

HARNESSING ENERGY AT THERMAL SOURCES ACT

NOVEMBER 1, 2024.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WESTERMAN, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 7409]

The Committee on Natural Resources, to whom was referred the bill (H.R. 7409) to amend the Geothermal Steam Act of 1970 to waive the requirement for a Federal drilling permit for certain activities, to exempt certain activities from the requirements of the National Environmental Policy Act of 1969, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 7409 is to amend the Geothermal Steam Act of 1970 to waive the requirement for a Federal drilling permit for certain activities, to exempt certain activities from the requirements of the National Environmental Policy Act of 1969, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 7409 would expedite the development of geothermal energy on non-federal lands that involve federal minerals. Currently, geothermal operators on non-federal land producing any amount of federal resources must abide by all federal laws and permitting processes, including the National Environmental Policy Act (NEPA), even if the share of federal minerals is minuscule. H.R. 7409 would address this issue by clarifying that geothermal exploration or production wells on non-federal lands are not subject to

NEPA,¹ Section 7 of the Endangered Species Act (ESA),² or Section 106 of the National Historic Preservation Act (NHPA)³ if the United States holds an ownership interest of less than 50 percent of the subsurface geothermal estate and the operator receives a State drilling permit. H.R. 7409 would lighten the administrative responsibilities of federal agencies while streamlining the permitting process for geothermal development.

Currently, geothermal energy operators pay a royalty of between 1 percent and 2.5 percent of the gross proceeds from the sale of electricity produced during the first ten years of production and between 2 and 5 percent each year after such 10-year period.⁴ Notably, the bill would not impact the royalty paid to the federal government. Therefore, the bill would not reduce the amount of federal revenues created by geothermal energy production.

COMMITTEE ACTION

H.R. 7409 was introduced on February 20, 2024, by Representative Young Kim (R-CA). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Energy and Mineral Resources. On March 6, 2024, the Subcommittee on Energy and Mineral Resources held a hearing on the bill. On April 16, 2024, the Committee on Natural Resources met to consider the bill. The Subcommittee on Energy and Mineral Resources was discharged from further consideration of H.R. 7409 by unanimous consent. The bill was ordered favorably reported to the House of Representatives by a roll call vote of 22 yeas to 16 nays, as follows:

¹ 42 U.S.C. § 4321.

² 16 U.S.C. § 1536(a)-(d).

³ 54 U.S.C. § 306108.

⁴ 30 USC 1004.

Committee on Natural Resources								
U S House of Representatives								
118th Congress								
Date April 16, 2024			Roll Call #9					
Meeting on / Amendment on On Favorably Reporting H.R. 7409 (Rep Kim of CA), <i>Harnessing Energy As Thermal Sources Act</i> or the "HEATS Act"								
MEMBERS	Yea	Nav	Pres	MEMBERS	Yea	Nav	Pres	
Mr Westerman, AR, Chairman	X			Mr Grijalva AZ Ranking				
Mr Lambern, CO	X			Ms Napolitano, CA		X		
Mr Wittman, VA	X			Mr Sablan CNMI				
Mr McClintock, CA	X			Mr Huffman CA		X		
Mr Gosar, AZ				Mr Gallego AZ				
Mr Graves, LA				Mr Nguyen CO		X		
Mr Rodewagen, AS				Mr Levin CA		X		
Mr LaMalfa, CA	X			Ms Porter CA		X		
Mr Webster, FL	X			Ms Leger Fernandez NM		X		
Mr Gonzalez-Colón, PR				Ms Stansbury NM		X		
Mr Fulcher, ID	X			Mrs Peltola AK	X			
Mr Stauber, MN	X			Ms Ocasio-Cortez NY		X		
Mr Curtis, UT	X			Mr Mullin CA		X		
Mr Tiffany, WI	X			Ms Hoyle OR		X		
Mr Carl, AL	X			Ms Kamelger-Dove CA		X		
Mr Rosendale, MT	X			Mr Magaziner, RI		X		
Mr. Boebert, CO	X			Ms Velazquez NY		X		
Mr. Bentr, OR	X			Mr Case HI		X		
Ms Kiggans, VA	X			Mrs Dingell MI		X		
Mr Moylan, Guam	X			Ms Lee NV		X		
Mr Hunt, TX	X							
Mr Collins, GA	X							
Ms Lant, FL	X							
Mr Davros, CA	X							
Ms Hageman, WY	X							
				TOTAL	22	16		

HEARINGS

For the purposes of clause 3(c)(6) of House rule XIII, the following hearing was used to develop or consider this measure: hearing by the Subcommittee on Energy and Mineral Resources held on March 6, 2024.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Designates the bill as the “Harnessing Energy At Thermal Sources Act” or the “HEATS Act”.

Section 2. No federal permit required for geothermal activities on certain land

Section 2 stipulates that geothermal wells on non-federal lands do not require a federal permit, and are, therefore, not subject to NEPA, ESA, or NHPA if the United States holds an ownership interest of less than 50 percent of the geothermal estate and the operator receives a drilling permit from the respective State.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources’ oversight findings and recommendations are reflected in the body of this report.

