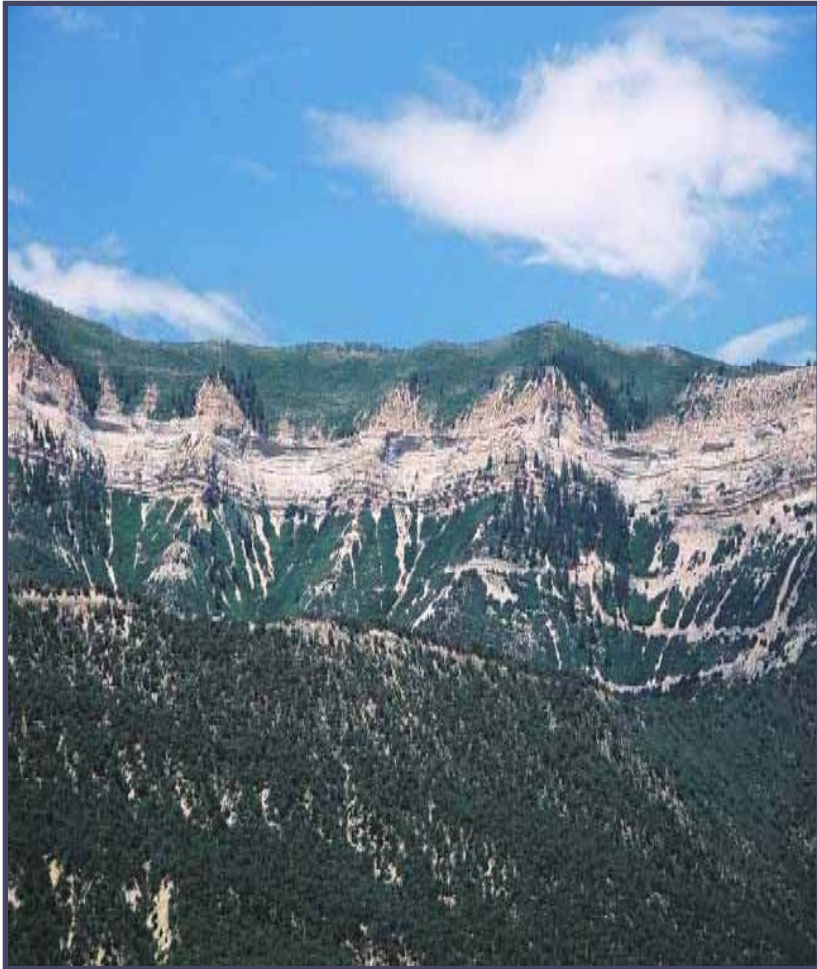


The Promise & Peril of Oil Shale: Federal Law & Policy

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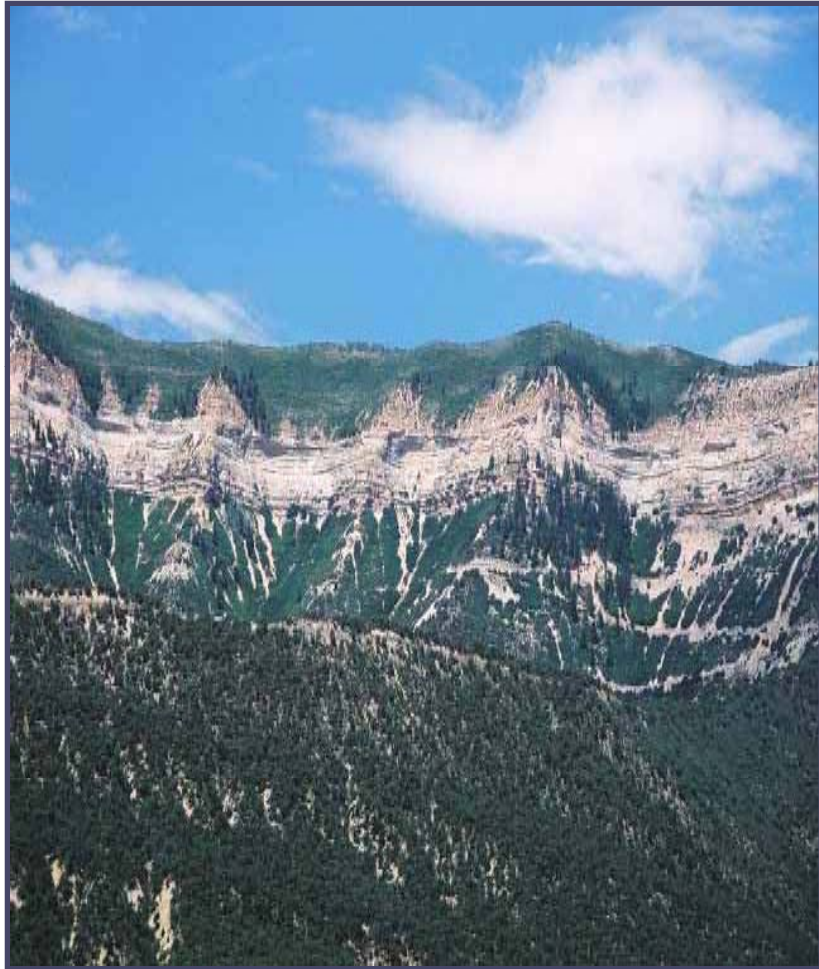
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Overview



