

# Subcommittee on Energy and Mineral Resources

Doug Lamborn, Chairman  
Hearing Memorandum

November 14, 2016

To: All Subcommittee on Energy and Mineral Resources Members

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

Hearing: **Legislative hearing on H.R. 866 (Rep. Diane Black)**, To achieve domestic energy independence by empowering States to control the development and production of all forms of energy on all available Federal land.  
**Tuesday, November 15, 2016, 11:30AM, 1334 Longworth House Office Building.**

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## **H.R. 866 (Rep. Diane Black, R-TN), “Federal Lands Freedom Act of 2015”**

### **Summary of the Bill**

On February 11, 2015 Representative Diane Black introduced H.R. 866, the “*Federal Lands Freedom Act of 2015*.” This bill permits a state that has an established leasing, permitting, and regulatory program to seek primacy for the implementation of federal leasing, permitting, and regulating responsibilities for oil and natural gas development on Federal lands.

### **Cosponsors**

**H.R. 866:** Rep. Blackburn, Marsha [R-TN-7], Rep. Fincher, Stephen Lee [R-TN-8], Rep. Fleischmann, Charles J. "Chuck" [R-TN-3], Rep. DesJarlais, Scott [R-TN-4], Rep. Duncan, John J., Jr. [R-TN-2], Rep. Roe, David P. [R-TN-1], Rep. Pittenger, Robert [R-NC-9], Rep. Weber, Randy K., Sr. [R-TX-14], Rep. Zinke, Ryan K. [R-MT-At Large], Rep. Graves, Sam [R-MO-6], Rep. Sessions, Pete [R-TX-32], Rep. Farenthold, Blake [R-TX-27], Rep. Stewart, Chris [R-UT-2], Rep. Duncan, Jeff [R-SC-3], Rep. Smith, Jason [R-MO-8], Rep. Chaffetz, Jason [R-UT-3], Rep. Tipton, Scott R. [R-CO-3], Rep. Salmon, Matt [R-AZ-5], Rep. Pompeo, Mike [R-KS-4], Rep. Cramer, Kevin [R-ND-At Large], Rep. Huelskamp, Tim [R-KS-1], Rep. Poe, Ted [R-TX-2], Rep. Gosar, Paul A. [R-AZ-4]

### **Invited Witnesses (in alphabetical order)**

*Mr. Demar Dahl*  
Elko County Commissioner  
Deeth, NV

*Professor Hillary Hoffman*  
Professor of Law  
Vermont Law School  
South Royalton, VT

*Mr. Nick Loris*  
Research Fellow  
Institute for Economic Freedom and Opportunity  
The Heritage Foundation  
Washington, D.C.

## **Background**

The Federal Government owns roughly 640 million onshore acres within the United States – approximately 28% of the total surface area.<sup>1</sup> Much of this land ownership is concentrated in two agencies: the U.S. Bureau of Land Management (BLM), and the U.S. Forest Service (USFS), which collectively control 70%.<sup>2</sup> This land may serve multiple uses including the development and production of oil and natural gas as authorized by the Mineral Leasing Act of 1920 (MLA).<sup>3</sup>

Federal production of natural resources has provided energy security and revenue to the country for decades. Unfortunately, the current administration has dramatically increased the regulatory burden for production on Federal land while decreasing the amount of land offered. Since the end of fiscal year 2008, the total amount of leased acreage has fallen from 47.2 million to 32.2 million, resulting in a fall from \$5.5 to \$3.7 billion in reported revenue to the Federal Government.<sup>4</sup> Although this decline may in part be attributed to the fall in commodity prices, the increasing bureaucratic red tape and regulatory uncertainty has certainly played a part.<sup>5</sup>

According to the BLM, it takes operators working on Federal lands an average of 220 days to obtain an approval for an Application for Permit to Drill (APD),<sup>6</sup> whereas states are able to complete the process in a mere 33 days.<sup>7</sup> Coupled with the onslaught of regulations with compliance costs in the tens of millions,<sup>8</sup> it comes as little surprise as to why industry is fleeing from Federal land.

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<sup>1</sup> Katie Hoover, Federal Lands and Natural Resources: Overview and Selected Issues for the 114th Congress, R43429, 1.

<sup>2</sup> *Id.* at 4.

<sup>3</sup> 30 U.S.C. § 181.

