

# 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. Steve Pearce)**, To clarify that the Bureau of Land Management shall not require permits for oil and gas activities conducted on non-Federal surface estate to access subsurface mineral estate that is less than 50 percent Federally owned.  
**June 6, 2018 at 2:00 PM; 1324 Longworth House Office Building**

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## **Summary of the Bill**

This discussion draft prohibits the Bureau of Land Management from requiring permits for oil and gas activities conducted on non-Federal surface estate to access a subsurface mineral estate that is less than 50 percent federally-owned.

## **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**

In recent years, the Bureau of Land Management (BLM) has required oil and gas operators to obtain federal permits for drilling and re-entry activities on State- and privately-owned lands if the federal government holds any ownership interest in the subsurface mineral estate impacted by such operations.

While the States are able to issue oil and gas drilling permits for operations on State and private land in an average of 30 days, BLM took an average 260 to process applications for permit to drill in 2017.<sup>1</sup> The agency's decision to require both State and federal permits for operations on lands not owned by the federal government has hindered development of State and private lands by prolonging the permitting process without providing additional environmental or safety benefits. The resulting delays have discouraged investment in oil and gas operations that would benefit the States, local governments and private landowners.

This legislation limits BLM's jurisdiction over drilling activities conducted on non-federal land to promote the efficient development of State- and privately-owned minerals. Specifically, this legislation amends the Mineral Leasing Act of 1920 to clarify that a BLM federal permit shall not be required for oil and gas drilling operations on State or private land if the federal government owns less than 50 percent of the subsurface mineral estate impacted by such activities and if the operator obtains and submits a State permit for such activities to the Secretary of the Interior.

## **Major Provisions of the Bill**

- Amends the Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.) to clarify that federal drilling permits shall not be required by BLM for oil and gas activities on non-federally-owned surface estate if the federal government owns less than 50 percent of the subsurface mineral estate impacted by such activities and if the operator obtains and submits a State permit for such activities to the Department of the Interior.
- An operator may commence drilling activities 30 days after submission of the State permit to the Department.
- Oil and gas activities authorized by a State permit submitted to BLM in accordance with this legislation are categorically excluded from further analysis under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 306108), or section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536).
- This legislation shall not impact the payment of royalties due to the Treasury under the Mineral Leasing Act or the assessment of penalties under the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1711 et seq.). The Department of the

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<sup>1</sup> Bureau of Land Management. Oil and Gas Statistics. Table 12. Time to Complete an Application for Permit to Drill (APD) Federal and Indian.

[https://www.blm.gov/sites/blm.gov/files/Table12\\_Time\\_to\\_Complete\\_an\\_APD1.pdf](https://www.blm.gov/sites/blm.gov/files/Table12_Time_to_Complete_an_APD1.pdf)

Interior may conduct inspections of the authorized activities to ensure royalties are properly valued and paid.

- This legislation does not apply to actions on Indian lands or resources managed in trust for the benefit of Indian tribes.

### **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 oil and gas activities on non-Federal surface estate (Pearce)**

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

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

\* \* \* \* \*

**(q) NO FEDERAL PERMIT REQUIRED FOR OIL AND GAS ACTIVITIES ON CERTAIN LAND.—**

**(1) IN GENERAL.—**The Secretary shall not require an operator to obtain a Federal drilling permit for oil and gas exploration and production activities conducted on non-Federal surface estate, provided that—

**(A)** the United States holds an ownership interest of less than 50 percent of the subsurface mineral estate to be accessed by the proposed action; and

**(B)** the operator submits to the Secretary a State permit to conduct oil and gas exploration and production activities on the non-Federal surface estate.

**(2) NO FEDERAL ACTION.—**Oil and gas exploration and production activities carried out under paragraph (1)—

**(A)** shall require no additional Federal action;

**(B)** may commence 30 days after submission of the State permit to the Secretary;

(C) are categorically excluded from any further analysis and documentation under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(D) shall not require any analysis under section 106 of the National Historic Preservation Act of 1966, as amended (54 U.S.C. 306108); and

(E) shall not require any analysis, assessment, or consultation under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536).

(3) ROYALTIES AND PRODUCTION ACCOUNTABILITY.—(A) Nothing in this subsection shall affect the amount of royalties due to the United States under this Act from the production of oil and gas, or alter the Secretary’s authority to conduct audits and collect civil penalties pursuant to the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1711 et seq.).

(B) The Secretary may conduct on-site reviews and inspections to ensure proper accountability, measurement, and reporting of production of Federal oil and gas, and payment of royalties.

(4) EXCEPTIONS.—This subsection shall not apply to actions on Indian lands or resources managed in trust for the benefit of Indian tribes.