Colorado
Legislative
Council
Staff

Room 029 State Capitol, Denver, CO 80203-1784
(303) 866-3521 FAX: 866-3855 TDD: 866-3472

MEMORANDUM

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March 31, 2010

TO: Representative Randy Baumgardner

FROM: Jason Schrock, Economist, 303-866-4720

SUBJECT: Background Information on Naval Oil Shale Reserve

This memorandum provides background information on the diversion of federal mineral leasing (FML) revenue to the federal government for past activities on the Naval Oil Shale Reserve in Garfield County.

Background on the diversion of FML money. The diversion of FML money from mineral production activities on certain areas of the Naval Oil Shale Reserve was required under 1997 federal legislation. The legislation required the diversion of FML money to pay for environmental restoration and waste management conducted by the federal Department of the Interior for the 1940-era oil shale project at the Anvil Points Facility on the reserve. The legislation also required that the diversion be used to cover the costs to the federal Department of Energy for its prior mineral extraction development on the reserve, such as installing wells and other equipment and administrative costs. The 1997 legislation is provided as Attachment A. The FML money that was diverted was deposited into a special federal trust fund.

This diversion was required to continue until the Department of Interior certified it had enough revenue to cover the costs of the cleanup and the Department of Energy certified there was enough to cover its prior mineral extraction development costs on the reserve.

Normally, roughly half of this FML money would flow to Colorado and be distributed as specified in the formula in Section 34-63-102, C.R.S. Under this formula, the FML money goes to public education, local governments and school districts, Department of Local Affairs for grants to local governments, the Colorado Water Conservation Board Construction Fund for water projects, a permanent savings fund, and higher education construction and maintenance projects. The other half would have been distributed to the federal treasury.

Amount of FML diversion needed for costs incurred. It was determined that the costs for the clean up would be $24.0 million and the mineral extraction development costs were $39.4 million, totaling $63.4 million. In August 2008, both departments issued the certification (Attachment B) that enough money had been deposited into the fund. After the certification, Colorado began to again receive its share of FML revenue from mineral production activities in the area; the revenue was distributed as all other FML revenue received by the state is under the formula in Section 34-63-102, C.R.S.

Scheduled completion of cleanup. According to a representative from the Bureau of Land Management (BLM) in the U.S. Department of Interior, the clean up of the Anvil Points Facility oil shale site is scheduled to be completed by September 30, 2010 (the end of the current federal fiscal year). The representative indicated that the cleanup will use all of the money estimated to be needed for the project in the certification ($24 million).

Amount of remaining money from FML diversion after the amount for costs incurred. The diversion of FML money continued after the special fund had more than the amount needed that was indicated in the certification. According to the BLM, at the time of the certification the fund had $113.7 million. Thus, the fund had about $50 million more than what was certified to be needed. In 2009, $12.9 million was rescinded from the fund and used for federal government appropriations. Thus, currently the fund has about $37.2 million.[1] According to a representative from Senator Udall's office, the money will sit in the fund until Congress either rescinds the money and uses it for appropriations or legislation passes to determine how the money should be used.

Legislation introduced to require the money be distributed to Colorado. There have been two bills introduced by Senators Udall and Bennett—S. 1575 (Attachment C) and S.1602 (Attachment D)—to have the state portion distributed to Colorado. Both of these bills specify that the state's portion be distributed to the state and be given to certain counties in the area of the Naval Oil Shale Reserve. Thus, based on the balance in the fund indicated by the BLM, the state's portion (roughly half) would be about $18 million.

Both of these bills have not yet been scheduled to receive a committee hearing. According to a representative from Senator Udall's office, the Congressional Budget Office would likely indicate (or "score") that these bills cause the federal government to lose revenue. Thus, under Congress's "PAYGO, " or pay-as-you-go, rules— which requires new spending or revenue changes to not add to the federal deficit— there would need to be an offset in either decreased spending or increased revenue to accompany these bills.

[1] Its important to note that there is some uncertainty regarding whether the costs to the Department of Energy was the amount indicated in the certification ($39.4), or a larger amount indicated by the Congressional Budget Office of $49 million. Thus, if the latter figure is accurate, then there is only an estimated $28 million available in the fund, rather than $37 million.

