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Committee on Natural Resources
Subcommittee on Energy and Mineral Resources
Honorable Mr. Paul Gosar, Chairman

On the discussion draft bill
"Enhancing State Management of Federal Lands and Waters Act"

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Chairman Gosar, Ranking Member Lowenthal, and Members of the Committee, thank you for inviting me to testify today on the draft discussion bill, "Enhancing State Management of Federal Lands and Waters Act." My name is Myron Ebell, and I am director of the Center for Energy and Environment at the Competitive Enterprise Institute (CEI), a non-profit, non-partisan public policy institute that focuses on regulatory issues from a free-market and limited-government perspective. CEI accepts no government funding. CEI and I have been involved in a wide range of federal lands and energy policy issues since the late 1980s.

I especially appreciate the opportunity to comment on this bill while it is still in the drafting process. Let me begin with the offshore energy title. The first section of the offshore title amends the Outer Continental Shelf Lands Act of 1953 to require the establishment within one year of a program "to conduct geological and geophysical mapping of the outer continental shelf, including mapping of reserves of oil and gas." In my view, this is a critical provision. The most recent National Assessment published in August 2017 of technically recoverable undiscovered resources made by the Bureau of Ocean Energy Management of 90 billion barrels of oil and 327 trillion cubic feet of natural gas in the 1.7 billion acre federal offshore estate is no doubt a well-informed guess, but it is really only a guess. Much of the data comes from geologic studies that are one, two, or even three decades old, and the assessment is thus based on outdated technology and scientific understanding that has been superseded by subsequent research. A comprehensive survey based on current geological knowledge and using up-to-date techniques, including seismic testing, is long overdue.

When similar geological surveys have been proposed in the past, they have never gotten started in the face of objections that they will cost too much and take too long. Undoubtedly, the same objections will be raised again in an effort to remove this provision from the bill. In my view, the objections of time and money are real, but are far outweighed by the value of having much better information about the extent and location of America's offshore energy resources. Incomplete and inadequate knowledge of federally-controlled resources is not of course restricted to offshore resource and regularly contributes to poor management decisions by the federal land agencies on a wide variety of issues.

As for the time it will take to map OCS potential oil and gas reserves, I suggest that now is a good time to begin. The Department of the Interior under Secretary Zinke's leadership should be enthusiastic about it and eager to get started. A complete map may take several years, but the most promising areas for major oil and gas reserves can be mapped first. As for the cost, I suggest that the Congress could stop appropriating funds for land acquisition under the Land and Water Conservation Fund and use the money for this and other projects that contribute to improving management of the land and subsurface resources that the federal government already owns. I hope that an amendment to the Interior-EPA appropriations bill to provide initial funding for the mapping program will be offered when the bill comes to the floor.

The second section of the offshore title contains one provision that CEI has supported for a long time—sharing federal revenues from offshore oil and gas production with the coastal states. This issue was last debated in Congress in 2006 when then-Natural Resources Committee Chairman Richard Pombo failed to enact general offshore royalty-sharing legislation and had to settle for enacting a provision that shares 37.5% of federal royalties on new production with Louisiana, Texas, Mississippi, and Alabama. These are the four Gulf states off whose coasts oil and gas was being produced in the federal OCS at the time.

CEI strongly supports sharing federal offshore royalties with the coastal states where production occurs. Sharing royalties with coastal states means that they will be treated in much the same way as states with oil and gas production on federal lands within the state. This seems only fair. Federal lands states receive a share of federal royalties under the Mineral Leasing Act of 1920 as amended. For most states, the amount is half of gross revenues from oil and gas leasing. Gross revenues come from the auction price of the lease (the bonus bid), a nominal annual rental fee, and the federal production royalty, which is 12.5%.

Sharing federal royalties provides a powerful incentive over the long term for states to support offshore oil and gas production off their coasts. It turns out that most states are as profligate in their spending as the federal government, but unlike the federal government most states must balance their budgets. This means that they are constantly seeking new sources of revenue. Receiving a share of federal royalties looks very attractive compared to raising taxes. Raising taxes depresses economic activity, whereas offshore oil and gas production increases economic activity (and thereby also increases indirect tax revenues) and at the same time would provide direct royalty payments to the state.

As well as providing a powerful incentive to the states, the discussion draft also includes provisions designed to give coastal states veto authority over offshore oil and gas production off their coasts. Under current law, coastal states cannot stop offshore drilling. At the same time, most coastal state governments currently oppose offshore drilling. These states are left with trying to exert political pressure, as in the case of Florida Governor Rick Scott, or making empty threats, as in the case of California Governor Jerry Brown. The discussion draft would give these states the legal right to prevent drilling off their coasts for a period of their choosing by paying a lost production fee to the federal treasury. The size of the payment would be calculated according to several factors.

I don't want to comment on the details of this section, which is lucky because the details are messy and most of them appear still to be in the process of being worked out. However, in concept, I think these provisions address in a highly creative way a real conflict in our federalist system by balancing federal rights and state interests. On the one hand, it is not right for any state to be able to stop resource production in the federal OCS. These resources are, after all, owned by all Americans, and therefore all Americans should be able to benefit from their use through increased economic activity and additional tax revenues. On the other hand, some states have strong reasons to oppose drilling off their own coasts. These provisions respect these states by granting them the privilege of prohibiting production by paying for it.

Now, I would like to comment on the onshore title in the discussion draft. The onshore title proposes to work around federal mismanagement of the oil and gas leasing program on federal lands by allowing states to take over management in areas of their choice, which the bill calls "enhanced management regions." My general view is that almost any aspect of federal land management would be done better by any of the federal lands states; and therefore I am in full support of this particular delegation of management. Oil and gas production on federal lands stagnated during the previous administration, largely as a result of deliberate administration policies. Despite dramatically different policies from the Trump administration, obstacles to increasing federal oil and gas production remain. As far as I am aware, the single biggest obstacle is processing and approving Applications for Permit to Drill (APDs) by local Bureau of Land Management offices. APDs must be approved before exploration wells can be drilled on lease tracts that have been acquired through BLM's competitive bidding process.

All the evidence points to the fact that states process drilling permits on private and state lands much more quickly and efficiently than the BLM processes drilling permits on federal lands. Thus, I feel confident that states that want to administer tracts of federal land that they choose for leasing, permitting, and production of oil and gas will do a better job than the BLM. The incentive and penalty structure in the bill will help ensure that production will increase under state management.

During the Obama years, the shale oil and gas revolution boosted U.S. production dramatically from a low of four million barrels of oil a day in 2008 (after peaking at ten million barrels in 1970) to over ten million barrels a day in 2017 today. This increase resulted from technological innovations made by creative people working in a free market. It occurred independently of government policies and to a large extent despite government policies. Together with vast coal reserves, the United States is well on the way to becoming the world's energy superpower. The economic benefits to the American people have been immense and look set to continue for decades to come. However, as a result of the previous administration's policies, oil and gas production on federal lands and the OCS has lagged. It's time to catch up.

Increasing federal energy production is an important part of President Trump's energy agenda, which is in turn a key part of his agenda to get the economy moving again. Much has already been done by the Department of the Interior to get federal production back on an upward track. This committee has already done good work that if enacted into law would make significant contributions to that effort. The Enhancing State Management of Federal Lands and Waters Act promises to make another major contribution to removing obstacles to vastly increasing oil and gas production on the federal estate. I look forward to working with the committee to advance this important legislation.

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