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BLM finalizes contentious overhaul of oil shale regs

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The Obama administration has finalized a new rule years in the making that's designed to ensure the environment is protected and taxpayers are fairly compensated if oil shale is ever commercially developed on federal lands.

The Bureau of Land Management's final **rule**, released late yesterday, amends federal oil shale management regulations to allow the Interior secretary to levy a higher royalty rate for commercial development than what the George W. Bush administration proposed in 2008.

It also requires commercial-scale oil shale project developers to include in formal plans of development environmental protection strategies for water, air and other natural resources.

A draft of the regulatory revisions was unveiled in early 2013, and BLM has been working to finalize them for nearly four years (***Greenwire***, March 22, 2013).

The final rule is expected to be published in the coming week in the *Federal Register* and will become effective 30 days later, an agency spokeswoman said.

The rule, in essence, throws out the Bush administration royalty rule that was designed primarily to encourage the development of vast oil shale reserves in Colorado, Wyoming and Utah.

There are currently no commercial oil shale operations on federal lands. But northwest Colorado, northeast Utah and southwest Wyoming sit atop a 16,000-square-mile section of the Green River Formation that is believed to contain more than half the world's oil shale reserves.

Some officials have estimated that the formation contains as much as 1.5 trillion barrels of recoverable oil shale — more than three times the total that will ever be produced in the oil fields of Saudi Arabia.

It's not clear whether the incoming Donald Trump administration will attempt to roll back or undermine the new rule. President-elect Trump has vowed to open federal lands to more oil and gas development, though it's unclear if oil shale will be part of that effort.

Extracting crude oil from shale rock requires heating an organic material in the rock called kerogen to 650 degrees Fahrenheit or more. It can be a resource-intensive process, with some government estimates calculating it could take three barrels of water for every one barrel of oil produced.

Representatives of the Rifle, Colo.-based National Oil Shale Association, which has been critical of the Obama administration's handling of oil shale issues, could not be reached for comment on this story in time for publication.

But the association says on its website that oil shale is "a huge untapped domestic resource that can assist the nation in becoming less reliant upon foreign sources of petroleum and reduce the price we pay at the pump over the long term."

The association says "a U.S. government policy is needed that supports the development of all domestic energy resources, including oil shale."

Ensuring a fair return

The final rule follows a legal settlement struck with environmental groups in early 2011 that required BLM to revisit the Bush administration's 2008 rule.

The Bush rule currently in effect allows oil shale developers to pay 5 percent royalties over the first five years of production, increasing by 1 percentage point each year after that until reaching 12.5 percent, which is the current rate for conventional oil and gas production on federal lands.

The Obama rule sets the 5 to 12.5 percent levels as minimum rates but allows the Interior secretary to set a higher initial rate. The Interior secretary would be allowed to do so after considering "relevant factors," including "geology, technology, costs, and market prices for oil and gas, aligning royalties with the latest market conditions," BLM said.

"Until there is a domestic commercial oil shale industry, we can only speculate about what royalty rates those factors would support," the rule states. "There are foreseeable circumstances in which a royalty of 5 percent could be appropriate, and others in which that rate would be too low."

The final rule acknowledges that allowing the Interior secretary to set initial royalty payment rates on a lease-by-lease basis "will somewhat reduce certainty regarding the royalty rate or rates that will apply to particular operations, which could slightly inhibit investment in oil shale research or development."

But the rule says the rate would be set and known to project operators "prior to investing in a commercial lease or lease conversion."

The final rule also "makes clear" that BLM can deny any application to convert federal "research, development and demonstration" leases to commercial leases, "or withhold approval of a plan of development, based on impacts to the environment or natural resources."

It also addresses environmental protections by requiring additional information and planning to be included in an oil shale development plan, including a strategy to protect water resources, an airshed review, an integrated waste management plan and an environmental protection plan, the agency said.

Conservation groups, which have labeled oil shale a dirty fossil fuel that should be left in the ground, had mixed reviews.

David Abelson, an environmental consultant in Boulder, Colo., who has followed the oil shale industry for the past decade, said he was pleased to see requirements that oil shale project developers must account for impacts to water, air and other natural resources.

But Abelson said he was disappointed the new rule does not set a higher, ironclad royalty rate. He said BLM needed to set a minimum rate of 12.5 percent.

"In terms of the royalty rate, it still does not ensure a fair return to the taxpayers," he said. "It's a subsidy, in that it allows companies to pay essentially what is below-market rate for the use of public resources."

Long, contentious history

The regulatory revisions, along with a separate BLM decision in 2013 to open nearly 700,000 acres for oil shale research and development leasing in Colorado, Wyoming and Utah, drew a great deal of public attention.

Former Interior Secretary Ken Salazar in March 2013 signed a record of decision finalizing resource management plans making the nearly 700,000 acres available for oil shale leasing — significantly less than the 2 million acres under the 2008 Bush administration oil shale leasing plan.

But a coalition of environmental groups, including the Sierra Club, Center for Biological Diversity and Southern Utah Wilderness Alliance, filed a lawsuit in U.S. District Court for the District of Colorado, claiming BLM failed to ensure the decision to approve the leasing plan would not jeopardize threatened and endangered species (***Greenwire***, July 29, 2013).

That lawsuit, in which the American Petroleum Institute is intervening in BLM's defense, is still pending.

The new oil shale rule was prompted, in part, by concerns that too little is known about the kinds of technologies that would be used to develop the resource.

The final rule acknowledges that "there is not yet a technology proven in the United States that can economically produce liquid fuels from oil shale."

While that may change "in the near or distant future," even then "it is likely that it will remain more economical to produce oil and gas from conventional reservoirs or from 'tight' oil and gas formations," such as shale formation access through hydraulic fracturing, the rule states.

Regardless, the regulatory amendments in the final rule "ensure that, should oil shale become economical to produce, the BLM's oil shale program will be better able to promote development of oil shale as a strategically important domestic fuel resource, while assuring that operations are conducted in an environmentally sound manner that minimizes impacts."

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