

Subcommittee on Energy and Mineral Resources

Paul Gosar, Chairman
Hearing Memorandum

June 4, 2018

To: Members of the Subcommittee on Energy and Mineral Resources

From: Majority Committee Staff Ashley Nichols (x5-9297)
Subcommittee on Energy and Mineral Resources

Hearing: Legislative hearing on a **Discussion Draft of H.R. ____ (Rep. John Curtis)**, To amend the Mineral Leasing Act to authorize Notifications for Permit to Drill.
June 6, 2018, at 2:00 PM; 1324 Longworth House Office Building

Summary of the Bill

This discussion draft authorizes Notifications for Permit to Drill for certain oil and gas drilling operations in lieu of Applications of Permit to Drill and directs the Secretary of the Interior to promulgate regulations for a Notification for Permit to Drill program.

Invited Witnesses (in alphabetical order)

Mr. John Baza
Director, Utah Division of Oil, Gas and Mining
Salt Lake City, UT

The Honorable Susana Martinez
Governor
State of New Mexico

Ms. Katharine MacGregor
Deputy Assistant Secretary for Land and Minerals Management
Department of the Interior
Washington, D.C.

The Honorable Ken McQueen
Secretary
Energy, Minerals and Natural Resources Department
State of New Mexico

Mr. Dennis Willis
Price, UT

Background

Under the Mineral Leasing Act (30 U.S.C. 181 et seq.), oil and gas operators are required to submit an Application of Permit to Drill (APD) for drilling activities on federal lands.¹ Due to extensive regulatory requirements and lengthy environmental reviews under the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 et seq.), the Bureau of Land Management (BLM) has accumulated a significant backlog of APDs, some of which have been pending for a year or more.² In fact, in 2017, BLM processed APDs in an average of 260 days.³ By comparison, States with oil and gas regulatory programs process drilling permits for activities on State and private land in an average of 30 days.⁴

Under the Mineral Leasing Act of 1920, the Department of the Interior must evaluate the surface impacts of drilling activities proposed in APDs before approval.⁵ BLM must analyze the surface use plan and drilling plan submitted in each APD and determine the potential impacts of proposed drilling activities on species, cultural artifacts, historic sites and the human environment. While certain drilling activities have greater environmental impacts than others, each APD is subject to review by BLM under NEPA. Some drilling activities may have a very insignificant impact on the environment, yet these APDs must wait in line behind other applications that require extensive environmental review and analysis.

This legislation would authorize a permitting program tailored for the approval of drilling operations that would have little or no environmental impact. Under this program, an oil and gas operator could opt to submit a Notification of Permit to Drill (NPD) in lieu of an APD if the drilling activities proposed meet certain criteria and do not pose environmental risk. This bill establishes criteria that each NPD must meet and directs the Secretary of the Interior to promulgate regulations establishing an NPD program within the Department. If an NPD meets all the statutory and regulatory requirements, BLM does not need to take further action to approve the permit once submitted, as approval is granted by meeting the requirements set forth in statute and regulation. BLM will not be required to conduct any site inspections or environmental review under NEPA for individual NPDs submitted by operators.

This legislation will streamline the oil and gas permitting process by allowing BLM to expedite the approval of drilling activities that pose little or no environmental harm. The authorization of an NPD program will reduce the time and personnel needed to approve such drilling operations, allowing BLM to prioritize its limited resources on reviewing activities that have a larger environmental footprint.

¹ 30 U.S.C. § 181.

² Letter from Brian Steed, Deputy Director of Policy and Programs, Department of the Interior, to Senator Mike Enzi. February 26, 2018.

³ Bureau of Land Management. Oil and Gas Statistics. <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/oil-and-gas-statistics>

⁴ Western Energy Alliance. Knowledge Center. Onshore Development.

