



A Continued Push for Reform Is Needed on Public Lands' Energy Leasing

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Presidents and their secretaries of the interior have considerable latitude in how they handle resource development. The secretary of the interior oversees the agency's Bureau of Land Management, which manages oil, gas and coal development on federal lands. As former secretary Ken Salazar noted in his final public web chat before leaving office last month, presidential administrations can take quite different approaches.

Under President George W. Bush's administration, former Secretary Salazar said that, "There was an agenda on oil and gas that basically allowed oil and gas to be developed anywhere no matter what the environmental consequences were." Under President Obama, he said:

We have brought a balanced approach. ... There are places that have special ecologies and environmental values and history that we need to protect. That's the approach we've taken, it is the approach we've embedded in our rules and regulations and our planning efforts here at Interior.¹

As important as the changes outlined by former Secretary Salazar are, they remain a work in progress. A report on the Obama administration's reforms prepared by The Wilderness Society concluded that, "[W]hile important progress has been made under the reforms, additional work is required to make the reforms successful and to provide a lasting 'fix' to the onshore oil and gas leasing and development program."² This issue brief takes a look at fossil-fuel development on public lands and explores options for how the new secretary of the interior can oversee this exploration in ways that ensure public health and safety and limit environmental damage.

Fossil-Fuel Leasing on Federal Lands: A Primer

The Mineral Leasing Act of 1920, as amended, governs the leasing of oil, natural gas, and coal on federal lands, excluding national parks, national monuments, and congressionally created wilderness areas.³ The law is administered by the Department of the Interior's Bureau of Land Management, or BLM, which oversees leasing on the 258 million acres it manages; on the 385 million acres managed by other federal agencies, such as the U.S. Forest Service; and on 57 million acres of land where the surface is privately owned but the mineral rights are owned by the federal government.

For the lands it directly controls, the BLM, under the 1976 Federal Land Management and Policy Act, must prepare resource-management plans to govern land uses, including which areas are suitable for leasing.⁴ This management is generally for large areas of land, and for periods of 10 to 15 years. According to the law, the BLM must apply the principle of multiple use, which means utilization "in the combination that will best meet the present and future needs of the American people." It also requires the agency to take into account:

*... the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.*⁵

For its part, the U.S. Forest Service develops its own land-management plans under the same general principles.

Most oil and gas leasing is done through a competitive process. The BLM identifies areas available for leasing, and energy companies then nominate land parcels within those areas, generally no more than 2,560 acres, for

quarterly auctions. Minimum bids of \$2 an acre are required. Leases require the payment of at least 12.5 percent of the value of oil or gas that is produced. There are also annual rental fees, starting at \$1.50 an acre for the first 5 years of the 10-year lease, increasing by \$2 an acre every year thereafter. Half of the funds from royalties and fees go to the U.S. Treasury and half to the state where the minerals are located, except in Alaska, where the state gets 90 percent.⁶

Owners of oil and gas leases must submit an application for a permit to drill for each well and cannot begin operations until the permit is approved by the BLM. The application must include a drilling plan and a surface-use plan showing locations of drilling pads and how the area will be reclaimed. The BLM must allow public inspection of those applications and prepare an environmental review. The Forest Service has similar requirements.

The BLM also administers coal leasing on federal lands, under the Mineral Leasing Act as amended—primarily by the 1976 Federal Coal Leasing Amendments Act—and through its own land-use planning. Leasing takes place under two procedures established by regulation: regional coal leasing, where the BLM selects tracts to meet regional requirements determined by teams of BLM officials and state and local officials, and through so-called leasing by application, which means energy companies apply for specific areas. Leases initially are in effect for 20 years, but can be automatically extended as long as coal is being produced in commercial amounts. No one company may own leases of more than 75,000 acres in a state or 150,000 acres nationally.⁷

By 1990 the BLM had all but abandoned the regional coal-leasing program, and today virtually all coal leases are done through leasing by application. As a 2012 study by the Institute for Energy Economics & Financial Analysis noted, "By 1990, BLM's regional coal teams had successfully lobbied to disband, or decertify, all 12 coal production regions," and this "gave coal companies nearly complete control of coal mining," most notably in the Powder River Basin, the source of most federal coal.⁸

The Obama administration's oil- and gas-drilling reform efforts

Bringing fundamental change to the way that the Interior Department's Bureau of Land Management, or BLM, manages energy development was never going to be an easy task. The bureau oversees mineral resources on 700 million acres of public lands and on private lands where the federal government owns the mineral rights. But in some ways and in some places it still has a cultural bias in favor of resource extraction. As a result, some BLM leaders in the West have been less than enthusiastic about the Obama administration's reform agenda, making implementation of the changes uneven and slower than it should be.

