



# Alaska Energy & Environmental Policy Update

*June 19, 2009*

Mark-up of the Senate energy bill wrapped up this week with provisions that would establish an Alaska Outer Continental Shelf (OCS) Permit Processing Coordination Office, enhance financing for the Alaska gas pipeline, and introduce incentives for small Alaska hydropower projects. Various energy proposals are brewing in the House of Representatives, as well, including the Waxman-Markey bill, which would establish a U.S. carbon cap-and-trade program. In May, the Department of the Interior asked the D.C. Circuit Court of Appeals to clarify a ruling that vacated the 5-year oil and gas leasing program for the entire OCS. Meanwhile, a Senate subcommittee hearing on 8(a) contracting and Alaska Native Corporations looms. U.S. policy on the Arctic, including proposed ratification of the Law of the Seas Treaty, has been getting attention on Capitol Hill. The Obama budget, released in early May, would slash critical funding for Alaska's Denali Commission. And, on May 28, Agriculture Secretary Tom Vilsack asserted authority over roadless areas in the national forests.

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## CONGRESS

### ***Energy Legislation Passes Senate Energy and Natural Resources Committee***

On June 17, a comprehensive energy bill passed the Senate Committee on Energy and Natural Resources by a vote of 15 to 8.

Over the course of the last several weeks, the Committee has marked up provisions on a broad range of energy-related matters, including nuclear waste, carbon sequestration, oil and gas development, and a renewable electricity standard. The final details of the oil and gas title were hammered out earlier this week. A carbon cap-and-trade title may be added to the Senate energy bill later this year.

During the Committee's consideration of the bill, Senator Murkowski successfully fought to keep at least two amendments she deemed "poison pills" out of the oil and gas title. One of the "poison pill" amendments, proposed by Senator Maria Cantwell (D-WA), would have required the Secretary of the Interior to issue regulations requiring that all oil and gas operations be conducted to achieve the "minimal practicable discharge" of pollutants into the waters of the OCS in all Alaska OCS regions and all areas subject to congressional moratoria that lapsed in 2006 and 2008. A second amendment, also proposed by Senator Cantwell, would have required the Secretary of the Interior, prior to "any oil or gas



drilling, exploration, or related activities . . . in Arctic and icy conditions or in any Federal water under the management of the North Pacific Fishery Management Council”—which includes all of the Exclusive Economic Zone off Alaska—to make a finding that “the United States has the knowledge, assets, and capabilities necessary to respond to a major oil spill in Arctic and icy conditions” and “that the activities would have no more than a negligible impact on any commercial fisheries.” The proposed amendments, as written, were viewed by some as likely to kill the prospect of future development in the Arctic. Interestingly, we understand that Senator Cantwell later told reporters that she does not plan to offer the Arctic drilling amendments on the floor unless Republicans try to offer amendments to open the Arctic National Wildlife Refuge.

#### *Alaska OCS Permit Processing Coordination Office Would be Established*

The oil and gas title of the Senate energy bill requires the Secretary of the Interior to establish a regional joint OCS lease and permit processing office for Alaska. The Alaska OCS Permit Processing Coordination Office would be staffed by representatives of the Department of the Interior, presumably to include the Minerals Management Service (MMS), the Department of Commerce, presumably to include the National Oceanic and Atmospheric Administration (NOAA) and the National Marine Fisheries Service (NMFS), the U.S. Army Corps of Engineers, the Environmental Protection Agency, and any other Federal agency that may have a role in OCS permitting activities.

#### *Alaska Gas Line Financing Would be Enhanced*

The oil and gas title also carries provisions that would help finance the Alaska gas line. Senator Murkowski reported that the legislation would

- Increase the 2004 Alaska Natural Gas Pipeline Act loan guarantee from \$18 billion to \$30 billion, plus inflation;
- Allow use of the Federal Financing Bank to capitalize the project in order to reduce administrative costs and interest rates and thereby shrink the overall cost of the pipeline by hundreds of millions of dollars; and
- Clarify language of the original 2004 loan guarantee to ensure that the federal government provides a 100 percent loan guarantee for up to 80 percent of the cost of the total project.

#### *Renewable Electricity Standard Could Benefit Alaska Hydro*

Senator Murkowski successfully pushed for key amendments to a proposed national renewable electricity standard (RES) to be included in the Senate energy bill. The RES measure, which would require utilities to generate 15 percent of their electricity from renewable resources by 2021, exempts utilities that sell less than 4 million megawatt hours annually. No Alaska utility meets the 4 million-megawatt-hour threshold.



