

# Subcommittee on Energy and Mineral Resources

Paul Gosar, Chairman  
Hearing Memorandum

September 1, 2017

**To:** All Subcommittee on Energy and Mineral Resource Subcommittee Members

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

**Hearing:** **Legislative hearing on H.R. 2661 (Rep. Liz Cheney),** To amend the Mineral Leasing Act to require the Secretary of the Interior to convey to a State all right, title, and interest in and to a percentage of the amount of royalties and other amounts required to be paid to the State under the Act with respect to public land and deposits in the State, and for other purposes.  
**September 6, 2017 at 10:00 AM; 1334 Longworth HOB**

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**H.R. 2661 (Rep. Liz Cheney), “State Mineral Revenue Protection Act”**

## **Summary of the Bill**

On June 8, 2017, Representative Liz Cheney (R-WY) introduced H.R. 2661, the “State Mineral Revenue Protection Act.” This bill would eliminate a 2 percent administrative fee assessed on the collection of Federal onshore mineral revenues and allow States to manage the collection of mineral revenues produced within their borders.

## **Cosponsors**

Rep. Steve Pearce (R-NM), Rep. Michelle Lujan Grisham (D-NM), Rep. Ben Ray Lujan (D-NM)

## **Invited Witnesses**

*Mr. A.J. Ferate*

Vice President of Regulatory Affairs  
Oklahoma Independent Petroleum Association  
Oklahoma City, Oklahoma

*Mr. John Ruple*

Associate Professor of Law (Research)  
Wallace Stegner Center Fellow  
University of Utah S.J. Quinney College of Law  
Salt Lake City, Utah

*Mr. Mike Smith*  
Executive Director  
Interstate Oil and Gas Compact Commission  
Oklahoma City, Oklahoma

*Mr. Paul Ulrich*  
Vice Chairman  
Petroleum Association of Wyoming  
Casper, Wyoming

## **Background**

The Mineral Leasing Act of 1920 provides for States to receive a 50 percent share of the revenues resulting from the leasing and production of onshore mineral resources on Federal land within their borders.<sup>1</sup> Alaska, which receives 90 percent of revenues, is the only exception. These revenues include payments from rentals, bonuses and royalties on various forms of energy production on Federal public lands.<sup>2</sup> Specifically, revenues are generated by payments related to oil, gas, coal leasing, as well as the leasing of certain minerals, including phosphates, sulfur, sodium and potash.<sup>3</sup>

Within the Department of the Interior, the Office of Natural Resources Revenue (ONRR) manages onshore and offshore Federal and Indian mineral revenues associated with the leasing and production of oil, natural gas, solid minerals and renewable energy resources. ONRR is responsible for the collection, verification, and disbursement of revenues according to the Mineral Leasing Act.<sup>4</sup> Once ONRR collects and verifies these revenues, the agency disperses the appropriate amounts to the States.

While the law provides for mineral revenues to be shared evenly between the Federal government and the States, the Department of the Interior (DOI) has assessed an administrative fee on mineral revenue collection since 2007.<sup>5</sup> In 2014, the Mineral Leasing Act was amended to make this fee assessment authority permanent.<sup>6</sup> This 2 percent fee is used by DOI to cover the cost of collecting bonuses, rents and royalties and dispersing revenues to the States. In Fiscal Year 2016, this fee amounted to approximately \$25 million.<sup>7</sup>

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<sup>1</sup> 30 U.S.C. §181

<sup>2</sup> Marc Humphries, Energy and Mineral Development on Federal Land (2015).

<http://www.crs.gov/Reports/IF10127?source=search&guid=ab1ee1f40564437797071c178c8fa2ad&index=>

<sup>3</sup> Briefing by Marc Humphries, Specialist in Energy Policy, Congressional Research Service received by Energy and Mineral Resources Subcommittee Majority Staff on August 20, 2017.

<sup>4</sup> U.S. Department of Interior. Office of Natural Resources Revenue. Highlights.

[https://www.onrr.gov/about/pdfdocs/Fact%20Sheet\\_ONRR%20Highlights\\_July%202016.pdf](https://www.onrr.gov/about/pdfdocs/Fact%20Sheet_ONRR%20Highlights_July%202016.pdf)

<sup>5</sup> Pub. L. No. 110-161 (2007).

