HOUSE COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN BRUCE WESTERMAN

To: House Committee on Natural Resources Republican Members
From: Energy and Minerals Staff Director, Ashley Nichols x59297
Date: March 9, 2023
Subject: Markup of one bill: H.R. 1335 (Westerman), the *"TAPP American Resources Act"*

The Natural Resources Committee will hold a markup on **Thursday, March 9, 2023, at 10:00 a.m.** in room 1324 Longworth House Office Building. The bill to be considered is H.R. 1335 (Westerman).

Member offices are requested to notify Madeline Bryant (madeline.bryant@mail.house.gov) by 4:30 p.m. on Wednesday, March 8, 2023, to confirm their Members attendance at the mark-up.

I. KEY MESSAGES & TOP LINE ACTIONS

- H.R. 1335 (Westerman), *TAPP American Resources Act*, and an amendment in the nature of a substitute (ANS) thereto, will move under regular order. Requests for recorded votes will be rolled, subject to the call of the chair.

- An ANS to H.R. 1335 will be offered by Chairman Westerman. Please ensure amendments are properly drafted to the ANS.

- H.R. 1335 would restart the leasing process for oil, natural gas and coal development and streamline the permitting process for all forms of energy and mineral development on federal lands and waters; reform the National Environmental Policy Act (NEPA) to establish timelines for and clarify the scope of environmental reviews; roll back harmful royalties and fee increases imposed on energy production; and ensure parity in energy revenue sharing for states with onshore and offshore energy development.

II. EXPECTED LEGISLATION

H.R. 1335 (Westerman), "*TAPP American Resources Act*".

H.R. 1335 would restart the onshore and offshore leasing process for energy production, streamline permitting for energy and mineral development and reform NEPA to ensure more timely reviews for all projects subject to federal approval.

Title I – Onshore and Offshore Leasing and Oversight

Title I includes several provisions aimed at improving the leasing processes for onshore and offshore oil and gas, as well as geothermal, energy development. The bill would clarify that onshore lease sales must be held in each state with eligible lands quarterly and requires replacement sales for any sales that are missed. The title also includes provisions that clarify that onshore oil and gas lease reinstatements do not require a duplicative NEPA analysis. Other provisions mandate that the Secretary of the Interior resolve protested lease sales within 60 days, require filing fees for protests, and allow operators to receive a suspension of operations for a lease if the BLM is failing to hold a lease sale on adjacent acreage.

For offshore energy development, title I includes a mandate that the Secretary of the Interior hold all lease sales in the last 5-year plan and requires the Secretary to hold 2 region-wide lease sales per year in the Central Gulf and the Western Gulf and 2 region-wide lease sales per year in the Alaska Region of the Outer Continental Shelf. These requirements would all apply to future 5-year programs and the bill would ensure that the upcoming 5-year program, and all future programs, are completed expeditiously.

Title I also contains a good governance provision that would require all bureaus within the Department of the Interior to issue a report to Congress, and publish online, detailing the past and present status of leasing and permitting documents that each bureau is responsible for. The report would require the respective bureaus to explain any delays as well as how they plan to address them. This provision would better enable Congress to conduct its oversight responsibilities by highlighting certain permits or processes that are inefficient or are not in accordance with law. The title also requires the Department of the Interior (DOI) and the Department of Agriculture to submit to Congress "staff planning reports" describing how the agencies plan to hire and allocate staff to address leasing and permitting delays.

Lastly, Title I includes specific provisions for geothermal and coal leasing. For geothermal, the bill simply requires the BLM to hold annual lease sales in eligible states, rather than every other year. For coal, the bill cancels the existing moratorium on new federal coal leasing and requires the prompt issuance of any lease-by-applications currently pending at DOI.

Title II – Permitting Streamlining

Title II focuses primarily on improving federal permitting processes on federal lands and preventing frivolous litigation from blocking or delaying energy projects. Title II accomplishes these goals by reforming NEPA and codifying the 2020 NEPA regulations promulgated by the White House Council on Environmental Quality (CEQ) under the Trump administration. Among other actions, these reforms establish time and page limits for environmental reviews, strengthen the role of the lead agency, provide direction to agencies to utilize and create categorical exclusions and discourage frivolous lawsuits.

This title also includes several NEPA specific provisions that would improve the permitting process for energy projects. This includes provisions that would exempt certain low-impact actions, such as actions in existing rights-of-way and actions in previously studied areas from

NEPA; allow agencies to use previous NEPA analyses for similar actions; and clarify that the scope of NEPA analysis for an oil and gas lease or permit should be confined to the area directly impacted by the lease or permit being issued.

Title II also includes provisions that would provide certainty in the right-of-way permitting process on federal lands. This includes language that would require agencies to notify applicants if their right-of-way application is complete within 60 days. Additionally, this title would allow agencies to grant rights-of-way for up to 50 years.

The title also includes several sections specific to applications for permits to drill (APDs) for oil and gas on federal lands. These include provisions that would clarify the deferral process for APDs, require current APDs languishing at the Bureau of Land Management (BLM) to be issued within 30 days (as is required by law), reduce paperwork by increasing the APD term from two years to four years, and allow operators to access federal minerals without an APD so long as they receive a permit from the respective state. The title also includes a provision to study and assess the ability for states to take over parts of the APD process.

This title also includes a provision to streamline the permitting process for geological and geophysical surveys in the Gulf of Mexico by enabling DOI to issue pending permits.

Title II also includes a provision that would allow applicants to fund staff or technological upgrades at agencies to expedite the permitting process for energy projects.

Finally, this title includes reforms to the judicial review process for energy projects. Specifically, this bill would prevent courts from vacating oil and gas leases if the agency in charge can remedy the court's concerns. It also creates a 120-day limitation on claims for litigation involving energy projects.

