

116TH CONGRESS
2D SESSION

S. 3202

To discourage speculative oil and gas leasing and to promote enhanced multiple use management of public land and National Forest System land, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 16, 2020

Ms. CORTEZ MASTO introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To discourage speculative oil and gas leasing and to promote enhanced multiple use management of public land and National Forest System land, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “End Speculative Oil
5 and Gas Leasing Act of 2020”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) Federal land should be managed for mul-
9 tiple uses, resources, and values, including recreation

1 use, grazing use, timber resources, mineral re-
2 sources, watershed management, wildlife and fish
3 habitat, and natural, scenic, scientific, and historic
4 values;

5 (2) section 17(a) of the Mineral Leasing Act
6 (30 U.S.C. 226(a)) authorizes the Secretary of the
7 Interior to offer for lease only land that is “known
8 or believed to contain oil or gas deposits”;

9 (3)(A) in determining whether a parcel of Fed-
10 eral land should be made available for oil and gas
11 leasing and development, and in offering such a par-
12 cel for sale, the Secretary does not meaningfully
13 take into consideration the oil and gas development
14 potential of that parcel; and

15 (B) as a result, the Secretary regularly offers
16 and leases for oil and gas development Federal land
17 that has no or low potential for the development of
18 oil and gas resources (referred to in this section as
19 “no- or low-potential Federal land”);

20 (4)(A) no- or low-potential Federal land is fre-
21 quently leased for or near the minimum lease bid, or
22 noncompetitively, and rarely produce oil or gas re-
23 sources; and

1 (B) as a result, taxpayers in the United States
2 receive minimal revenue from the leasing of no- or
3 low-potential Federal land;

4 (5) making no- or low-potential Federal land
5 available for oil and gas leasing can result in leases
6 being obtained for speculative purposes;

7 (6) the Secretary wastes taxpayer resources in
8 issuing and managing leases on no- or low-potential
9 Federal land;

10 (7) no- or low-potential Federal land frequently
11 supports other economically important uses, re-
12 sources, and values including the uses, resources,
13 and values described in paragraph (1);

14 (8) the existence of leases on no- and low-poten-
15 tial Federal land can and does limit the ability of
16 the Secretary to support and enhance the uses, re-
17 sources, and values described in paragraph (1); and

18 (9) meaningful public participation in leasing
19 decisions is essential and can help to ensure that the
20 decisions of the Secretary are well-informed and
21 based on current and reliable information and data.

22 **SEC. 3. POLICY.**

23 In accordance with Federal multiple use land man-
24 agement goals, it is the policy of the United States that—

25 (1) the Secretary—

1 (A) shall not, absent exceptional cir-
 2 cumstances, offer for lease any Federal land
 3 that has low or no potential for the development
 4 of oil and gas resources;

5 (B) shall discourage speculation in the
 6 Federal onshore oil and gas leasing program;

7 (C) by not offering for lease Federal land
 8 described in subparagraph (A), shall conserve
 9 limited Federal resources that can be better ap-
 10 plied elsewhere; and

11 (2) the policies described in paragraph (1) are
 12 in keeping with, and are not detrimental to, the en-
 13 ergy security of the United States.

14 **SEC. 4. DEFINITIONS.**

15 In this Act:

16 (1) DRAINAGE.—The term “drainage” means
 17 the migration of hydrocarbons, inert gases (other
 18 than helium), or associated resources from a well
 19 caused by production from another well.

20 (2) FEDERAL LAND.—The term “Federal land”
 21 means—

22 (A) public land; and

23 (B) National Forest System land.

24 (3) LAND USE PLAN.—The term “land use
 25 plan” means—

1 (A) a land use plan required under sec-
2 tions 201 and 202 of the Federal Land Policy
3 and Management Act of 1976 (43 U.S.C. 1711,
4 1712), including any resource management plan
5 (as defined in section 1601.0–5 of title 43,
6 Code of Federal Regulations (or successor regu-
7 lations)); and

8 (B) a land and resource management plan
9 developed by the Secretary of Agriculture pur-
10 suant to section 6 of the Forest and Rangeland
11 Renewable Resources Planning Act of 1974 (16
12 U.S.C. 1604).

13 (4) PUBLIC LAND.—The term “public land”
14 has the meaning given the term “public lands” in
15 section 103 of the Federal Land Policy and Manage-
16 ment Act of 1976 (43 U.S.C. 1702).

17 (5) REASONABLY FORESEEABLE DEVELOPMENT
18 SCENARIO.—The term “reasonably foreseeable devel-
19 opment scenario” has the meaning given the term in
20 the handbook of the Bureau of Land Management
21 entitled “H—1624–1—Planning for Fluid Mineral
22 Resources” (as in effect on the date of enactment of
23 this Act) and issued pursuant to the Federal Land
24 Policy and Management Act of 1976 (43 U.S.C.
25 1701 et seq.).

