

BACKGROUND

No. 2992 | FEBRUARY 18, 2015

The Federal Lands Freedom Act: Empowering States to Control Their Own Energy Futures

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Abstract

The United States is now the world's leader in both natural gas and oil production—centuries' worth of oil, natural gas, and coal resources lie beneath private property as well as under lands owned by state governments. While federally owned lands are also full of energy potential, a bureaucratic regulatory regime has mismanaged land use for decades. The tremendous economic benefits of open energy markets and the proven track record of the individual states' regulatory structures dictate a re-examination of the way the federal government manages resources on federal lands. The Federal Lands Freedom Act gives states the authority to administer leasing, permitting, and regulatory programs for development of all energy resources on federal lands. States are already well positioned to help make a transition to better management of these resources. While Congress should pursue opportunities to reduce the size of the federal estate, the Federal Lands Freedom Act is a significant step toward better management of America's lands and natural resources.

One of the primary reasons the United States is now the world's leader in both natural gas and oil production is that centuries' worth of oil, natural gas, and coal resources lie beneath private property as well as under lands owned by individual states. While federally owned lands are also full of energy potential, a bureaucratic regulatory regime has mismanaged land use for decades.

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KEY POINTS

- The sheer size and diversity of the federal estate and its resources are too much for distant federal bureaucracies and an overextended federal budget to manage effectively.
- Since 2009, oil production on state and private lands has increased 61 percent while production on federal lands has fallen 9 percent—though 43 percent of all proved crude oil reserves are on federal lands.
- Allowing states to regulate the energy resources on federal lands means more efficient and accountable management, and frees federal resources for more pressing issues.
- States share the cost of the maintenance of federal lands and have regulatory structures to manage federal lands within their boundaries.
- Increased oil and natural gas production drives down prices for all Americans, and enables U.S. businesses to be more competitive. Shale oil and gas sales amounted to nearly \$200 billion in 2013, and are expected to continue to be a source of economic growth.

This paper, in its entirety, can be found at <http://report.heritage.org/bg2992>

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Act, introduced by Representative Diane Black (R-TN) and Senator James Inhofe (R-OK), gives states the authority to administer leasing, permitting, and regulatory programs for development of all energy resources on federal lands. States are already well positioned to help make a transition to better management of these resources. While Congress should pursue opportunities to reduce the size of the federal estate, the Federal Lands Freedom Act is a significant step toward better management of America's lands and natural resources.

Inefficient Federal Management. The federal estate is massive, consisting of some 635 million acres. The effective footprint is perhaps even larger as limitations on federal lands often impact the use of adjacent state and private lands, and as government agencies lock up lands through informal designations and study areas.

The sheer size and diversity of the federal estate and the resources both above and below ground are too much for distant federal bureaucracies and an overextended federal budget to manage effectively. For instance, the Department of the Interior's Bureau of Land Management (BLM) announced in 2011 that it was nearing completion of a two-year backlog of oil and gas leases in Wyoming, tying up more than \$50 million in lease sales.¹ In 1988, the BLM, which oversees 248 million acres of federal land and 700 million acres of underground mineral resources, leased 12.2 million acres; only one-tenth of that was made available in 2014.²

Conversely, paperwork and regulatory hoops seem to have increased. The BLM estimates that it took an average of 227 days simply to complete a drill application—just one step in the approval process to harvest oil and gas resources on federal

lands. This is compared to 154 days in 2005 and the average 30 days it takes state governments to do the same.³ It should hardly be assumed that the time spent on arduous paperwork improves environmental protection.

It comes as no surprise, then, that since 2009 oil production on federal lands has fallen by 9 percent even as production on state and private lands has increased by 61 percent over the same period. According to the Congressional Research Service, roughly 43 percent of all proved crude oil reserves are on federal lands. In 2010, 36 percent of all domestic oil production came from federal lands; now only 23 percent does. A similar story can be told of coal and natural gas.⁴

Further, federal ownership is a disincentive to production on state and private lands adjacent to or interspersed with federal lands. Production on federal lands is much more time-consuming and expensive, so drilling may make economic sense only if a company has access to both the federal land and the non-federal land.

