

**Statement of
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House Natural Resources Committee
Subcommittee on Energy & Mineral Resources
H.R. 5259, Certainty for States & Tribes Act
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Chairman Lamborn, Ranking Member Lowenthal, and Members of the Subcommittee, thank you for the opportunity to discuss the views of the Department of the Interior (Department or DOI) on H.R. 5259, the Certainty for States and Tribes Act. H.R. 5259 would direct the Secretary of the Interior (Secretary) to reestablish with significant modifications the Royalty Policy Committee (RPC) under the Office of Natural Resource Revenue (ONRR). The bill would also impose a time limit on the completion of the Department's "Discretionary Programmatic Environmental Impact Statement to Modernize the Federal Coal Program" (Coal PEIS); overturn part of the Pause on coal leasing; and require the Secretary to conduct a sale and issue coal leases within a year of completed National Environmental Policy Act (NEPA) reviews, regardless of whether the application is exempt from the Pause. In addition, it would constrain DOI's rulemaking authority with respect to mineral leases by prescribing external reviews, authorizing delay requests, and requiring modification of proposed regulations in some circumstances.

While the Department shares the Subcommittee's goals of promoting meaningful consultation with non-Federal partners regarding the regulation and leasing of publicly owned minerals, as well as expediting review of minerals policy and programs, the Department strongly objects to the approach proposed under H.R. 5259.

Background

Royalty Policy Committee (RPC)

The RPC was established by charter in 1995 under the Federal Advisory Committee Act (FACA). The RPC advised the Secretary on royalty management issues and other mineral-related policies, and also provided a forum for mineral lessees, operators, revenue payers, royalty recipients, government agencies and the interested public to express their views on those issues. The Associate Director of the former Minerals Revenue Management program within the Minerals Management Service (MMS) served as the non-voting Designated Federal Officer of the RPC, with both the Bureau of Land Management (BLM) and Bureau of Indian Affairs (BIA) participating as "at large," ex officio, non-voting, Federal agency members. Non-Federal members were appointed by the Secretary to represent state and tribal governments, public interest groups, and the energy industry. The RPC elected, from its membership, a Chairperson and a Vice Chairperson to serve a 2-year term.

The RPC charter required biennial review and could be renewed in two-year increments by the Secretary as long as the MMS required the expertise and advice of the Committee. The RPC was terminated on April 2, 2014.

Coal Programmatic Environmental Impact Statement (PEIS)

Coal has been an important domestic energy source for decades and will continue to be so in the years ahead. The Federal government plays a major role in facilitating and regulating U.S. coal production, as approximately 41 percent of annual U.S. coal production comes from Federal land. The Federal government has a responsibility to all Americans to manage the public's coal resources in a responsible and sustainable way to help meet our energy needs, provide taxpayers a fair return, and protect health, safety, and the environment.

On January 15, 2016, the Secretary issued Secretarial Order Number 3338, directing the BLM to conduct a comprehensive review of the Federal coal program. The purpose of the Coal PEIS is to identify and evaluate potential reforms to the Federal coal program by examining a broad array of concerns, including how, when, and where to lease; how to account for the environmental and public health impacts of Federal coal production; and, notably, how to ensure American taxpayers are earning a fair return for the use of their public resources consistent with our statutory obligation. The Coal PEIS scoping process, which is currently underway, will establish the full scope and content of the review. The Secretarial Order responds to concerns raised by members of Congress, other interested stakeholders, and the public; feedback received from a series of public listening sessions last year in Montana, Wyoming, Colorado, New Mexico and Washington, D.C.; and the Government Accountability Office's and Department of the Interior Office of the Inspector General's critiques of the current Federal coal program.

While the Coal PEIS is prepared, the Secretary has directed the BLM to place a pause on the issuance of new Federal coal leases for thermal (steam) coal subject to limited, enumerated exemptions and exclusions (Pause). The Pause does not apply to existing coal production activities, and is consistent with the practice during two prior programmatic reviews of the Federal coal program, which occurred during the 1970s and 1980s. During the current Pause, the BLM cannot hold coal lease sales, nor process a new lease application for surface or underground coal, unless the application meets one of the exceptions or exemptions in the Order. For pending applications that are subject to the Pause, the BLM may continue to process up to, but not including, issuance of a final decision to hold a sale or modify a lease.

Preparation of the Coal PEIS is currently in progress. The BLM is accepting public comments and will complete a series of public meetings later this month to help inform the scope of the review. The BLM estimates it will take approximately three years to complete the PEIS, with extensive additional opportunities for public participation along the way.

