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SENATE

REPORT
117–203

OIL AND GAS PERMITTING PROCESS

NOVEMBER 17, 2022.—Ordered to be printed

Mr. MANCHIN, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 4227]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 4227), to streamline the oil and gas permitting process and to recognize fee ownership for certain oil and gas drilling or spacing units, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

AMENDMENTS

The amendments are as follows:

1. Beginning on page 1, strike line 4 and all that follows through page 2, line 2, and insert the following:

> (a) IN GENERAL.—Notwithstanding the Mineral Leasing Act (30 U.S.C. 181 et seq.), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.), or subpart 3162 of title 43, Code of Federal Regulations (or successor regulations), but subject to any State or Tribal requirements and subsection (c), the Secretary of the Interior shall not require a permit to drill for an oil and gas lease under the Mineral Leasing Act (30 U.S.C. 181 et seq.) for an action occurring within an oil and gas drilling or spacing unit if—

2. On page 3, strike lines 1 through 3 and insert the following:

> (b) NOTIFICATION.—For each State permit to drill or drilling plan that would impact or extract oil and gas owned by the Federal Government—
>
> (1) each lessee, or designee of a lessee, shall—

(A) notify the Secretary of the Interior of the submission of a State application for a permit to drill or drilling plan on submission of the application; and

(B) provide a copy of the application described in subparagraph (A) to the Secretary of the Interior not later than 5 days after the date on which the permit or plan is submitted; and

(2) each lessee, designee of a lessee, or applicable State shall notify the Secretary of the Interior of the approved State permit to drill or drilling plan not later than 45 days after the date on which the permit or plan is approved.

(c) NONAPPLICABILITY TO INDIAN LANDS.—Subsection (a) shall not apply to Indian lands (as defined in section 3 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1702)).

(d) EFFECT.—Nothing in this section affects—

(1) other authorities of the Secretary of the Interior under the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.); or

(2) the amount of royalties due to the Federal Government from the production of the Federal minerals within the oil and gas drilling or spacing unit.

PURPOSE

The purpose of S. 4227, as ordered reported, is to remove the requirement for a permit from the Secretary of the Interior for certain oil and gas drilling or spacing units where the Federal Government holds a minority interest in the minerals within the unit and there is no surface interest held by the Federal Government in the area impacted by the action.

BACKGROUND AND NEED

In the western United States, there are occasionally "split-estate" situations, where the ownership of the surface rights and mineral rights are held by different parties. Generally, in split-estate situations, the surface is owned by a non-federal entity, while the subsurface mineral estate is held by the federal government. Split-estates can present management challenges for oil and gas development as modern directional drilling techniques have enabled well drilling from a single well pad on the surface to reach multiple pools of oil and gas miles apart, potentially with different owners of the mineral estate and the surface estate.

The leasing of Federally owned or managed minerals is managed by the Secretary of the Interior, acting through the Bureau of Land Management (BLM), primarily under the provisions of the Mineral Leasing Act (30 U.S.C. 181 et seq.) and the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.). Under current law, no drilling operations or related surface disturbing activities may be initiated without an approved Application for a Permit to Drill (APD) on lands and interests in land owned by the United States.

The BLM has procedures to address federal review and permitting processes applied in split-estate situations, particularly where

wells are not located on federal surface estate. Like any APD review, these situations require administrative resources from BLM, in the context of significant responsibilities for reviewing all other applications for permits to drill (APDs) across federal surface and fully owned mineral estate. In cases where federal minerals are combined with private or state owned minerals due to the geologic location of the resources and the layout of oil and gas spacing units identified by state regulators, the presence of federal minerals triggers the requirement for an APD that would not otherwise apply. Some private mineral rights holders, as well as oil and gas developers, have claimed that the development process is slower in this mixed ownership scenario than would occur in situations where mineral ownership is limited to state or private owners, as a result of the requirement for an APD and the subsequent review process.

LEGISLATIVE HISTORY

S. 4227 was introduced by Senators Hoeven and Cramer on May 16, 2022. Senator Daines is a cosponsor. The Subcommittee on Public Lands, Forests, and Mining held a hearing on S. 4227 on June 7, 2022.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business session on July 21, 2022, by a voice vote of a quorum present, recommends that the Senate pass S. 4227, if amended as described herein.

COMMITTEE AMENDMENTS

The Committee adopted two amendments during its consideration of S. 4227. The first amendment narrows the "notwithstanding any law" provision of the original bill. The second amendment requires a lessee or designee of a lessee using this provision to notify the Secretary of the Interior when it submits an application to the State for a permit to drill or drilling plan and when the State approves the permit or plan; exempts Indian Lands (as defined in section 3 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA)); and adds a savings clause to clarify that the Act has no effect on other authorities of the Secretary of the Interior under FOGRMA nor affects royalties otherwise due from the lessee to the Federal government.

The amendments are described further in the section-by-section analysis below.