<sup>6</sup> Pub. L. No. 113-67 (2013).

<sup>7</sup> United States Department of Interior. Budget Justifications and Performance Information Fiscal Year 2018. Office of the Secretary Department-Wide Programs.

[https://www.doi.gov/sites/doi.gov/files/uploads/fy2018\\_os\\_budget\\_justication.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/fy2018_os_budget_justication.pdf)

H.R. 2661 would enable States to administer the collection of their share of mineral revenues produced on their lands, eliminating the need for this administrative fee charged by the Federal government. Specifically, this legislation would amend the Mineral Leasing Act to remove the authorization for the 2 percent administrative fee, ensuring that States will receive the entirety of their 50 percent share of Federal mineral revenues. If enacted, States can still choose to forego this option and continue to receive their revenue disbursements through the current process administered by ONRR.

Federal mineral revenues are a crucial source of income for the States, serving to offset losses in private tax revenue due to the tax-exempt status of Federal land.<sup>8</sup> States utilize these funds to mitigate the environmental impacts of mineral development, support infrastructure projects,<sup>9</sup> and fund public services and programs, including public school systems and community colleges.<sup>10</sup> Allowing the States to receive the entirety of their 50 percent share of Federal mineral revenues will contribute to the provision of these and other necessary public services.

### **Major Provisions of the Bill**

- Amends the Mineral Leasing Act of 1920 to remove the authorization for a 2 percent administrative fee charged by the Federal government on mineral revenue collection.
- Requires the Secretary of Interior to convey to a State, upon request, all right, title, and interest in and to a percentage of the amounts required to be paid into the Treasury from sales, bonuses, royalties, and rentals for public land or deposits located in that State.
- Once the Secretary has conveyed the right, title and interest to a State, mineral revenue payments will be made directly to the State rather than to the Treasury.
- The Secretary must notify lease holders of public land in such States that right, title and interest in and to the amounts they owe have been conveyed to the State and that they must pay those amounts directly to the State.

### **Administration Position**

Unknown at this time.

### **Cost**

CBO has not scored the legislation.

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<sup>8</sup> Marc Humphries, Mineral Royalties on Federal Lands: Issues for Congress (2015). <http://www.crs.gov/reports/pdf/R43891>

<sup>9</sup> Marc Humphries, Mineral Royalties on Federal Lands: Issues for Congress (2015). <http://www.crs.gov/reports/pdf/R43891>

<sup>10</sup> The United States Extractive Industries Transparency Initiative. Explore Data, Wyoming. <https://useiti.doi.gov/explore/WY/#disbursements> (Accessed August 29, 2017).

## Effect on Current Law (Ramseyer)

### Showing Current Law as Amended by H.R. 2661

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

Section 35 of the Mineral Leasing Act (30 U.S.C. 191)

#### §191. Disposition of moneys received

##### (a) In general

All money received from sales, bonuses, royalties including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982 [30 U.S.C. 1701 et seq.], and rentals of the public lands under the provisions of this chapter and the Geothermal Steam Act of 1970 [30 U.S.C. 1001 et seq.], shall, **except as provided in subsection (b)**, be paid into the Treasury of the United States; and, subject to the provisions of subsection (b), 50 per centum thereof shall be paid by the Secretary of the Treasury to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this chapter, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided*, That all moneys which may accrue to the United States under the provisions of this chapter and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by [section 7433\(b\) of title 10](#). All moneys received under the provisions of this chapter and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts. Payments to States under this section with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, except for any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute. Such warrants shall be issued by the United States Treasury not later than 10 days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined to be payable to a State shall be made not later than the last business day of the month in which such dispute is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the dispute is resolved.

##### **(b) Conveyance to States of Property Interest in State Share-**

**(1) IN GENERAL-** Notwithstanding any other provision of law, on request of a State and in lieu of any payments to the State under subsection (a), the Secretary of the Interior shall convey to the State all right, title, and interest in and to the percentage specified in that subsection for that State of all amounts otherwise required to be paid into the Treasury under that subsection from sales, bonuses, royalties

(including interest charges), and rentals for all public land or deposits located in the State.

