

Statement for the Record
Bureau of Land Management
U.S. Department of the Interior
House Natural Resources Energy and Mineral Resources Subcommittee
H.R. 866, Federal Land Freedom Act
November 15, 2016

Thank you for the opportunity to present the Department of the Interior's (Department) views on H.R. 866, the Federal Land Freedom Act.

Among its measures, H.R. 866 would allow for any state with an oil and gas program to submit a declaration to the Secretaries of the Interior, Agriculture, and Energy to transfer responsibility for oil and gas development on available Federal land from the Federal government to the state. H.R. 866 provides that any action taken by a state to lease, permit, or regulate oil and gas exploration and development on Federal land would not be considered a Federal action and therefore would not be subject to certain Federal environmental, cultural, and administrative laws and analyses. For the reasons outlined below, the Department strongly opposes H.R. 866.

Background

The Bureau of Land Management (BLM) is responsible for managing more than 10 percent of the Nation's surface and nearly a third of its minerals. The BLM manages this large portfolio on behalf of the American people under the dual framework of multiple use and sustained yield. With respect to oil and gas development, the BLM works diligently to fulfill its role in securing America's energy future, coordinating closely with its partners and other stakeholders to ensure that development of public and tribal oil and gas resources occurs in the right places, and that oil and gas development projects are managed safely and responsibly.

In addition to overseeing this development, the BLM is responsible for ensuring that production from nearly 100,000 active wells is conducted in an environmentally responsible manner. To accomplish this, the BLM works closely with lessees and operators to ensure that they implement best management practices and appropriate mitigation. These measures are designed to promote safe and efficient operations, and minimize impacts to the environment by concentrating development in smaller areas and lessening impacts to affected resources. Since 2008, oil production is up 108 percent on lands where development requires a BLM permit. This doubling of production represents an even greater increase than the 88 percent increase in oil production across all lands nationwide during that same time period. This production contributes to the nation's energy supplies and provides important economic benefits. For example, in FY 2015, onshore Federal oil and gas royalties exceeded \$2 billion, approximately half of which was paid directly to the states in which the development occurred. As of the end of FY 2015, there were over 7500 drilling permits approved and ready to drill without additional action by the BLM. These permits would support over 4 years of drilling at current rates (1900 wells per year). In addition, in FY 2015 the BLM completed 30,000 inspections that helped secure the protection of sensitive resources and ensure that the royalties due were properly accounted for.

H.R. 866, the Federal Land Freedom Act

H.R. 866 provides that any state that has established an oil and gas leasing program may submit to the Secretaries of Interior, Agriculture, and Energy a declaration that such a program has been established or amended. Upon submission of this declaration, the state may lease, permit, and regulate oil and gas exploration and development on available Federal land located within the state. These activities would be carried out by the state in lieu of the Federal government. The bill defines “available Federal land” as any Federal land located within the boundaries of the state, excluding Indian trust lands, units within the National Park or National Wildlife Refuge Systems, and congressionally designated wilderness areas. An action taken by a state to lease, permit, or regulate oil and gas exploration and development would not be subject to a Federal permit or license, and would not be considered a Federal action under the Administrative Procedures Act (APA), the National Historic Preservation Act (NHPA), the Endangered Species Act of 1973 (ESA), or the National Environmental Policy Act of 1969 (NEPA).

H.R. 866 requires that any lease or permit issued by a state would include provisions for the collection of royalties or other revenues in an amount equal to the amount of royalties or other revenues that would have been collected if the lease or permit had been issued by the Federal government. The revenues collected by a state would be deposited in the same Federal account in which the revenues would have been deposited if the lease or permit had been issued by the Federal government. The bill also permits a state to collect and retain a fee from an applicant to cover the administrative costs of processing an application for a lease or permit.

Analysis

The Department strongly opposes this legislation. The Department, through the BLM, is best positioned to consider the varied interests and concerns necessary to ensure that public resources owned by all Americans are properly managed for the benefit of present and future generations.

