

# ISSUE BRIEF

No. 3979 | JUNE 27, 2013

## Energy Production on Federal Lands: Handing Keys Over to the States

*Nicolas D. Loris*

Advancements in drilling and extraction technologies and better information have provided a recent surge in domestic oil and gas production in some regions of the country, while in others, the rate of production has slowed or even decreased.

The divergent trajectories in production primarily boils down to one word: *ownership*. Much of the growth is occurring on private and state-owned lands, while oil and gas output on federal lands has been in decline. States are in the best position to promote economic growth and to protect the environment, which is why state regulators should manage energy production and resources in their respective states. The Federal Land Freedom Act of 2013 (S. 1233 and H.R. 2511), introduced by Senator James Inhofe (R-OK) and Representative Diane Black (R-TN), would do just that by allocating more authority to the states to control their energy future.

**Freeing the Federal Land.** The Federal Land Freedom Act would allow states to develop energy resources on federal land that is not Indian land, part of the National Park System, the National Wildlife Refuge System, or a congressionally designated area. The legislation would allow states to

develop programs that satisfy all applicable federal laws required to produce energy on federal lands. Therefore, states would have complete control of their energy programs. Further, states would submit a declaration of their program to the Departments of Agriculture, Energy, and Interior, and the program would not be subject to judicial review.

The federal government owns nearly one-third of United States territory. Congress should consider privatizing some of that land, but in the meantime, transferring the management of federal lands to state regulators would encourage energy resource development on the federal estate while maintaining a strong environmental record.<sup>1</sup>

**Federal vs. State Oil and Gas Production.** There has been a stark difference between oil and gas production on private and state-owned lands and federal lands. According to a recent Congressional Research Service report, since 2007, federal production of natural gas both on and offshore fell 33 percent. On state and private lands, it grew 40 percent over the same time frame. Crude oil production on federal lands in 2012 was below 2007 levels but grew 35 percent on non-federal lands since then. In fact, all increases in oil and gas production since 2012 were on non-federal lands.<sup>2</sup>

The increase in oil and gas extraction on non-federal lands is occurring all over the United States and is largely a result of shale oil and shale gas developments. The shale-fueled economy has produced benefits extending well beyond the drillers. Increased supply puts downward pressure on prices, and employment has soared in the regions where production is occurring. Demands for local restaurants, hotels, grocery stores, and even

---

This paper, in its entirety, can be found at  
<http://report.heritage.org/ib3979>

Produced by the Thomas A. Roe Institute  
for Economic Policy Studies

**The Heritage Foundation**  
214 Massachusetts Avenue, NE  
Washington, DC 20002  
(202) 546-4400 | [heritage.org](http://heritage.org)

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

---

out-of-state manufacturers and supplier networks have increased.<sup>3</sup>

**Federal vs. State Permitting Process.** Much of the shale oil and shale gas deposits in the U.S. are beneath state and privately owned lands, but an important reason for its rapid increase in production has been an efficient permitting process. The time frame by which states process an application for a permit to drill is measured in days or weeks, whereas the average application process for a permit to drill on federal lands lasts months and sometimes over a year.

North Dakota processes a permit in an average of 10 days.<sup>4</sup> Other states have similarly short time frames: Colorado's average is 27 days (and improving),<sup>5</sup> Ohio's average is 14 days,<sup>6</sup> Texas's average is five days (expedited permits are two days),<sup>7</sup> and even California is seven days and by law must be processed within 10 days or the permit is automatically approved.<sup>8</sup>

It pays off: Rather than spending undue time and money filling out and filing permit applications, drilling companies are getting oil and gas to market. The experience in North Dakota shows how quickly this can happen. Drillers in the Bakken formation went from producing 2,000 barrels of oil per day in 2005

to 289,000 barrels per day in 2010 to an astounding 679,000 barrels per day in January 2013.<sup>9</sup>

The average application for a permit to drill on federal lands was 307 days in 2011—a 41 percent increase since 2006—because of an increasingly complicated application process. In 2011, it took industry an average of 236 days just to submit the permit application and the Bureau of Land Management another 77 days to approve the permit.<sup>10</sup>

Other hurdles that industry faces when attempting to drill on federal lands include the environmental analyses required by the National Environmental Policy Act and the legal challenges from anti-drilling advocates create additional unnecessary delays. From lease sale until actual production, drilling on federal land can take up to 10 years, as opposed to one or two years on private and state-owned lands.<sup>11</sup>

**Why States Do It Better.** One of the primary reasons shale oil and shale gas production has been so successful economically and environmentally is state government management. State regulators and private land owners have the local knowledge and the proper incentives to promote economic growth while protecting their environment. They understand site-specific challenges and can address