SECTION-BY-SECTION ANALYSIS

Section 1. Compliance with BLM permitting

Subsection (a) provides that subject to any State or Tribal requirements and subsection (c), the Secretary of the Interior shall not require a permit drill for an oil and gas lease under the Mineral Leasing Act within an oil and gas drilling or spacing unit if less than 50 percent of the minerals are owned by the Federal Government and the Federal Government does not have an interest in the directly impacted surface estate.

Subsection (b) requires that for each State permit to drill or drilling plan that would impact or extract oil and gas owned by the

Federal Government, each lessee or designee shall notify the Secretary of the Interior of the submission and provide a copy of the permit or plan not later than 5 days after submission. Additionally, the subsection requires that on approval of the State permit or plan to drill the lessee, designee, or the State shall notify the Secretary of the Interior no later than 45 days after the permit or plan is approved.

Subsection (c) provides that Subsection (a) shall not apply to Indian lands as defined in Section 3 of the Federal Oil and Gas Royalty Management Act of 1982.

Subsection (d) is a savings clause and provides that nothing in this Section affects other authorities of the Secretary under the Federal Oil and Gas Royalty Management Act of 1982 nor affects royalties otherwise due from the lessee to the Federal government.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of S. 4227, as ordered reported, has been requested but was not received at the time the report was filed. When the Congressional Budget Office completes its cost estimate, it will be posted at *www.cbo.gov.*

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 4227.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 2130, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 4227, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Department of the Interior at the June 7, 2022, hearing on S. 4227 follows:

STATEMENT OF NADA WOLFF CULVER, DEPUTY DIRECTOR, POLICY & PROGRAMS, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

S. 4227, Excluding Certain Federal Minerals from Federal Drilling Permit Requirements

S. 4227 eliminates the requirement that an oil and gas operator submit to the BLM a Federal Application for Permit to Drill (APD) in instances where there is non-Federal surface estate and where the subsurface mineral estate is

less than 50 percent Federal in drilling and spacing units. Under the bill, a state would be required to provide the Secretary of the Interior a copy of the state approved drilling permit within 45 days of approval. Without a Federal permit, the NEPA, NHPA, and Endangered Species Act requirements for the exploration, development, or production of oil and gas would no longer apply. S. 4227 also states that nothing in the bill alters the amount of royalties due to the United States from production of Federal oil and gas.

Analysis

The BLM opposes the modifications to the oil and gas permitting process outlined in S. 4227. Since taking office through April 2022, this Administration has approved more than 4,700 APDs, leaving industry with more than 9,000 approved APDs available for drilling. The total review time for APDs has also decreased by more than 40 percent since 2011.

The Department has concerns that S. 4227 would remove the Secretary's discretion to ensure that oil and gas operations are conducted safely, are following all applicable environmental laws, and are consistent with the BLM's multiple use and sustained yield mandate under the FLPMA. Essentially, the bill would transfer Federal decision-making authority to the State. By requiring the state to merely notify the Secretary within 45 days of the State's approval of an APD, S. 4227 would eliminate the Secretary's existing discretion with respect to these approvals, which would be a significant change from current law that would undermine the BLM's core responsibility to ensure that permitted and regulated activities occurring on Federal lands are in compliance with Federal requirements designed specifically to protect the environment, nearby communities, other landowner interests, and taxpayers. The provision would not allow the Secretary to withhold approval, where appropriate, nor does it contain any requirement for the proponent's request to be fully complete prior to submission.

The APD is the important final step in the Federal oil and gas development process before development can occur. The bill fails to address several key oversight roles the BLM plays in ensuring that Federal minerals—and that lands that are used to access them—are protected as the mineral resources are developed, nor does it allow for inspection and enforcement to verify production. The BLM has robust drilling and production standards that are applied to all wells that intersect Federal minerals. Without these Federal drilling standards—including those related to blowout preventer tests and cementing and casing requirements—the BLM has concerns for the protection of water zones and other potential risks that would result from the bill. Any shortcomings resulting from a state's permitting process would inappropriately leave Federal taxpayers responsible for obligations created by the state.

Further, During the APD review, the BLM is required to complete a site-specific environmental analysis of the permitting action, which does not generally occur in the BLM's land use planning process or in the leasing analysis. Additionally, during this process, the public has their final opportunity to engage in the decision-making process, which helps the BLM identify public health and safety concerns and other potential resource conflicts related to a proposed drilling action on resources owned by the public. S. 4227 would take away important public involvement, where Federal, state, Tribal, and local entities participate in the environmental review process through the posting of APDs on the BLM national public database and within the responsible field office.

If enacted, S. 4227 would require the state to approve all APDs within drilling and spacing units with less than a 50 percent Federal mineral interest. The BLM notes that there are units where individual wells could be more than 50 percent Federal minerals, and these wells would also not require a Federal APD. As a result, the bill could potentially apply to significantly more APDs than the Sponsors intended.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill as ordered reported.

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