H.R. 5259 – RPC (Secs. 2 & 3)

H.R. 5259 would reestablish the RPC through modification of the RPC's 2010 charter, replacing MMS with ONRR as the agency to which the Committee reports. The bill directs that the Committee meet at least once a year and alters the non-Federal membership structure. As

reconstituted, the Committee would include at least five members representing the Governors of States that each receive more than \$10 million annually in royalty revenues from Federal leases. Also, tribal membership would be limited to no more than five members representing mineral-producing Indian tribes.

H.R. 5259 would create a subcommittee of the RPC comprising solely state and tribal participants, referred to as the State and Tribal Resources Board (Board). The RPC would be required to assess and issue a report on the potential impact of any DOI proposed mineral leasing regulation or policy related to exploration, development, production, or valuation of oil, gas, or coal within 180 days of the Department's announcement of a new regulation or policy (or within 180 days of the enactment of the bill, for policies and regulations pending as of the date of enactment). The report would be required to include a determination of the impact of the policy or regulation.

In addition, with respect to a regulation related to mineral leasing policy on Federal land, H.R. 5259 would require that the Board prepare a report assessing the economic impact of the regulation on school funding, public safety, and other essential state or tribal government services. If the Board determines that the proposed regulation would have a negative state or tribal budgetary impact, the Board could request a delay of 180 days in the finalization of the regulation for further review and consultation.

Before issuing the final regulation, the Secretary would be required to revise the proposed regulation to address any negative state or tribal economic impacts identified by the RPC. The Secretary would also be required to explain in the final regulation why the Department did or did not take into account recommendations from the RPC report when finalizing the regulation.

Analysis

The Department remains committed to promoting opportunities for meaningful stakeholder engagement on minerals leasing policy; however, we do not support the provisions of H.R. 5259 related to reestablishing the RPC, establishing the State and Tribal Resources Board, and we strongly object to giving these external bodies authority to mandate changes in DOI proposed regulations. Many of the provisions in H.R. 5259 represent an unnecessary infringement upon DOI's administrative authority, and could restrict and delay much needed modernization of policy and regulations related to exploration, development, production, and valuation of Federal or Indian oil, gas, or coal.

Most significantly, H.R. 5259 would make a potentially sweeping substantive change in the existing law governing leasing of public oil, gas, and coal by requiring the Secretary to revise any proposed regulation related to mineral leasing of oil, gas or coal "to avoid any negative State or tribal economic impact determined by the [State and Tribal Resources Board under the Royalty Policy] Committee." Such a requirement would constrain the Secretary's long-standing authority to lease public oil, gas, and coal resources in the best interests of the American public under the specific provisions of the Mineral Leasing Act of 1920, as subsequently amended, and other laws, and to lease minerals that the United States holds in trust for individual Indians and Indian tribes (Indian mineral owners) under the Act of March 3, 1909; the Indian Mineral

Leasing Act; and the Indian Mineral Development Act, for the benefit of those individuals and tribes. While the extent to which this language is intended to override existing statutes is not entirely clear, it could be read to require changes to proposed rules on behalf of the economic interests of certain parties without regard to the Secretary's existing legal obligation to protect health, safety, and other significant resources. As well as restricting the Secretary's authority and discretion under current law, this change could lead to confusion and provide additional grounds for legal challenges to final DOI rules.

H.R. 5259 would also have the potential to delay regulations related to mineral leasing of oil, gas, and coal. Delay is a particular concern, given that most of the regulations currently governing leasing of energy minerals are decades old and do not reflect current technologies, capabilities, practices, and economic conditions. The bill would give the Board authority to request up to a 180-day delay in finalization of a regulation, for further analysis and consultation. Under H.R. 5259, the Secretary could ultimately be required to revise the subject policy or regulation to respond to the Board's report, which would create additional significant delays to finalization of critical minerals policy and regulations.

In addition, the Department is concerned that the term "policy" is not defined and could be broadly interpreted to apply to internal policies related to exploration, development, production, and valuation of Federal or Indian minerals. The bill as written has a very broad scope that might apply to an extensive range of DOI guidance, potentially adding substantial costs to DOI operations.

Moreover, the Department believes that reinstatement of the RPC is unnecessary, as the Department has in place various advisory bodies to address key minerals issues. For example, the Department has partnered with 10 states and 6 tribes to conduct compliance reviews and audits of Federal and tribal leases. As a testament to this collaborative partnership, representatives from the states and tribes formed a constituent group called the State and Tribal Royalty Audit Committee (STRAC). This group meets semi-annually with ONRR to coordinate on compliance work and provide input into the Department's revenue management activities, policies, and procedures.

