



Alaska Energy & Environmental Policy Update

March 11, 2009

Alaska State Senator Kim Elton has been appointed Director of Alaska Affairs at the U.S. Department of the Interior. His appointment comes as Alaska once again grabs headlines. Last week, Senators Lisa Murkowski and Mark Begich challenged efforts by Members of Congress and the Obama Administration to include a provision in the Omnibus Appropriations bill to allow the Administration to roll back Endangered Species Act regulations for the polar bear without standard notice and comment proceedings. On Thursday, the joint effort by Murkowski and Begich to amend the provision failed, and last night, Congress passed the \$410 billion omnibus bill with the polar bear rider attached. In February, Congress passed a \$743 billion stimulus bill, which included \$43 billion in funding and incentives for renewable energy and energy efficiency. Senator Murkowski introduced an innovative new ANWR bill that would allow development of some of the Refuge's oil and gas resources without permitting surface occupancy. Interior Secretary Ken Salazar announced that the Administration will reconsider national oil and gas leasing policy in the coming months. And, the House Committee on Natural Resources held three hearings on national offshore drilling policy, while the Senate plans to hold a hearing on offshore drilling policy in March.

CONGRESS

The Congress has spent the last few weeks working on two massive spending bills: a \$743 billion economic stimulus bill, formally known as the "American Recovery and Reinvestment Act," (Pub. L. 111-5) and the "Omnibus Appropriations Act" (H.R. 1105) which provides the remainder of fiscal year 2009 funding for the federal government.

Last night, the \$410 billion Omnibus Appropriations bill passed the Senate by voice vote. President Obama is expected to sign the bill shortly.

Yesterday, Senate Majority Leader Harry Reid (D-NV) was able to garner the 60 votes he needed to cut off debate and pass the omnibus bill. The vote on cloture was 62-35, with eight Republicans joining 54 Democrats to allow the bill to move forward. Republicans who supported invoking cloture on the bill included Senators Lisa Murkowski, Thad Cochran (R-MS), Richard Shelby (R-AL), Lamar Alexander (R-TN), Roger Wicker (R-MS), Arlen Specter (R-PA), Kit Bond (R-MO), and Olympia Snowe (R-ME). Congress will now turn to the FY 2010 appropriations process.



Stimulus Bill Funds Significant Renewable Energy and Energy Efficiency Measures

With more than \$43 billion in grant funding, loan guarantees, and tax incentives, renewable energy and energy efficiency programs fared very well in the final version the economic stimulus bill signed by President Obama on February 16. For a breakdown of the final numbers in a recent policy update, please refer to “Renewable Energy and Energy Efficiency Programs Emerge as Winners in American Recovery and Reinvestment Act,” on the Van Ness Feldman website at www.vnf.com

Omnibus Appropriations Rider Allows Obama Administration to Issue New Polar Bear Rule without Notice and Comment

Democrats in the House of Representatives attached a rider to the Omnibus Appropriations bill that gives the Secretary of the Interior the authority to overturn certain regulations that the Bush Administration adopted under the Endangered Species Act (ESA). One of the regulations is the Polar Bear Special 4(d) Rule, which was issued in an effort to provide legal certainty to the application of the ESA in Alaska’s arctic region. The other regulation allows federal agencies greater leniency to determine for themselves whether a project is likely to present a threat to protected species. The rider gives the Secretary of the Interior 60 days to withdraw or “reissue” the regulations.

The Polar Bear 4(d) Rule adopts existing conservation regulatory requirements under the Marine Mammal Protection Act of 1972 and the Convention on International Trade in Endangered Species of Wild Fauna and Flora as the appropriate regulatory provisions for the polar bear. The polar bear was listed as threatened last May.

It is unclear what actions the Secretary may now take to reissue the Special Rule for the polar bear, and the legislative history of the bill does not explain how Congress intends the term “reissue” to be interpreted. Under one interpretation, the Secretary can now issue a revised rule, with major changes, without having to comply with the procedural requirements of the Administrative Procedure Act (APA) or the ESA, including notice, comment and consultation rules.

Pursuant to the terms of the rider, should the Secretary decide to withdraw the 4(d) Rule, the polar bear would remain listed as a threatened species under the ESA, but some activities currently covered, and protected, by the 4(d) Rule would be at risk for incurring liability under the ESA, should a “take” of a polar bear occur. This liability could extend even to minor, incidental impacts on polar bears from otherwise entirely lawful activities. Other activities and actions, such as self-defense and most subsistence activities, would remain protected by statute.

Last week, Senators Murkowski and Begich jointly offered an amendment to the Omnibus Appropriations bill that would have permitted the withdrawal of the Polar Bear 4(d) Rule, but only after the regular notice and comment procedures of the APA had been followed. On Thursday, the Senate defeated the Murkowski-Begich amendment by a vote of 52 to 42.

Last night, the Senate approved the Omnibus Appropriations bill by voice vote, with the polar bear rider attached. The bill now goes to the President for his signature.