<https://www.westernenergyalliance.org/knowledge-center/land/onshore-development/permitting>

⁵ 30 U.S.C. § 181

Major Provisions of the Bill

- Amends the Mineral Leasing Act of 1920 to authorize an NPD program and directs the Secretary of the Interior to promulgate regulations for an NPD program within one year of enactment.
- Operators or lessees may submit an NPD for drilling and production activities on exploratory, development and service wells on federal oil and gas leases in lieu of an APD, if the proposed activity qualifies.
- An applicant must include similar information required by the APD process, as well as any other information required by order, notice or regulation issued by the Secretary.
- To be considered for the NPD process, an applicant must either:
 - Demonstrate that the proposed drilling operations are located in a developed field for which an approved land use plan or NEPA analysis exists; operations do not increase the surface disturbance at the proposed site; the proposed operations will impact less than ten acres so long as the total surface disturbance of a lease is less than 150 acres; the proposed activity is within the boundaries of a communitization or unit agreement containing minerals leased by a State or private mineral owner for which a State regulatory body has approved a permit; or a NEPA categorical exclusion applies; OR
 - Include an environmental review concluding the actions authorized under the NPD pose no significant effects under NEPA or the National Historic Preservation Act of 1966 (NHPA, 54 U.S.C. 300101 et seq.). Such environmental and archaeological reviews may be completed by third-party contractors pre-approved by BLM.
- Upon receipt of an NPD, the Secretary of the Interior has 15 days to inform the applicant if the NPD is incomplete. If the Secretary finds that a completed NPD does not sufficiently meet the criteria listed above, the Secretary may object to an NPD and the operator may respond to resolve any objections.
- After receiving a completed NPD, the Secretary has 45 days to issue any written objections to the NPD. If no objections are issued, drilling and production activities described in the NPD can commence, without further approval from the Secretary. Upon receipt of any written objections, the applicant shall be given 45 days to address such objection in writing to the Secretary.
- Unlike the approval process for APDs, the Secretary may not require site inspections for NPDs. However, the Secretary may conduct inspections of and evaluate activities authorized by any permit for enforcement action.

- The Secretary shall not require any additional surface use permits for actions authorized under an NPD.
- The Secretary may object to an NPD if it is likely that the proposed actions will jeopardize the continued existence of a threatened or endangered species listed under the Endangered Species Act of 1973 (ESA, 16 U.S.C. 1531 et seq.) or cause harm to cultural artifacts or sites protected under NHPA. The Secretary may require consultations under ESA or NHPA and attach conditions to an NPD based on those consultations.
- Individual NPDs will not be subject to further analysis under NEPA, but the development of regulations pursuant to this legislation shall be considered a major federal action under NEPA.
- This legislation also prohibits the Secretary of the Interior from requiring a BLM-issued permit for drilling activities on non-federal land or to develop non-federal minerals if such activities are authorized by a State permit which has been provided to the Secretary.

Administration Position

Unknown.

Cost

CBO has not scored the legislation.

Effect on Current Law (Ramseyer)

Showing Current Law as amended by discussion draft bill on the Mineral Leasing Act (Curtis)

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

The Mineral Leasing Act (30 U.S.C. 181 et seq.)

* * * * *

SEC. 43. LANDS NOT SUBJECTED TO OIL AND GAS LEASING.

(a) PROHIBITION.—The Secretary shall not issue any lease under this Act or under the Geothermal Steam Act of 1970 on any of the following Federal lands:

- (1) Lands recommended for wilderness allocation by the surface managing agency.
- (2) Lands within Bureau of Land Management wilderness study areas.
- (3) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area.
- (4) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96–119), unless such

lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an act of Congress.

