

110TH CONGRESS
2D SESSION

H. R. 6860

To exempt exploration, development, and production of oil and natural gas under leases on Federal lands from State environmental and pollution control laws, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 10, 2008

Mrs. BLACKBURN introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To exempt exploration, development, and production of oil and natural gas under leases on Federal lands from State environmental and pollution control laws, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Oil and Gas Lease
5 Reform Act of 2008”.

6 **SEC. 2. ENVIRONMENTAL REVIEW PROCESS.**

7 (a) **PREEMPTION OF STATE LAW.**—No State environ-
8 mental or pollution control law regulating the emission of

1 pollutants or protecting human health or the environment
2 shall apply to any activity under a lease for the explo-
3 ration, development, or production of oil or natural gas
4 on Federal lands (including submerged lands), including
5 any such State law that is expressly applicable to such
6 activity under any other provision of Federal law.

7 (b) CONFORMING AMENDMENTS.—

8 (1) Section 25 of the Outer Continental Shelf
9 Lands Act (43 U.S.C. 1351) is amended—

10 (A) by striking subsection (d); and

11 (B) in subsection (h)—

12 (i) in paragraph (1) by striking “Any
13 modification required by the Secretary”
14 and all that follows through the end of the
15 sentence;

16 (ii) in paragraph (1) by striking sub-
17 paragraph (B);

18 (iii) in paragraph (2)(A) by striking
19 clause (ii); and

20 (iv) in paragraph (2)(B) by striking
21 clause (ii).

22 (2) Section 202(c) of the Federal Land Policy
23 and Management Act of 1976 (43 U.S.C. 1712(c))
24 is amended—

1 (A) in paragraph (8), by striking “State
2 and”; and

3 (B) in paragraph (9)—

4 (i) by striking “and of the States”
5 and all that follows through “897), as
6 amended,” ;

7 (ii) by striking “of approved State
8 and”;

9 (iii) by striking “State, local, and”;

10 (iv) by striking “non-Federal Govern-
11 mental”; and

12 (v) by striking the last sentence.

13 **SEC. 3. PREVENTION OF UNNECESSARY OR UNDUE DEG-**
14 **RADATION OF PUBLIC LANDS.**

15 Section 302(b) of the Federal Land Policy and Man-
16 agement Act of 1976 (43 U.S.C. 1732(b)) is amended by
17 inserting “(1)” before the first sentence, and by adding
18 at the end the following:

19 “(2) For purposes of application of this subsection
20 with respect to a lease for the exploration, development,
21 or production of oil or natural gas, the term ‘unnecessary
22 or undue degradation’ means (A) surface or submerged
23 disturbance greater than what would normally result when
24 an activity is being accomplished by a prudent operator
25 in usual, customary, and proficient operations of similar

1 character and taking into considerations the effect of oper-
2 ations on other resources and land uses, including those
3 resources and uses outside the area of operations; (B) fail-
4 ure to initiate and complete reasonable mitigation meas-
5 ures, including the attainment of a level of protection or
6 reclamation required by specific Federal law in areas such
7 as the California Desert Conservation Area, Wild and Sce-
8 nic Rivers, Bureau of Land Management-administered
9 portions of the National Wilderness System, and Bureau
10 of Land Management-administered National Monuments
11 and National Conservation Areas; (C) failure to comply
12 with applicable Federal environmental statutes and regu-
13 lations thereunder; or (D) failure to abide by the terms
14 and conditions of an approved plan of operations and oper-
15 ations described in a complete notice.”.

16 **SEC. 4. CONDITION FOR SUSPENSION OF LEASE.**

17 (a) FEDERAL LAND POLICY AND MANAGEMENT ACT
18 OF 1976.—Section 302(c) of the Federal Land Policy and
19 Management Act of 1976 (43 U.S.C. 1732(c)) is amended
20 by inserting “(1)” before the first sentence, and by adding
21 at the end the following:

22 “(2)(A) The Secretary may not suspend any lease for
23 the exploration, development, or production of oil or nat-
24 ural gas, unless—

1 “(i) the Secretary determines, based on clear
2 proof, that operations under the lease will present an
3 imminent threat or harm to public safety or will sig-
4 nificantly damage the public lands outside lease stip-
5 ulations; or

6 “(ii) the suspension is requested by the lessee.