TITLE 10 - ARMED FORCES
Subtitle C - Navy and Marine Corps
PART IV - GENERAL ADMINISTRATION
CHAPTER 641 - NAVAL PETROLEUM RESERVES

§ 7439. Certain oil shale reserves: transfer of jurisdiction and petroleum exploration, development, and production

(a) Transfer Required.—

(1) Upon the enactment of this section, the Secretary of Energy shall transfer to the Secretary of the Interior administrative jurisdiction over all public domain lands included within Oil Shale Reserve Numbered 1 and those public domain lands included within the undeveloped tracts of Oil Shale Reserve Numbered 3.

(2) Not later than November 18, 1998, the Secretary of Energy shall transfer to the Secretary of the Interior administrative jurisdiction over those public domain lands included within the developed tract of Oil Shale Reserve Numbered 3, which consists of approximately 6,000 acres and 24 natural gas wells, together with pipelines and associated facilities.

(3) Notwithstanding the transfer of jurisdiction, the Secretary of Energy shall continue to be responsible for all environmental restoration, waste management, and environmental compliance activities that are required under Federal and State laws with respect to conditions existing on the lands at the time of the transfer.

(4) Upon the transfer to the Secretary of the Interior of jurisdiction over public domain lands under this subsection, the other provisions of this chapter shall cease to apply with respect to the transferred lands.

(b) Authority To Lease.—

(1) Beginning on November 18, 1997, or as soon thereafter as practicable, the Secretary of the Interior shall enter into leases with one or more private entities for the purpose of exploration for, and development and production of, petroleum (other than in the form of oil shale) located on or in public domain lands in Oil Shale Reserves Numbered 1 and 3 (including the developed tract of Oil Shale Reserve Numbered 3). Any such lease shall be made in accordance with the requirements of the Mineral Leasing Act (30 U.S.C. 181 et seq.) regarding the lease of oil and gas lands and shall be subject to valid existing rights.

(2) Notwithstanding the delayed transfer of the developed tract of Oil Shale Reserve Numbered 3 under subsection (a)(2), the Secretary of the Interior shall enter into a lease under paragraph (1) with respect to the developed tract before November 18, 1998.

(c) Management.— The Secretary of the Interior, acting through the Director of the Bureau of Land Management, shall manage the lands transferred under subsection (a) in accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and other laws applicable to the public lands.

(d) Transfer of Existing Equipment.— The lease of lands by the Secretary of the Interior under this section may include the transfer, at fair market value, of any well, gathering line, or related equipment owned by the United States on the lands transferred under subsection (a) and suitable for use in the exploration, development, or production of petroleum on the lands.

(e) Cost Minimization.— The cost of any environmental assessment required pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) in connection with a proposed lease under this section shall be paid out of unobligated amounts available for administrative expenses of the Bureau of Land Management.

(f) Treatment of Receipts.—

(1) Notwithstanding section 35 of the Mineral Leasing Act (30 U.S.C. 191), all moneys received during the period specified in paragraph (2) from a lease under this section (including moneys in

the form of sales, bonuses, royalties (including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.)), and rentals) shall be covered into the Treasury of the United States and shall not be subject to distribution to the States pursuant to subsection (a) of such section 35.

(2) The period referred to in this subsection is the period beginning on November 18, 1997, and ending on the date on which the Secretary of Energy and the Secretary of the Interior jointly certify to Congress that the sum of the moneys deposited in the Treasury under paragraph (1) is equal to the total of the following:

(A) The cost of all environmental restoration, waste management, and environmental compliance activities incurred by the United States with respect to the lands transferred under subsection (a).

(B) The cost to the United States to originally install wells, gathering lines, and related equipment on the transferred lands and any other cost incurred by the United States with respect to the lands.