(2) AMOUNT- Notwithstanding any other provision of law, after a conveyance to a State under paragraph (1), any person shall pay directly to the State any amount owed by the person for which the right, title, and interest has been conveyed to the State under this subsection.

(3) NOTICE- The Secretary of the Interior shall promptly provide to each holder of a lease of public land to which subsection (a) applies that are located in a State to which right, title, and interest is conveyed under this subsection notice that--

(A) the Secretary of the Interior has conveyed to the State all right, title, and interest in and to the amounts referred to in paragraph (1); and

(B) the leaseholder is required to pay the amounts directly to the State.

#### **[(b) Deduction for administrative costs**

In determining the amount of payments to the States under this section, beginning in fiscal year 2014 and for each year thereafter, the amount of such payments shall be reduced by 2 percent for any administrative or other costs incurred by the United States in carrying out the program authorized by this chapter, and the amount of such reduction shall be deposited to miscellaneous receipts of the Treasury.]

#### **(c) Rentals received on or after August 8, 2005**

(1) Notwithstanding the first sentence of subsection (a) and except as provided in subsection (b), any rentals received from leases in any State (other than the State of Alaska) on or after August 8, 2005, shall be deposited in the Treasury, to be allocated in accordance with paragraph (2).

(2) Of the amounts deposited in the Treasury under paragraph (1)-

(A) 50 percent shall be paid by the Secretary of the Treasury to the State within the boundaries of which the leased land is located or the deposits were derived; and

(B) 50 percent shall be deposited in a special fund in the Treasury, to be known as the "BLM Permit Processing Improvement Fund" (referred to in this subsection as the "Fund").

(3) Use of fund.-

(A) In general.-The Fund shall be available to the Secretary of the Interior for expenditure, without further appropriation and without fiscal year limitation, for the coordination and processing of oil and gas use authorizations on onshore Federal and Indian trust mineral estate land.

(B) Accounts.-The Secretary shall divide the Fund into-

(i) a Rental Account (referred to in this subsection as the "Rental Account") comprised of rental receipts collected under this section; and

(ii) a Fee Account (referred to in this subsection as the "Fee Account") comprised of fees collected under subsection (d).

(4) Rental account.-

(A) In general.-The Secretary shall use the Rental Account for-

(i) the coordination and processing of oil and gas use authorizations on onshore Federal and Indian trust mineral estate land under the jurisdiction of the Project offices identified under section 15924(d) of title 42; and

(ii) training programs for development of expertise related to coordinating and processing oil and gas use authorizations.

(B) Allocation.-In determining the allocation of the Rental Account among Project offices for a fiscal year, the Secretary shall consider-

(i) the number of applications for permit to drill received in a Project office during the previous fiscal year;

(ii) the backlog of applications described in clause (i) in a Project office;

(iii) publicly available industry forecasts for development of oil and gas resources under the jurisdiction of a Project office; and

(iv) any opportunities for partnership with local industry organizations and educational institutions in developing training programs to facilitate the coordination and processing of oil and gas use authorizations.

(5) Fee account.-

(A) In general.-The Secretary shall use the Fee Account for the coordination and processing of oil and gas use authorizations on onshore Federal and Indian trust mineral estate land.

(B) Allocation.-The Secretary shall transfer not less than 75 percent of the revenues collected by an office for the processing of applications for permits to the State office of the State in which the fees were collected.

#### **(d) BLM oil and gas permit processing fee**

##### **(1) In general**

Notwithstanding any other provision of law, for each of fiscal years 2016 through 2026, the Secretary, acting through the Director of the Bureau of Land Management, shall collect a fee for each new application for a permit to drill that is submitted to the Secretary.

##### **(2) Amount**

The amount of the fee shall be \$9,500 for each new application, as indexed for United States dollar inflation from October 1, 2015 (as measured by the Consumer Price Index).

##### **(3) Use**

Of the fees collected under this subsection for a fiscal year, the Secretary shall transfer-

(A) for each of fiscal years 2016 through 2019-

(i) 15 percent to the field offices that collected the fees and used to process protests, leases, and permits under this chapter, subject to appropriation; and

(ii) 85 percent to the BLM Permit Processing Improvement Fund established under subsection (c)(2)(B) (referred to in this subsection as the "Fund"); and

(B) for each of fiscal years 2020 through 2026, all of the fees to the Fund.