7 “(B) The Secretary shall review any suspension of
8 a lease under subparagraph (A)(i) at least once every 30
9 days, and may renew such a suspension only after such
10 a review.

11 “(C) Any suspension by the Secretary of a lease
12 under subparagraph (A)(i) for more than a total of 90
13 days in any 6-month period is deemed to be a breach of
14 a contractual obligation of the United States, if—

15 “(i) the lessee is taking action to mitigate the
16 condition that was the reason for the suspension;
17 and

18 “(ii) such action is preventing the imminent
19 threat, harm, or significant damage.

20 “(D) In the case of a breach under of contractual
21 obligation, under subparagraph (C)—

22 “(i) the lessee shall be awarded contract dam-
23 ages; and

24 “(ii) the lessee may—

1 “(I) retain the lease, and reapply upon
2 submission to the Secretary of an application
3 that includes procedures to address the reasons
4 for the suspensions; or

5 “(II) surrender the lease and be refunded
6 the amounts paid by the lessee to the United
7 States as a bonus bid for the lease.

8 “(E) The term of a lease shall be extended by the
9 period of each suspension of the lease under subparagraph
10 (A).

11 “(F) The maximum period of time a lease may be
12 suspended by request under subparagraph (A)(ii) is 2
13 years for each 5-year period of the original term of the
14 lease.

15 “(G) In this paragraph the term ‘significantly dam-
16 age’ means destroy 5 percent of more of wildlife and flora
17 in the area that is subject to a the lease, or destroy histor-
18 ical structures in excess of the terms under permits and
19 plans approved by the Secretary pursuant to the lease.”.

20 (b) MINERAL LEASING ACT.—Section 17 of the Min-
21 eral Leasing Act (30 U.S.C. 226) is amended by adding
22 at the end the following:

23 “(q)(1) The Secretary may not suspend any lease
24 under this Act for the exploration, development, or pro-
25 duction of oil or natural gas, unless—

1 “(A) the Secretary determines, based on clear
2 proof, that operations under the lease will present an
3 imminent threat or harm to public safety or will sig-
4 nificantly damage the public lands; or

5 “(B) the suspension is requested by the lessee.

6 “(2) The Secretary shall review any suspension of a
7 lease under paragraph (1)(A) at least once every 30 days,
8 and may renew such a suspension only after such a review.

9 “(3) Any suspension by the Secretary of a lease under
10 paragraph (1)(A) for more than a total of 90 days in any
11 6-month period is deemed to be a breach of a contractual
12 obligation of the United States, if—

13 “(A) the lessee is taking action to mitigate the
14 condition that was the reason for the suspension;
15 and

16 “(B) such action is preventing the imminent
17 threat, harm, or significant damage.

18 “(4) In the case of a breach under of contractual obli-
19 gation, under paragraph (3)—

20 “(A) the lessee shall be awarded contract dam-
21 ages; and

22 “(B) the lessee may—

23 “(i) retain the lease, and reapply upon sub-
24 mission to the Secretary of an application that

1 includes procedures to address the reasons for
2 the suspension; or

3 “(ii) surrender the lease and be refunded
4 the amounts paid by the lessee to the United
5 States as a bonus bid for the lease.

6 “(5) The term of a lease shall be extended by the
7 period of each suspension of the lease under paragraph
8 (1).

9 “(6) The maximum period of time a lease may be
10 suspended by request under paragraph (1)(B) is 2 years
11 for each 5-year period of the original term of the lease.

12 “(7) In this subsection the term ‘significantly dam-
13 age’ means destroy 5 percent of more of wildlife and flora
14 in the area that is subject to a the lease, or destroy histor-
15 ical structures in excess of the terms under permits and
16 plans approved by the Secretary pursuant to the lease.”.