Benefits of New Management. Under the Federal Lands Freedom Act, states will be able to develop a regulatory program for energy development on federal lands and submit the program to the Departments of the Interior, Energy, and Agriculture. This would be sufficient in lieu of redundant federal requirements, such as the National Environmental Policy Act. The bill also does not include Indian lands, national parks, or congressionally designated wilderness areas. While very few benefit from stagnant production on federal lands, many would benefit from the new management that the Federal Lands Freedom Act recommends:

1. Mead Gruver, "BLM: Oil-Gas Lease Backlog in Wyo. Almost Cleared," *Ventura County Star*, March 31, 2011, <http://www.vcstar.com/business/blm-oil-gas-lease-backlog-in-wyo-almost-cleared> (accessed January 14, 2015).
2. Bureau of Land Management, "Number of Acres Leased During the Fiscal Year," data series, October 29, 2014, http://www.blm.gov/style/medialib/blm/wo/MINERALS__REALTY__AND_RESOURCE_PROTECTION_/energy/oil__gas_statistics/data_sets.Par.80157.File.dat/numberofacresleasedeachyear.pdf (accessed January 14, 2015).
3. Bureau of Land Management, "Average Application for Permit to Drill (APD) Approval Timeframes: FY2005-FY2014," January 6, 2015, http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/statistics/apd_chart.html (accessed January 14, 2015). Even these numbers are questionable according to a Freedom of Information Act (FOIA) request by Norton Rose Fulbright Global Legal Practice, and average days heavily depend on the related field office. For example, according to the FOIAed BLM data, the average number of days to approve a permit to drill at the Moab, UT, office was 579 days in FY 2011. Norton Rose Fulbright, "Western Lands and Energy Newsletter," June 26, 2013, <http://www.nortonrosefulbright.com/knowledge/publications/100086/western-lands-and-energy-newsletter> (accessed January 7, 2015).
4. Marc Humphries, "U.S. Crude Oil Production in Federal and Non-Federal Areas," Congressional Research Service *Report for Congress*, April 10, 2014, <http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/20140410CRS-US-crude-oil-natural-gas-production-federal-non-federal-areas.pdf> (accessed January 16, 2015).

- **Less paperwork, more energy supply, lower prices.** Much of the shale oil and shale gas deposits in the U.S. lie beneath state and privately owned lands, but an important reason for the rapid increase in production has been an efficient permitting process. Ohio requires a permit to be processed within 21 days, and an expedited permit within seven days.⁵ Other states have similarly short time frames: Texas's average is four days (expedited permits are two days),⁶ and even in California, a permit must be processed within 10 days; if it is not, it is automatically approved.⁷

Efficiency pays off: Rather than spending undue time and money filling out and filing permit applications, companies are getting more—and more affordable—energy to the market. In October 2008, the United States produced 4.7 million barrels per day; production skyrocketed to more than 9 million barrels per day in October 2014.⁸ Natural gas production is at an all-time high in the U.S.⁹ The dramatic increase in oil and natural gas production drives down prices, putting money back into Americans' bank accounts, and enabling American businesses to be more competitive.

- **More accountable management.** While the federal government can simply pass on the costs of poor or no management to federal taxpayers, states have powerful incentives for better management of resources on federal lands. State governments and budgets can be more accountable to the people who will directly benefit from wise management decisions or be marginalized by

poor ones, making it more likely that resources will be both developed—and developed in a way that protects the environment.¹⁰

States also have unique expertise in the lands within their bounds, unlike federal policies, which do not always make sense across the diversity of the federal estate. The geologic makeup of lands across the U.S. presents different economic and environmental challenges. State environmental regulators who already have the local expertise are more capable of providing efficient and timely guidance. Allowing state programs to function in place of federal ones employs this knowledge and relieves federal budgets of the burden to manage permitting requests and regulatory responsibilities, freeing up federal resources for more pressing issues, such as wildfire management.

- **Raising revenues without raising taxes.** Turning over management to states would likely increase energy production and, consequently, the royalties that state and federal budgets receive. Currently, royalties from onshore mineral development of federal lands are split, with 49 percent going to states, 40 percent to the federal Reclamation Fund, and 11 percent to the U.S. Treasury. Last year, all royalties amounted to \$1.1 billion for Indian Tribes (a record), \$150 million to the Historic Preservation Fund, \$895 million to the Land and Water Conservation Fund, \$1.76 billion to the Reclamation Fund, \$2.2 billion to states (of which \$2.1 billion was onshore), and \$7.2 billion to the U.S. Treasury.¹¹ While oil and natural gas make up the lion's share of fed-

5. Ohio Department of Natural Resources Oil and Gas Division, "Permitting," 2015, <http://oilandgas.ohiodnr.gov/industry/permitting-bonding-hydrology> (accessed January 20, 2015).

