The Past, Present, and Future of Our Public Lands: Celebrating the 40th Anniversary of the Public Land Law Review Commission's Report, One Third of the Nation's Land (Martz Summer Conference, June 2-4)  

6-3-2010

SLIDES: Chapter 7 of the Commission Report

David L. Bernhardt

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Chapter 7 of the Commission Report

Martz Summer Conference 2010

Presented by
David L. Bernhardt
June 3, 2010
Overview

- A perspective on the policy anchors contained in Chapter 7

- A perspective on current and future opportunities or challenges

- Highlight a few of the “Items of Special Concern” contained in Chapter 7
A Few Policy Anchors Contained in Chapter 7

- “Our standard of living and our national defense are heavily dependent upon the availability of fuel and nonfuel minerals.”
- “Public land mineral policy should encourage exploration, development and production of minerals on public lands.”
- “Mineral exploration and development should have a preference over some or all other uses on much of the public lands.”
- “We are satisfied that the private enterprise has succeeded well in meeting our national mineral needs, and we see no reason to change this traditional policy.”
"These Federal programs should serve to identify general areas favorable to mineral occurrence with detailed exploration and development left to private enterprise."

"[W]e believe the environment must be given consideration, but regulations must not be arbitrarily applied if the national importance of the minerals is properly weighed."

"While an administrator should have no discretion to withhold a permit, he should have authority to vary these restrictions to meet local conditions."
“It is our view that protection of the environmental values must cover all phases of mineral activity from exploration though development and production, to reasonable postmining rehabilitation.”

“Up to the time commercial production commences, exploration development and production plans should be reviewed by the land management agency for consideration of environmental factors, but administrators should be required to approve or disapprove plans within a reasonable time.”
The Present and Future?

- Are today’s policymakers likely to embrace the policy anchors included within Chapter 7, or something different?
- Scandals and crisis tend to drive what might be considered bold Congressional action otherwise tends to be incremental.
  - 1987 Reform Act
  - Deepwater Royalty Relief Act of 1995.
“Virtually all interested parties, including the Members of Congress, the mining community, the PLLRC, the Administration, the environmental organizations, and others, have proposed changes in the Mining Law of 1872, as amended, to alter, or mitigate the adverse impacts resulting from, the present position of hardrock mining on the public lands. The Committee expects to initiate the legislative process with hearings early next year on the various legislative proposals to alter the 1872 Mining Law.”

**Items of Special Concern**

**ELIMINATE OUTDATED RESTRICTIONS** - Restrictions on public land mineral activity that are no longer relevant to existing conditions should be eliminated so as to encourage mineral exploration and development and long standing claims should be disposed of expeditiously. (Coal, Geothermal, Alien ownership).

**DOI LEAD AGENCY** - The Department of the Interior should continue to have sole responsibility for administering mineral activities on all public lands, subject to consultation with the department having management functions for other uses.

**DISPOSAL POLICY** - In future disposals of public lands for nonmineral purposes, all mineral interests known to be of value should be reserved with exploration and development discretionary in the Federal Government and a uniform policy adopted relative to all reserved mineral interests.

**HOBBY COLLECTING** - Statutory provision should be made to permit hobby collecting of minerals on the unappropriated public domain and the Secretary of the Interior should be required to promulgate regulations in accordance with statutory guidelines applicable to these activities.

**BUY OIL SHALE CLAIMS** - Legislation should be enacted which would authorize legal actions by the Government to acquire outstanding claims or interests in public land oil shale subject to judicial determination of value.

**EXPERIMENTAL OIL SHALE** - Some oil shale public lands should be made available now for experimental commercial development by private industry with the cooperation of the Federal Government in some aspects of the development.
Oil Shale Experimental Program

- Offer lease tracts sufficiently large to permit amortization of investments required for development.
- Consider industry’s input regarding size of tracts, lease duration, and size of plant.
- Allow test lease holders chance for commercial lease
- Experiment with bonuses, fees, royalties.
- Provide fixed terms
- Avoid other conflicts
The Bush Administration determines that it is “worthwhile” to initiate steps to help facilitate oil shale research and development efforts, and begins a phased, or staged approach to oil shale development.

- **Step One**: Develop a research, development and demonstration leasing program. (Administration believed this effort would significantly enhance the collective knowledge regarding the viability of innovative technologies for oil shale development on a commercial scale).