PERFORMANCE GOALS AND OBJECTIVES

As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to prohibit the use of Federal funds to provide housing to specified aliens on any land under the administrative jurisdiction of the Federal land management agencies.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY,
AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(d)(1) of House rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to the Congressional Budget Act of 1974.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

The Committee adopts as its own the estimate of the Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

EXISTING PROGRAMS

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

GEOHERMAL STEAM ACT OF 1970

* * * * *

SEC. 30. NO FEDERAL PERMIT REQUIRED FOR GEOHERMAL ACTIVITIES ON CERTAIN LAND.

(a) *IN GENERAL.*—*The Secretary shall not require an operator to obtain a Federal drilling permit for geothermal exploration and production activities conducted on a non-Federal surface estate, provided that—*

(1) the United States holds an ownership interest of less than 50 percent of the subsurface geothermal estate to be accessed by the proposed action; and

(2) the operator submits to the Secretary a State permit to conduct geothermal exploration and production activities on the non-Federal surface estate.

(b) *NO FEDERAL ACTION.*—*A geothermal exploration and production activity carried out under subsection (a)—*

(1) shall not be considered a major Federal action for the purposes of section 102(2)(C) of the National Environmental Policy Act of 1969;

(2) shall require no additional Federal action;

(3) may commence 30 days after submission of the State permit to the Secretary;

(4) shall not be subject to section 7 of the Endangered Species Act of 1973; and

(5) shall only be considered an undertaking under division A of subtitle III of title 54, United States Code (commonly referred to as the "National Historic Preservation Act"), if, with respect to the State in which the activity occurs, there is no State law in effect that addresses the preservation of historic properties in such State.

(c) **ROYALTIES AND PRODUCTION ACCOUNTABILITY.**—(1) Nothing in this section shall affect the amount of royalties due to the United States under this Act from the production of electricity using geothermal resources (other than direct use of geothermal resources) or the production of any byproducts.

(2) The Secretary may conduct onsite reviews and inspections to ensure proper accountability, measurement, and reporting of the production described in subsection (a), and payment of royalties.

(d) **EXCEPTIONS.**—This section shall not apply to actions on Indian lands or resources managed in trust for the benefit of Indian Tribes.

(e) **INDIAN LAND.**—In this section, the term "Indian land" means—

(1) any land located within the boundaries of an Indian reservation, pueblo, or rancheria; and

(2) any land not located within the boundaries of an Indian reservation, pueblo, or rancheria, the title to which is held—

(A) in trust by the United States for the benefit of an Indian tribe or an individual Indian;

(B) by an Indian tribe or an individual Indian, subject to restriction against alienation under laws of the United States; or

(C) by a dependent Indian community.

DISSENTING VIEWS

H.R. 7409, the Harnessing Energy at Thermal Sources Act (HEATS Act), would carve out certain geothermal drilling circumstances from federal review under the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the National Historic Preservation Act (NHPA). Under this bill, geothermal exploration and production that take place on non-federal surface estate and less than 50 percent of federal subsurface estate would not need a drilling permit for geothermal exploration or development. Because the limit on affected federal subsurface estate is expressed in terms of the percentage of the overall project, large projects with substantial impacts on federal resources could be exempted from review under this bill.

Across the West, there are areas where the surface land rights are owned by private entities, but the subsurface rights (minerals, oil and gas, geothermal resources) are owned by the federal government, primarily managed by the Bureau of Land Management (BLM). Under current law, before BLM approves any project involving federal subsurface, it must go through NEPA analysis to determine impacts on the surface—even if the surface is privately owned. Committee Republicans argue H.R. 7409 is necessary to expedite the development of geothermal projects that involve non-federal surface and some (less than 50 percent) federal subsurface. In these scenarios, BLM currently requires operators to secure a geothermal drilling permit (GDP).

In doing so, this legislation would waive essential review requirements, including ESA, tribal consultation, and community input. At the hearing on the legislation, BLM testified that the agency opposes the legislation because it removes the Secretary's ability to ensure that geothermal operations are conducted safely, follow all applicable environmental laws, and are consistent with BLM's multiple-use and sustained yield mandate. The bill would undermine the BLM's core responsibility to ensure that permitted and regulated activities occurring on federal lands are in compliance with federal requirements designed specifically to protect the environment, nearby communities, other landowner interests, and taxpayers.

H.R. 7409 fails to address several key oversight roles that the BLM plays in ensuring that federal geothermal resources—and that lands that are used to access them—are protected as those resources are developed. Any shortcomings resulting from a state's permitting process would inappropriately leave federal taxpayers responsible for obligations created by the state. During the review of the GDP and its associated operations plan, for example, the BLM is required to complete a site-specific environmental analysis of the permitting action, which does not occur in the BLM's land use planning process or in the leasing analysis. As part of this re-

view, the public has its final opportunity to engage in the decision-making process, which helps the BLM identify public health and safety concerns and other potential resource conflicts related to a proposed drilling action on resources owned by all Americans. H.R. 7409 would take away important opportunities for public involvement where federal, state, tribal, and local entities participate in the environmental review process.

RAÚL M. GRIJALVA,
Ranking Member.

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