In addition to the input received from STRAC, the Department also receives input from the U.S. Extractive Industries Transparency Initiative (USEITI) Advisory Committee, a Federal Advisory Committee Act (FACA) committee chartered in 2014. Membership on the USEITI Advisory Committee includes representatives from the extractive industry, civil society organizations (such as non-governmental organizations supporting good governance or environmental protection), and Federal, state, and local government agencies, as well as tribal government and individual Indian mineral owner representatives. As part of the USEITI implementation, the Advisory Committee provides advice and guidance to the Secretary on open government and data transparency issues, as well as revenue management policy. Both STRAC and the USEITI Advisory Committee provide oversight on the collection and disbursement of the Nation's mineral resource revenues and help ensure full and fair return to the American people for use of these public resources.

The BLM also works directly with Resource Advisory Councils, local citizen-based groups that provide advice on the management of public lands and resources. Additionally, the BLM maintains close relationships with and provides for regular discussions with and input from the National Association of Counties, the National Governors Association (NGA), and the Interstate Oil and Gas Compact Commission. For example, the BLM currently is exploring a partnership for shale education with the NGA. The BLM and other Federal agencies also serve on the Bakken Federal Executive Group, as well as the Indian Energy and Minerals Steering Committee, to help with coordination and meet the needs of stakeholders.

The Department also maintains internal advisory bodies, such as the Gas and Oil Measurement Team (GOMT), a DOI panel composed of technical experts from the BLM, ONRR, and the Bureau of Safety and Environmental Enforcement (BSEE), with advisory participation by the Bureau of Indian Affairs (BIA). The GOMT provides technical and regulatory expertise regarding new technology, standards, and issues related to oil and gas measurement. The GOMT reports to the internal Onshore and Offshore Coordination Committee (OOC), made up of representatives from the BIA, BLM, Bureau of Ocean Energy Management (BOEM), BSEE, and ONRR. The OOC provides the Department with oversight and policy guidance to improve internal coordination and communication among DOI's onshore and offshore oil and gas sub-agencies, and to strengthen policies and procedures related to onshore and offshore oil and gas management. Another internal advisory body, the Indian Energy and Mineral Steering Committee (IEMSC) is composed of senior Departmental managers from BLM, ONRR, BIA, Office of the Special Trustee for American Indians, and the Office of Surface Mining, Reclamation, and Enforcement. The IEMSC serves as a coordinating body for Indian mineral development, and is responsible for the establishment of the Farmington Indian Minerals Office "one-stop shop" and the Indian Energy Service Center strike team and for development of the Standard Operating Procedures for Federal and Indian Mineral Development.

In light of these many and varied sources of advice on Federal minerals policy, the RPC would be duplicative and unnecessary.

Finally, the Department is concerned that the proposed composition of the State and Tribal Resources Board is overly narrow. Advisory committees to the Federal government commonly include representatives of a broad range of relevant interests, in recognition that government policy is informed by hearing from those with varied views and perspectives. While the economic interest of States and Tribes with substantial coal, oil, and gas resources is a very important factor in the Department's decision-making on these matters, it is not the only interest that the Department must consider under current law. The Federal government administers public minerals for the benefit of all Americans, and in doing so, the Department must consider a wide variety of views and perspectives. Further, when considering reasonable alternatives for development of Indian minerals, the Secretary must choose the alternative that is in the best interest of the Indian mineral owner. As previously constituted, the Royalty Policy Committee included some representation of interests besides those of mineral-producing States and Tribes, but the proposed State and Tribal Resources Board would have no such breadth and balance.

H.R. 5259 – Coal PEIS (Secs. 4-6)

H.R. 5259 would require the Secretary to confer with the newly established Review Board on implementation of the Coal PEIS. The Review Board would consist of representatives of the governors of each state that collects more than \$10 million annually in mineral revenue for production of Federal or Indian coal leases. The bill also sets January 15, 2019, as the deadline for completing the PEIS, terminating the Pause on coal leasing on that date and barring any Federal expenditure on the Coal PEIS thereafter. Additionally, H.R. 5259 states that there would be no requirement for the Secretary to conduct or complete the Coal PEIS at any time after January 20, 2017.

H.R. 5259 would also limit the scope of the current Pause on coal leasing by exempting any leases by application or lease modifications for which the BLM, as of January 15, 2016, had begun its review under section 102 of the NEPA.

In addition, H.R. 5259 would require the Secretary to conduct a lease sale (for a lease by application accepted by the Secretary) and issue a coal lease – or approve a modification (for a request for a lease modification accepted by the Secretary) – not later than one year after the BLM completes the applicable environmental review under NEPA, regardless of whether the application is exempt from the Pause. The only exception to this requirement is if the applicant no longer seeks the lease or modification to the lease.

