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U.S. DEPARTMENT OF THE INTERIOR
BEFORE THE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
ON
S. 1273, THE FAIR ACT OF 2013

Chairman Wyden, Ranking Member Murkowski, and members of the Committee, I am pleased to appear before you today to discuss S. 1273, the Fixing America's Inequities with Revenues (FAIR) Act of 2013, which would change existing leasing and revenue sharing laws to provide additional funds from revenue generated by energy production on federal lands and waters to states. The Administration is committed to ensuring that American taxpayers receive a fair return from the sale of public resources. The revenue sharing provisions of S. 1273 would ultimately reduce the net return to taxpayers in every state from the development of offshore energy resources owned by all Americans, have significant and long term costs to the Federal Treasury, and increase the federal deficit. In addition, the bill does not appear to be targeted to achieve clear conservation or energy policy outcomes. For these reasons, the Administration cannot support the bill.

Introduction

As the President has stressed, the Administration is committed to promoting safe and responsible domestic oil and gas production as part of a broad energy strategy that will protect consumers and reduce our dependence on foreign oil. The Department of the Interior manages the public lands and federal waters that provide resources critical to the Nation's energy security; is responsible for collecting and distributing revenue from energy development; and ensures that the American taxpayer receives a fair return for development of those federal resources.

The lands and resources managed by the Department are vast. Onshore, in the 34 states where federal leases are located, over 37 million acres are under lease. Offshore, the Department has made 60 million acres available for development in the past three offshore lease sales alone. In the Gulf of Mexico alone there are over 32 million acres under active lease. These onshore and offshore lands are a huge economic engine. The development of 23 percent of domestic energy supplies is overseen by the Department, and it collects an average of over $10 billion annually through mineral extraction and other activities. Roughly half of these revenues are shared annually with states, tribes, counties, and other entities, and the remainder is deposited in the Treasury's General Fund to contribute to deficit reduction. Funds are also disbursed to coastal states under the revenue sharing provisions of the Outer Continental Shelf Lands Act and the Gulf of Mexico Energy Security Act (GOMESA).

We take seriously our responsibility to the public for the stewardship of our nation's natural resources and public assets that generate royalty revenue from federal leases. As described in more detail below, revenue generated from leases on the OCS is directed to the U.S. Treasury and is used to fund federal conservation programs through contributions to the Land and Water Conservation Fund and the Historic Preservation Fund. The Administration strongly supports the LWCF and the core values it represents and agrees that a portion of the proceeds from the sale of these public assets should be reinvested in something of lasting value for all Americans in every state.

The Administration is mindful of the long-held view that coastal states should share the benefits of energy development that takes place offshore. Although coastal states clearly enjoy significant economic benefits from offshore development in the form of jobs and state and local tax revenues, there is also significant revenue generated from offshore leasing and production in which coastal states claim an interest. Congress initially addressed the interests of the coastal states in two ways; first, in 1953, with the passage of the Submerged Lands Act, which allows coastal states to claim a seaward boundary up to three geographical miles from their coastlines, and; second, in 1986, through the amendment of section 8(g) of the OCSLA, under which the Secretary of the Interior provides to coastal states 27 percent of all revenues collected on federal oil and gas leases within three miles of the state boundary established in the Submerged Lands Act. Lastly, in 2006 Congress enacted the Gulf of Mexico Energy Security Act, which put in place revenue sharing considerations for coastal states. These Congressional actions are discussed in further detail below.

Development of Federal Resources

Recognizing that America's oil and gas supplies are limited, we must develop our domestic resources safely, responsibly, and efficiently, while at the same time taking steps that will ultimately lessen our reliance on foreign energy sources.

Onshore, 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 about 700 million acres of onshore subsurface mineral estate throughout the nation. Together with the Bureau of Indian Affairs, it also provides permitting and oversight on approximately 56 million acres of land held in trust by the federal government on behalf of tribes and individual Indian owners. BLM is also working with local communities, tribes, states, industry, and other federal agencies to build a clean energy future.

Guided by the Federal Land Policy and Management Act, BLM manages public lands under a multiple-use mandate, and considers a wide variety of factors in its land management decisions. These include industry interest, conservation values, protection of the environment, as well as other potential uses of the land. Leasing and mineral development is guided by the provisions of the Mineral Leasing Act and related laws, and rights-of-way for renewable energy projects issued under FLPMA.

These federal lands and resources, located within state boundaries, belong to the public and, as directed by law, BLM places a high priority on requiring that energy leasing and development are conducted in a scientifically-based, environmentally-sound manner while balancing other multiple uses and resource values. The goal is to ensure environmentally responsible development of resources on federal and Indian lands with a fair return to the American people, states, counties, tribes, and individual Indians for the use of their resources.

