

**MEMORANDUM**

April 10, 2015

**To:** Senator John Hoeven  
Attention: Ryan Bernstein

**From:** Alexandra M. Wyatt, Legislative Attorney, 7-0816

**Subject:** **Delegation to States of Oil and Gas Regulation on Federal Lands**

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This brief memorandum responds to your inquiry whether the Department of the Interior (DOI) and the Bureau of Land Management (BLM) have statutory authorization to delegate regulation (permitting, inspection, and enforcement) of oil and gas production to the states for production occurring on federal land. Based on our examination of the relevant statutes, DOI and BLM do not appear to have such authorization.

Development of oil and gas on federal lands is governed primarily by the Mineral Leasing Act of 1920 (MLA),<sup>1</sup> as well as by the Federal Land Policy and Management Act of 1976<sup>2</sup> and various other statutes.<sup>3</sup> No language has been found in any of these statutes authorizing DOI or BLM to delegate authority or assign responsibility for regulation of such oil and gas production to states. Rather, the federal-state relationship in the context of oil and gas development on federal lands is set forth across various provisions in ways that retain DOI's primary responsibility. For example, the MLA requires DOI to "take into consideration and to the extent practical comply with State standards for right-of-way construction, operation, and maintenance" for pipelines through federal lands.<sup>4</sup>

There are, in contrast, statutory provisions authorizing DOI to delegate aspects of oil and gas royalty management on federal lands to states. Specifically, the Federal Oil and Gas Royalty Management Act (FOGRMA) allows DOI to delegate royalty collection and enumerated related activities to a state,<sup>5</sup> and allows cooperative agreements with states "to share oil or gas royalty management information" and "to

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<sup>1</sup> 30 U.S.C. §§ 181-287. Under the MLA, DOI, through BLM, administers leasing auctions and implementing activities for oil and gas production on all federal lands.

<sup>2</sup> 43 U.S.C. §§ 1701-1785.

<sup>3</sup> *E.g.*, Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 351-360 (extending Mineral Leasing Act and authority of DOI over oil and gas operations to federal "acquired lands"); Mining and Minerals Policy Act of 1970, 30 USC 21 et seq. (setting modern policy regarding mineral development in the United States of encouraging private enterprise while mitigating adverse environmental impacts); Energy Policy Act of 2005, Pub. L. No. 109-58, tit. III, subtit. F, 119 Stat. 594, 720-736 (2005) (requiring DOI review of federal onshore oil and gas leasing and permitting practices, imposing deadlines, and mandating other streamlining). General delegations and state program authorities in various general statutes to protect air and water quality or address other topics, such as state Clean Air Act programs, involve other federal agencies besides DOI and are beyond the scope of this memorandum.

<sup>4</sup> 30 U.S.C. § 185(v).

<sup>5</sup> 30 U.S.C. § 1735.

carry out inspection, auditing, investigation or enforcement (not including the collection of royalties, civil or criminal penalties or other payments) activities” in cooperation with DOI, for the purpose of ensuring accurate calculation and payment of royalties.<sup>6</sup> Other aspects of oil and gas development besides royalty management, such as environmental oversight, are not included in the scope of FOGRMA.

Recent bills have proposed to address this lack of statutory authorization for state regulation of oil and gas development on federal lands. The Federal Land Freedom Act of 2015, introduced in February 2015 in both chambers, would allow a state to lease, permit, and regulate the exploration and development of oil, natural gas, and other forms of energy on federal land within the state upon the state’s submission of a declaration regarding its program for doing so, notwithstanding any other law.<sup>7</sup> State actions under the authority provided by the bill would not be considered federal actions and would “not be subject to” federal permitting or federal species protection, historic preservation, environmental review, or administrative procedure statutes.<sup>8</sup> The Protecting States’ Rights to Promote American Energy Security Act would prohibit DOI from enforcing any federal regulations or permitting requirements for hydraulic fracturing within states that have their own hydraulic fracturing regulations, and would require DOI to defer to state regulations, guidance, and permitting for all hydraulic fracturing activities on federal lands.<sup>9</sup> Other bills may expand state authority over specific projects, such as pipelines.<sup>10</sup>

Please note that information in this memorandum may be of general interest to Congress. As such, all or part of this information may be provided in other CRS written products. Your confidentiality as a requester will be preserved in any case.

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<sup>6</sup> 30 U.S.C. § 1732.

<sup>7</sup> S. 490, H.R. 866, 114<sup>th</sup> Cong. (2015).

<sup>8</sup> S. 490 § 4(c), 114<sup>th</sup> Cong. (2015); H.R. 866 § 4(c), 114<sup>th</sup> Cong. (2015).

<sup>9</sup> S. 15, 114<sup>th</sup> Cong. (2015).

<sup>10</sup> *E.g.*, S. 147, 114<sup>th</sup> Cong. (2015) (authorizing Keystone Pipeline as described in the application filed by TransCanada Corporation to the Department of State along with any subsequent revision to the pipeline route within the State of Nebraska required or authorized by the State of Nebraska).

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