1. The Honorable Donald Paul Hodel and the Honorable Becky Norton Dunlop, "The Federal Estate: Opening Access to America's Resources," The Heritage Foundation, [http://thf\\_media.s3.amazonaws.com/2012/EnvironmentalConservation/Chapter7-The-Federal-Estate.pdf](http://thf_media.s3.amazonaws.com/2012/EnvironmentalConservation/Chapter7-The-Federal-Estate.pdf) (accessed June 10, 2013).
2. Marc Humphries, "U.S. Crude Oil and Natural Gas Production in Federal and Non-Federal Areas," Congressional Research Service Report for Congress, March 7, 2013, <http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/20130228CRSreport.pdf> (accessed June 10, 2013).
3. IHS Global Insight, "America's New Energy Future: The Unconventional Oil and Gas Revolution and the US Economy," 2012, <http://www.ihs.com/info/ecc/a/americas-new-energy-future-report-vol-2.aspx?ocid=anefvol2-21350:consulting:dm:0001> (accessed June 18, 2013).
4. Institute for Energy Research, "Time Required for Processing a Permit to Drill—Federal vs. States," <http://www.instituteforenergyresearch.org/wp-content/uploads/2012/09/Time-required-to-drill-1-sm.png> (accessed June 10, 2013).
5. Colorado Oil and Gas Conservation Commission, memorandum dated April 25, 2011, [http://cogcc.state.co.us/announcements/CommissionLtr4\\_25\\_11.pdf](http://cogcc.state.co.us/announcements/CommissionLtr4_25_11.pdf) (accessed June 18, 2013).
6. Ohio Division of Oil and Gas Resources Management, 2011 Ohio Oil and Gas Summary, <http://ohiodnr.com/portals/11/publications/pdf/oilgas11.pdf> (accessed June 10, 2013).
7. Railroad Commission of Texas, "Drilling," <http://www.rrc.state.tx.us/data/drilling/index.php> (accessed June 10, 2013).
8. California Department of Conservation, "Oil, Gas and Geothermal—Frequently Asked Questions," [http://www.conservation.ca.gov/dog/faqs/Pages/Index.aspx#what\\_permits](http://www.conservation.ca.gov/dog/faqs/Pages/Index.aspx#what_permits) (accessed June 10, 2013).
9. Western Energy Alliance, "The Blueprint for Western Energy," July 8, 2011, <http://westernenergyalliance.org/wp-content/uploads/2011/07/Blueprint-for-Western-Energy-Prosperity.pdf> (accessed June 18, 2013); and Javier E. David, "Bakken Emerges as Contender for US Oil Drilling Crown," CNBC, March 23, 2013, <http://www.cnbc.com/id/100579131> (accessed June 11, 2013).
10. U.S. Department of Interior, "Average Application for Permit to Drill (APD) Approval Timeframes: FY2005–FY2012," [http://www.blm.gov/wo/st/en/prog/energy/oil\\_and\\_gas/statistics/apd\\_chart.html](http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/statistics/apd_chart.html) (accessed June 10, 2013).
11. Kathleen Sgamma, "The American Energy Initiative: A Focus on Growing Differences for Energy Development on Federal vs. Non-Federal Lands," testimony before the Subcommittee on Energy and Power, Committee on Energy and Commerce, U.S. House of Representatives, August 2, 2012, <http://archives.republicans.energycommerce.house.gov/Media/file/Hearings/Energy/20120802/HHRG-112-IF03-WState-SgammaK-20120802.pdf> (accessed June 10, 2013).

concerns efficiently. They are the ones who have the most to gain when the management of natural resources and economic activity is done properly—but also the most to lose if they are mismanaged and handled without care for the environment.

Land is a significant asset for a state, but if it is mishandled, that asset can turn into a liability. State and local governments and private landowners have the proper incentive structure to use the land as an asset.

On the other hand, federal ownership of land results in a one-size-fits-all approach to land management. It also disincentivizes production on non-federal lands located adjacent to or interspersed with federal lands: Production on federal lands is much more difficult, so drilling may make economic

sense only if a company has access to both the federal land and the non-federal land. At the very least, the proximity of federal lands makes the non-federal lands less attractive.

**Time for New Management.** States with an abundance of natural resources have been handcuffed by Washington’s bureaucratic control, while production on private and state-owned lands has impressively climbed to higher rates. The federal government should not stand in the way of states that want to replicate that success. Inhofe and Black’s legislation would allow state governments to be that new manager.

—*Nicolas D. Loris is Herbert and Joyce Morgan Fellow in the Thomas A. Roe Institute for Economic Policy Studies at The Heritage Foundation.*