Offshore, title and ownership of the federal seabed within 3 nautical miles of the shore (except Texas and western Florida, where it is 9 nautical miles), along with right to manage all of the natural resources within those boundaries, was given to coastal states by an Act of Congress, the Submerged Lands Act, in 1953. Following enactment of that Act, coastal states generally control decisions related to leasing and developing these lands, including the collection and distribution of all revenue, generated from mineral development from those lands.

Under that Act, the Outer Continental Shelf – that portion of the lands under the high seas beyond the state boundaries set in the Submerged Lands Act – remain under federal jurisdiction, and development of resources from the OCS is managed by the Secretary of the Interior under the Outer Continental Shelf Lands Act. Prior to the enactment of GOMESA in 2006, the only general revenue sharing from leases in the federal waters of the OCS came from section 8(g) of the OCSLA, in which Congress directed the Secretary to pay to coastal states 27 percent of the bonuses, rents and royalties collected within three nautical miles of the state boundary. This amendment to the OCSLA was intended to provide a fair and equitable division of Federal revenues from near-shore leases and thereby resolve a Federal-State dispute regarding drainage of oil and gas resources from "common pool" lands.

Through its offshore agencies, the Bureau of Ocean Energy Management and the Bureau of Safety and Environmental Enforcement, the Department manages access to and development of the energy and mineral resources on the OCS in a manner that is operationally safe and environmentally sound, prevents waste, and provides a fair return to the taxpayer for these federal resources. The Office of Natural Resources Revenue is responsible for the management of the mineral revenues generated from federal and Indian lands onshore and on the federal OCS.

Development and planning on the OCS is guided by section 18 of the OCSLA, which requires the Secretary to prepare the 5-Year Program consisting of a 5 year schedule of proposed lease sales that shows size, timing, and location of leasing activity as precisely as possible. The OCSLA mandates that the 5-Year Program must balance the priorities of meeting national energy needs, ensuring environmentally sound and safe operations, and assuring receipt of fair market value to the taxpayer.

This is a public planning process during which the economic, social, and environmental values of the renewable and nonrenewable resources in the OCS and the potential impact of oil and gas exploration on other resource values of the OCS and the marine, coastal, and human environments are evaluated. Throughout, the Department's analysis is based on science and research obtained through the Environmental Studies Program, Technology Assessment and Research Program, and studies from other sources such as other Federal and State agencies, the National Academy of Sciences, and universities.

In order to balance the priorities of national energy needs, environmental protection and receipt of fair market value, the OCSLA requires the Secretary to consider information on the geographical, geological, and ecological characteristics of each region; equitable sharing of development benefits and environmental risks; regional and national energy markets; other uses of the OCS; interest of potential oil and gas producers; the laws, goals and policies of the affected states; the relative environmental sensitivity and marine productivity of different areas of the OCS; and the relevant environmental and predictive information for different areas of the OCS.

The 5-Year Program thus initiates the process of deciding how, when and where it is appropriate to offer oil and gas leases on the OCS. It is a detailed, carefully executed, and public process and it is based on sound scientific analysis. A key part of safe and responsible development of our oil and gas resources is recognizing that different environments and communities require different approaches and technologies. The Program reflects this recognition, and accounts for issues such as current knowledge of resource potential, adequacy of infrastructure including oil spill response capabilities, Department of Defense priorities, and the need for a balanced approach to our use of natural resources.

Nearly 219 million acres on the OCS will be considered for leasing in the current Five Year Outer Continental Shelf Oil and Gas Leasing Program for 2012-2017 (Five Year Program.) And the current Five Year Program makes all of the OCS areas with the greatest resource potential available for oil and gas leasing. Together, these areas contain more than 75 percent of the undiscovered, technically recoverable oil and gas resources estimated to exist on the OCS. The third lease sale from the Five Year Program, scheduled for this August, will offer 21 million acres offshore Texas – all the available unleased acreage in the Western Gulf of Mexico.

The majority of lease sales are scheduled for areas in the Gulf of Mexico, where resource potential and interest is greatest and where infrastructure is most mature. But it also includes frontier areas, such as the Arctic, which holds substantial oil and gas potential, but also presents unique environmental and operational challenges. In the Arctic we must proceed cautiously, safely, and based on the best science available.

We also note that, since the Deepwater Horizon disaster the Administration has taken a number of actions to improve the safety of offshore drilling. Important offshore drilling safety reforms still necessitate action by Congress and the Administration urges the Committee to pass those important measures.

