

**Statement for the Record  
Bureau of Land Management  
U.S. Department of the Interior**

**House Committee on Natural Resources  
Subcommittee on Energy and Mineral Resources**

**H.R. 4381, Planning for American Energy Act  
H.R. 4382, Providing Leasing Certainty for American Energy Act  
H.R. 4383, Streamlining Permitting of American Energy Act  
H.R. 4402, National Strategic and Critical Minerals Production Act  
H.R. 1192, Soda Ash Royalty Extension, Job Creation, and Export Enhancement Act  
H.R. 2176, Clean Energy Promotion Act**

**April 26, 2012**

**Introduction**

Following is a Statement for the Record of the Department of the Interior on six bills pertaining to the development of renewable and conventional energy and other mineral resources on our Nation's onshore public lands: H.R. 4381, the Planning for American Energy Act; H.R. 4382, the Providing Leasing Certainty for American Energy Act; H.R. 4383, the Streamlining Permitting of American Energy Act; H.R. 4402, the National Strategic and Critical Minerals Production Act; H.R. 1192, the Soda Ash Royalty Extension, Job Creation, and Export Enhancement Act; and H.R. 2176, the Clean Energy Promotion Act.

Four of these bills were introduced only one week ago, and the Department has not had adequate time to conduct an in-depth analysis and develop detailed, thorough testimony. The comments below represent our initial review of the bills.

The Department expressed concern to the Subcommittee that short notice of the hearing on multiple new bills would deprive the Department of the opportunity to provide testimony containing thorough analysis, and is disappointed the Subcommittee declined to hold the hearing at a later date.

**Background**

Since the beginning of his tenure, Secretary of the Interior Ken Salazar has made scientifically-based, environmentally-sound development of renewable and conventional energy and mineral resources on the Nation's public lands one of his top priorities. Through the Secretary's New Energy Frontier initiative, the Department of the Interior has been at the forefront of the Administration's efforts outlined in the *Blueprint for a Secure Energy Future* to create jobs, reduce the Nation's dependence on fossil fuels and oil imports, and reduce effects associated with global climate change. Facilitating renewable energy development is a major component of

the Department's all-of-the-above energy strategy along with effective management of conventional energy programs.

The Bureau of Land Management administers over 245 million surface acres – more than any other Federal agency – which are located primarily in 12 western States, including Alaska, as well as approximately 700 million acres of onshore subsurface mineral estate throughout the Nation. The BLM, together with the Bureau of Indian Affairs, also provides permitting and oversight services on approximately 56 million acres of land held in trust by the Federal government on behalf of tribes and individual Indian owners.

The BLM's management of public land resources and protection of public land values results in extraordinary economic benefits to local communities and to the Nation, helping to contribute more than \$120 billion annually to the national economy and supporting more than 550,000 American full and part-time jobs according to the *Department of the Interior's Economic Contributions* report of June 21, 2011. Energy and mineral resources generate the highest revenue values of any uses of the public lands from royalties, rents, bonuses, sales and fees. In FY 2011, onshore Federal oil and gas royalties exceeded \$2.7 billion, approximately half of which were paid to the states in which the development occurred. During calendar year 2011, the BLM held 32 onshore oil and gas lease sales – covering nearly 4.4 million acres – which generated about \$256 million in bonus bid revenue (in addition to royalties) for American taxpayers. The 2011 lease sale revenues were 20 percent higher than those in calendar year 2010.

These benefits are not only economic, but also contribute substantially to America's energy security. There are currently over 37 million acres of Federal mineral estate under oil and gas lease. In FY 2011, the Department of the Interior collected royalties on more than 112 million barrels of oil produced from onshore Federal minerals. Moreover, the production of nearly 3 trillion cubic feet of natural gas made FY 2011 one of the most productive years on record. Despite this near-record production, only about 34 percent of the acreage under oil and gas lease is currently in production, and nearly 6,700 applications for permits to drill (APDs) have been approved by the BLM, but not yet drilled by industry, as of April 16, 2012.

Since 2008, the BLM has processed more than 19,000 APDs. The BLM expects to process 5,500 APDs in fiscal year 2012. As part of the BLM's ongoing efforts to ensure efficient processing of oil and gas permit applications, the BLM is preparing to implement new automated tracking systems that could reduce the review period for drilling permits by two-thirds and expedite the sale and processing of Federal oil and gas leases. The new systems will track permit applications through the entire review process and quickly flag any missing or incomplete information – greatly reducing the back-and-forth between the BLM and industry applicants currently needed to amend paper applications.