- **Step Two**: At some point in the future, the Administration would develop a regulatory framework for a commercial oil shale leasing program to ensure that any commercial development of oil shale on BLM lands is both environmentally and fiscally responsible.

By initiating a research, development and demonstration leasing process, the BLM could provide itself, state and local governments, and the public, with information that can be utilized to develop strategies for managing any environmental effects and enhancing community infrastructure.

The BLM intends to ensure that a commercial oil shale development program demands rigorous technological and environmental oversight, requires the best available practices to minimize impacts and ensures that states and local communities have the opportunity to be involved in the development of a commercial program.

Believed that if the research and development efforts are sub-economic, the small research, development and demonstration projects will be more easily dismantled. Lands may be reclaimed with minimal adverse environmental impact.

June 2005 – Bush Administration Proceeds with the Research Development and Demonstration Program

<table>
<thead>
<tr>
<th></th>
<th>House (Passed 4/21/05)</th>
<th>Senate (Passed 6/28/08)</th>
<th>EPACT (Passed 7/29/05)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>RD&amp;D Program</strong></td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Programmatic EIS</strong></td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Commercial Program</strong></td>
<td>Yes</td>
<td>Yes (but only after EIS and Report to Congress)</td>
<td>Yes (“shall publish a regulation establishing” program within 6 months of PEIS)</td>
</tr>
<tr>
<td><strong>Vision of Development of Resources</strong></td>
<td>“accelerated basis”</td>
<td>“deliberate pace”</td>
<td>“should occur”</td>
</tr>
<tr>
<td><strong>DoE Led Task Force</strong></td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Interagency Cooperation on Permitting</strong></td>
<td>No</td>
<td>No</td>
<td>Yes – DoE as the lead agency</td>
</tr>
<tr>
<td><strong>USGS Assessment</strong></td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Royalty Rate Setting</strong></td>
<td>No</td>
<td>No</td>
<td>Determination is left up to the Secretary, “encourage development” and “fair return”</td>
</tr>
<tr>
<td><strong>DoD Fuel</strong></td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>
# RD&D Lease Terms in June 2005, January 2009 and February 2010

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Seek Comments</td>
<td>1- Potential of proposals to advance knowledge of effective technology</td>
<td>Same criteria as 2005 plus “potential environmental, social, economic impacts on the site or the region”</td>
<td>Same criteria as 2005 plus additional information required in nomination relating to water, GHG, carbon capture, and minimizing wildlife and surface impacts.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2- economic viability</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>3- means of managing the effects of oil shale development</td>
<td></td>
<td></td>
<td></td>
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</tbody>
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<table>
<thead>
<tr>
<th>Limits on # RD&amp;D Leases</th>
<th>-</th>
<th>-</th>
<th>-</th>
<th>One applicant per entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seek Comments</td>
<td>10 yrs.</td>
<td>10 yrs.</td>
<td>10 yrs.</td>
<td>10 yrs.</td>
</tr>
</tbody>
</table>
### RD&D Lease Terms in June 2005, January 2009 and February 2010 (continued)

<table>
<thead>
<tr>
<th></th>
<th>2004 Request for Comments</th>
<th>June 2005 Solicitation</th>
<th>January 2009 Solicitation</th>
<th>November 2009 Solicitation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Diligence</strong></td>
<td>-</td>
<td>Plan of operations, schedule of activities, and methodology; subject to annual review</td>
<td>Same as 2005</td>
<td>Plan of development in 9 mos., obtain local and state permits within 18 mos.; deployment of infrastructure within 24 mos.; quarterly progress reports</td>
</tr>
<tr>
<td><strong>Size of Lease</strong></td>
<td>40 acres</td>
<td>160 acres</td>
<td>640 acres</td>
<td>160 acres</td>
</tr>
<tr>
<td><strong>Size of Conversion Right</strong></td>
<td>5120 acres</td>
<td>5120 acres</td>
<td>0 acres</td>
<td>480 acres</td>
</tr>
<tr>
<td><strong>Application Fee</strong></td>
<td>-</td>
<td>$2000</td>
<td>$4000</td>
<td>$6500</td>
</tr>
</tbody>
</table>
Questions