Revenue Distribution

As noted above, while coastal states manage revenues associated with activities in state waters, the Office of Natural Resources Revenue is responsible for the management of revenues associated with federal offshore, onshore, and Indian leases, as well as revenues received as a result of onshore and offshore renewable energy efforts. This revenue management effort is one of the federal government's greatest sources of non-tax revenues.

The federal government has been collecting revenues from mineral production from onshore federal lands since 1920, from Indian lands since 1925, and from federal offshore lands since 1953. Since 1982, Interior has disbursed $243 billion in mineral leasing revenue to key federal programs, state and Indian recipients, and the U.S. Treasury.

The distribution of revenues associated with onshore federal lands is generally split between the states and the federal government. Onshore, under the Mineral Leasing Act, 50 percent of the money (net of a deduction for administrative costs) is distributed directly to the state within which the specific lease is located; 40 percent is sent to the Reclamation Fund of the U.S. Treasury, which finances the Bureau of Reclamation's water projects in 17 western states; and the remaining 10 percent goes to the Treasury's General Fund. Alaska receives a 90 percent share of the revenues from certain leases located on federal lands within Alaska (net of the administrative cost deduction), as mandated by provisions of the Alaska Statehood Act.

For offshore leases on the OCS, ONRR distributes collected money to U.S. Treasury accounts. In recent years, annual deposits have included nearly $900 million to the Land and Water Conservation Fund and $150 million to the Historic Preservation Fund. The remainder is sent to the U.S. Treasury's General Fund where it significantly contributes to reducing the Federal deficit.

Additionally, a portion of revenues from certain offshore federal leases—adjacent to the seaward boundaries of coastal states—are shared with eligible coastal states and political subdivisions. Currently, there are three offshore revenue sharing programs through which ONRR distributes a share of revenue from certain federal offshore leases to coastal states.

Under the 1978 Amendments to the OCSLA, certain coastal states and the federal government share revenues from OCS oil and gas leases. The applicable leases are those located on the OCS within 3 nautical miles of the state's seaward boundary. Referenced above, this three mile-wide area is commonly referred to as the "8(g) zone." The 1986 amendments to the OCSLA require that an affected coastal state receive 27 percent of revenues generated from the leasing and development of federal oil and gas resources located in the 8(g) zone.

The Energy Policy Act of 2005 also provided for coastal states and the federal government to share revenues from certain OCS renewable energy leases. These leases may be located within 3 nautical miles of state submerged lands. States within 15 nautical miles of the center of a project are eligible to share in a portion of 27 percent of the revenues generated from the leasing and operation of renewable energy leases.

Finally, section 105 of the Gulf of Mexico Energy Security Act of 2006 (GOMESA) established oil and gas revenue sharing from federal leases in the Gulf of Mexico for the four Gulf producing States – Alabama, Louisiana, Mississippi, and Texas – and their eligible coastal political subdivisions, as well as the Land and Water Conservation Fund. In general, GOMESA provides for the distribution of 37.5 percent of qualified revenues among the four States and their coastal political subdivisions. An additional 12.5 percent of revenues are allocated to provide financial assistance to states in accordance with section 6 of the LWCF.

The GOMESA revenue sharing is split into two phases. During the first phase, which began in 2007, 37.5 percent of all qualified OCS revenues, including bonus bids, rentals and production royalty, are shared among the Gulf oil and gas producing States of Alabama, Louisiana, Mississippi and Texas and their coastal political subdivisions from those new leases issued in the so-called "181 Area" in the Gulf's Eastern planning area and the 181 South Area. An additional 12.5 percent of these same revenues are allocated to LWCF state grants.

The second phase of GOMESA revenue sharing is scheduled to begin in Fiscal Year 2017, and it expands the definition of qualified OCS revenues to include receipts from all other Gulf of Mexico leases issued after December 20, 2006 from 2002–2007 Gulf of Mexico Planning Areas not subject to withdrawal or moratoria restrictions. Importantly, payments to Gulf Coast states and allocations to LWCF state grants in Phase 2 are collectively capped at $500 million annually; this significantly reduces the long-term cost to the Treasury relative to a scenario in which the full 50 percent of qualified OCS revenues are spent on direct payments to Gulf Coast states and LWCF state grants.

There have been other programs that distribute assistance derived from revenue from the OCS to states and local governments. A recent example is the Coastal Impact Assistance Program, established in the Energy Policy Act of 2005. This program authorized the distribution of $1 billion, in increments of $250 million per year, of OCS revenues in each of fiscal years 2007-2010 to eligible states and their coastal political subdivisions. Eligible states under this program include states with production in adjacent federal waters of the OCS; Alabama, Alaska, California, Louisiana, Mississippi, and Texas. The funds were made available through a grant program for authorized uses specified in the Act, including the conservation, protection or restoration of coastal areas; mitigation of damage to fish, wildlife and natural resources; and mitigation of the impact of OCS activities through funding onshore infrastructure projects and public service needs.