Meanwhile, the coal produced from more than 300 Federal coal leases is used to generate electricity in at least 40 states, accounting for more than one-fifth of all electricity generated across the country. This production, covering nearly a half million acres of Federal mineral estate, underscores the Administration's commitment to the goals of energy security and job

creation. Royalties from this production totaled over \$780 million in FY 2011. The BLM also held four coal leases sales in 2011 that generated more than \$700 million in bonus bids.

The BLM also is leading the Nation on the new energy frontier, actively supporting solar, wind, and geothermal energy development on BLM-managed and adjacent lands. BLM-managed lands in the Southwestern U.S. are some of the best in the world in terms of their solar energy potential. Under Secretary Salazar, the BLM has approved permits for 29 commercial-scale renewable energy projects, or the transmission associated with them, on public lands since 2009. This includes 16 solar, five wind, and eight geothermal projects. Together, these projects represent more than 6,500 megawatts (MW) and 12,500 construction and operations jobs, and when built will power about 1.3 million homes. In addition, the Department has identified more than 3,000 miles of transmission lines for expedited review. Enhanced development of wind power is a key component of our Nation's energy strategy for the future. There are currently 437 MW of installed wind power capacity on BLM-managed public lands, but there are 20 million acres of public lands with wind potential. Additionally, nearly half of U.S. geothermal energy production capacity is from Federal leases.

The BLM is working with local communities, tribes, state regulators, industry, and other Federal agencies to build a clean energy future. Our goal is environmentally responsible development of conventional and renewable energy and other mineral resources on Federal and Indian lands with a fair return to the American people, tribes, and individual Indians for the use of their resources.

### **H.R. 4381, Planning for American Energy Act**

H.R. 4381 directs the Secretary of the Interior to develop a 4-year strategy for the development of onshore Federal energy and minerals resources – including a strategic production objective of oil and natural gas; coal; critical minerals; wind, solar, biomass, hydropower, and geothermal energy; oil shale; and other energy production technology sources. The bill requires that actions be taken to achieve certain energy production objectives unless the President determines it is not in the national security or economic interests to do so. The bill further directs the completion of a programmatic Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) which is deemed sufficient to satisfy requirements of resource management planning and land use planning associated with implementation of the 4-year strategy.

### **Analysis**

The Department opposes H.R. 4381, which, if enacted, would override the BLM's statutory direction that the public lands be managed for multiple uses.

Guided by the Federal Land Policy and Management Act, the BLM's unique multiple-use management of public lands includes activities as varied as livestock grazing; outdoor recreation, including hunting and fishing; the conservation of natural, historical, cultural, and other important resources – as well as development of both conventional and renewable energy resources. H.R. 4381 would direct Federal land managers to manage lands for the primary

purpose of energy development rather than make thoughtful decisions on multiple use management through a public process based on site specific analysis and consideration.

H.R. 4381 also imposes additional layers of administrative planning for energy development on top of those which the BLM is already undertaking through existing authorities. These already provide extensive legal and regulatory direction for the development of oil, gas, and coal from the public lands. In addition, the BLM has recently made significant progress on programmatic planning for a suite of renewable and unconventional energy resources, including wind, solar, geothermal and oil shale.

Finally, the bill's requirement that the Department take all necessary actions to achieve energy production goals on Federal lands fails to acknowledge the comprehensive approach to support expansion of safe and responsible energy development that the Department already has in place and is committed to maintaining. The BLM has made significant progress in the past several years, reducing protests and appeals by better planning through its leasing reforms. As stated above, we continue to offer a healthy number and quality of lease sales, with good industry response, and an emphasis on permitting has produced a large inventory of permits and acreage that industry has yet to develop.

#### **H. R. 4382, Providing Leasing Certainty for American Energy Act**

H.R. 4382 reverses the oil and gas leasing reform policy initiated by Secretary Salazar in January 2010 that was implemented to ensure environmental protection of important natural resources on BLM lands (BLM Instruction Memorandum 2010-117). The bill also requires the BLM to offer for lease no fewer than 25% of lease nominations in areas open to leasing each year; and requires that the BLM actively lease in areas designated as open when Resource Management Plans are revised; and states that acreages offered for lease shall not be subject to protest. Finally, the bill allows lease sales to be categorically excluded from further NEPA review.