1 (6) SECRETARY.—The term “Secretary” means
 2 the Secretary of the Interior, acting through the Di-
 3 rector of the Bureau of Land Management.

4 **SEC. 5. FEDERAL LAND COVERED BY REASONABLY FORE-**
 5 **SEEABLE DEVELOPMENT SCENARIO ISSUED**
 6 **BEFORE DATE OF ENACTMENT.**

7 (a) IN GENERAL.—With respect to Federal land oth-
 8 erwise available for leasing of oil and gas resources pursu-
 9 ant to the Mineral Leasing Act (30 U.S.C. 181 et seq.)
 10 or the Mineral Leasing Act for Acquired Lands (30 U.S.C.
 11 351 et seq.) that is covered by a reasonably foreseeable
 12 development scenario issued before the date of enactment
 13 of this Act, except as provided in subsection (b), the Sec-
 14 retary shall not offer the Federal land for lease unless the
 15 reasonably foreseeable development scenario for that land
 16 includes an assessment of the oil and gas development po-
 17 tential of that land that specifically identifies the potential
 18 for all acres subject to decisions on availability for leasing.

19 (b) EXCEPTION FOR DRAINAGE.—

20 (1) IN GENERAL.—The Secretary may offer for
 21 lease any Federal land described in subsection (a)
 22 without meeting the requirements of that subsection
 23 if—

24 (A)(i) the Federal land is adjacent to land
 25 currently producing oil or gas; and

(ii) the lease is issued for the purpose of preventing drainage from the adjacent land; or

(B) the Federal land—

(i) does not exceed 640 acres; and

(ii) is located within 1 mile of a well producing oil or gas in paying quantities on the date on which the Federal land is offered for leasing.

(2) REQUIREMENT.—A lease issued under paragraph (1) shall be consistent with the applicable land use plan and all other applicable law.

SEC. 6. FEDERAL LAND NOT COVERED BY CURRENT REASONABLY FORESEEABLE DEVELOPMENT SCENARIO.

(a) IN GENERAL.—

(1) IN GENERAL.—Except as provided in subsection (c), if the Secretary determines that Federal land otherwise available for leasing of oil and gas resources pursuant to the Mineral Leasing Act (30 U.S.C. 181 et seq.) or the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.) is not covered by a reasonably foreseeable development scenario issued in accordance with this subsection or section 5(a), the Secretary, in cooperation with the Secretary of Agriculture with respect to National

1 Forest System land, shall complete such a reason-
 2 ably foreseeable development scenario.

3 (2) REQUIREMENTS.—Any reasonably foresee-
 4 able development scenario issued on or after the
 5 date of enactment of this Act shall, at a minimum—

6 (A) assess and designate all Federal land
 7 covered by the reasonably foreseeable develop-
 8 ment scenario as having high, moderate, low, or
 9 no potential for development of oil and gas re-
 10 sources; and

11 (B) publish a map depicting the covered
 12 Federal land and the development potential for
 13 that Federal land designated under subpara-
 14 graph (A).

15 (3) FACTORS.—

16 (A) IN GENERAL.—In completing a reason-
 17 ably foreseeable development scenario for Fed-
 18 eral land, the Secretary shall take into consider-
 19 ation—

20 (i) past and present exploration and
 21 development activity in the vicinity, includ-
 22 ing historic trends;

23 (ii) for each lease in the vicinity, the
 24 number, location, and types of wells
 25 drilled, the representative depth of wells

1 drilled, the number and location of dry
2 holes, the success ratio for wells drilled,
3 and the location, production history, and
4 life expectancy of producing fields;

5 (iii) geological, geophysical, and geo-
6 chemical information for the Federal land,
7 including data and information from the
8 United States Geological Survey, the De-
9 partment of Energy, State agencies, indus-
10 try, professional societies, academic
11 sources, and the public;

12 (iv) structural and stratigraphic data
13 and information relating to basins, fields,
14 and plays on the Federal land; and

15 (v) data and information on the likeli-
16 hood that economically recoverable oil and
17 gas resources are present in a given area,
18 including information submitted by experts
19 and the public.

20 (B) EXPLANATION OF FACTORS.—The
21 Secretary shall document how each factor de-
22 scribed in subparagraph (A) and any other fac-
23 tors considered by the Secretary support the
24 designation of the potential for development of
25 oil and gas resources on the Federal land.