House Natural Resources Committee Conducts Hearings on National OCS Drilling Policy; Shell President Marvin Odum Suggests New Course of Action for Alaska

The House Committee on Natural Resources held three hearings in February on national offshore oil and gas drilling policy, eliciting testimony from various stakeholders.

An oversight hearing on energy development on public lands and the outer Continental Shelf is also scheduled for the Senate Committee on Energy and Natural Resources, to be held on Tuesday, March 17, 2009. For further information, contact Patty Beneke at (202) 224-5451 or Gina Weinstock at (202) 224-5684.

The first of the three House committee hearings was decidedly anti-drilling, with several representatives of environmental, tourism, and fishing interests expressing opposition to offshore oil and gas development. Most speakers encouraged Congress to re-impose the congressional moratorium on expanded outer continental shelf (OCS) leasing. At the second hearing, witnesses speaking on behalf of state interests disagreed about the extent to which offshore oil drilling should be permitted. However, most state representatives appeared to agree with members of the conservation community that a permanent Ocean Conservation Trust Fund, funded with OCS production royalties, should be an element of any new drilling plans.

The third hearing featured representatives of the oil and gas industry. Marvin Odum, President of Shell Oil, talked at length about the difficulties his company has had developing leases in Alaska's arctic region, an area that holds an estimated 25 billion barrels of oil and 122 trillion cubic feet of natural gas. Shell has purchased 434 offshore leases in the Beaufort and Chukchi Seas, but Odum stressed that legal challenges have resulted in what he deems a "de facto moratorium" on development of the northern Alaska OCS.

Mr. Odum suggested that Congress could take several important steps to improve the efficiency of the regulatory process for offshore development in Alaska, including (1) establishing a timeframe within which legal challenges to federal permits must be resolved, (2) providing adequate funding to federal agencies to conduct required environmental studies, and (3) establishing a federal pilot office in Alaska to coordinate the regulatory activities of agencies that address energy development in the State.

Opponents of offshore drilling focused on a range of concerns, including spills, dependency on fossil fuels, climate change, impacts on marine mammals and fish from exploratory activities, and drill mud contaminants, although they generally appeared to recognize that technological advancements have lessened overall environmental impacts. In addition, citing a U.S. Energy Information Agency report, drilling opponents noted that, at peak production in 2025, increased offshore drilling would produce only 220,000 barrels a day, which would account for less than 1 percent of current energy demand in the U.S.

Proponents and opponents alike had much to say about how to spend drilling revenues. Phillippe Cousteau, grandson of Jacques Cousteau, challenged lawmakers to set aside an ocean conservation fund. Other witnesses recommended sharing more of the oil and gas revenues with affected states. Several witnesses suggested that revenues should help pay for renewable energy infrastructure.



Senator Murkowski Proposes Innovative Legislation to Develop ANWR's Oil and Gas

During her annual address to the Alaska Legislature, Senator Murkowski announced that she will introduce federal legislation that would allow oil and gas from the Arctic National Wildlife Refuge (ANWR) to be developed from state lands and waters using directional drilling techniques. The proposed legislation would permit limited oil and gas development of ANWR's resources, while ensuring that no surface development would occur in the federal refuge.

In 2007, the 110th Congress, with strong Democrat majorities, approved "no surface occupancy" development of oil and gas in a Wyoming wilderness area when it passed the Wyoming Range Legacy Act of 2007, setting a supportive precedent. Senator Murkowski's "best of both worlds" ANWR bill likely will be the subject of serious public discussion when the 111th Congress considers federal energy legislation this spring.

Senate Energy and Natural Resources Committee Issues Subcommittee Assignments

It's official: Democrats on the Senate Energy and Natural Resources Committee have a three-vote majority for the 111th Congress, with 13 Democrats and 10 Republicans, compared to 12 Democrats and 11 Republicans in the prior Congress.

Democrats on the committee include Senators Jeff Bingaman (D-NM), chairman; Byron Dorgan (D-ND); Ron Wyden (D-OR); Tim Johnson (D-SD); Mary Landrieu (D-LA); Maria Cantwell (D-WA); Bob Menendez (D-NJ); Blanche Lincoln (D-AR); Bernard Sanders (I-VT); Evan Bayh (D-IN); Debbie Stabenow (D-MI); Mark Udall (D-CO); and Jeanne Shaheen (D-NH). Republicans include Senators Lisa Murkowski, ranking member; Richard Burr (R-NC), John Barrasso (R-WY); Sam Brownback (R-KA); James Risch (R-ID); John McCain (R-AZ); Robert Bennett (R-UT); Jim Bunning (R-KY); Jeff Sessions (R-AL); and Bob Corker (R-TN).

Senators Cantwell and Risch will be chairman and ranking member, respectively, on the Subcommittee on Energy. Senators Wyden and Barrasso will be chairman and ranking member of the Subcommittee on Public Lands and Forests. Senators Udall and Burr will be chairman and ranking member of the Subcommittee on National Parks. And, Senators Stabenow and Brownback will be chairman and ranking member of the Subcommittee on Water and Power. Senators Bingaman and Murkowski will be ex officio members of each of the subcommittees.