Analysis

The Department strongly opposes the bill's provision to block use of Federal funds and declare the Coal PEIS complete as of January 15, 2019, regardless of whether the Coal PEIS is actually complete as of that date. The BLM has estimated that the PEIS will take approximately three years to complete. A programmatic review of the Federal coal program has not been undertaken in more than 30 years, however, and the Department is committed to allowing ample opportunity for robust public participation throughout the review. The Coal PEIS will analyze a host of complex issues related to the realities of today's economy and current understanding of environmental and public health impacts from coal production. The review will also explore how, when, and where to lease; whether U.S. coal exports should factor into leasing or other program decisions; how the management, availability, and pricing of Federal coal impact domestic and foreign markets and energy portfolios; and the role of Federal coal in fulfilling the energy needs of the United States. This is a complex undertaking that will take time, and the Department believes that setting an absolute three-year deadline is not reasonable, given the scope of the task.

The Department also strongly opposes the bill's provision that would exclude from the current Pause on coal leasing all coal leases by application and coal lease modifications for which the BLM had started NEPA review as of January 15, 2016. In issuing the Order with the Pause on new coal leasing during development of the Coal PEIS, the Secretary struck a careful balance. The Order ensures that current production continues unaffected, and that applications with final NEPA decisions may go forward to lease sale. It also provides limited exclusions to the Pause including for small modifications and emergency situations. New applications and modification

requests after the date of the Order may be accepted, but the BLM will not begin the NEPA analysis until the Pause is lifted, unless the application fits within an exemption or exclusion to the Pause. For pending applications and modifications as of the date of the Secretarial Order that do not fit within an exemption or exclusion to the Pause, the Order provides that NEPA analysis and other preparatory work may continue, but the BLM will not proceed to a final sale or modify a lease until completion of the PEIS.

Further, the Department estimates that there is enough coal already under lease to sustain current levels of production from Federal lands for approximately 20 years. Given the serious concerns raised about the Federal coal program and the large reserves of undeveloped coal already under lease, it would be irresponsible to continue to issue new leases under outdated rules and processes. The Pause is consistent with the practice during two previous programmatic reviews, and it ensures that leasing decisions can benefit from the recommendations that come out of the review. The provision in H.R. 5259 exempting from the Pause all lease applications and requests for modifications in process as of January 15, 2016, would undermine the careful balance struck by the Secretary, lock hundreds of millions of tons of coal into leases under current, possibly inadequate, program terms, and substantially diminish the impact of any reforms adopted pursuant to the Coal PEIS.

Finally, H.R. 5259 establishes an unnecessary and arbitrary deadline on issuance of leases, and it could be read to eliminate the Secretary's discretion not to offer for sale a coal lease or lease modification requested by an applicant. Section 6 of the bill would set a deadline for action on a lease by application or modification request "accepted by the Secretary" of one year after the date of completion of the applicable NEPA analysis. Upon expiration of the deadline, the bill would require the Secretary to "conduct the lease sale and issue the lease, or approve the modification." The only exception provided in the bill is if the applicant indicates in writing that the applicant no longer seeks the lease or modification. While the intent of the provision is unclear because of the uncertainty surrounding the meaning of the phrase "accepted by the Secretary," it could be read to require lease issuance, thereby rendering the required NEPA review largely moot by preventing the Secretary from relying on that review in making a leasing decision, overturning decades of existing law and precedent, and severely circumscribing the Secretary's authority to appropriately administer public lands and mineral resources and protect the public interest. Even if that is not the intent, it is not clear why establishing such a deadline for lease issuance is necessary. Finally, such an arbitrary deadline could eliminate the Secretary's flexibility to address unanticipated circumstances.

H.R. 5259 – Offshore Oil & Gas Programs

H.R. 5259, as written, is unclear regarding the extent to which it might affect the Department's policies and regulations related to oil and gas development on the Outer Continental Shelf (OCS). The RPC, as previously chartered, had no role in the OCS program, except for matters of royalty valuation and revenue collection processes. The bill would revise the RPC charter to refer only to ONRR, in place of references to the MMS and the Minerals Revenue Management, while at the same time expanding the RPC's charter to allow for the RPC's assessment of "any proposed regulation or policy related to mineral leasing policy for Federal land for exploration, development, or production of oil, gas, or coal." This bill language would create ambiguity

about whether RPC review extends only to ONRR policies and regulations or also to BOEM and BSEE policies and regulations. If this bill is applicable to the OCS program generally, the provision would give the Committee a unique role in reviewing the Department's policies and regulations outside of the process established by the OCS Lands Act, and in general, might delay the Department's ability to execute functions of its OCS programs related to oil and gas exploration, development or production in a timely manner.

Conclusion

Thank you for the opportunity to testify. I will be glad to answer any questions you may have.