At a glance:

• Royalty rates governing oil, gas and coal development on public lands are severely outdated

• Low rates take away from other uses of our shared public lands

• Raising the rate and other smart policies could bring the federal leasing process into the 21st century

In order to fairly value public lands, we must ensure rates reflect current market value, provide a fair return to local communities and take into account the impacts of development.

WHAT IS A ROYALTY?

The percentage of revenue paid to the federal government by energy companies from sale of oil, gas, or coal extracted from the nation’s public lands.

For decades, oil, gas and coal companies have been drilling and mining our public lands and paying a royalty rate of only 12.5 percent or less. For oil and gas, that rate has been in place for nearly a century – and for coal since the 1970s. Originally put in place through the Mineral Leasing Act of 1920 and other statutes, royalty rates ensured that the government and the American people were properly compensated for the development and use of non-renewable energy resources—like oil, gas, and coal—extracted from public lands. However, throughout the decades, these policies have not kept pace with the changes in technologies, markets and the public’s expectations for use of the public lands.

Our public lands are being undervalued.
The current royalty rate of 12.5 percent for oil and gas was established at a time when American life was very different. This rate was set as a floor, not a ceiling, and needs to be revisited. Individual states have significantly higher royalty rates than the federal government. Rates on public lands need to keep pace.

In terms of federal coal royalty policy, those rates were locked in place in the early 1970s, when the same 12.5 percent was set for surface mined coal, which is the most common type of coal mining on federal lands. Even more alarming, coal companies rarely pay the full 12.5 percent due to subsidies, loopholes and deductions. According to recent studies, the effective royalty rate is under 5 percent. The American people aren't receiving the full value of an already low rate. Fortunately, the Department of the Interior (DOI), through the Office of Natural Resource Revenue (ONRR) is working to correct these inequities and ensure that taxpayers receive closer to their fair share from existing royalty rates.

Over the past century, Americans are increasingly valuing public lands for access to recreation, family time and enjoyment. Studies show time and again that number of visitors to our public lands is steadily increasing. On Bureau of Land Management (BLM) lands alone, 62 million people visited in 2014. Yet prices for developing public resources are at rock bottom and open access for leasing has encouraged energy development over all other values of our shared public lands.

Lands managed by the BLM have to be managed for multiple uses, meaning that when management decisions are made conservation, recreation and wildlife management all have to be considered in addition to other uses like energy development. Historically, oil and gas companies have gotten to lease far more acres than are saved for conservation and other uses. After all of that, even when these lands are developed, Americans have been shortchanged on the full value of their share.

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What gets left out

In 1920 the best available science and technology required oil, gas and coal to power the nation. Now we have a variety of less polluting energy sources. Due to impressive efficiency upgrades, we don’t need as much energy as we once did per capita and the costs of producing and selling the energy are completely different. We should be focusing more on how to reduce the impacts from fossil fuel development, not subsidizing companies to produce more.

The impacts of burning fossil fuels are very real and well documented. The American people should not have to absorb the costs from extractive industries. The federal government is tacitly encouraging subsidies for resources that contribute greatly to climate change through low rates to the oil, gas and coal industry.

Oil, gas and coal don’t just do harm through the carbon they emit when burned; mining and drilling for these resources also scar the land, water and wildlife habitat. Nearby communities depend on public land for hunting, hiking, scenery, tourism, drinking water and other values important to their economies. Loss of wildlife habitat affects places that hunters visit and the areas animals need to survive, and contaminated rivers and streams damage local drinking water and great places for fishing. A higher royalty rate cannot account for all of these lost experiences and very real damages, but it can help states and communities better address them.
The current disarrayed state of the federal coal program is not new. Not much has changed since 1984, when the Linowes Commission investigated irregularities in royalty payments due the Federal Government, Indian tribes and states and recommended substantial changes to the program. The coal industry has been paying artificially low rates while extracting our shared public resources. In March of 2015, the DOI and the BLM called for an open and honest conversation with the American people. They sought to find the best way to reform the federal coal program and ensure that American communities receive their fair share from resources extracted from public lands.

Over the years, it has been no secret that the program is flawed. Since the Linowes Commission, there have been at least fifteen calls to modify the program from federal agency watchdogs and nonprofits focused on federal resources issues—which found reasons to revisit, reform and modernize the program. Time and time again, the royalty structure for coal has been called out for shortchanging the government, states, local communities and the American people for being leased non-competitively and losing hundreds of millions of dollars in potential revenue.

Recovering lost revenue could help local communities build schools, roads and parks. It could go toward local conservation efforts and wildlife management. It could help offset the effects of coal pollution and the impacts to land in local communities. All of these things would help to ensure we are leaving our children a country where there is abundant open space, clean drinking water and clear air to breathe.
The royalty rates for oil and gas extraction were set at a time when the government wanted to encourage energy development on public lands and set the low rate to provide an incentive. In the 1920s there was not an abundance of research to show that once these lands were developed, they were changed forever. Oil and gas developers were drilling with impunity. However, Western states quickly realized the money to be made and started raising their royalty rates.

Most oil and gas states in the West charge a significantly higher royalty rate than the federal government. The average is between 16.67 percent and 18.75 percent. Texas collects twice the federal rate. Even the George W. Bush administration understood the importance of fair royalty rates, twice raising the rates of offshore oil development to its current 18.75.

The current structure of the royalty program for oil and gas development is leaving millions of dollars on the table. According to a report by Center for Western Priorities, “New data show that energy-rich states in the Rocky Mountain West—Colorado, Montana, New Mexico, Utah, and Wyoming—are being deprived of between $490 million and $730 million in gross revenues annually because the federal government has failed to modernize royalty rates.” There is a clear need for a more modern administration of the coal program.

There is strong support for modernizing the current royalty structure that governs energy development on our public lands. In addition to federal coal listening sessions directed by the DOI that occurred throughout the country during the summer of 2015, the DOI has sought public comments on oil and gas reform, as well as the federal coal program.

**Promising Reforms**

The DOI has been aggressive in seeking input on the ways to improve the royalty structure for coal, oil and natural gas. One avenue for improvement is to change how the Department evaluates the true cost of oil, gas, and coal through the ONRR. To fairly value our oil, gas and coal resource, ONRR can close the loopholes and end the subsidies and deductions that allow the coal industry to pay one-third the royalty rate that the law demands. A strong rule from ONRR is on the table and would ensure American taxpayers recoup their fair share from their own federal royalties.

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Another important avenue is raising the actual royalty rate for oil, gas and coal. Contrary to what many people think, the 12.5 percent that is currently being charged is the royalty floor not the ceiling. The Secretary of the Interior can, and should, raise it through the legal avenues that have been handed to the Department from Congress. The royalty rate for onshore oil, gas and coal should be raised to 18.75 percent to match the current rate for offshore oil and gas, as well as the rate that many states have set for their own resources. This would give the American people the revenue they deserve for their land and resources and allow state budgets and local community coffers to fund the activities and programs that are badly needed throughout the West.

With a few changes, we could ensure that Americans receive their fair share for our shared natural resources. A strong oil, gas and coal program that operates on federal land should ensure that the American people are seeing the returns owed for the use of their lands and resources. Any rates charged should take into account all of the externalities that come from developing energy on federal lands and ensure that we have clean air to breathe, clean water to drink and wild places to recreate. The answers are right there for the taking. Smart solutions can bring the federal royalty program into the 21st century.