(g) Use of Receipts.—

(1) The Secretary of the Interior may use, without further appropriation, not more than $1,500,000 of the moneys covered into the Treasury under subsection (f)(1) to cover the cost of any additional analysis, site characterization, and geotechnical studies deemed necessary by the Secretary to support environmental restoration, waste management, or environmental compliance with respect to Oil Shale Reserve Numbered 3. Upon the completion of such studies, the Secretary of the Interior shall submit to Congress a report containing—

(A) the results and conclusions of such studies; and

(B) an estimate of the total cost of the Secretary's preferred alternative to address environmental restoration, waste management, and environmental compliance needs at Oil Shale Reserve Numbered 3.

(2) If the cost estimate required by paragraph (1)(B) does not exceed the total of the moneys covered into the Treasury under subsection (f)(1) and remaining available for obligation as of the date of submission of the report under paragraph (1), the Secretary of the Interior may access such moneys, beginning 60 days after submission of the report and without further appropriation, to cover the costs of implementing the preferred alternative to address environmental restoration, waste management, and environmental compliance needs at Oil Shale Reserve Numbered 3. If the cost estimate exceeds such available moneys, the Secretary of the Interior may only access such moneys as authorized by subsequent Act of Congress.

(Added Pub. L. 105–85, div. C, title XXXIV, § 3404(a), Nov. 18, 1997, 111 Stat. 2059; amended Pub. L. 107–107, div. A, title X, § 1048(c)(14), Dec. 28, 2001, 115 Stat. 1226; Pub. L. 107–345, § 1, Dec. 17, 2002, 116 Stat. 2894.)

References in Text

The Mineral Leasing Act, referred to in subsec. (b)(1), is act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, which is classified generally to chapter 3A (§ 181 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 181 of Title 30 and Tables.

The Federal Land Policy and Management Act of 1976, referred to in subsec. (c), is Pub. L. 94–579, Oct. 21, 1976, 90 Stat. 2743, as amended, which is classified principally to chapter 35 (§ 1701 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 43 and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (e), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Federal Oil and Gas Royalty Management Act of 1982, referred to in subsec. (f)(1), is Pub. L. 97–451, Jan. 12, 1983, 96 Stat. 2447, which is classified generally to chapter 29 (§ 1701 et seq.) of Title 30, Mineral Lands and Mining.

For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 30 and Tables.

Amendments

2002—Subsec. (f)(1). Pub. L. 107–345, § 1(1), struck out after first sentence: "Subject to a specific authorization and appropriation for this purpose, such moneys may be used for reimbursement of environmental restoration, waste management, and environmental compliance costs incurred by the United States with respect to the lands transferred under subsection (a)."

Subsec. (g). Pub. L. 107–345, § 1(2), added subsec. (g).

2001—Subsec. (a)(2). Pub. L. 107–107, § 1048(c)(14)(A), substituted "November 18, 1998" for "one year after the date of the enactment of this section".

Subsec. (b)(1). Pub. L. 107–107, § 1048(c)(14)(B), substituted "November 18, 1997," for "the date of the enactment of this section,".

Subsec. (b)(2). Pub. L. 107–107, § 1048(c)(14)(C), substituted "November 18, 1998" for "the end of the one-year period beginning on the date of the enactment of this section".

Subsec. (f)(2). Pub. L. 107–107, § 1048(c)(14)(D), substituted "November 18, 1997," for "the date of the enactment of this section".

Attachment B

August 7, 2008

The Honorable Nancy Pelosi
Speaker of the House of
Representatives
Washington, D.C. 20515

Dear Madam Speaker:

Pursuant to the requirements of 10 U.S.C. § 7439(f)(2), the Department of the Interior (DOI) and the Department of Energy (DOE) hereby certify that the sum of monies deposited in the established special Treasury fund is at least equal to: (a) the cost of all environmental restoration, waste management, and environmental compliance activities incurred by the United States with respect to the Anvil Points Facility on Naval Oil Shale Reserve Number 3 (NOSR 3); and (b) the cost to the United States to originally install wells, gathering lines, and related equipment on the lands transferred.

The DOI has determined that the costs of addressing environmental restoration, waste management, and environmental compliance activities at NOSR 3 are estimated at $24,019,400. We have obligated funds in that amount for a contract and, as provided by 10 U.S.C. § 7439(g)(2), we will draw on the special Treasury fund to implement this contract, which will complete the environmental activities necessary at NOSR 3. The DOE has determined, in accordance with the statute, that the cost to the United States to originally install wells, gathering lines, and related equipment at the site totals $39,435,387.