Under the Mineral Leasing Act of 1920 (MLA) and the Mineral Leasing Act for Acquired Lands of 1947, the BLM is responsible for oil and gas leasing, permitting, and regulation of Federal mineral resources under BLM-managed surface lands, National Forest System lands, lands managed by other agencies, and in some cases state or private surface. The BLM implements these statutes to ensure a fair return to the taxpayer and safe and environmentally sound development, including requirements related to pre-leasing, surface-disturbing activities, well construction, and production measurement. The Indian Mineral Leasing Act extends this regulatory authority and the resultant rules to Indian oil and gas leases on trust lands (except those lands specifically excluded by statute). These oil and gas-specific authorities are implemented in the context of BLM’s broader authority under the Federal Land Policy and Management Act of 1976 (FLPMA) to manage the public lands using the principles of multiple use and sustained yield and to take any action necessary to prevent unnecessary or undue degradation.

Consistent with these authorities, the BLM makes decisions on the best and most appropriate uses of public lands through a public and transparent land use planning process. By conveying oversight of oil and gas operations on Federal land from the Federal government to a state, H.R. 866 would undermine the BLM’s public planning process, contradict mandates under the MLA,

FLPMA, and various other laws, and generally prioritize oil and gas development above all other uses of the public lands.

In addition, H.R. 866 would appear to open all Federal lands to oil and gas exploration and development, with the exception of Indian trust lands, units within the National Park or National Wildlife Refuge Systems, or congressionally designated wilderness. With regard to BLM-managed lands, the decision of whether to lease for oil and gas development is a matter appropriately within the discretion of the Secretary of the Interior under the multiple use and sustained yield mandate. Land use decisions are made through the BLM planning process after a robust public engagement with communities, including the determination of the suitability of an area for oil and gas development. In accordance with FLPMA, these plans are developed in partnership with state, local, and tribal governments, as well as the public, to consider and balance the importance of all resources. The process is designed to address resource conflicts, such as balancing important wildlife habitat needs with energy development.

H.R. 866 would instead give discretion to states to deviate from the decisions made through the BLM's land use planning process, providing states with the authority to pursue oil and gas development in areas with unique and environmentally sensitive qualities, including lands within the BLM's National Landscape Conservation System or Sage-Grouse Priority Habitats, or areas simply identified for other use.

The Department does not believe that this is a proper treatment or use of lands owned in common by all Americans.

As previously noted, H.R. 866 adds that any action undertaken by a state's oil and gas program on Federal lands would not be required to comply with, or be subject to analysis under, several critical administrative or environmental and cultural protection laws, including the APA, NHPA, ESA, and NEPA. Compliance with these laws is required of all Federal actions and neglecting the objectives of these laws could cause irreversible damage to the natural, cultural, and mineral resources that belong to all present and future Americans. The bill also does not appear to transfer to states liability for contamination caused by oil and gas activities permitted by a state, or responsibility for reclamation of abandoned wells.

Finally, H.R. 866 would require that leases or permits issued by a state include provisions for the collection of royalties or other revenues in an amount equal to that which would have been collected under a Federal lease. The bill is silent on reporting requirements, enforcement authority, adjudication of disputes, rulemaking authority, and the collection, control, or disbursement of federal funding, to name just a few significant activities. These activities entail critical federal functions carried out by the Department. These revenues generated from these leases are shared by Federal, state, and tribal governments and are used to fund critical investments in local communities as well as programs for the entire nation. These leases are one of the nation's largest sources of non-tax revenue. It is incumbent upon the Federal government, on behalf of the American taxpayer, to ensure it is collecting an accurate and fair share of revenue from oil and gas produced on Federal lands.

For these reasons, the Department strongly opposes H.R. 866.

Conclusion

Thank you for the opportunity to present this Statement for the Record.