposition=attachment&contentType=pdf>.

¹³ H.R. 2663 § 213.

¹⁴ *Id.* at § 212.

Section 101: Extension of funding for implementation of Geothermal Steam Act of 1970

This section extends funding for the Implementation of the Geothermal Steam Act of 1970 through 2020 and deposits the funds into an account available to the Secretary of the Interior subject to appropriation.

Section 201: Definitions

This section defines terms used throughout Subtitle A.

Section 202: Land use planning; supplements to programmatic environmental impact statements

This section requires the BLM to review and update the programmatic environmental impact statements affecting geothermal, wind, and solar development on federal land once every ten years. Furthermore, the Secretary of the Interior is directed to coordinate with state, tribal, and local governments, and other interested stakeholders in identifying public land areas that are economically viable for the development of renewable resources, and will have minimal impact on animal and plant habitat, or recreation.

Section 203: Environmental review on covered land

This section authorizes the director of the BLM to determine whether a PEIS has satisfied the requisite level of environmental review for a proposed renewable project on federal land. If the director determines so, such project shall not be required to conduct any further environmental review as required by NEPA.

Section 204: Program to improve renewable energy project permit coordination

This section mandates the establishment of a federal program to improve permit coordination between agencies, and requires a report be made to Congress on the actions taken by the agencies.

Section 211: Definitions

This section defines terms used throughout Subtitle B.

Section 212: Disposition of Revenues

This section requires that royalties generated, as well as bonus bids, rentals, fees, or other payments returned, be disbursed in the following manner: 25% to the affected state, 25% to the affected counties, 15% to the treasury, and 35% to a new fund – the “Renewable Energy Resource Conservation Fund”, which the bill establishes to mitigate the impacts of renewable development.

Section 213: Royalties

This section directs the Secretary of the Interior to establish a royalty rate through a rulemaking for solar and wind development. Such rule must encourage production of solar or wind energy”; “ensure a fair return to the public”; and “encourage the maximum energy generation while disturbing the least quantity of covered land and other natural resources, including water.”

Section 214: Enforcement of royalty and payment provisions

This section requires the Secretary to establish an enforcement system for royalty payments, and applies the Federal Oil and Gas Royalty Management Act of 1982 to the development of solar and wind energy.

Section 215: Enforcement

This section maintains the agency’s enforcement authorities under FLPMA and the ability to revoke or suspend development as necessary.

Section 216: Segregation from appropriation under mining on federal land laws

This section authorizes the Secretary of the Interior or Secretary of Agriculture to withdraw lands identified for renewable energy development from the establishment of mining claims for a period of no more than 10 years.

Section 217: Study and report on conservation banking

This section requires the affected departments to conduct a study on the feasibility of conservation banking on federal land.

Section 218: Applicability of law

This section prohibits wind and solar generation with capacities of greater than 20 MW from accessing the rental fee exemption for rights-of-way under section 504(g) of FLPMA.

Cost

Unknown at this time

Administration Position

Unknown at this time

Effect on Current Law

Showing Current Law as Amended by H.R. 2663

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

Section 234 of the Energy Policy Act of 2005 (42 U.S.C. 15873)

§15873. Deposit and use of geothermal lease revenues for 5 fiscal years

(a) Deposit of geothermal resources leases

Notwithstanding any other provision of law, amounts received by the United States [in the first 5 fiscal years beginning after August 8, 2005] through fiscal year 2020, as rentals, royalties, and other payments required under leases under the Geothermal Steam Act of 1970 [30 U.S.C. 1001 et seq.], excluding funds required to be paid to State and county governments, shall be deposited into a separate account in the Treasury.

(b) Use of deposits

(1) IN GENERAL.—Amounts [Amounts] deposited under subsection (a) shall be available to the Secretary of the Interior for expenditure, without further appropriation and without fiscal year limitation, to implement the Geothermal Steam Act of 1970 [30 U.S.C. 1001 et seq.] and this Act.

(2) Effective for fiscal year 2015 and each fiscal year thereafter, amounts deposited under subsection (a) shall be available to the Secretary of the Interior for expenditure, subject to appropriation and without fiscal year limitation, to implement the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) and this Act.

(c) Transfer of funds

For the purposes of coordination and processing of geothermal leases and geothermal use authorizations on Federal land the Secretary of the Interior may authorize the expenditure or transfer of such funds as are necessary to the Forest Service.