- Federal legal paradigm, focused on leasing and development on federal lands
- Administrative and Legislative history
- Questions

Federal Legal Paradigm



- The Mineral Leasing Act
- Energy Policy Act of 2005
- Federal Land Policy and Management Act of 1976
- Relevant substantive and procedural statutes such as the Administrative Procedure Act, National Environmental Policy Act and the Endangered Species Act

Mineral Leasing Act: Oil Shale Highlights

- Broad discretion rests with the Secretary of the Interior:
 - ...the Secretary of the Interior is hereby authorized to lease to any person or corporation...
 - ...any deposits of oil shale belonging to the United States...as may be required...as he may prescribe.
 - Leases may be for indeterminate periods, upon such conditions as may be imposed by the Secretary of the Interior...
 - ...such royalties as shall be specified in the lease...
 - ...readjustment at the end of each twenty-year period by the Secretary of the Interior...
 - ...the Secretary may, in his discretion, waive the payment of any royalty and rental...
- Congress has also imposed some specific limitations on that discretion:
 - 5760 acres per lease
 - 50,000 acre limitation for holding or acquiring leases in any one state
 - \$2.00/acre

Despite Lengthy Energy Debate, Limited Discussion Regarding Oil Shale Between 2001 and 2004

- The 2001 President's National Energy Policy outlined a number of recommendations to diversify and increase energy supplies, encourage conservation, and ensure environmentally responsible production and distribution of energy
- 2001-2004, "Oil Shale Task Force(s)"
- November 22, 2004, the BLM sought public input regarding the terms to be included in leases of small tracts for oil shale research and development
- Spring 2005, oversight hearings occur in House and Senate
- Spring 2005, House initiates legislative action by including a provision relating to a commercial program within its version of the Energy Policy Act of 2005
- June 2005, BLM solicits nominations

House Oil Shale Provision - Spring of 2005

SEC. 2018. OIL SHALE.

- (a) Finding- Congress finds that oil shale resources located within the United States--
 - (1) total almost 2 trillion barrels of oil in place; and
 - (2) are a strategically important domestic resource that **should be developed on an accelerated** basis to reduce our growing reliance on politically and economically unstable sources of foreign oil imports.
- (b) Requirement to Develop Oil Shale Leasing Program- The Secretary of the Interior **shall** develop a Federal commercial oil shale leasing program **as soon as practicable and publish a final regulation implementing such program by not later than December 31, 2006.**
- (c) Commencement of Lease Sales- The Secretary shall **hold the first oil shale lease sale under such program within 180 days after publishing the final regulation.**
- (d) Report- Within 90 days after the date of enactment of this Act, the Secretary shall report to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate on--
 - (1) the interim actions necessary to--
 - (A) develop the program under subsection (b);
 - (B) promulgate the final regulation under subsection (b); and
 - (C) conduct the first lease sale under the program under subsection (b); and
 - (2) a schedule for completing such actions.
- (e) Oil Shale Land Exchanges--
 - (1) REQUIREMENT- The Secretary shall identify and pursue to completion oil shale land exchanges, on a value-for-value basis, that will allow qualified oil shale developers to have early access to currently owned Federal oil shale lands and to commence commercial oil shale development.
 - (2) APPLICABLE LAW- The Secretary shall conduct land exchanges under this subsection in accordance with the Federal Land Policy Management Act of 1976 (43 U.S.C. 1701 et seq.) and the Federal Land Exchange Facilitation Act of 1988 (43 U.S.C. 1701 note).