17 (c) OUTER CONTINENTAL SHELF LANDS ACT.—Sec-
18 tion 5 of the Outer Continental Shelf Lands Act (43
19 U.S.C. 1334) is amended—

20 (1) in subsection (a)—

21 (A) in paragraph (1) by striking “(A) at
22 the request” and all that follows through the
23 end of the paragraph and inserting “in accord-
24 ance with subsection (k)”; and

1 (B) by amending paragraph (2) to read as
2 follows:

3 “(2) with respect to cancellation of any lease or
4 permit, that comply with subsection (k);” and

5 (2) by adding at the end the following:

6 “(k)(1) The Secretary may not suspend any lease
7 under this Act for the exploration, development, or pro-
8 duction of oil or natural gas, unless—

9 “(A) the Secretary determines, based on clear
10 proof, that operations under the lease will present an
11 imminent threat or harm to public safety or will sig-
12 nificantly damage the public lands; or

13 “(B) the suspension is requested by the lessee.

14 “(2) The Secretary shall review any suspension of a
15 lease under paragraph (1)(A) at least once every 30 days,
16 and may renew such a suspension only after such a review.

17 “(3) Any suspension by the Secretary of a lease under
18 paragraph (1)(A) for more than a total of 90 days in any
19 6-month period is deemed to be a breach of a contractual
20 obligation of the United States, if—

21 “(A) the lessee is taking action to mitigate the
22 condition that was the reason for the suspension;
23 and

24 “(B) such action is preventing the imminent
25 threat, harm, or significant damage.

1 “(4) In the case of a breach under of contractual obli-
2 gation, under paragraph (3)—

3 “(A) the lessee shall be awarded contract dam-
4 ages; and

5 “(B) the lessee may—

6 “(i) retain the lease, and reapply upon sub-
7 mission to the Secretary of an application that
8 includes procedures to address the reasons for
9 the suspension; or

10 “(ii) surrender the lease and receive such
11 compensation as the lessee shows necessary to
12 the Secretary as being greater of—

13 “(I) the fair value of the canceled
14 rights as of the date of cancellation, taking
15 account of both anticipated revenues from
16 the lease and anticipated costs, including
17 costs of compliance with all applicable reg-
18 ulations and operating orders, liability for
19 cleanup costs or damages, or both, in the
20 case of an oil spill, and all other costs rea-
21 sonably anticipated on the lease, or

22 “(II) the excess, if any, over the les-
23 see’s revenues, from the lease (plus inter-
24 est thereon from the date of receipt to date
25 of reimbursement) of all consideration paid

1 for the lease and all direct expenditures
2 made by the lessee after the date of
3 issuance of such lease and in connection
4 with exploration or development, or both,
5 pursuant to the lease (plus interest on
6 such consideration and such expenditures
7 from date of payment to date of reimburse-
8 ment),

9 except that with respect to leases issued before
10 September 18, 1978, such compensation shall
11 be equal to the amount specified in subclause
12 (I) of this clause, and that in the case of joint
13 leases which are canceled due to the failure of
14 one or more partners to exercise due diligence,
15 the innocent parties shall have the right to seek
16 damages for such loss from the responsible
17 party or parties and the right to acquire the in-
18 terests of the negligent party or parties and be
19 issued the lease in question.

20 “(5) The term of a lease shall be extended by the
21 period of each suspension of the lease under paragraph
22 (1).

23 “(6) The maximum period of time a lease may be
24 suspended by request under paragraph (1)(B) is 2 years
25 for each 5-year period of the original term of the lease.

1 “(7) In this subsection the term ‘significantly dam-
2 age’ means—

3 “(A) destroy 5 percent or more of fish and
4 other aquatic life in the area that is subject to the
5 lease;

6 “(B) destroy 5 percent or more of the marine
7 environment within one mile of the area that is sub-
8 ject to the lease, including the area within the lease;
9 or

10 “(C) destroy 5 percent or more of the coastal
11 environment that is nearest to the area that is sub-
12 ject to the lease.”.