(b) EXPLORATION.—In the case of any area of National Forest or public lands subject to this section, nothing in this section shall affect any authority of the Secretary of the Interior (or for National Forest Lands reserved from the public domain, the Secretary of Agriculture) to issue permits for exploration for oil and gas, coal, oil shale, phosphate, potassium, sulphur, gilsonite or geothermal resources by means not requiring construction of roads or improvement of existing roads if such activity is conducted in a manner compatible with the preservation of the wilderness environment. (30 U.S.C. 226–3)

SEC. 44. NOTOFICATIONS OF PERMIT TO DRILL.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary shall establish procedures by which an operator may conduct drilling and production activities on eligible Federal land after sending to the Secretary a notification of permit to drill under this section in lieu of obtaining an APD.

(b) CONTENT OF APPLICATION.—To be considered a complete notification of permit to drill under this section, an operator shall include in the notification of permit to drill submitted under this section the following:

- (1) A notification of permit to drill form.
- (2) A surface use plan of operations.
- (3) A drilling plan.
- (4) A well play certified by a registered surveyor.
- (5) An operator certification.
- (6) Evidence of bond coverage.
- (7) A notification of permit to drill fee in an amount to be determined by the Secretary.
- (8) Any other information required by order, notice, or regulation issued by the Secretary pursuant to this section.

(c) JUSTIFICATION FOR OBJECTION.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the Secretary may not object to a notification of permit to drill under this section if the application—

(A) demonstrates that the drilling operations described in the notification of permit to drill will be located in—

- (i) a developed field, where there are existing oil and gas wells within a 5 mile radius and for which an approved land use plan or environmental review was prepared within the last 10 years under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) that analyzed such drilling operations as a reasonably foreseeable activity;
- (ii) a location or well pad site at which drilling has occurred within 10 years before the date of spudding the well and the proposed operations do not increase the surface disturbance on the location or well pad site;

- (iii) an area consisting of individual surface disturbances of less than 10 acres and the total surface disturbance on the lease is not greater than 150 acres;
- (iv) an area consisting of Federal mineral interests that is located within the boundaries of a communization agreement or unite agreement which contains minerals leased by a State or private mineral owner for which a drilling permit has been approved by a State regulatory agency; or
- (v) an area in which a categorical exclusion under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) applies for oil and gas drilling or re-entry activities; or

(B) includes—

- (i) an environmental review that concludes that actions described in the notification of permit to drill pose no significant effects to the human environment or threatened or endangered species; and
- (ii) an archeological review that concludes that actions described in the notification of permit to drill pose no significant effects on cultural or historic properties or resources.

(2) ENDANGERED SPECIES PROTECTION.—

(A) IN GENERAL.—Notwithstanding paragraph (1), the Secretary shall object to a notification of permit to drill if the activity described in such notification of permit to drill is likely to jeopardize the continued existence of a species that is a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or result in the destruction or adverse modification of critical habitat of such species.

(B) WITHDRAWAL OF OBJECTION.—The Secretary may withdraw an objection under subparagraph (A) if the operator consults with the Secretary on such objection and places conditions on the notification of permit to drill sufficient to comply with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(3) NATIONAL HISTORIC PRESERVATION.—

(A) IN GENERAL.—Notwithstanding paragraph(1), the Secretary shall object to a notification of permit to drill if the activity described in such notification of permit to drill is likely to affect properties listed, or eligible for listing, in the National Register of Historic Places under section 306108 of title 54, United States Code.

(B) WITHDRAWAL OF OBJECTION.—The Secretary may withdraw an objection under subparagraph (A) if the operator consults with the Secretary on

such objection and places conditions on the notification of permit to drill sufficient to comply with section 306108 of title 54, United States Code.

(d) OBJECTION OR NO ACTION.—

(1) NOTIFICATION OF INCOMPLETE APPLICATION.—Not later than 15 days after receipt of a notification permit to drill, or a revised notification of permit to drill, from an operator under this section, if the notification of permit to drill is not complete, the Secretary shall notify the operator in writing of such.

(2) NOTIFICATION OF OBJECTIONS.—Not later than 45 days after receipt of a complete notification of permit to drill from an operator under this section, the Secretary shall review the notification of permit to drill and—

(A) notify the operator in writing of any objections to the notification of permit to drill; or

(B) take no action.