#### **Analysis**

The Department opposes H.R. 4382. As stated above, the Secretary's leasing reforms established an orderly, open, and environmentally sound process for developing oil and gas resources on public lands in a manner that has maintained robust leasing and permitting. The Secretary's reforms focus on making oil and gas leasing more predictable, increasing certainty for stakeholders, including industry, and restoring needed balance with comprehensive up front analysis added to the development process. Requiring the BLM to offer no fewer than 25% of lease nominations in areas open to leasing each year is an arbitrary standard that undermines rational and diligent review on the basis of greatest development potential, as well as other economic, environmental, and health considerations.

The BLM has concerns with the requirement that BLM actively lease in areas designated as open when Resource Management Plans are revised. Continuing to lease in some open areas in which recreational or ecological values are at risk could prevent the BLM from protecting important resource values. It could be counterproductive to efforts to develop energy resources on Federal lands if the result is greater near-term resource damage that, in turn, would necessitate more onerous restrictions on future energy development activities. Limiting protests of oil and gas leases and providing categorical exclusions from further NEPA review limits the public's

opportunity to engage in decisions about the lands the BLM manages. Such an approach would disinvest Americans who have valid and important concerns about the management of lands that belong to every American.

### **H. R. 4383, Streamlining Permitting of American Energy Act**

H.R. 4383 makes numerous changes to existing authorities governing the permitting of Federal energy resources. The bill generally requires the BLM to process APDs within 60 days (unless NEPA review is incomplete), and stipulates that a submitted APD is deemed approved if the Secretary has not made a decision within 60 days. The bill makes permanent the current \$6,500 permit processing fee, but provides that the BLM can only collect the fee when a decision is issued on the APD, and requires that 50% of the processing fee be transferred to the BLM field office in which the permit is processed. H.R. 4383 provides that 50% of wind and solar right of way (ROW) authorization fees be transferred to the BLM field office where they are collected to process permits and applications for renewable energy development. The bill also requires a \$5,000 documentation fee for each protest filed on these permits with 50% of these fees remaining with local BLM field offices.

In addition, H.R. 4383 requires the BLM to establish a “Federal Permit Streamlining Project” in every BLM office that processes energy projects, and explicitly states the BLM may not use a finding of extraordinary circumstances review when using section 390 categorical exclusions of the Energy Policy Act. Finally, H.R. 4383 includes provisions (Title IV) pertaining to judicial review procedures. As stated above, the BLM has already adopted a significant and effective program for streamlining permitting and planning, with good results in both leasing and production.

#### Analysis

The Department opposes H.R. 4383. The bill would essentially strip from the BLM its ability to issue APDs based on important reviews and clearances – including cultural surveys and necessary tribal consultation – and mandates unreasonable timeframes for processing APDs. The Department strongly supports efforts to encourage wind and solar energy development, but believes funding support for those objectives can best be achieved through a combination of user fees and regular discretionary appropriations. In addition, the BLM opposes the \$5,000 documentation fee submitted for each protest because it is an inappropriate economic barrier for the public to seek judicial review or redress of an agency decision.

The bill’s provisions establishing “Federal Permit Streamlining Projects” are impractical, and would likely result in the establishment of such project offices in over 50 of the BLM’s field offices. Coordination of these projects among multiple agencies would be extremely time consuming and costly, and would hinder the BLM’s ability to conduct its other vital land management responsibilities. In addition, the BLM views the availability of the extraordinary circumstances review an important step in assuring that a categorically excluded action does not have impacts that are unanticipated, and thus opposes the bill’s provisions on this point. Finally, the Department of the Interior defers to the Department of Justice regarding the provisions of the bill (Title IV) pertaining to judicial review procedures.

## **H.R. 4402, National Strategic and Critical Minerals Production Act**

H.R. 4402, the National Strategic and Critical Minerals Production Act of 2012, seeks to improve the flow of critical and strategic minerals to the U.S. manufacturing sector by requiring measures to try to expedite the mineral exploration and mine permitting process on public lands managed by the Departments of the Interior and Agriculture. It defines critical and strategic mineral mines as “infrastructure projects” so that they will fall under the March 22, 2012, Executive Order “Improving Performance of Federal Permitting and Review of Infrastructure Projects.” In addition, the bill includes numerous other provisions that affect the application of the National Environmental Policy Act (NEPA), the management of permit applications, the review of Federal Register notices for such projects, and the handling by the courts of civil actions arising from disputes over mine proposals.

