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Energy and Mineral Development on Federal Land

Background

Energy production on federal lands accounts for a significant amount of total U.S. energy production. For example, in FY2013, approximately 27% of crude oil, 18% of natural gas, and 41% of coal production came from federal lands. Geothermal electric generating capacity on federal lands represents 40% of U.S. total geothermal capacity. Solar and wind energy potential on federal lands is growing and based on Bureau of Land Management (BLM) approved projects, there is potential for 5,000 megawatts (MW) of wind and nearly 8,800 MW of solar energy annual capacity on federal lands, although currently the level of generation is low. The volumes and value of non-fuel mineral production on federal lands are uncertain because there are no reporting requirements, but could be high, especially for gold, the primary mineral mined (by value) on federal lands.

Three royalty debates may be revived in the 114th Congress: (1) whether to increase the statutory minimum rate for onshore federal oil and gas leases from 12.5% to 18.75%, (2) whether to enact revenue sharing laws for Outer Continental Shelf (OCS) leases to include all coastal states, and (3) whether to charge a royalty on hardrock locatable minerals produced on federal public domain lands.

Minerals (fuel and non-fuel) are an exhaustible resource; when extracted today they are unavailable for extraction at a later date. The miner must decide whether to produce now or in the future. If production occurs now, the miner must consider the value of foregone future production. A mineral royalty is a payment to the resource owner for the extraction of the mineral. In the mining industry the royalty is typically based on production (\$/ton) or income (percent of gross or net income). For federal oil and gas leases, royalties are assessed on the gross value of production minus allowable deductions.

House and Senate bills in the 113th Congress proposed to raise the minimum rate from 12.5% to 18.75% on oil and gas produced on federal leases, provide for revenue sharing of OCS revenues, and establish a “gross proceeds” royalty on federally owned locatable mineral production.

Onshore Oil and Gas

Development of oil and gas on federal lands is governed primarily by the Mineral Leasing Act of 1920 (MLA) (30 U.S.C. §181). Leasing auctions and implementing activities are administered by the Bureau of Land Management (BLM) for all federal lands. The MLA authorizes the Secretary of the Interior—through the BLM—to lease the subsurface rights to virtually all BLM and Forest Service (FS) lands that contain fossil fuel deposits, with the federal government retaining title to the lands. The MLA

authorizes both competitive and noncompetitive bidding processes for oil and gas exploration and production leases.

In a competitive lease sale, a bonus payment is required to win the lease. Non-competitive leases are initiated by an application process. Rents are then paid on a per-acre basis prior to production. The revenue associated with the onshore leasing process is collected and disbursed by the Office of Natural Resource Revenues (ONRR).

Another controversial issue is the permitting process and timeline, which the Energy Policy Act of 2005 (EPAct05) revised for oil and gas permits. Although the time it takes BLM to process applications has decreased since FY2006, the time it takes applicants to respond and resolve issues with the applications has increased over the same time period. EPAct05 also authorized a pilot project to improve efficiency of processing oil and gas permits through FY2015. After three years of implementation, a 2008 BLM report described improved interagency communication and a reduction in the time needed for BLM to review and process permit applications in the pilot locations. The Administration has proposed to extend the pilot, while some Members of Congress have proposed to make the pilot program permanent. There is language in EPAct05 that requires the Secretary of the Interior to make “a recommendation to the President regarding whether the pilot project should be implemented throughout the United States.”

Raising the Onshore Oil and Gas Royalty Rate

A mineral royalty is a payment to the resource owner for the extraction of the mineral. Typically, in the mining industry the royalty is based on production (\$/ton) or income (percent of gross or net income). For federal oil and gas leases, royalties are assessed on the gross value of production minus allowable deductions. There is precedent for raising federal oil and gas lease royalty rates. Under the Bush Administration in 2008, Interior Secretary Dirk Kempthorne raised the deepwater rate for new leases from 12.5% to 16.67%. Then, in 2009, Secretary Ken Salazar of the Obama Administration increased the royalty rates for new offshore leases to 18.75%. The lower federal onshore royalty rate (12.5%) for oil and gas may be viewed as an incentive rate to encourage bidding on federal lands.

Coal

As a result of high volumes of coal production on federal lands, there are several congressional concerns, such as how to balance coal production against other resource values for federal lands. Other concerns include how to assess the value of the coal resource, what is the fair market value (e.g., minimum bids) for the coal, and what should be the government’s royalty. In response to these congressional concerns, a 2013 GAO analysis found inconsistencies in

how BLM evaluated and documented federal coal leases. In addition, a 2013 DOI Inspector General report found BLM may have violated provisions in the MLA by accepting below-cost bids for federal coal leases. The Secretary of the Interior announced the initiation of a new rule for the valuation of coal. It is uncertain when a final rule will be promulgated.