S. 1273, the FAIR Act

If enacted, S. 1273 would, generally, amend section 9 of the OCSLA to require the Secretary of the Treasury to deposit 37.5 percent of all revenues derived from all rentals, royalties, bonus bids, and other sums payable to the United States from energy development on the OCS into a special fund in the Treasury; the Secretary of the Interior would then be required to disperse a 27.5 percent share of these revenues to coastal states and their political subdivisions; the remaining 10 percent share of the revenues would be paid to coastal states that establish funds to support projects relating to alternative and renewable energy, energy research and development, energy efficiency, or conservation activity.

It would also amend section 102(9) of GOMESA to accelerate the revenue sharing provisions of that Act; reduce the amount shared with the LWCF; and revise and eventually eliminate the current $500 million cap on amounts distributed to Gulf Coast states and LWCF. The cap would be increased by $100 million per year until FY 2025, at which point the cap would be removed entirely. We note that the cost to the Treasury of eliminating the cap would be significant, and based on current revenue projections and trends, would eventually be in the billions of dollars annually.

According to the Department's preliminary calculations made since S. 1273's introduction a week ago, the bill would likely result in a reduction of more than $5 billion in deposits to the Treasury through 2022, and the rate of reduction in deposits would dramatically increase thereafter. This loss of revenue to the Treasury is a major concern for the Administration as Agencies are already forced to do more with less under sequestration.

It is also significant to note that S. 1273 would provide only $62.5 million per year – slightly less than 7 percent of LWCF's annual $900 million commitment – to only one aspect of LWCF, the state grants component. While the Administration appreciates implicit recognition that there is a connection between the OCS and LWCF, the insufficient LWCF funding in the bill and the exclusion of the majority of LWCF programs are major concerns, and are inconsistent with the President's budget request to establish mandatory dedicated funding for LWCF programs, with full funding at $900 million annually beginning in 2015. Enactment of a mandatory LWCF program is a central element of the President's conservation agenda and would ensure continued funding for this program designed to make investments in conservation and recreation for the American people to balance the development of oil and gas resources through the use of its proceeds.

Onshore, it would amend section 35 of the Mineral Leasing Act to require the Secretary of the Interior to disburse 50 percent of receipts from development of onshore alternative or renewable energy to the State within the boundaries of which the energy source is located. The Administration believes that any new disposition of federal energy revenues should be targeted to achieve clear conservation and energy policy outcomes.

The Obama Administration has made clear its commitment to reduce the deficit and put the Nation on a sound fiscal course. The 2014 budget request provides a balanced approach to achieve $1.8 trillion in additional deficit reduction over the next ten years and replace the cuts required by sequestration. The President's Budget for 2014 relies on a balanced approach to providing a fair return the Treasury and taxpayers from federal energy revenues; the budget counts on the expected collections of revenues to fulfill commitments made in the budget to the

American public, including for example funding the Land and Water Conservation Fund, the Historic Preservation Fund, and a new Energy Security Trust Fund that would set aside $2 billion over ten years for critical, cutting-edge research focused on finding cost-effective transportation alternatives to oil to protect American families from spikes in gasoline prices and allow us to run our cars and trucks on electricity or homegrown fuels.

As discussed above, the revenue sharing provisions of S. 1273 would ultimately reduce the net return to taxpayers from development of the federal resources on the OCS and affected by the bill, and would add to the federal deficit. For these reasons, the Administration cannot support the bill.

Moreover, the Administration has proposed as part of the President's Budget a range of oil and gas management reforms that it believes will allow taxpayers to receive a better return on development its oil and gas resources. In addition, these reforms will provide appropriate incentives for companies to diligently develop their unused Federal oil and gas leases – held both on and offshore on the OCS. Today, more than 70 percent of the tens of millions of offshore acres under lease are inactive, including almost 27 million inactive leased acres in the Gulf of Mexico. Onshore, about 57 percent of leased acres – almost 22 million acres in total – are neither being explored nor developed. The American taxpayer, and states as well, will benefit from this production and the higher federal revenue generated as a result of these reforms.

Conclusion

Mr. Chairman, these federal resources are managed for the good of the American people, who all share in their ownership. Because this legislation will reduce the net return to the public, who own this resource; would negatively impact the conservation programs funded through the LWCF; misses an important opportunity to improve our energy security by establishing and funding the Energy Security Trust; and adds to the federal deficit, the Administration cannot support S. 1273. I am happy to answer any questions that the Committee might have.