1 (4) OPPORTUNITY FOR PUBLIC PARTICIPA-
2 TION.—In carrying out a reasonably foreseeable de-
3 velopment scenario under this subsection, the Sec-
4 retary shall—

5 (A) notify the public that the reasonably
6 foreseeable development scenario is being initi-
7 ated;

8 (B) publish a request for information for
9 the reasonably foreseeable development sce-
10 nario;

11 (C) release a draft version of the reason-
12 ably foreseeable development scenario for a
13 public review and comment for a period of not
14 less than 60 days; and

15 (D) consider and respond to public com-
16 ments in the final version of the reasonably
17 foreseeable development scenario.

18 (b) REGULAR UPDATE.—

19 (1) IN GENERAL.—Not later than 15 years
20 after the date of enactment of this Act, and not less
21 frequently than every 15 years thereafter, the Sec-
22 retary, consistent with subsection (a) and in co-
23 operation with the Secretary of Agriculture with re-
24 spect to National Forest System land, shall review

1 and update all reasonably foreseeable development
2 scenarios covering Federal land.

3 (2) PROHIBITION.—Except as provided in sub-
4 section (c), the Secretary shall not offer for lease
5 any Federal land otherwise available for leasing of
6 oil and gas resources pursuant to the Mineral Leas-
7 ing Act (30 U.S.C. 181 et seq.) or the Mineral Leas-
8 ing Act for Acquired Lands (30 U.S.C. 351 et seq.)
9 unless the Secretary has updated the reasonably
10 foreseeable development scenario covering that Fed-
11 eral land in accordance with paragraph (1).

12 (c) EXCEPTION FOR DRAINAGE.—

13 (1) IN GENERAL.—The Secretary may offer for
14 lease any Federal land otherwise available for leas-
15 ing of oil and gas resources pursuant to the Mineral
16 Leasing Act (30 U.S.C. 181 et seq.) or the Mineral
17 Leasing Act for Acquired Lands (30 U.S.C. 351 et
18 seq.) without completing or updating a reasonably
19 foreseeable development scenario for that land under
20 subsection (a) or (b), as applicable, if—

21 (A)(i) the Federal land is adjacent to land
22 currently producing oil or gas; and

23 (ii) the lease is issued for the purpose of
24 preventing drainage from the adjacent land; or

25 (B) the Federal land—

- 1 (i) does not exceed 640 acres; and
2 (ii) is located within 1 mile of a well
3 producing oil or gas in paying quantities
4 on the date on which the Federal land is
5 offered for leasing.

6 (2) REQUIREMENT.—A lease issued under para-
7 graph (1) shall be consistent with the applicable
8 land use plan and all other applicable law.

9 **SEC. 7. LAND HAVING NO OR LOW DEVELOPMENT POTEN-**
10 **TIAL UNDER A REASONABLY FORESEEABLE**
11 **DEVELOPMENT SCENARIO.**

12 (a) IN GENERAL.—Except as provided in subsections
13 (b) and (c), the Secretary shall not offer for lease any Fed-
14 eral land otherwise available for leasing of oil and gas re-
15 sources pursuant to the Mineral Leasing Act (30 U.S.C.
16 181 et seq.) or the Mineral Leasing Act for Acquired
17 Lands (30 U.S.C. 351 et seq.) if the Federal land is des-
18 ignated in the applicable reasonably foreseeable develop-
19 ment scenario as having low or no potential for develop-
20 ment of oil or gas resources.

21 (b) EXCEPTION FOR DRAINAGE.—

22 (1) IN GENERAL.—The Secretary may offer for
23 lease any Federal land described in subsection (a)
24 if—

1 (A)(i) the Federal land is adjacent to land
 2 currently producing oil or gas; and

3 (ii) the lease is issued for the purpose of
 4 preventing drainage from the adjacent land; or

5 (B) the Federal land—

6 (i) does not exceed 640 acres; and

7 (ii) is located within 1 mile of a well
 8 producing oil or gas in paying quantities
 9 on the date on which the Federal land is
 10 offered for leasing.

11 (2) REQUIREMENT.—A lease issued under para-
 12 graph (1) shall be consistent with the applicable
 13 land use plan and all other applicable law.

14 (c) VARIANCE PROCESS.—

15 (1) IN GENERAL.—An entity seeking to lease
 16 Federal land described in subsection (a) for pur-
 17 poses other than the purpose described in subsection
 18 (b)(1)(A)(ii) may submit to the Secretary an appli-
 19 cation for a variance under which the applicant shall
 20 bear the full burden of establishing and documenting
 21 that providing a variance for the Federal land
 22 would—

23 (A) be consistent with decisions contained
 24 in the land use plan in effect for the Federal
 25 land;

1 (B) affect only areas—

2 (i) with low wildlife, recreation, live-
3 stock, and other multiple-use resource val-
4 ues; and

5 (ii) where impacts to those values
6 arising from the variance can be resolved;

7 (C) optimize the use of existing infrastruc-
8 ture and avoid duplication of infrastructure and
9 disruption of public land;

