The big news in climate policy this past week was Senator Joe Manchin (D-WV) signing off on a deal with the Democratic Senate Majority leader, Chuck Schumer, to spend hundreds of billions of dollars on climate investments – the bill is catchily called the Inflation Reduction Act of 2022. I'll take a look at the big picture for the bill in a subsequent post, but here I want to zero in on a provision of the proposed legislation that has gotten a lot of attention, and criticism from a range of environmental groups: Section 50265 of the bill, "Ensuring Energy Security." The provision in question prohibits, for the next ten years, the issuance of new rights-of-way on federal lands for solar or wind projects unless:

> (A) an onshore lease sale [for oil and gas development] has been held during the 120-day period ending on the date of the issuance of the right-of-way for wind or solar energy development; and

> (B) the sum total of acres offered for lease [for oil and gas development] in onshore lease sales during the 1-year period ending on the date of the issuance of the right of-way for wind or solar energy development is not less than the lesser of— (i) 2,000,000 acres; and (ii) 50 percent of the acreage for which expressions of interest have been submitted for lease sales during that period;

A similar provision applies for issuance of leases for off-shore wind projects, requiring an off-shore oil and gas lease sale within one year of the issuance of the lease and a minimum of 60,000,000 acres offered for lease in that one-year period.

The goal of the provision is pretty clear: Senator Manchin wants to ensure that there will be at least some oil and gas development on federal lands over the next several years. However, President Biden promised in the 2020 campaign to end oil and gas leasing on federal lands. Up to now, one of Manchin's main leverage points to prevent the phase-out of oil and gas leasing on federal lands was his ability to block a climate policy bill in the Senate, given Manchin's critical role as the fiftieth Democratic Senator. But if Manchin votes for a climate policy bill that is enacted, this leverage disappears – and then there is much less Manchin can do to stop a Biden Administration phase-out of oil and gas development.

This provision provides Manchin with a credible commitment from the Biden Administration to keep leasing federal lands for oil and gas even after the enactment of the bill. The Biden Administration has made deployment of renewable energy, including renewable energy projects on federal lands, a high Administration priority. This provision ties the Administration's priority to Manchin's priority – no oil and gas leasing, no renewable energy development.

While the provision might have solved a sticky point in the negotiations with Manchin, I'm not so sure that the provision will have the impact on the ground that many people expect (both proponents and critics), for a few reasons:

First, there are environmental groups that oppose both oil and gas and renewable projects. For these groups, the provision may not affect their efforts to stop oil and gas projects – if stopping those projects also stops renewable projects, these groups may see the outcome as a net win. And the provision makes clear that it does not alter existing laws (such as the National Environmental Policy Act or the Endangered Species Act) that groups opposing oil and gas projects currently rely on.

Second, the provision only requires leases to be offered at sale. But there is no requirement that the areas offered for lease are actually successfully auctioned off. The agencies (if they wish) can offer lease sales in areas that are not particularly attractive for bidders, or with onerous lease terms that deter bidders. Even if there are no bidders, if the sales are held, then the provision is satisfied. There are many cases where many of the acres offered in a lease sale are not actually sold either because there are no bids or because the minimum bid price is not met (see this example from the offshore context). Indeed, the legislation increases the minimum bid price, imposes a fee for simply participating in lease auctions, and it eliminates the noncompetitive leasing process (which was a way in which lands that received no bids in the competitive auction process could still be leased).

Finally, the minimum acreage requirements in the provision are actually lower than the acres offered for onshore auctions since 2009 (which have ranged from 807,000 acres in a year to almost 12 million acres), and are about average for offshore sales. The result is that the Administration could likely decrease the scope of the leasing program and still comply with the provision.

That doesn't mean the provision is good policy in the abstract. It adds yet another complication to the process for developing renewable projects on federal lands,

potentially chilling vital development. And if the goal is to ensure a balance in energy production in the United States, it should be made symmetric – the provision should also prohibit future oil and gas leases unless a minimum number of renewable energy onshore right-of-way projects or offshore leases are approved by the agency over the next ten years as well.

All that being said, as even some of the signatories of the letter opposing the provision have conceded (see this Twitter thread by the Sunrise Movement), the benefits of the climate investments in the bill overall more than offset the harms of this provision. I'll explore the bill as a whole in my next post.