13 **SEC. 5. LIMITATION ON REQUIREMENT TO CONDUCT ENVI-
14 RONMENTAL REVIEWS FOR A LEASE.**

15 (a) IN GENERAL.—No statement is required under
16 section 102(2)(C) of the National Environmental Policy
17 Act of 1969 (42 U.S.C. 4332(2)(C)) for a lease for the
18 exploration, development, or production of oil or natural
19 gas on Federal lands (including any lease under the Outer
20 Continental Shelf Lands Act, the Mineral Leasing Act, the
21 Mineral Leasing Act for Acquired Lands, or any other
22 Federal law), except for—

- 23 (1) sale of the lease by the lessee; and
24 (2) as provided in subsection (b).

1 (b) PERMITS FOR EXPLORATION, DEVELOPMENT,
2 PRODUCTION AND INFRASTRUCTURE.—

3 (1) IN GENERAL.—The Secretary of the Inte-
4 rior shall prepare a single statement under such sec-
5 tion, and conduct a single review for that purpose,
6 with respect to all plans and permits required for ex-
7 ploration, development, production, and construction
8 of infrastructure to be carried out under the lease,
9 upon submission by the lessee of a request under
10 this subsection.

11 (2) CONTENTS OF REQUEST.—The lessee shall
12 include in the request a comprehensive plan that in-
13 cludes all plans and applications for all permits re-
14 ferred to in paragraph (1).

15 (3) LIMITATION ON OTHER REVIEWS.—Upon
16 submission of a request under this subsection, no
17 Federal agency or official, other than the Secretary,
18 may conduct any review or issue any other state-
19 ment under 102(2)(C) of the National Environ-
20 mental Policy Act of 1969 (42 U.S.C. 4332(2)(C))
21 for activities under the lease.

22 (4) SUBMISSION OF COMMENT.—The head of
23 any Federal agency with authority to administer any
24 Federal law that applies to activities under such a

1 lease may submit comments to the Secretary regard-
2 ing such request.

3 (5) REQUIREMENT TO ISSUE PERMITS.—If the
4 Secretary determines, after reviewing all comments
5 submitted under paragraph (4), that the comprehen-
6 sive plan complies with the requirements of such sec-
7 tion—

8 (A) each Federal official responsible for
9 administering any law under which a such a
10 permit is required shall issue such permit with-
11 in the 60-day period beginning on the date the
12 Secretary issues the determination, unless such
13 official files an appeal of the determination in
14 the District of Columbia Court of Appeals filed
15 before the end of that period; and

16 (B) operations under the lease and such
17 permits may commence immediately upon the
18 issuance of a final decision in all such appeals,
19 except as otherwise provided in such a decision.

20 (6) PERIOD TO BEGIN PRODUCTION.—For pur-
21 poses of any requirement under Federal law that
22 production of oil or gas under such a lease begin
23 within a specified period, such period shall begin
24 upon the later of—

1 (A) the expiration of the period referred to
2 in paragraph (5)(A); and

3 (B) this issuance of a final decision in all
4 appeals filed in accordance with that paragraph.

5 (7) REGULATIONS.—The Secretary shall issue
6 such regulations as are necessary to issue this sub-
7 section.

8 **SEC. 6. APPEALS PROCESS.**

9 Notwithstanding section 554(f) of title 5, United
10 States Code, any appeal of a decision of an officer of the
11 Department of the Interior or an administrative law judge
12 regarding any lease for the exploration, development, or
13 production of oil or natural gas on Federal lands (includ-
14 ing submerged lands) or an matter under or with respect
15 to such a lease shall be in accordance with the following:

16 (1) Within 60 days after the issuance of the de-
17 cision, the appellant shall file a notice of appeal with
18 the appellee and the Secretary of the Interior that
19 includes a statement of reasons, arguments, briefs,
20 and a request for a hearing.

21 (2) Within 30 days after receipt of such notice
22 of appeal, the Secretary shall decide whether to hold
23 an administrative hearing pursuant to the request.
24 If the Secretary decides not to hold such a hearing,

1 the decision of the officer or judge is a final agency
2 action.