(3) NO ACTION REQUIRED.—If the Secretary has not notified an operator under either paragraph (1) or paragraph (2) within 45 days after receipt of a notification of permit to drill from the operator under this section, the operator may, without further action from the Secretary, conduct the drilling and production activities for which the notification of permit to drill was submitted.

(4) OPPORTUNITY TO RESUBMIT APPLICATION.—If the Secretary notifies an operator under paragraph (1) of an incomplete application or paragraph (2) of an objection, the Secretary shall allow the operator to address such incomplete application or objection and revise and resubmit the notification of permit to drill.

(5) OPPORTUNITY TO RESUBMIT APPLICATION AS APD.—If the Secretary notifies an operator under paragraph (2) of an objection, the Secretary shall allow the operator to resubmit such information in the form of an application for an APD.

(e) APPLICATION FEE.—The Secretary may not charge an operator under this section a fee for submitting a notification of permit to drill greater than the fee the Secretary charges an applicant for an APD.

(f) ENVIRONMENTAL REVIEW.—

(1) IN GENERAL.—An environmental review or archeological review described in subsection (c)(1)(B) may be completed by a third-party contractor approved by the Secretary or pursuant to an memorandum of understanding between the operator and the Secretary.

(2) FIELD WORK AUTHORIZATION.—The Secretary shall issue a field work authorization to a third-party contractor for the purposes of paragraph (1) within a reasonable time period.

(3) REQUEST FOR CONCURRENCE.—The Secretary shall allow a third-party contractor to submit a request to the State Historic Preservation Office on behalf of the Secretary.

(g) ADDITIONAL SURFACE USE PERMITS.—The Secretary may not require an operator that has submitted a notification of permit to drill for which the Secretary did not notice an objection to obtain a surface use permit for an action included in the notification of permit to drill.

(h) SITE INSPECTION.—The Secretary may not require an operator that has submitted a notification of permit to drill for which the Secretary did not notice an objection to submit to a site inspection before commencement of the activities described in the notification of permit to drill.

(i) FEDERAL ENFORCEMENT.—The Secretary may conduct inspections of and evaluate activities described in a notification of permit to drill for purposes of bringing an enforcement action. The Secretary may suspend enforcement proceedings if the operator modifies its activities to comply with the notification of permit to drill or obtains an APD for such activities.

(j) APPLICATION OF NEPA.—

(1) NO ACTION BY SECRETARY.—The decision by the Secretary to take no action under subsection (c)(1)(B)(2) shall not constitute a major Federal action under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321(2)(C)).

(2) DEVELOPMENT OF REGULATIONS.—The development of any regulation pursuant to this section shall constitute a major Federal action under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321(2)(C)).

(k) DEFINITIONS.—In this section:

(1) APD.—The term “APD” means an application to drill or re-enter a well.

(2) DRILLING OPERATIONS.—The term “drilling operations” means the drilling or re-entry of a well.

(3) DRILLING PLAN.—The term “drilling plan” means a plan containing—

- (A) a description of the drilling program;
- (B) the surface and projected completion zone location;
- (C) pertinent geologic data;

- (D) expected hazards;
- (E) proposed mitigation measures to address such hazards;
- (F) any other information specified in applicable notices or orders; and
- (G) any other pertinent data as the Secretary may require.

(4) SURFACE USE PLAN OF OPERATION.—The term “surface use plan of operation” means a plan containing—

- (A) the road and drillpad location;
- (B) details of pad construction;
- (C) methods for containment and disposal of waste material;
- (D) plans for reclamation of the surface;
- (E) any other information specified in applicable orders or notices; and
- (F) any other pertinent data as the Secretary may require.

SEC. 44 45. SHORT TITLE. This Act may be cited as the “Mineral Leasing Act”.