10 (D) minimize adverse impacts on fish and
11 wildlife habitats and migration and movement
12 corridors in nearby areas;

13 (E) cause no significant effects on species
14 listed as endangered species or threatened spe-
15 cies under the Endangered Species Act of 1973
16 (16 U.S.C. 1531 et seq.) or the habitats of
17 those species;

18 (F) cause no cumulative impacts on air or
19 water resources of concern that cannot be
20 avoided or minimized;

21 (G) cause no adverse impacts on—

22 (i) units of the National Park System;

23 (ii) units of the National Wildlife Ref-
24 uge System;

1 (iii) areas of critical environmental
2 concern;

3 (iv) components of the National Wil-
4 derness Preservation System; or

5 (v) other special status areas, includ-
6 ing State and local parks and wildlife and
7 recreation areas; and

8 (H) allow the Federal land to be developed
9 in the public interest.

10 (2) OPPORTUNITY FOR PUBLIC PARTICIPA-
11 TION.—

12 (A) IN GENERAL.—On receipt of an appli-
13 cation for a variance under paragraph (1), the
14 Secretary shall—

15 (i) promptly notify the public that the
16 application has been received; and

17 (ii) provide the public with an oppor-
18 tunity to review and comment on the appli-
19 cation, including any supporting docu-
20 ments, for a period of not less than 60
21 days.

22 (B) RESPONSE.—The Secretary shall con-
23 sider and respond in writing to any public com-
24 ments received under subparagraph (A)(ii) be-

1 fore making a determination under paragraph
2 (3)(A).

3 (3) GRANTING OF VARIANCE.—The Secretary
4 may grant a variance for Federal land described in
5 subsection (a) pursuant to an application submitted
6 under paragraph (1), and offer that Federal land for
7 lease, if—

8 (A) the Secretary publishes in the Federal
9 Register a determination that—

10 (i) the applicant met the burden of es-
11 tablishing and documenting that the vari-
12 ance would meet the requirements de-
13 scribed in paragraph (1);

14 (ii) offering the Federal land for
15 lease—

16 (I) would not preclude the use of
17 the Federal land for other uses, in-
18 cluding grazing, fish and wildlife, and
19 recreation uses; and

20 (II) would be managed in accord-
21 ance with the principles of multiple
22 use (as defined in section 103 of the
23 Federal Land Policy and Management
24 Act of 1976 (43 U.S.C. 1702)); and

1 (iii) the variance is in the public inter-
2 est; and

3 (B) the Federal land—

4 (i) is adjacent to land currently pro-
5 ducing oil or gas in commercial quantities
6 on the date on which the variance is grant-
7 ed; and

8 (ii) does not exceed 640 acres.

9 (4) REQUIREMENT.—A lease issued under para-
10 graph (3) shall be consistent with the applicable
11 land use plan and all other applicable law.

12 (5) LIMITATION.—The Secretary shall not
13 grant more than 1 variance under this subsection
14 per 5-year period to an applicant or to an entity
15 under common ownership or control with the appli-
16 cant.

17 **SEC. 8. EFFECT.**

18 (a) MULTIPLE USE CONSIDERATIONS.—Nothing in
19 this Act, including a determination under a reasonably
20 foreseeable development scenario issued pursuant to this
21 Act that Federal land has high or moderate potential for
22 development of oil and gas resources, alters—

23 (1) the requirements under section 202(c) of
24 the Federal Land Policy and Management Act of
25 1976 (43 U.S.C. 1712(c)) that prior to offering for

1 lease any public land otherwise available for leasing
2 of oil and gas resources pursuant to the Mineral
3 Leasing Act (30 U.S.C. 181 et seq.) or the Mineral
4 Leasing Act for Acquired Lands (30 U.S.C. 351 et
5 seq.), the Secretary shall consider and weigh the
6 multiple use and sustained yield values of the public
7 land;

8 (2) the requirements of subsections (b) and (e)
9 of section 6 of the Forest and Rangeland Renewable
10 Resources Planning Act of 1974 (16 U.S.C. 1604)
11 that prior to offering for lease any National Forest
12 System land otherwise available for leasing of oil
13 and gas resources pursuant to the Mineral Leasing
14 Act (30 U.S.C. 181 et seq.) or the Mineral Leasing
15 Act for Acquired Lands (30 U.S.C. 351 et seq.), the
16 Secretary of Agriculture shall consider and weigh
17 the multiple use and sustained yield values of the
18 National Forest System land; or

19 (3) any other applicable requirements of law.

20 (b) NEPA.—Nothing in this Act modifies, alters, or
21 impacts the applicability of the National Environmental
22 Policy Act of 1969 (42 U.S.C. 4321 et seq.) to the leasing
23 of Federal land by the Secretary.

○