3 (3) Within 60 days after the Secretary holds
4 such a hearing, the Secretary shall issue a final deci-
5 sion on the appeal. If the Secretary fails to issue a
6 final decision in that period, the Secretary is deemed
7 to have found in favor of the appellee. Such final de-
8 cision or finding is deemed to be a final agency ac-
9 tion.

10 (4) Any judicial appeal by the appellant of such
11 a final agency action may only be filed—

12 (A) in the District of Columbia Court of
13 Appeals; and

14 (B) within 60 days after the end of the pe-
15 riod referred to in paragraph (3).

16 (5) If a final decision by the District of Colum-
17 bia Court of Appeals in such judicial appeal is not
18 issued within 1 year after the date the judicial ap-
19 peal is filed—

20 (A) the court is deemed to have decided
21 the appeal in favor of the appellee; and

22 (B) no court has jurisdiction over the ap-
23 peal except the Supreme Court.

24 (6) Any administrative or judicial appeal of a
25 decision by the Department of the Interior regarding

1 a statement under section 102(2)(C) of the National
2 Environmental Policy Act of 1969 (42 U.S.C.
3 4332(2)(C)) or any similar environmental analysis
4 must be countered by a similar assessment con-
5 ducted by the appellant that shows that the Depart-
6 ment—

7 (A) did not follow accepted scientific meth-
8 ods in reaching its decision; and

9 (B) is arbitrary and capricious.

10 (7) If the suit is determined by the court to
11 have no basis in fact or law, the appellant shall be
12 liable to the appellee for attorney and witness fees
13 and court costs, except in the case of an indigent
14 party. If one or more 3rd parties contributed assist-
15 ance to the indigent party to bring suit or reason-
16 able incident actions related to suit, then 3rd parties
17 shall be liable for such fees and costs. If any of such
18 assistance was directly paid to the indigent party,
19 the indigent party may be held liable for fees and
20 costs to the extent of the amount received.

21 **SEC. 7. CITIZEN SUITS, ENFORCEMENT ACTIONS, AND AP-**
22 **PEALS UNDER THE OUTER CONTINENTAL**
23 **SHELF LANDS ACT.**

24 (a) RESTRICTION ON ACTIONS BY NONCITIZENS AND
25 FEDERAL AGENCIES.—Section 23(a)(1) of the Outer Con-

1 tinal Shelf Lands Act (43 U.S.C. 1349(a)(1)) is
2 amended by adding at the end the following: “No such
3 civil action may be commenced by a person that is not
4 a United States citizen, a State, or a United States incor-
5 porated or unincorporated company or corporation estab-
6 lished under the laws of a State. No such civil action may
7 be commenced by a Federal officer or agency, except the
8 Secretary of the Interior.”.

9 (b) LIMITATION ON ACTIONS AND INTERVENTION IN
10 CASE OF SUITS BY ATTORNEY GENERAL.—Section
11 23(a)(2)(B) of such Act (43 U.S.C. 1349(a)(2)(B)) is
12 amended—

13 (1) by inserting “or criminal” after “civil”; and

14 (2) by striking “, but in any such action” and
15 all that follows and inserting a period.

16 (c) RECOVERY FOR FRIVOLOUS ACTIONS.—

17 (1) CITIZEN SUITS.—Section 23 of such Act
18 (43 U.S.C. 1349) is amended by adding at the end
19 the following:

20 “(d) If an action under this section is determined by
21 the court to have no basis in fact or law, the plaintiff shall
22 be liable to the defendant for attorney and witness fees
23 and court costs, except in the case of an indigent party.
24 If one or more 3rd parties contributed assistance to the
25 indigent party to bring suit or reasonable incident actions

1 related to suit, then the 3rd parties shall be liable for such
2 fees and costs. If any of such assistance was directly paid
3 to the indigent party, the indigent party may be held liable
4 for fees and costs to the extent of the amount received.”.