### **Analysis**

The Department has numerous concerns with H.R. 4022 and opposes the bill. Some of the bill’s provisions are already being undertaken, including the formulation of memoranda of understanding among agencies and proponents, the concurrent gathering and review of data, the appointment of projects leads who are assigned to a project through completion. H.R. 4402 also substitutes state and Federal permitting processes for NEPA analyses, thus circumventing public involvement and the formulation of alternatives. The bill mandates unrealistic performance and review standards for Federal Register notices for these mining projects.

H.R. 4402 lacks clarity on a number of issues, including how the rights of surface owners in split estate situations might be affected in an expedited review process. It also does not discuss the consequences of missing the 30-month deadline on permitting decisions and how state permitting authorities relate to this timeline. It is also unclear how Section 103, which requires maximizing recoverable resources while minimizing environmental impacts, would affect DOI’s authority under the Federal Land Policy and Management Act to prevent “undue and unnecessary degradation of the public lands.”

The Department of the Interior has not had an opportunity to fully evaluate the implications of defining critical and strategic mineral mines as infrastructure projects as defined under the above cited Executive Order and the administrative resources that would require. Finally, the Department defers to the Department of Justice on issues regarding the courts and claims under the Equal Access to Justice Act.

## **H.R. 1192, Soda Ash Royalty Extension, Job Creation, and Export Enhancement Act**

H.R. 1192 extends for 5 years the royalty rate reduction provided for under the Soda Ash Royalty Rate Reduction Act of 2006, which expired in October 2011. The bill would apply an across-the-board reduction in the royalty rate on soda ash leases from an average of 5.6 percent to 2 percent. As mandated by the 2006 Act, the BLM reported to Congress in the fall on the impact of the reduction over the previous 5 years, in the U.S. Department of the Interior Report to Congress: The Soda Ash Royalty Reduction Act of 2006.

## Analysis

The Department cannot support H.R. 1192. The report found that the Soda Ash Royalty Reduction Act of 2006 resulted in a substantial loss of royalty revenues to the Federal Government and the states which exceeded Congressional estimates at the time of enactment. The royalty rate reduction does not appear to have contributed in a significant way to the creation of new jobs within the industry, to increased exports, or to a notable increase in capital expenditures to enhance production. In addition, the royalty rate reduction appears to have influenced a shift of production away from state leases and private lands and onto Federal leases. In addition, the report found that, with regard to global competitiveness, U.S. production has remained stable at around 11 million tons since 2002, with exports stable at around 5 million tons since 2005. U.S. exports continue to account for over 40 percent of total world exports. In contrast, China's production has doubled since 2002, from approximately 10 million to approximately 20 million tons, while Chinese exports remain far below U.S. exports. Since 2002, world-wide production has risen from 37 million tons to 48 million tons in 2010.

Finally, the report found that overall domestic employment has not increased since passage of the Act. However, it is not readily apparent from the available data whether jobs have been maintained due to the royalty rate reduction in the face of the global economic downturn. Any analysis of the number of jobs maintained during the royalty reduction period is highly uncertain; employment levels in the industry depend on a number of factors, such as soda ash market conditions and employee productivity.

## **H.R. 2176, Clean Energy Promotion Act**

H.R. 2176 authorizes up to \$5 million in rents received from wind energy and solar energy rights-of-way to be deposited annually into a new U.S. Treasury account – the “BLM Wind Energy and Solar Energy Permit Processing Improvement Fund.” Under the bill, these funds would be available to the BLM for wind and solar energy permit processing on BLM-managed public lands without further appropriation. The bill would also allow the transfer of funds from the account to the U.S. Fish and Wildlife Service, the Environmental Protection Agency, and state agencies involved in permit processing on public lands.

## Analysis

The Department strongly supports the objective of H.R. 2176 to encourage wind and solar energy development, but believes funding support for those objectives can best be achieved through a combination of user fees and regular discretionary appropriations. We look forward to continuing to work with the sponsors and the committee to achieve this mutual goal, including through the FY 2013 appropriations process.

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