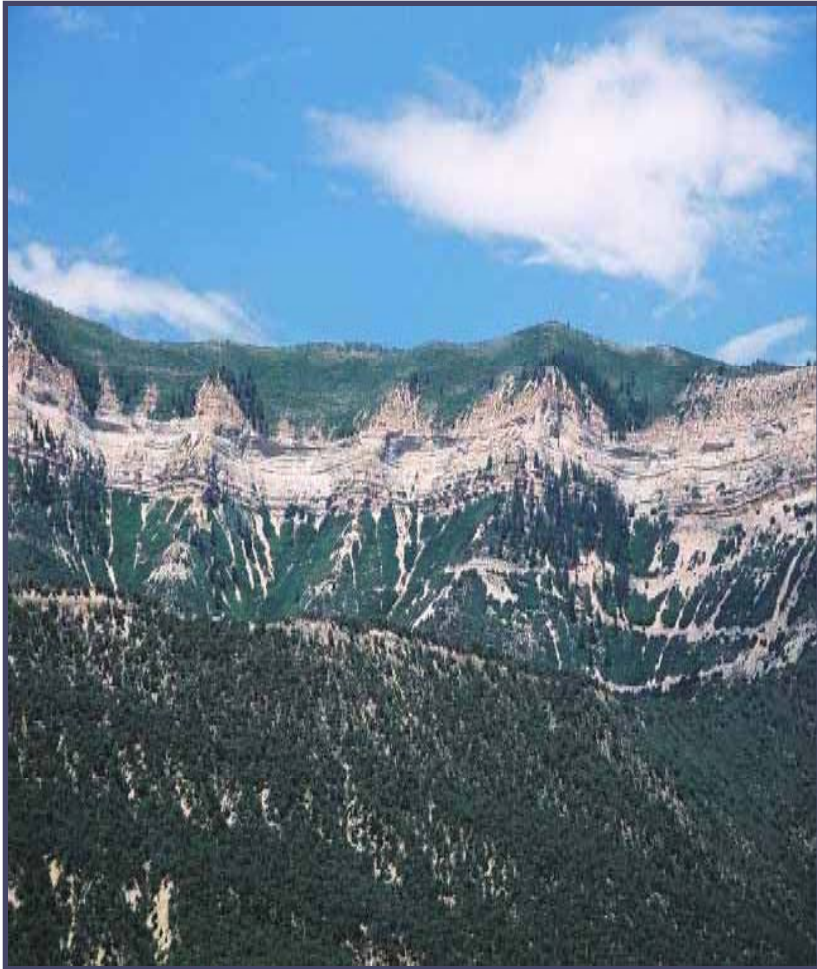
June 2005 – Bush Administration Proceeds with the Research Development and Demonstration Program

- 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.

Energy Policy Act of 2005 (H.R. 6)

	House (Passed 4/21/05)	Senate (Passed 6/28/08)	EPACT (Passed 7/29/05)
<i>RD&D Program</i>	No	Yes	Yes
<i>Programmatic EIS</i>	No	Yes	Yes
<i>Commercial Program</i>	Yes	Yes (but only after EIS and Report to Congress)	Yes (“shall publish a regulation establishing” program within 6 months of PEIS)
<i>Vision of Development of Resource</i>	“accelerated basis”	“deliberate pace”	“should occur”
<i>DoE Led Task Force</i>	No	Yes	Yes
<i>Interagency Cooperation on Permitting</i>	No	No	Yes – DOI as the lead agency
<i>USGS Assessment</i>	No	No	Yes
<i>Royalty Rate Setting</i>	No	No	Determination is left up to the Secretary, “encourage development” and “fair return”
<i>DoD Fuel</i>	No	No	Yes