Alaskans on the Hill

Erik Elam, who has worked for Congressman Don Young for just over a year, recently took over as legislative assistant on issues relevant to Alaska Natives, public lands, energy, mineral development, and other issues that fall under the jurisdiction of the House Committees on Natural Resources and Energy & Commerce.

Kevin Simpson recently joined the Minority Staff of the Senate Committee on Energy and Natural Resources. Kevin is from Juneau, Alaska and served through the end of the 110th Congress as Senator Ted Stevens's legislative assistant on energy issues. Kevin's issues include oil and gas, oil shale, liquid natural gas, management of natural gas by the Federal Energy Regulatory Commission, and management of oil and gas by the Bureau of Land Management and Minerals Management Service (MMS).



ADMINISTRATION

Interior Secretary Ken Salazar Re-Evaluates U.S. Oil and Gas Policy

On Friday, January 16, 2009, four days before the inauguration of President Obama, the Bush Administration proposed a new five-year OCS oil and gas leasing program that called for 31 offshore lease sales in 12 planning areas between 2010 and 2015, including new sales in the Beaufort and Chukchi Seas and in Cook Inlet off of Alaska.

The current OCS five-year program is set to expire on June 30, 2012. Under the Bush Administration's proposal, the current five-year plan would have been succeeded by the new program two years ahead of schedule.

Criticizing the Bush Administration's eleventh hour proposal as "a headlong rush of the worst kind," based on "bad information," and tilted towards the "usual" energy players, on February 10, 2009, Secretary Salazar announced a "new way forward" on OCS planning that will consist of four steps:

First, the Department of the Interior (DOI) extended the public comment period on the Draft Proposed 5-Year OCS Oil and Gas Leasing Program for 2010-2015 by 180 days, to September 21, 2009.

Second, Secretary Salazar directed both MMS and the U.S. Geological Survey (USGS) to assemble by the end of March a report detailing current information regarding all offshore resources of the United States. This process, the Secretary commented, will allow DOI to move forward on an OCS development policy with a comprehensive understanding of U.S. offshore resources, as well as an understanding of where information about offshore resources is lacking. Based on the report, DOI will determine the areas for which more information is necessary and will develop a plan for gathering that information.

Third, within 30 days of the issuance of the report by MMS and USGS, DOI will hold four regional meetings around the country regarding the Administration's next steps with respect to OCS development. One meeting each will be held in Alaska, on the Pacific Coast, on the Gulf Coast, and on the Atlantic Coast. Meeting sites have not been finalized.

Fourth, and finally, the Secretary promised to move forward as soon as possible on a final rulemaking for development of offshore renewable resources. This rulemaking will provide a framework for offshore renewables development, including wind, wave and tidal energy development. Secretary Salazar said that he hopes to issue the final rulemaking "in the next few months."

Secretary Salazar clarified that DOI is not proposing any substantive changes to the current five-year OCS oil and gas leasing program, and that the Department will continue to allow lease sales to move forward as scheduled. In response to questions regarding contentious leases already scheduled under the current plan, Secretary Salazar suggested that while some scheduled leases could be the subject of litigation, the Administration has no current plans to intervene or postpone such leases.

Onshore, on February 4, Secretary Salazar also cancelled oil and gas leases on 77 parcels of federal land in Utah, reversing one of the Bush Administration's final official acts. In December, BLM had auctioned off 116 parcels for oil and gas development despite objections that development on most of the parcels



Alaska Energy & Environmental Policy Update

could harm protected lands in Nine Mile Canyon and Arches National Park. Secretary Salazar commented he was canceling the leases while DOI re-examines the studies that permitted the contested parcels to be leased.

The latter action shows that Secretary Salazar is willing to consider canceling oil and gas leases *after* sales have been held, suggesting the Secretary could consider canceling other planned lease sales. The move has some wondering if the Administration could interfere in planned offshore oil and gas lease sales in politically sensitive regions like Alaska’s arctic region. However, in his February 10 press conference regarding national OCS policy, Secretary Salazar emphasized that the Obama Administration has no current plans to intervene in or postpone any of the leases scheduled under the current five-year OCS oil and gas leasing plan.

Senator Kim Elton Appointed Director of Alaska Affairs at the Department of the Interior

On Tuesday, Juneau’s own Kim Elton was appointed Director of Alaska Affairs at the U.S. Department of the Interior. Elton was elected to the City and Borough of Juneau Assembly in 1989, served as a member of the Alaska House of Representatives from 1994-1998, and has served as an Alaska State Senator since 1998.

Elton, a Democrat, served as a policy aide to former Alaska Republican Lt. Governor Terry Miller and as staff to the House of Representatives Democratic Caucus and Legislative Affairs Committee. Elton has worked on commercial fishing boats and has served as Executive Director of the Alaska Seafood Marketing Institute.

Elton grew up in Southeast Alaska.

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Alaska Energy & Environmental Policy Update

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