

Committee on Natural Resources

Rob Bishop Chairman
Mark-Up Memorandum

July 24, 2017

To: All Natural Resources Committee Members

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

Mark-Up: **H.R. 2316 (Rep. Glenn Thompson)**, To amend the Mineral Leasing Act and the Energy Policy Act of 1992 to repeal provisions relating only to the Allegheny National Forest.
July 25 & 26, 2017; 1324 Longworth House Office Building

H.R. 2316 (Rep. Thompson), “Cooperative Management of Mineral Rights Act of 2017”

Summary of the Bill

The purpose of this bill is to repeal existing provisions of the Minerals Leasing Act and the Energy Policy Act of 1992 to comply with a series of court decisions that prohibit the U.S. Forest Service from regulating oil and gas development of private mineral estates. The provisions apply exclusively to split-estate acreage within the Allegheny National Forest, located in northwestern Pennsylvania.

Cosponsors

Rep. Gene Green (D-TX)

Background

The Allegheny National Forest (“ANF”), located in Northwestern Pennsylvania, spans 517,000 acres and is home to a robust oil and gas industry.¹ The ANF is located just 15 miles from the first commercial oil well drilled in the United States.² The federal government, through the Department of Agriculture, acquired the surface land in 1923 to create the national forest, with private owners retaining title to the subsurface mineral estate.³ Private mineral owners have the right to develop their interests, and are entitled to reasonable use of the surface to access their

¹ U.S. Forest Service, Allegheny National Forest, <https://www.fs.usda.gov/allegheny>.

² Crowell Moring, Client Alert: Federal District Court Grants Final Declaratory Relief to Energy Resource Producers in Marcellus Shale Region, Vacating Harmful U.S. Forest Service/Sierra Club Settlement, <https://www.crowell.com/NewsEvents/AlertsNewsletters/all/Federal-District-Court-Grants-Final-Declaratory-Relief-to-Energy-Resource-Producers-in-Marcellus-Shale-Region-Vacating-Harmful-US-Forest-Service-Sierra-Club-Settlement/pdf>.

³ *Id.*

minerals, pursuant to the Weeks Act.⁴ Until 2008, private mineral owners worked cooperatively with the Forest Service to develop oil and gas resources. The mineral owners routinely provided 60-day notification of drilling plans, and the Forest Service issued a “Notice to Proceed,” or “NTP.”

However, in 2007, the Forest Service deemed the issuance of an NTP a “major federal action” that invoked the National Environmental Policy Act (“NEPA”). This designation required a full environmental analysis of the ANF, and environmental groups sued the Forest Service to enforce the new designation. The Forest Service settled with these groups and issued a moratorium on issuing NTPs until the completion of the NEPA analysis.⁵

This departure from decades of practice in the ANF resulted in severe consequences for the families and businesses developing the mineral estate. The oil and gas industry sued, claiming that the Forest Service lacked the authority to ban development of the private mineral estate. In 2009, the U.S. District Court for the Western District of Pennsylvania agreed, and overturned the moratorium on oil and gas development in the ANF.⁶ The court reaffirmed the dominance of the underlying mineral estate, as granted by the Weeks Act. This decision was confirmed on appeal in 2013.⁷

In accordance with the federal court decisions, H.R. 2316 fully repeals the invalidated language from statute as it applies to the ANF. Throughout the litigation, the Forest Service claimed Section 2508 of the Energy Policy Act of 1992, codified in the Mineral Leasing Act 30 U.S.C. Section 226 (o), provided authority to restrict drilling operations. Courts definitively struck down this language and its corresponding adverse effects on the local and state economy. Had these regulations not been challenged, the Forest Service could have applied the rules to the 11 million acres of split estate lands throughout the country, devastating mineral owners and local and state economies.

A similar version of this bill passed the House during the 114th Congress, and was referred to the Senate Committee on Energy and Natural Resources on September 7, 2016.

Major Provisions/Analysis of H.R. 2316

Section 1. Short Title

This section provides the short title as the Cooperative Management of Mineral Rights Act of 2017.

⁴ The acquisition by the federal government of surface rights for lands where mineral rights were privately held was expressly allowed by the Weeks Act, which states, “Such acquisition by the United States shall in no case be defeated because of located or denied rights of way, easements, and reservations, which, from their nature will, in the opinion of the secretary of Agriculture, in no manner interfere with the use of the lands so encumbered...” 16 U.S.C. Section 518.

⁵ Settlement Agreement, *Forest Service Employees for Environmental Ethics v. U.S. Forest Service*, No. 08-323-SJM (W.D. PA 2009), available at https://pennstatelaw.psu.edu/file/aglaw/Forest_service_settlement.pdf.

⁶ *Minard Run Oil Co. v. U.S. Forest Service*, 1980 U.S. Dist. LEXIS 9570 (W.D. PA 1980).

⁷ *Minard Run Oil Co. v. U.S. Forest Service*, 670 F.3d 236 (3d Cir. 2011).

Section 2. Repeal of Provisions Regarding the Allegheny National Forest

Subsection (a) repeals the sections of the law that the Forest Service used to apply NEPA requirements to restrict surface operations within the forest.

Subsection (b) maintains the 60 day notice period for drilling plans in accordance with the Minard Run Oil court decision, and reiterates the bill does not limit the existing authority of the Forest Service.