Another part of the Department of the Interior's energy portfolio is coal production, with the great bulk of it coming from federal lands in the Powder River Basin region of Wyoming and Montana. Here too, the Obama administration has a long way to go in ensuring that the program is consistent with its stated climate change goals and that it is operating in the public interest by providing a fair dollar return to the Treasury Department.

Without a doubt, Secretary Salazar quickly set a different and refreshing tone when he took charge of the Interior Department in 2009. Saying that there was a "new sheriff in town"⁹ who would no longer let the oil and gas industry treat public lands as its private "candy store,"¹⁰ Secretary Salazar slammed the brakes on oil- and gas-lease sales on 77 tracts of land in Utah, one of the Bush administration's most controversial sales. Many of these tracts were close to national parks and other treasured lands.¹¹

After scuttling those sales, the Interior Department undertook a formal internal review of BLM's leasing program, which led to the reforms that were unveiled in May 2010.¹² Those reforms called for a better balance between developing oil and gas resources and the protection of other public lands resources, including nearby parks and refuges, wildlife, and historic and archaeological sites. "There is no presumed preference for oil and gas development over other uses," states the reform document.¹³

A key element of the reforms was ensuring that BLM would assume more responsibility for identifying parcels of land suitable for oil and gas development rather than ceding that important task to industry. As a result, a new procedure was developed for more comprehensive planning in some areas where large-scale leasing could be expected but has not yet taken place and where conflicts with other resources such as recreation or water supplies are likely. This process enables BLM to review large landscapes in order to identify areas suitable for oil and gas development and areas where other uses such as recreation and protecting wildlife habitat should take precedence.

This new process is similar to the broader, landscape-level approach used by the Interior Department in planning for large-scale development of solar energy in the desert Southwest. It offers the promise of far more cohesive land-use planning driven by science,

and it is attentive to other needs and values besides the extraction of fossil fuels. But it has been unevenly applied, with some BLM field offices less willing than others to employ it.

While the leasing reforms represent a good start, the BLM and its parent, the Department of the Interior, can and should do more. Keeping the leasing reform agenda on track ought to be one of the key items on the task list of new Secretary of the Interior Sally Jewell, who was sworn into office on April 12, 2013. It could also help the Obama administration to achieve a better balance between drilling and conservation on the public lands owned by all Americans. So far during the Obama presidency, the administration has won permanent protection for far fewer acres than many of its recent predecessors, and as of the beginning of this year, it had drilled about 2.5 acres for every acre preserved from development.¹⁴ That compares to the 1-to-1 ratios of drilling to conservation by both the George H. W. Bush and Bill Clinton administrations.¹⁵

Problems in the Colorado state office of the BLM highlight the challenges facing Secretary Jewell. That office has been decidedly reluctant to implement some key elements of the reforms, provoking a number of high-profile controversies. These include plans—recently deferred, at least temporarily—to allow oil and gas drilling close to Mesa Verde National Park and Dinosaur National Monument, as well as in a highly valued agricultural area known as the North Fork Valley. The state BLM office was also moving to permit drilling in a region known as South Park, which is a critical watershed for the cities of Denver and Aurora and is a valued recreation area.¹⁶ The same BLM office recently extended some oil and gas leases in the Thompson Divide region that were about to expire because they had not yet been developed during their 10-year term.¹⁷ That gift to the industry came despite the Obama administration’s rhetorical commitment to making energy companies “use it or lose it” on leases rather than allowing them to sit on lands indefinitely without actually drilling.¹⁸

Beyond the problems in advancing leasing reforms in individual states, the Department of Interior has also failed to make good on pledges to increase the royalties it collects on publicly owned oil and gas that is developed by private industry. It has been four years since former Secretary Salazar—who can raise royalty rates on his own without congressional approval—said that he would increase the royalty rate of 12.5 percent,¹⁹ but no action has yet been taken. Most of the major oil- and gas-producing states charge significantly higher royalties on energy produced from state lands.²⁰

Sticking to the status quo on coal-mining regulations

In contrast to the oil- and gas-leasing program, the Obama administration has shown little interest in altering the status quo when it comes to leasing public lands for the development of coal resources. Most of the leasing of this land occurs in the Powder River Basin region of northeastern Wyoming and southeastern Montana. It accounts

for about 40 percent of total U.S. coal production—and about 13 percent of total U.S. greenhouse-gas emissions when burned for electricity.²¹ Since 2011 BLM has leased land producing more than 2 billion tons of coal in the Powder River Basin, and approvals for leases producing another 3.5 billion tons could come relatively soon.²²