Research Development and Demonstration Program



- November 2004, request comments on lease form
- June 2005 solicitation
- January 2009 solicitation
- November 2009 solicitation

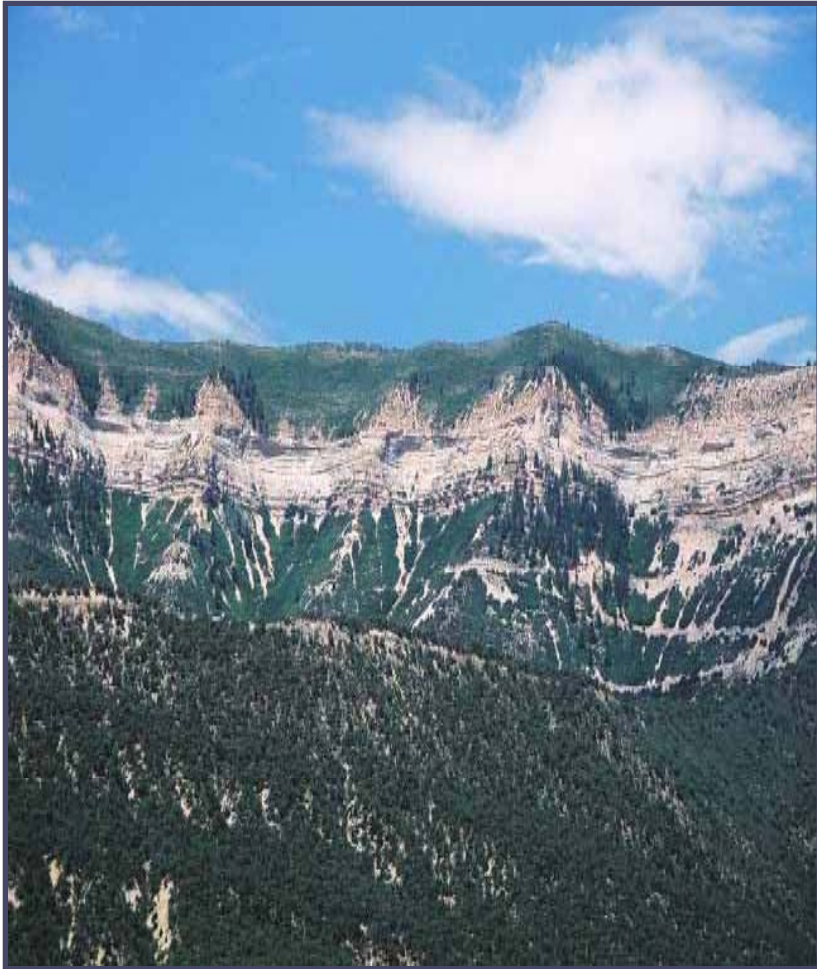
RD&D Lease Terms in June 2005, January 2009 and February 2010

	2004 Request for Comments	June 2005 Solicitation	January 2009 Solicitation	November 2009 Solicitation
<i>Criteria for award</i>	Seek Comments	1- Potential of proposals to advance knowledge of effective technology 2- economic viability 3- means of managing the effects of oil shale development	Same criteria as 2005 plus “potential environmental, social, economic impacts on the site or the region”	Same criteria as 2005 plus additional information required in nomination relating to water, GHG, carbon capture, and minimizing wildlife and surface impacts.
<i>Limits on # RD&D Leases</i>	-	-	-	One applicant per entity
<i>Term of Lease</i>	Seek Comments	10 yrs.	10 yrs.	10 yrs.

RD&D Lease Terms in June 2005, January 2009 and February 2010 (continued)

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

Closing Observations



- Federal law provides significant discretion for Secretary of the Interior to develop the leasing program he
- The U.S. is in the initial stages of an experiment that was launched with the intent to avoid the failed efforts of past decades
- Some mistakes have already been made in this new effort
- Questionable whether economic, environmental, technical, regulatory and political certainties will be sufficient to commercial scale development

Questions