Since the total amount in the special Treasury fund is currently estimated over $100 million and the total costs incurred by the DOI and DOE cited above are estimated at $63,454,787, the amount in the special Treasury fund more than equals the costs incurred.

With this certification, future leasing receipts will no longer be diverted to the special Treasury fund, but instead will resume distribution under the applicable provisions of the Mineral Leasing Act, 30 U.S.C. § 191.

If you have any questions, please contact Mr. Matthew Eames, Director, DOI Office of Congressional and Legislative Affairs at (202) 208-7693 or Ms. Lisa E. Epifani, Assistant Secretary, DOE Congressional and Intergovernmental Affairs at (202)-586-5450. An identical letter is being sent to the Honorable Richard B. Cheney, President of the Senate.

Sincerely,

DIRK KEMPTHORNE
Secretary of the Interior

SAMUEL W. BODMAN
Secretary of Energy

II

111TH CONGRESS
1ST SESSION

S. 1575

To amend title 10, United States Code, to ensure that excess oil and gas lease revenues are distributed in accordance with the Mineral Leasing Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 4, 2009

Mr. UDALL of Colorado (for himself and Mr. BENNET) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To amend title 10, United States Code, to ensure that excess oil and gas lease revenues are distributed in accordance with the Mineral Leasing Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TREATMENT OF OIL SHALE RESERVE RECEIPTS.

Section 7439(f) of title 10, United States Code, is amended by adding at the end the following:

"(3)(A) The moneys deposited in the Treasury under paragraph (1) that exceed the amounts described in subparagraphs (A) and (B) of paragraph (2) shall be trans-

ferred by the Secretary of the Treasury in accordance with section 35 of the Mineral Leasing Act (30 U.S.C. 191) to the State of Colorado for use in accordance with subparagraph (B).

"(B) Amounts transferred to the State of Colorado under subparagraph (A) shall be used by the State and political subdivisions of the State for—

"(i) conservation, restoration, and protection of land, water, and wildlife resources affected by oil or gas development activities in Garfield and Rio Blanco Counties in the State;

"(ii) repair, maintenance, and construction of State and county roads in each of those counties; and

"(iii) the conduct of capital improvement projects (including the construction and maintenance of sewer and water treatment plants) that are designed and carried out to address the impacts of oil and gas development activities in each of those counties.".

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II

111TH CONGRESS
1ST SESSION

S. 1602

To amend title 10, United States Code, to ensure that excess oil and gas lease revenues are distributed in accordance with the Mineral Leasing Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 6, 2009

Mr. UDALL of Colorado (for himself and Mr. BENNET) introduced the following bill; which was read twice and referred to the Committee on Armed Services

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A BILL

To amend title 10, United States Code, to ensure that excess oil and gas lease revenues are distributed in accordance with the Mineral Leasing Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TREATMENT OF OIL SHALE RESERVE RECEIPTS.

Section 7439(f) of title 10, United States Code, is amended by adding at the end the following:

"(3)(A) The moneys deposited in the Treasury under paragraph (1) that exceed the amounts described in subparagraphs (A) and (B) of paragraph (2) shall be trans-

ferred by the Secretary of the Treasury in accordance with section 35 of the Mineral Leasing Act (30 U.S.C. 191) to the State of Colorado for use in accordance with subparagraph (B).

"(B)(i) Of the amounts to be distributed under subparagraph (A), the Secretary of the Treasury shall transfer—

"(I) 40 percent to Garfield County, Colorado;

"(II) 40 percent to Rio Blanco County, Colorado;

"(III) 10 percent to Moffat County, Colorado; and

"(IV) 10 percent to Mesa County, Colorado.

"(ii) The amounts provided to the counties under clause (i) shall be used by the counties, or any cities or political subdivisions within the counties to which the funds are transferred by the counties, to mitigate the effects of oil and gas development activities within the affected counties, cities, or political subdivisions.

"(iii) Amounts provided to the counties under clause (i) shall not be considered for the purpose of calculating payments for the counties under chapter 69 of title 31, United States Code.".

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