Subsection (c) maintains the Forest Service's ability to harvest and market timber in the ANF.

Cost

While there is no cost estimate available from the CBO at this time for this version of the bill, the 114th version, H.R. 3881, was estimated to have a negligible effect on spending. This bill should be similarly scored.

Administration Position

Unknown at this time.

Anticipated Amendments

No anticipated amendments.

Effect on Current Law (Ramseyer)

Showing Current Law as Amended by H.R. 2316
[text proposed to be deleted bracketed and highlighted in blue]

Section 17 of the Mineral Leasing Act (30 U.S.C 226)

§226. Lease of oil and gas lands

* * * * *

[(o) Certain outstanding oil and gas deposits

(1) Prior to the commencement of surface-disturbing activities relating to the development of oil and gas deposits on lands described under paragraph (5), the Secretary of Agriculture shall require, pursuant to regulations promulgated by the Secretary, that such activities be subject to terms and conditions as provided under paragraph (2).

(2) The terms and conditions referred to in paragraph (1) shall require that reasonable advance notice be furnished to the Secretary of Agriculture at least 60 days prior to the commencement of surface disturbing activities.

(3) Advance notice under paragraph (2) shall include each of the following items of information:

(A) A designated field representative.

(B) A map showing the location and dimensions of all improvements, including but not limited to, well sites and road and pipeline accesses.

(C) A plan of operations, of an interim character if necessary, setting forth a schedule for construction and drilling.

(D) A plan of erosion and sedimentation control.

(E) Proof of ownership of mineral title.

Nothing in this subsection shall be construed to affect any authority of the State in which the lands concerned are located to impose any requirements with respect to such oil and gas operations.

(4) The person proposing to develop oil and gas deposits on lands described under paragraph (5) shall either-

(A) permit the Secretary to market merchantable timber owned by the United States on lands subject to such activities; or

(B) arrange to purchase merchantable timber on lands subject to such surface disturbing activities from the Secretary of Agriculture, or otherwise arrange for the disposition of such merchantable timber, upon such terms and upon such advance notice of the items referred to in subparagraphs (A) through (E) of paragraph (3) as the Secretary may accept.

(5)(A) The lands referred to in this subsection are those lands referenced in subparagraph (B) which are under the administration of the Secretary of Agriculture where the United States acquired an interest in such lands pursuant to the Act of March 1, 1911 (36 Stat. 961 and following), but does not have an interest in oil and gas deposits that may be present under such lands. This subsection does not apply to any such lands where, under the provisions of its acquisition of an interest in the lands, the United States is to acquire any oil and gas deposits that may be present under such lands in the future but such interest has not yet vested with the United States.

(B) This subsection shall only apply in the Allegheny National Forest.]

Section 2508 of the Energy Policy Act of 1992 (Public Law 102-486)

[SEC. 2508. CERTAIN OUTSTANDING OIL AND GAS.]

(a) IN GENERAL- Section 17 of the Mineral Leasing Act (30 U.S.C. 226) is amended by adding the following new subsection after subsection (n):

(o) CERTAIN OUTSTANDING OIL AND GAS- (1) Prior to the commencement of surface-disturbing activities relating to the development of oil and gas deposits on lands described under paragraph (5), the Secretary of Agriculture shall require, pursuant to regulations promulgated by the Secretary, that such activities be subject to terms and conditions as provided under paragraph (2).

(2) The terms and conditions referred to in paragraph (1) shall require that reasonable advance notice be furnished to the Secretary of Agriculture at least 60 days prior to the commencement of surface disturbing activities.

(3) Advance notice under paragraph (2) shall include each of the following items of information:

(A) A designated field representative.

(B) A map showing the location and dimensions of all improvements, including but not limited to, well sites and road and pipeline accesses.

(C) A plan of operations, of an interim character if necessary, setting forth a schedule for construction and drilling.

(D) A plan of erosion and sedimentation control.

(E) Proof of ownership of mineral title.

Nothing in this subsection shall be construed to affect any authority of the State in which the lands concerned are located to impose any requirements with respect to such oil and gas operations.

(4) The person proposing to develop oil and gas deposits on lands described under paragraph (5) shall either--

(A) permit the Secretary to market merchantable timber owned by the United States on lands subject to such activities; or

(B) arrange to purchase merchantable timber on lands subject to such surface disturbing activities from the Secretary of Agriculture, or otherwise arrange for the disposition of such merchantable timber, upon such terms and upon such advance notice of the items referred to in subparagraphs (A) through (E) of paragraph (3) as the Secretary may accept.

(5)(A) The lands referred to in this subsection are those lands referenced in subparagraph (B) which are under the administration of the Secretary of Agriculture where the United States acquired an interest in such lands pursuant to the Act of March 1, 1911 (36 Stat. 961 and following), but does not have an interest in oil and gas deposits that may be present under such lands. This subsection does not apply to any such lands where, under the provisions of its acquisition of an interest in the lands, the United States is to acquire any oil and gas deposits that may be present under such lands in the future but such interest has not yet vested with the United States.

(B) This subsection shall only apply in the Allegheny National Forest.

(b) REGULATIONS- Within 90 days after the enactment of this Act the Secretary of Agriculture shall promulgate regulations to implement the amendment made by subsection (a).