<sup>4</sup> Bureau of Land Management, Total Number of Acres Under Lease as of the Last Day of the Fiscal Year, [http://www.blm.gov/style/medialib/blm/wo/MINERALS\\_REALTY\\_AND\\_RESOURCE\\_PROTECTION\\_/energy/oil\\_gas\\_statistics/data\\_sets.Par.67327.File.dat/numberofacresleasedlastday.pdf](http://www.blm.gov/style/medialib/blm/wo/MINERALS_REALTY_AND_RESOURCE_PROTECTION_/energy/oil_gas_statistics/data_sets.Par.67327.File.dat/numberofacresleasedlastday.pdf); and U.S. Office of Natural Resource Revenue, Statistical Information, <https://statistics.onrr.gov/ReportTool.aspx>

<sup>5</sup> Brian Scheid, Without incentives industry sees regulation hindering US oil production,

<http://www.platts.com/latest-news/oil/houston/without-incentives-industry-sees-regulation-hindering-21093118>.

<sup>6</sup> Bureau of Land Management, Average Application for Permit to Drill Approval Timeframes: FY2005 – FY2015, [http://www.blm.gov/wo/st/en/prog/energy/oil\\_and\\_gas/statistics/apd\\_chart.html](http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/statistics/apd_chart.html)

<sup>7</sup> Western Energy Alliance, Red Tape Nation, <https://www.westernenergyalliance.org/RedTapeNation/Delay>

<sup>8</sup> For instance, recently finalized Onshore Orders 3, 4, and 5, are projected to cost industry \$59.1 million in up-front compliance costs, and \$27.1 million annually. See Bureau of Land Management, In the Spotlight: Onshore Orders 3, 4, and 5 Fact Sheets, available at <http://www.blm.gov/wo/st/en.html>

The “Federal Lands Freedom Act” (FLFA) seeks to resolve this problem and ensure Federal lands are made attractive again to industry by providing regulatory certainty and increased revenues to both the states and Federal Government.

As states understand the unique geography, climate, and geology within their borders, they have traditionally served as the lead regulators in the oil and gas arena.<sup>9</sup> For instance, when attempting to justify its costly hydraulic fracturing regulations, even the BLM acknowledged that over 99 percent of total well completions on Federal and Indian lands nationwide occurred in states with existing hydraulic fracturing regulations. Despite this acknowledgement, the BLM promulgated a one-size-fits-all regulatory regime that failed to account for the unique challenges faced by each state. The FLFA recognizes this regulatory disconnect and offers states with “established . . . leasing, permitting, and regulatory program[s]” an avenue to obtain primacy for the leasing and regulation of federal land for the production of oil and natural gas.

Furthermore, the FLFA exempts state regulatory programs – and interested operators – from complying with the burdensome National Environmental Policy Act, the Endangered Species Act, the National Historic Preservation Act, and the Administrative Procedures Act. With the removal of these bureaucratic hurdles, industry will again be attracted to Federal lands, and Western states will continue to lead in developing the successful regulatory tools needed to address technological developments in the industry and maintain the current environmental protections within their states.

Finally, the FLFA will promote favorable economic results. Not only will jobs be created as a result of increased production, but revenues – in the form of rentals and royalties – will be generated for both the state and Federal Governments.

The Federal Government was never meant to control such a vast amount of land with so little state input. The FLFA returns power to the states, which have the experience and expertise to protect their local environments, and ensures the productive use of Federal lands allowing the states to work with the private sector to develop our vast natural resources.

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

### Section 1: Short title

Defines the act as the “*Federal Lands Freedom Act of 2015.*”

### Section 2: Findings

Outlines important Congressional findings in support of the bill including: the large number of acres (166 million) off-limit to Federal leasing, the adverse effects of decreased leasing, and the recognition of states’ ability to regulate efficiently.

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<sup>9</sup> StatesFirst, About, <http://www.statesfirstinitiative.org/about>

### Section 3: Definitions

Provides the definitions to be used in the act and excludes specific federal land (Tribal land, land within the National Park System, land within the National Wildlife Refuge System, and congressionally designated wilderness areas) from being regulated by the States.

### Section 4: State Control of Energy Development and Production on All Available Federal Land

Allows a state with an “established . . . leasing, permitting, and regulatory program” to submit a declaration to the Secretaries of the Interior, Agriculture and Energy, that such a program is in existence and upon such submission, obtain primacy to regulate energy development on Federal land within the State’s borders; a primacy designation exempts the state from having to comply with the Administrative Procedures Act, the National Historic Preservation Act, the Endangered Species Act, or the National Environmental Policy Act.

### Section 5: No Effect on Federal Revenues

Ensures the Federal Government receives its revenue share from resource production on Federal land that will be authorized by a state permit program under section 4.