

Statement for the Record
Department of the Interior
House Natural Resources Committee
Subcommittee on Energy and Minerals Resources
H.R. 2728, Protecting States' Rights to Promote American Energy Security Act
July 25, 2013

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to present the views of the Department of the Interior on H.R. 2728, the Protecting States' Rights to Promote American Energy Security Act. This bill would prohibit the enforcement of Federal hydraulic fracturing regulations in states with existing regulations, guidance, or permit requirements for that activity. The Bureau of Land Management (BLM) is committed to working with the states to ensure safe, responsible, and environmentally conscious domestic oil and gas production. Because H.R. 2728 would prevent the Department from ensuring that hydraulic fracturing activities on public lands operate under a consistent baseline level of appropriate environmental protection, the Department strongly opposes the bill.

Background

The BLM manages oil and natural gas operations on over 700 million acres of Federal subsurface mineral estate and must balance multiple-use interests in making decisions that will contribute to meeting the nation's energy needs while also protecting public lands and human health. The BLM's current regulations governing hydraulic fracturing operations on public lands are more than 30 years old. The increasing use of hydraulic fracturing on BLM and privately owned lands, and the deployment of new technologies, has necessitated that BLM update its framework for managing the extraction of fluid minerals from the Federal and Indian mineral estate. The BLM released a revised proposed rule in May 2013 to strengthen and modernize its regulations for hydraulic fracturing activities on public and Indian lands. The BLM is currently accepting public comment until August 23, 2013.

The Department and the BLM recognize the efforts of states that currently have hydraulic fracturing regulations, and the agency has drafted the revised proposed rule to minimize conflicts in those states. Included in the revised proposed rule is a variance process that allows for broad deference to state and tribal standards that meet or exceed those proposed by the rule. In addition, the BLM intends to reach out to states to establish formal agreements that will leverage the strengths of existing partnerships, provide a greater role for states in the oversight process, reduce duplication of efforts for agencies and operators, and implement the revised proposed rule as consistently as possible with state regulations, while fulfilling the Secretary's responsibilities mandated by statute as steward for the public lands and trustee for Indian lands.

H.R. 2728

H.R. 2728 prohibits the Department of the Interior from enforcing Federal regulations regarding hydraulic fracturing activities on any land in any state that has existing regulations on hydraulic fracturing. This deferral to state authority would occur regardless of the quality or comprehensiveness of the state rules, even if the rules are less protective or otherwise in conflict with Federal guidelines.

The BLM's proposed rule is specifically designed to ensure that oil and gas operators have a consistent set of minimum standards for operations on Federal and Indian lands. The revised

proposed rule includes a variance process that enables the BLM to recognize as sufficient an operator's compliance with a state's or a tribe's hydraulic fracturing rules so long as those rules meet or exceed the effectiveness of the BLM's revised proposed rule. It is important to note that BLM is not an outlier in taking action to address the recent surge in hydraulic fracturing activity. Many states have taken, or are in the process of taking, similar action to update their oil and gas regulations as they apply to hydraulic fracturing on state or private lands. However, based on a recent review by BLM, currently, 15 of the 34 states with federal oil and gas mineral estate have no hydraulic fracturing regulations in place, while the requirements vary considerably across the 19 states that do have regulations of some kind.

The development of the revised proposed hydraulic fracturing rule has included proactive Tribal consultation with scores of Tribal leaders under the Department's Tribal Consultation Policy and proactive engagement with state oil and gas regulatory staff. The agency will continue to consult with Tribal leaders and states throughout the rulemaking process to ensure our final rules are implemented as consistently as possible with state and Tribal rules. Responses from these representatives and others will inform the agency's actions in defining the final scope of acceptable hydraulic fracturing rule options. BLM officials look forward to working cooperatively with state and tribal officials to develop agreements or certification processes that would minimize administrative requirements for operators. Cooperative development of these agreements would allow the BLM and the states to improve efficiency, increase flexibility, reduce regulatory duplication, and reduce costs for operators and for the Federal Government and the states.

Conclusion

Thank you for the opportunity to present this Statement for the Record on H.R. 2728.