6. Railroad Commission of Texas, "Railroad Commission's IT Modernization Program Streamlines Processing Times for Drilling Permits," <http://www.rrc.state.tx.us/all-news/121114a/> (accessed January 16, 2015).

7. California Department of Conservation, "Oil, Gas and Geothermal—Frequently Asked Questions," http://www.conservation.ca.gov/dog/faqs/Pages/Index.aspx#what_permits (accessed January 16, 2015).

8. U.S. Energy Information Administration, "Petroleum & Other Liquids: U.S. Field Production of Crude Oil," data set, December 30, 2014, <http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=p&f=m> (accessed January 16, 2015).

9. U.S. Energy Information Administration, "Natural Gas: U.S. Natural Gas Marketed Production," data set, December 31, 2014, <http://www.eia.gov/dnav/ng/hist/n9050us2m.htm> (accessed January 16, 2015).

10. Jack Spencer et al., "Environmental Conservation: Eight Principles of the American Conservation Ethic," The Heritage Foundation, July 27, 2012, <http://opportunity.heritage.org/conservation-the-environment-through-responsible-stewardship/>.

11. U.S. Department of the Interior, Office of Natural Resources Revenue, "Disbursements FY2014 Through FY2014," data series, <http://statistics.onrr.gov/ReportTool.aspx> (accessed January 16, 2015).

eral and state royalties from leases, the Federal Lands Freedom Act allows states to manage all energy resources.

- **Increased economic opportunity.** Job creation in the oil and gas industry bucked the slow economic recovery and grew by 40 percent from 2007 to 2012, in comparison to 1 percent in the private sector over the same period.¹² Further, in a recent report estimating the impacts of opening up all federal lands to oil and gas production, the Congressional Budget Office (CBO) found that sales of shale oil and gas amounted to \$195 billion—1.2 percent of gross domestic product (GDP)—in 2013. The oil and gas sectors are expected to continue being a source of economic growth, especially in the next few years while the economy is weak. Growth does not stop with the oil and gas industry, though, as opportunity will also reach “industries that support it; [increase] investment and production in other industries because energy prices are lower than they would otherwise be; and [increase] demand for goods and services because of greater household income.”¹³ One concrete example of improving economic opportunities is Methanex Corporation’s decision to move

two plants from Chile to Louisiana, bringing well-paying jobs to America.¹⁴ The Institute for Energy Research projects that the CBO’s estimations could be even more far-reaching with more accurate pricing data.¹⁵

A Path to Economic Growth and Environmental Protection

States share the cost of the maintenance of federal lands, whether by the liability of no management, the lost opportunity of poor management, or the infrastructure needed to support development of resources. States have a proven record of managing resources, and already have the regulatory structures in place to do so on federal lands within their boundaries as well. Not only would new management multiply benefits for all Americans, it would also encourage better care of the environment and natural resources by putting them in the hands of people who have an immediate stake in wise management.

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12. U.S. Energy Information Administration, “Oil and Gas Industry Employment Growing Much Faster than Total Private Sector Employment,” August 8, 2013, <http://www.eia.gov/todayinenergy/detail.cfm?id=12451> (accessed January 16, 2015).

13. Congressional Budget Office, “The Economic and Budgetary Effects of Producing Oil and Natural Gas from Shale,” December 2014, https://www.cbo.gov/sites/default/files/cbofiles/attachments/49815-Effects_of_Shale_Production.pdf (accessed January 16, 2015).

14. *Ibid.*

15. Joseph Mason, “Beyond the Congressional Budget Office: The Additional Economic Effects of Immediately Opening Federal Lands to Oil and Gas Leasing,” Institute for Energy Research, February 2013, http://instituteforenergyresearch.org/wp-content/uploads/2013/02/IER_Mason_Report_NoEMB.pdf (accessed January 16, 2015).