Title III – Permitting for Mining Needs

Title III sets up a process to maximize efficiency and minimize delays for mining projects on federal land. This begins with designating a lead federal agency to coordinate the mine permitting process. Upon request of a project sponsor, the lead agency may enter into a memorandum of agreement with the project sponsor or state or tribal government to carry out permitting activities. This will provide more clarity throughout the process. Additionally, deadlines for completion of review under NEPA are set at 1 year for environmental assessments (EAs) and 2 years for environmental impact statements (EISs), unless a deadline extension is agreed to by the project sponsor. Further, a lead agency is authorized to adopt an EA or EIS prepared by a project sponsor if such document meets NEPA requirements.

This title also extends several existing permitting streamlining mechanisms to mining projects. For instance, to reduce delays publication of relevant federal actions in the Federal Register for all mineral projects will be delegated to the agency of jurisdiction. Minor surface disturbance on five acres or less may now receive expedited review under this bill. Additionally, this bill adds hardrock mining as a covered sector under the Fixing America's Surface Transportation (FAST) Act, and specifically includes any project that receives federal funds under the Defense

Production Act for domestic mining or processing as covered projects under the FAST Act as well, unless the project sponsor opts out.

This title also ensures that ancillary mining activities, including exploration operations and construction of a mine access road, are permitted with or without the discovery of a valuable mineral deposit. It is essential for an operator to have certainty that they will be able to explore and utilize the full area they have sited for a prospective mine, without having to go through separate review for mining support operations.

Finally, this title addresses the politicization of DOI's critical minerals list, amending the existing critical mineral criteria to prevent the unilateral exclusion of uranium from future consideration. The Secretary of the Interior is required to update the Final List of Critical Minerals with the revised criteria within 60 days of enactment of this Act.

Title IV – Federal Land Use Planning

Title IV prohibits mineral withdrawals on federal lands without a recent mineral assessment (within the previous 10-year period) and an assessment of the impacts of the withdrawal on the U.S. mineral supply chain (including negative impacts on economic and national security).

This title also requires DOI, upon discovery of a new mineral deposit in a previously withdrawn area, to recommend ways to reduce impacts the withdrawal may have on mineral exploration, development, and other mining activities.

Finally, this title requires a recent mineral assessment be part of a resource management plan, including the consideration of the economic, strategic, and national security value of mineral deposits in proposed resource management plan area.

Title V – Ensuring Competitiveness on Federal Lands

This title rolls back the onerous fees and royalties imposed on onshore and offshore operators by the so-called, "Inflation Reduction Act" or "IRA."

Specifically, for offshore oil and gas development, the IRA amended the Outer Continental Shelf Lands Act (OCSLA) to raise the minimum royalty rate for offshore oil and gas leasing on the OCS from 12.5 percent to 16.66 percent and capping royalty rates at 18.75 percent for the first 10 years of a lease and 16.66 percent thereafter.

For onshore oil and gas development, the IRA:

- Raised the minimum royalty rate for onshore oil and gas leasing from a minimum of 12.5 percent to a fixed 16.66 percent for the first 10 years after enactment then a minimum of 16.66 percent thereafter.
- Raised the minimum bid for an onshore lease from a minimum of $2 per acre to a fixed $10 per acre for the first 10 years after enactment, then a minimum of $10 per acre thereafter.

- Raised the rental rate for onshore leases to $3 for the first 2 years of a lease, $5 for the next 6 years of a lease and $15 for the remaining years of a lease for the first 10 years after enactment. After 10 years after enactment, the rental rate shall be $3 for the first 2 years of a lease, $5 for the next 6 years of a lease and *not less than* $15 for the remaining years of a lease.
- Raised minimum royalty rate for reinstated leases from 16.66 percent to 20 percent and the rental rates for reinstated leases from $10 per acre to $20 per acre.
- Imposed a new fee of $5 per acre to nominate parcels for lease sales (known as "expressions of interest fees"), with an adjustment for inflation every 4 years.
- Eliminated noncompetitive leasing and instead allows for parcels not receiving bids during a lease sale to undergo another round of competitive bidding.
- Required that royalties be assessed on all gas produced or lost through venting and flaring ("new methane royalty").

Title V of the *TAPP American Resources Act* would reverse these onerous fees and royalty increases enacted by the IRS, ensuring competitiveness of federal lands and waters in terms of investment in new energy development. Operators face significantly less regulatory hurdles on states and private lands than on federal lands and waters. Imposing new fees and higher royalties in a time of inflation and rising energy prices both disincentivizes development and leads to higher energy prices for American consumers.

Title VI – Energy Revenue Sharing

Title VI will allow for parity in revenue sharing for coastal states with offshore energy development. Specifically, this title will increase the state share of offshore oil and gas revenues for Alabama, Louisiana, Mississippi, and Texas from 37.5 percent to 50 percent. Additionally, this title includes provisions to establish revenue sharing for states with new offshore wind development off their coastline. Under this bill, states with offshore wind development will receive 50 percent of the revenues from offshore lease sales and 37.5 percent of the revenues will be deposited into the existing North American Wetlands Conservation Fund.

Finally, this title will repeal a 2 percent administrative fee imposed on energy revenue sharing for onshore states with energy development on federal lands within their borders.

This legislation is a combination of three bills that previously received legislative hearings in the Committee in the 118th Congress. Hearing information, including testimony and the hearing memos, may be viewed here and here.

Staff contacts: Ashley Nichols (Ashley.Nichols@mail.house.gov) x5-9297.

III. CBO SCORES

None available.

IV. EFFECT ON CURRENT LAW (RAMSEYER)

H.R. 1335 (Westerman) - TAPP American Resources Act