##### **(4) Additional costs**

During each of fiscal years of 2016 through 2026, the Secretary shall not implement a rulemaking that would enable an increase in fees to recover additional costs related to processing applications for permits to drill.

Section 6 of the Mineral Leasing Act (30 U.S.C. 355)

### **§355. Disposition of receipts**

(a) [Subject to the provisions of section 35(b) of the Mineral Leasing Act (30 U.S.C. 191(b)), all] All receipts derived from leases issued under the authority of this chapter shall be paid into the same funds or accounts in the Treasury and shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease, the intention of this provision

being that this chapter shall not affect the distribution of receipts pursuant to legislation applicable to such lands: *Provided, however,* That receipts from leases or permits for minerals in lands set apart for Indian use, including lands the jurisdiction of which has been transferred to the Department of the Interior by the Executive order for Indian use, shall be deposited in a special fund in the Treasury until final disposition thereof by the Congress. Notwithstanding the preceding provisions of this section, all receipts derived from leases on lands acquired for military or naval purposes, except the naval petroleum reserves and national oil shale reserves, shall be paid into the Treasury of the United States and disposed of in the same manner as provided under section 35 of the Mineral Leasing Act (30 U.S.C. 191) [of the Act of February 25, 1920 (41 Stat. 450; 30 U.S.C. 191)], in the case of receipts from sales, bonuses, royalties, and rentals of the public lands under that Act [30 U.S.C. 181 et seq.].

(b) Notwithstanding any other provision of law, any payment to a State under this section shall be made by the Secretary of the Interior and shall be made not later than the last business day of the month following the month in which such moneys or associated reports are received by the Secretary of the Interior, whichever is later. The preceding sentence shall also apply to any payment to a State derived from a lease for mineral resources issued by the Secretary of the Interior under section 520 of title 16. The Secretary shall pay interest to a State on any amount not paid to the State within that time at the rate prescribed under section 1721<sup>1</sup> of this title from the date payment was required to be made under this subsection until the date payment is made.

Section 20 of the Geothermal Steam Act of 1970 (30 U.S.C. 1019)

## **§1019. Disposal of moneys from sales, bonuses, rentals, and royalties**

### **(a) In general**

Except with respect to lands in the State of Alaska, all monies received by the United States from sales, bonuses, rentals, and royalties under this chapter shall be paid into the Treasury of the United States. Of amounts deposited under this subsection, subject to [the provisions of subsection (b) of section 191 of this title and] section 1004(a)(2) of this title-

- (1) 50 percent shall be paid to the State within the boundaries of which the leased lands or geothermal resources are or were located; and
- (2) 25 percent shall be paid to the county within the boundaries of which the leased lands or geothermal resources are or were located.

### **(b) Use of payments**

Amounts paid to a State or county under subsection (a) shall be used consistent with the terms of section 191 of this title.

Section 205 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1735)

## **§1735. Delegation of royalty collections and related activities**

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### **(f) Compensation to State for costs of delegation; allocation of costs**

Subject to appropriations, the Secretary shall compensate any State for those costs which may be necessary to carry out the delegated activities under this Section.<sup>1</sup> Payment shall be

made no less than every quarter during the fiscal year. Compensation to a State may not exceed the Secretary's reasonably anticipated expenditure for performance of such delegated activities by the Secretary. [Such costs shall be allocable for the purposes of section 191(b) of this title to the administration and enforcement of laws providing for the leasing of any onshore lands or interests in land owned by the United States. Any further allocation of costs under section 191(b) of this title made by the Secretary for oil and gas activities, other than those costs to compensate States for delegated activities under this chapter, shall be only those costs associated with onshore oil and gas activities and may not include any duplication of costs allocated pursuant to the previous sentence. Nothing in this section affects the Secretary's authority to make allocations under section 191(b) of this title for non-oil and gas mineral activities.] All moneys received from sales, bonuses, rentals, royalties, assessments and interest, including money claimed to be due and owing pursuant to a delegation under this section, shall be payable and paid to the Treasury of the United States.

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