October 15, 2021

The Honorable Charles E. Schumer  
Majority Leader  
U.S. Senate  
The Capitol  
Washington, DC 20510

The Honorable Nancy Pelosi  
Speaker of the House  
U.S. House of Representatives  
The Capitol  
Washington, DC 20510

Dear Majority Leader Schumer and Speaker Pelosi:

As Congress considers the reconciliation package, we at the Project On Government Oversight urge you to preserve language that passed out of the House Natural Resources Committee to fund historic investments in order to build a resilient, more sustainable economy that will directly benefit taxpayers. We specifically request that you include Subtitle H, section 70804 (c) and Subtitle H, section 70807 (b) of the bill passed by the House committee, which together would institute much-needed reforms to increase oil and gas royalties and establish a hardrock mineral royalty, among other things.\(^1\) It is critical that you include these provisions in order to meet Congress’s fiduciary responsibility to return fair market value for extractive industries’ use of publicly owned lands back to state and local economies, tribal nations, and the American people.

POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

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The reforms proposed in the bill passed by the House committee complement other provisions in this reconciliation bill that we also support, as outlined in a recent coalition letter signed by POGO addressed to congressional leadership that urged lawmakers to update federal oil and gas bonding standards and minimum bids, rents, and royalty rates; end noncompetitive leasing; and end the leasing of lands with low or no potential for oil and gas development.²

First, consistent with POGO’s historic concern regarding oil and gas companies’ efforts to cheat taxpayers out of billions of dollars in potential revenue, we urge you to preserve the House language to increase onshore oil and gas royalty rates.³ Currently, the government collects a 12.5% royalty for onshore federal oil and gas leases — a rate that hasn’t been updated since it was first established over one hundred years ago by the Mineral Leasing Act of 1920. As POGO has stated elsewhere, the Congressional Budget Office notes that increasing the onshore rate to 18.75% would have no meaningful impact on levels of production, but could potentially generate as much as $200 million over the course of a decade.⁴ While offshore royalty rates have at least been increased in this century to their current 18.75%, the Department of the Interior must nonetheless be vigilant and sensitive to changing market conditions to ensure that oil and gas companies are paying their fair share. As it stands, Interior is failing to uphold its fiduciary obligation to taxpayers to ensure a fair market value for natural resources extracted by oil and gas companies from publicly owned land, since part of this fair market value is derived from royalties collected on the sale of resources extracted on site.⁵ We support the language passed out of the House Natural Resources Committee to increase the onshore royalty rate from 12.5% to 20%.

Second, we urge you to preserve the House language to establish a crucial hardrock mining royalty. Current law solely benefits mining companies, to the detriment of American taxpayers. Congress enacted the General Mining Law of 1872 almost 150 years ago, which acts as the current basis for companies to avoid paying any royalties to the federal government.⁶ Congress’s original intent behind this policy was to encourage speculation and production in hitherto undeveloped western lands. Because the West has undergone transformative development since that time, this antiquated law must be updated for the 21st century. In a recent hearing before the Senate Energy and Natural Resources Committee, Chairman Joe Manchin emphasized that it was


Third, we ask you to preserve the language that ends noncompetitive leasing, as approved by the House Committee on Natural Resources. Similar to the spirit of this provision, POGO has long advocated for greater transparency of the Department of the Interior’s Bureau of Ocean Energy Management’s oil and gas leasing procedures. Specifically, POGO has testified before Congress on the need to conduct oversight on two of the bureau’s practices that severely undercut its statutory obligation to the taxpayer: the practice of selling tracts below their predicted market value, and the practice of regularly predicting unreasonable depreciation of lease value over time.\footnote{Misuse of Taxpayer Dollars and Corporate Welfare in the Oil and Gas Industry [see note 9].} We believe that efforts to ensure that the bureau is selling leases only close to their actual market value should be given due consideration, including the cessation of noncompetitive leasing.

Additionally, as you consider the House committee language to eliminate royalty relief for oil and gas companies, we urge you to consider POGO’s work highlighting Interior’s policy to temporarily provide royalty relief to those companies during the COVID-19 pandemic, rather than to collect that revenue for redistribution among states and local governments to provide potentially lifesaving equipment and care.\footnote{“TRACKER: Trump administration oil and gas handouts during global pandemic,” Center for Western Priorities, https://westernpriorities.org/tracker-trump-administration-oil-and-gas-handouts-during-global-pandemic/?utm_source=Master+Press+List+2.0&utm_campaign=6cd34a805d-EMAIL_CAMPAIGN_2020_06_11_08_37&utm_medium=email&utm_term=0_79fad8be67-6cd34a805d-84273761.} According to the Center for Western Priorities, companies were given an option to apply for a lower royalty rate or, in some cases, suspend their lease altogether.\footnote{“TRACKER: Trump administration oil and gas handouts during global pandemic,” Center for Western Priorities, https://westernpriorities.org/tracker-trump-administration-oil-and-gas-handouts-during-global-pandemic/?utm_source=Master+Press+List+2.0&utm_campaign=6cd34a805d-EMAIL_CAMPAIGN_2020_06_11_08_37&utm_medium=email&utm_term=0_79fad8be67-6cd34a805d-84273761.} In testimony before the House Natural Resources Committee’s Subcommittee on Oversight and Investigations, POGO noted that Interior approved 555 royalty reductions and 422 lease suspensions between the beginning of the pandemic and October 2020, with some companies’ royalty rates dropping as low as 0.5% in that time.\footnote{Misuse of Taxpayer Dollars and Corporate Welfare in the Oil and Gas Industry [see note 9].} Considering that oil and gas industries are still riding the coattails of a one-time direct benefits payout of $25 billion as a result of the 2017 Tax Cuts and Jobs Act, POGO firmly believes that the extractive industries do
not need another bailout funded by taxpayers. Furthermore, because a portion of all royalties is returned to the state or region where the development occurred, this will go far in stopping oil and gas companies from pocketing money intended for a diverse range of state and tribal programs.

Finally, while POGO enthusiastically commends the language passed out of the House Committee on Natural Resources as written, we also recommend that you consider adding a provision that directs the Bureau of Ocean Energy Management to work with an independent third party tasked with examining the bureau’s internal processes for valuing tracts of land. The Department of the Interior’s outdated policies and procedures have the potential to cost taxpayers billions of dollars in forgone revenue, yet at the same time, these policies and procedures are often shielded from public scrutiny. POGO recommends passing language to ensure that the bureau receives explicit direction to submit to a comprehensive analysis of its tract valuation process in order to evaluate why the bureau so consistently predicts unreasonable rates of depreciation on lease value over time and sells tracts below their predicted market value.

We are grateful for your leadership on these critical issues, and we look forward to working with you to ensure Congress increases the onshore royalty rate, establishes a hardrock mining royalty, and institutes further transparency mechanisms within royalty procedures so that the American people receive what they are owed.

Sincerely,

Danielle Brian
Executive Director

cc: Chairman Joe Manchin, Senate Energy and Natural Resources Committee
    Chairman Raúl Grijalva, House Natural Resources Committee

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14 Misuse of Taxpayer Dollars and Corporate Welfare in the Oil and Gas Industry [see note 9].