While demand for coal to generate electricity in the United States is on the decline—its share of electricity production has fallen in a decade from about 50 percent to just 37 percent²³—the industry is increasingly looking to export to Asia and other regions of the world to make up for the decline.²⁴

Because of coal's leading role in climate change and controversy regarding the industry's recent attempts to build new coal-export facilities on the West Coast, the Interior Department's coal-leasing program has come under increasing scrutiny. Among the issues at play are whether taxpayers are getting fair value for the sale of publicly owned coal being mined in the Powder River Basin; the incongruity between the Obama administration's stated commitment to battle climate change and its aggressive selling of leases in the Powder River Basin; and whether coal companies are resorting to accounting gimmicks to avoid paying fair royalties on coal they export.²⁵

The United States by law is supposed to receive fair market value on the coal it sells to the industry, but the program has been periodically beset by scandal over the years,²⁶ and even now there are many who question whether taxpayers are getting a fair return on federal coal sales. Most coal lease sales over the past two decades have drawn only a single bidder.²⁷ A report issued last year by the Institute for Energy Economics and Financial Analysis in Cambridge, Massachusetts, estimated that this system may have cost taxpayers as much as \$28.9 billion over the past three decades.²⁸ Publication of that report prompted Rep. Edward Markey (D-MA) to request an investigation by the Government Accountability Office,²⁹ which last did a thorough audit of the coal-leasing program in 1983, when it uncovered a \$100 billion loss to the Treasury Department because of bidding manipulation.³⁰

Two other investigations of the coal program are also underway. An Interior Department task force is investigating whether coal companies are ducking fair royalty payments by selling coal cheaply to affiliates, paying royalties based on that low price, and then having the affiliates export it overseas at much higher prices. That investigation was created at the request of Rep. Markey and Sen. Ron Wyden (D-OR) after Reuters published a story looking into the industry practices.³¹ In addition, the inspector general's office at the Department of the Interior is looking into issues of fair market value and royalties.

While the issues of fair market value and taxpayer return are important, ultimately they are less critical than the role that massive sales of publicly owned coal play in carbon emissions and whether the Obama administration will adjust the lease-sale program to square with its rhetorical commitment to fighting climate change.

Conclusion

In his second inaugural address, the president said that, “We will respond to the threat of climate change, knowing that failure to do so would betray our children and future generations.”³² Less than a month later, he issued an ultimatum to Congress in his State of the Union speech, saying:

*[I]f Congress won't act soon to protect future generations, I will. I will direct my Cabinet to come up with executive actions we can take, now and in the future, to reduce pollution, prepare our communities for the consequences of climate change, and speed the transition to more sustainable sources of energy.*³³

The actions that the president and his administration can take, which have been endorsed by the Center for American Progress, include the following.

Adopting a ‘clean resources standard’

The administration should adopt a “clean resources standard” to reduce the dominant role that fossil fuels play in the energy portfolio from public lands. This promises to ramp up the share of overall federal-lands energy coming from renewable sources such as wind and solar to 35 percent by 2035. As detailed in the Center for American Progress’s 2012 report, “Using Public Lands for the Public Good,”³⁴ about 66 percent of the energy currently coming off of federal lands is from coal, and renewables, including hydropower, are at 15 percent.

Raising royalty rates and leasing rates

If the administration raises both the royalty rates that companies must pay on federal coal and the separate fees they pay for federal coal leases, the prices would better reflect the true economic costs of burning coal. These costs include the very expensive health impacts of coal-fired electricity.

Including the impact on climate change in reviews

The administration should require environmental reviews of federal-land management decisions, including energy developments, to include their impacts on climate change,³⁵ specifically whether the actions will exacerbate global warming.

More than 20 environmental groups have urged even more dramatic administrative action in a recent letter to Interior Secretary Sally Jewell. They call on her to impose “an

immediate moratorium on new coal leasing in the Powder River Basin” and to conduct a “comprehensive review” of the entire coal-leasing program to:

...ensure that coal companies do not cheat U.S. taxpayers, existing mines do not endanger our air, water and wildlife and are properly reclaimed, and the greenhouse gas emissions from federal coal leases do not conflict with the Administration’s stated commitment to reduce the country’s contribution to climate change.³⁶

Even without imposing a coal-leasing moratorium, there is much that the new secretary of the interior can do to ensure that fossil-fuel development on federal lands is done in ways and with limits that better protect public health, safety, and the environment. Secretary Jewell should start down that road as soon as possible.

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