5 (2) CIVIL ENFORCEMENT ACTIONS.—Section 24
6 of such Act (43 U.S.C. 1350) is amended by adding
7 at the end the following:

8 “(f) If an action under this section is determined by
9 the court to have no basis in fact or law, the plaintiff shall
10 be liable to the defendant for attorney and witness fees
11 and court costs.”.

12 (d) APPELLATE JURISDICTION.—

13 (1) CITIZEN SUITS.—Section 23(b)(1) of such
14 Act (43 U.S.C. 1349(b)(1)) is amended by adding at
15 the end the following: “Any appeal of a decision in
16 such a proceeding brought against a Federal agency
17 or a lessee under this Act shall be brought in the
18 District of Columbia Court of Appeals.”.

19 (2) ACTIONS BY SECRETARY ON EXPLORATION
20 OR DEVELOPMENT AND PRODUCTION PLAN.—Sec-
21 tion 23(c)(2) of such Act (43 U.S.C. 1349(c)(2)) is
22 amended by striking “shall be subject” and all that
23 follows and inserting “shall be subject to judicial re-
24 view only in the District of Columbia Court of Ap-
25 peals.”.

1 (e) ACTIONS FOR DAMAGES.—Section 23(b)(2) of
2 such Act (43 U.S.C. 1349(b)(2)) is amended by striking
3 “resident of the United States who is injured” and insert-
4 ing “citizen of the United States or United States incor-
5 porated or unincorporated company or corporation that is
6 injured, or State that is injured,”.

7 **SEC. 8. REVIEW OF RESTRICTING OF DRILLING DURING**
8 **CERTAIN PERIODS OF THE YEAR.**

9 Not later than 90 days after the date of the enact-
10 ment of this Act, the Secretary of the Interior, acting
11 through the Bureau of Land Management, shall review
12 and report to the Congress regarding restricting drilling
13 under oil and gas leases on Federal lands in the Inter-
14 mountain West during certain periods of the year. The
15 Secretary shall include in the report a determination of
16 whether it would be better to limit such restrictions to
17 allow drilling an area quickly, rather than causing ex-
18 tended disturbance by drilling over several years.

19 **SEC. 9. RELIANCE ON ENVIRONMENTAL INFORMATION.**

20 (a) IN GENERAL.—Reliance by a Federal agency on
21 environmental information included in the statement or
22 other documents required under section 102(2)(C) of the
23 National Environmental Policy Act of 1969 (42 U.S.C.
24 4332(2)(C)) with respect to the leasing of Federal lands
25 (including submerged lands) for exploration, development,

1 or production of oil or natural gas, in taking any action
2 to address a matter that arose after purchase of a lease
3 by a lessee with respect to exploration, development, pro-
4 duction, or transportation under the lease shall not invali-
5 date such a lease, and shall not result in suspension of
6 activities under the lease unless it presents an imminent
7 threat to public safety.

8 (b) REVIEW.—The Secretary of the Interior may re-
9 view any such action to determine what modifications
10 should be made by lessee in activities under the a lease
11 to resolve the matter.

12 (c) JUDICIAL REVIEW.—The District of Columbia
13 Court of Appeals has exclusive jurisdiction over any action
14 seeking review of any action by a Federal agency taken
15 in reliance on information referred to in subsection (a).
16 In any such action, the appellant has the burden to prove
17 that the agency’s actions were not reasonable and clearly
18 did not meet accepted standards for mitigation.

19 **SEC. 10. USE OF ADJOINING LEASE TRACT.**

20 In any case in which logical exploration for or devel-
21 opment of oil or natural gas under a lease of Federal lands
22 (including submerged lands) for that purpose cannot pro-
23 ceed without acquisition or participation of adjoining land
24 that is not available, the Secretary of the Interior may
25 allow temporary use of such land by the lessee for such

1 exploration and development unless it is owned by or
2 under lease to another person. No lease or statement
3 under 102(2)(C) of the National Environmental Policy
4 Act of 1969 (42 U.S.C. 4332(2)(C)) shall be required for
5 such use if the use is minimal and will have minimal envi-
6 ronmental effect on such adjoining Federal land.

○