However, language included by Senator Murkowski in the RES legislation would permit Alaska utilities to sell renewable energy credits to Lower 48 utilities. Credits would be available for the installation of hydroelectric power, including lake taps, pumped storage, and hydro projects up to 50 megawatts. The amendment would allow projects like Lake Dorothy near Juneau, Mahoney Lake near Ketchikan, Grant and Elva lakes near Dillingham, and smaller hydro projects like those proposed for Angoon and Tok to qualify as renewable energy projects and receive tradable credits that could aid in securing financing. Senator Murkowski also was able to include language that would double credits for renewable energy generation on tribal land and land owned by Alaska Native Corporations, which could help finance renewable energy projects.

#### *ANWR and Revenue Sharing Amendments Fail in Committee Mark-Up*

In mark-up last week, the Senate Energy and Natural Resources Committee voted down Senator Murkowski's amendment to open ANWR to directional drilling, and Senator Landrieu's (D-LA) amendment to provide revenue sharing to coastal states.

Senator Landrieu's revenue sharing amendment would have provided 37.5 percent of royalties from oil and gas production in federal waters to coastal states, a benefit currently enjoyed by states bordering the Gulf of Mexico. The proposal was voted down 10-13. Senator Bingaman has strongly opposed efforts to introduce new revenue sharing legislation. We understand that Senators Brownback (R-KS) and Lincoln (D-AR) have both stated that they might support revenue sharing at a lower percentage. However, they voted against the amendment last Tuesday.

The close vote reflects a brewing debate over whether coastal states should receive royalties for new oil and gas development on areas of the OCS previously closed to development. Congressional approval for new development likely will depend on the support of coastal state representatives. States also have some leverage over the OCS leasing process through the Coastal Zone Management Act, which allows a state to block development by demonstrating that OCS drilling does not comport with the state's coastal management program.

#### ***Multiple Energy Proposals Continue to Brew in the House of Representatives***

Several major energy bills remain pending in the House of Representatives. In early May, Representatives Tim Murphy (R-PA) and Neil Abercrombie (D-HI) introduced H.R. 2227, the American Conservation and Clean Energy Independence Act. The bill would expedite offshore oil exploration and recycle associated revenues into energy programs researching carbon capture and sequestration, nuclear power, renewables and efficiency. Representative Abercrombie is reportedly one of several prominent Democrats that believe that House cap-and-trade legislation is unlikely to move forward this year. The group of Democrats is reportedly pushing for a strategic shift away from cap-and-trade towards emphasis on "clean energy" development and energy independence. The bill has good bipartisan support, with a prior version of the bill claiming about 140 cosponsors, including 20 members of the House Energy and Commerce Committee.



In our April issue, we reported that Representatives Henry Waxman (D-CA) and Edward Markey (D-MA) had floated comprehensive “clean energy” legislation that pairs a carbon cap-and-trade program with green energy provisions such as a RES. The bill was introduced in mid-May as the American Clean Energy and Security Act (ACES), H.R. 2454, was marked up in mid May, and was reported out of the House Energy and Commerce Committee by a vote of 33-25. This week’s Van Ness Feldman Weekly Climate Change Policy Update, available at <http://www.vnf.com/news-alerts-368.html>, reports that House Speaker Nancy Pelosi (D-CA) may bring the ACES bill to the floor of the House of Representatives during the week of June 22. This implies that none of the eight committees to which the bill was referred will hold a public mark-up, but rather that the Democrats are working behind closed doors to reach agreement on a procedural method (perhaps a new version of the legislation or an amendment) that would add new matters from the various other committees with shared or additional jurisdiction on the issues. On June 16, Republican members on the House Agriculture Committee sent a letter to Speaker Pelosi asking for more time to consider the legislation.

