

The Sequester's Effect on Mineral Payments to Colorado on Public Lands
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The Balanced Budget and Emergency Deficit Control Act of 2011 ("Act") required Congress to produce \$1.2 trillion in deficit reduction by across-the-board cutbacks in discretionary spending in the federal budget or face a sequestration order from the President. After Congress failed to enact legislation to achieve the deficit reduction target, as required by the Act, on March 1, 2013, President Obama issued a sequestration order which reduced budgetary authority for Fiscal Year 2013 (ending October 1, 2013) by approximately \$85 million for all Federal accounts.

No matter where you stand on the sequester, one thing is clear – the reduction in "discretionary spending" has affected Colorado and other public land energy states in an unexpected and disproportionate manner.

Under the Mineral Leasing Act of 1920 ("MLA") and Public Law 111-322, Colorado and other public land states with federal mineral development were to share in payments received from the development of the public lands, with the state's share being 48 percent. In an unanticipated budgetary move, the Department of Interior declared that monies owed to public land states from bonuses, royalties, and rentals for federal oil, gas, coal and other leasable minerals under the MLA are *discretionary* and subject to the sequester.

The sequester's reduction in the funds owed to Western states will lead to the loss of \$110 million in mineral payments to these states over the next six months. Colorado's share of this cut is \$8.4 million. Like other Western states, Colorado uses these funds to support State services – including the funding of the State Public School Fund, Colorado Water Conservation Board, school districts, and local governments.

While initially several Western states planned to bring suit against the federal government, it appears now that any lawsuit is on the back burner. Does the Federal government have the authority to withhold the state share of federal mineral payments? While intuitively the answer might be "no," the reality is that appropriations law may dictate a different result.

Most ironic, however, is that the sequester is doing exactly what Congress tried to prevent when it passed the MLA and later amendments – it is treating Colorado and the Western states differently than Eastern states. Congress included the mineral payments provision to balance out the financial burden on the Western states. After the federal government decided to reverse its historic policy of disposing of lands and chose instead to reserve federal minerals and, eventually in the Federal Land and Policy Management Act of 1976 ("FLPMA") to retain public lands, the Western states lost the ability to collect property tax revenue on those lands.

Federal lands comprise 47% of the Western states, but only 4% of lands in all other states combined. In fact, federal land ownership varies from 28 ½% to 81% of public land states – some counties may only include 1% private taxable lands. Before passage of the MLA, an Oklahoma congressman requested that the mineral payments provision be removed. Congressmen from the Western states united to argue that this provision remain. As a Utah

congressman explained, the State could only collect property tax revenue from 25% of the public land within its borders, but this 25% must carry the financial burden of supporting the remainder of the State.

When FLPMA was passed and ended public land disposal in 1976, Congress determined that the amount paid to the States from mineral payments was insufficient, so Congress increased the State share percentage from 37½% to 50%. In the Public Land Law Review Commission report of 1970 which led to FLPMA's passage, the Commission stated that "it is the obligation of the United States to make certain that the burden of that [public land retention] policy is spread among all the people of the United States and is not borne only by those States and governments in whose area the lands are located. Therefore, the Federal Government should make payments to compensate State and local governments for the tax immunity of Federal lands."

It is unfortunate that Colorado and other Western states are now bearing a disproportionate burden from the presence of federal lands and minerals within their borders. These payments that are meant to provide much needed funding for State services from the development of federal minerals have been significantly and abruptly reduced. It is not as though the federal government is decreasing the amount of royalties to be paid by coal, oil, and gas developers. These amounts remain constant, even though the mineral payments to the Western states are being reduced. For Colorado, it is not merely the loss of mineral payments, it is the concomitant fact that Colorado will still need to pay for all the direct State services already budgeted. Now, the Colorado taxpayers will make up this difference or experience reduced services.