Renewables on Federal Land

The Obama Administration has placed a high priority on renewable energy projects on federal lands because of its concern over the impact of emissions from fossil fuel-fired power plants. Interest in renewable energy sources has also been driven by the increasing adoption of statewide renewable portfolio standards that require electricity producers to supply a certain minimum share of electricity from renewable sources. Both BLM and FS manage land that is considered suitable for renewable energy generation, and as such have authorized projects for geothermal, wind, solar, and biomass energy projects. Congressional interest in renewable energy resources on onshore federal lands has focused on whether to expand the leasing program for wind and solar projects versus the current rights of way process and how to balance environmental concerns with the development and production of these resources. These environmental concerns include wildlife impacts from wind turbines and water supply requirements for solar energy.

Outer Continental Shelf (OCS)

The Outer Continental Shelf Lands Act (OCSLA) of 1953, as amended, provides for the leasing of OCS lands in a manner that protects the environment and returns revenues to the federal government in the form of bonus bids, rents, and royalties. OCSLA requires the Secretary of the Interior to submit five-year leasing programs that specify the time, location, and size of the areas to be offered. Each five-year leasing program entails a lengthy multistep process that includes environmental impact statements. After a public comment period, a final proposed plan is submitted to the President and Congress. (For details of the OCS oil and gas leasing framework, see CRS Report R40806, *Energy Projects on Federal Lands: Leasing and Authorization*, by Adam Vann.) The Bureau of Ocean Energy Management (BOEM) administers the offshore energy leasing program.

The new five year Draft Proposed Program (DPP) for the next five-year leasing program (2017-2022) was released January 27, 2015. There would be 14 lease sales in the OCS, including sales in the Mid and South Atlantic Planning Areas and in Alaska's Chukchi Sea, Beaufort Sea, and Cook Inlet Planning Areas. Certain areas (e.g., most of the Eastern Gulf of Mexico, Alaska's North Aleutian Basin Planning Area and selected parts of the Chukchi and Beaufort Seas) have been withdrawn and placed off-limits for oil and gas leasing activities. Once finalized, the new five-year leasing program would be implemented in August 2017.

Revenue Sharing

The largely decentralized revenue-sharing system for onshore federal energy and mineral resources under the Mineral Leasing Act of 1920 provides states generally with a 50% share of revenues collected (rents, bonuses, and royalties), less 2% for administrative costs; Alaska, however, receives 90% of all revenues collected on federal onshore leases (less administrative costs). This is different from the much more centralized system used for offshore revenue, which has much less revenue sharing. Revenue sharing from OCS leases occurs under the Gulf of Mexico Energy and Security Act (GOMESA) enacted in 2006 (P.L. 109-432) for four Gulf coastal states: Louisiana, Texas, Alabama, and Mississippi. The states collect 37.5% of leasing revenues from selected leases off their coasts. Another revenue sharing feature of offshore leases allows the states to collect 27% of leasing revenues from leases within three miles beyond the states' offshore boundaries. A relatively small amount was disbursed to coastal states from offshore leases because the vast majority of GOMESA revenue begins to flow to the states after 2017. For example, in FY2014, this share was about \$38 million out of nearly \$2.2 billion in total state onshore and offshore disbursements.

Mining on Federal Lands

Mining of hardrock minerals on federal lands is governed primarily by the General Mining Law of 1872. The original purposes of the Mining Law were to promote mineral exploration and development on federal lands in the western United States, offer an opportunity to obtain a clear title to mines already being worked, and help settle the West. The Mining Law grants free access to individuals and corporations to prospect for minerals on open public domain lands, and allows them, upon making a discovery, to stake (or "locate") a claim on the deposit. A valid claim entitles the holder to develop the minerals. The Mining Law continues to provide the structure for much of the western mineral development on public domain lands.

Establish a Locatable Mineral Royalty

Western mining, although not as extensive as it once was, is still a major economic activity. Industry officials argue that the current claim-patent system enhances a company's ability to bring an economic deposit into production. They contend that restrictions on free access and security of tenure would curtail exploration. Mining Law critics consider the claim-patent system a giveaway of publicly owned resources because of the absence of royalties and the small charges associated with keeping a claim active and obtaining a patent.

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