



The CLEAR Act: Impacts to Renewable Energy Development on Federal Land

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The Consolidated Land, Energy and Aquatic Resources (CLEAR) Act (H.R. 3534) (the Act), recently introduced by the House Natural Resources Committee, seeks to implement a leasing and royalty collection regime for wind and solar energy projects on federal lands that will result in significantly more federal oversight of, and regulatory hurdles for, these renewable energy projects.

One provision, division of the Minerals Management Service into three separate entities, will impact renewable energy development by creating federal regulatory oversight that does not currently exist. The CLEAR Act calls for establishment of the Bureau of Energy and Resource Management (BERM) to provide for leasing, permitting and environmental study oversight for renewable energy projects; the Bureau of Safety and Environmental Enforcement (BSEE) to conduct and oversee all inspections and investigations, and all health, safety and environmental regulations for renewable energy related activities; and the Office of Natural Resource Revenue (ONRR) to provide oversight for revenue collections.

CLEAR Act to Require Wind and Solar Projects Located on Federal Lands to Obtain Leases

Section 501 of the Act introduces a significant change to regulation of alternative energy project development on public lands by establishing a competitive commercial wind and solar leasing program. The section eliminates the current practice of obtaining easements, rights-of-ways and special use permits under the BLM or Forest Service for all commercial wind and solar projects on Federal lands. The Act does however, provide for a

transition period to commercial leasing and provides for the issuance of easements, special-use permits and rights-of-ways for commercial wind or solar projects in two instances: (1) "a plan of development has been submitted to the relevant Secretary before the date of enactment of this Act;" and (2) for projects where "a meteorological testing tower or other data collection device has been installed under an approved easement, special-use permit or right-of-way before the date of enactment of this Act."

Section 501 further establishes "diligent development requirements" by regulating work requirements and milestones for the stated purpose of ensuring "that diligent development is carried out under each lease issued under this subtitle."

CLEAR Act to Require the Issuance of Lease Regulations for Renewable Energy Projects

Section 502 provides for the issuance of regulations for the stated purposes of ensuring "sound, efficient and environmentally responsible development of wind and solar resources on Federal lands." The section establishes duration of leases, requires the holder of a lease to provide certain sureties for restoration and mitigation activities and requires compliance with best management practices required to be established under the Act.

CLEAR Act to Require Royalty Payments

Section 503 establishes a payment structure for development of solar and wind energy on public lands for the stated purpose of ensuring "a fair return to the United States." Such payments should "encourage development of solar and wind energy on public lands;" and "be commensurate with similar payments for the development of solar and wind energy on State and private lands." All revenue payments will be deposited in the general fund of the Treasury.

CLEAR Act to Require Recordkeeping and Reporting

Section 504 establishes record keeping, reporting procedures and audits for any person directly involved in "developing, producing, processing, transporting, purchasing, or selling renewable energy under this title." Royalty payment audits may be conducted at the Secretary's discretion to ensure compliance under the Act and failure to cooperate with an audit may result in involuntary forfeiture of the lease or permit. The Act establishes a seven year timeframe to maintain records and calls for additional time where

the Secretary deems necessary pursuant to Section 505. As deemed necessary by the Secretary to assure compliance with the Act, the Secretary may make available to other Federal agencies any trade secrets, proprietary information and other confidential information protected from disclosure under the Freedom of Information Act.

CLEAR Act Provides Mechanisms to Govern Royalty Payment Compliance

Section 507 addresses interest and penalties that will be assessed in the event that royalty payments are not received or such royalties are underreported. The Act provides a definition for “underreporting” and provides that the Secretary may waive underreporting if underreporting is corrected prior to notice of the same from the Secretary or where the party had authority for the underreporting as defined in the Act. Liability for failure to comply with the royalty payments pursuant to Section 507 of the Act is governed under section 109 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1719) “to the same extent as if the failure to comply occurred under that Act.”

Developers should be aware of this pending legislation because it will significantly change the current regime for regulatory oversight of renewable energy projects on Federal lands.

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