Finally, in mid-May, majority staff for the House Natural Resources Committee circulated draft legislation entitled “The Federal Lands and Resources Energy Development Act of 2009.” The discussion draft would

- Consolidate all federal energy and mineral leasing programs within one bureau in the Department of the Interior that would handle lease sales, inspection, enforcement and revenue collection;
- Create new OCS “Regional Planning Councils” for the Atlantic, Pacific, Gulf of Mexico and Alaska regions;
- Create new “diligent development” rules for onshore and offshore leases while imposing new fees on nonproducing leases, shorten initial onshore lease terms from 10 years to five, and raise minimum royalty rates to 18.75 percent;
- Require new offshore oil and gas leases to meet a “zero discharge” requirement; and
- Establish an Oceans Trust Fund, dedicating 10 percent of OCS revenues to provide grants to coastal states and regional collaboratives for activities that contribute to the protection, maintenance, and restoration of marine ecosystems.

### ***Senate Committee Hearing on Native Contracting Looms***

On May 12, Senator Claire McCaskill (D-MO), Chair of the Senate Committee on Homeland Security and Governmental Affairs’ Subcommittee on Contracting Oversight, sent a letter to twenty Alaska Native Corporations (ANCs) seeking extensive information about their subsidiaries, subcontractors, executive compensation, total revenue from federal contracts and subcontracts, and cash dividends and other shareholder benefits. Senator McCaskill gave the corporations just 13 days to provide her subcommittee with the information, which she says will help the subcommittee prepare for a July 16, 2009 hearing on contracts awarded to ANCs through the Small Business Administration’s 8(a) contracting program. Participation by ANCs in the 8(a) program has been controversial. Unlike other



8(a) participants, whose sole-source awards are capped, ANCs can win sole-source contracts of any value. Also, unlike other 8(a) participants, ANCs are allowed to have multiple affiliate businesses in the program as long as they operate in different sectors. The 8(a) program has proven successful for several ANCs and the communities they serve.

### ***U.S. Arctic Policy Agenda Getting Attention on the Hill***

The Senate and House Foreign Relations Committees have both held hearings this year on national policy as it relates to the Arctic. At the hearings, witnesses spoke about the implications of climate change and the retreat of ice in the Arctic for U.S. foreign policy, national security, and the economy. Several witnesses urged the United States to ratify the Law of the Seas treaty and to seek binding international agreements to protect Arctic ecosystems.

Developing a presence in the Arctic for exploratory purposes, national security, and to protect human safety and the environment is a priority for Alaska's congressional delegation. In March, the delegation sent a letter to President Obama asking for a meeting with the President to discuss Arctic policy and management. On June 12, Congressman Young introduced H.R. 2865, the "Arctic Marine Shipping Assessment Implementation Act of 2009", which would authorize funding for two new Coast Guard icebreakers. Congressman Young also recently expressed his interest in seeing stronger marine pilotage requirements in U.S. Arctic waters.

In May, Senator Murkowski asked the Senate Appropriations Committee to consider appropriating \$72.5 million to be used to refurbish the Polar Star ice breaker and begin the design of a new polar ice breaker. She observed that other Arctic nations are increasing their capabilities in the region. Russia has 18 icebreakers, and plans to build three more. Finland has seven, and Canada six. Senator Murkowski remarked: "The United States has two working icebreakers and a third in caretaker status. Even China, which doesn't have any Arctic waters, has one. I would encourage the Committee to strongly support increasing the U.S. icebreaker fleet."

On June 9, Senator Mark Begich detailed his own Arctic policy agenda at an Annapolis, Maryland symposium on the impacts of an ice-diminishing Arctic on U.S. naval and maritime operations. The Senator observed that U.S. interests in the Arctic have grown in little more than a century from exploration of the poorly understood region by dogsled to an appreciation of the region as critical to national security and energy independence, and emblematic of the impact of human activities on the natural environment. Focusing on national policy on the Arctic, Senator Begich proposed the appointment of an American "Arctic ambassador" to the Arctic Council better coordinate national and international Arctic policy for the U.S.; creation of a Regional Citizen's Advisory Council for the Arctic, similar to the council formed in Alaska's Prince William Sound in the wake of the Exxon Valdez oil spill; investment in basic science to better understand the oceanography, hydrology, meteorology, biology of fish and marine mammals, as well as the energy potential, of the region; U.S. ratification of the Persistent Organic Pollutants Treaty; and U.S. ratification of the United Nations Convention on the Law of the Sea. By failing to ratify the Convention on the Law of the Sea, the Senator observed, the U.S.



denies itself a seat at the table on Arctic issues. “While other nations have filed claims for Arctic continental shelf areas beyond their 200-mile limit, the United States lacks standing to claim such submerged lands and resources, including substantial amounts of oil and gas.” In August, Senator Begich will host a number of Senators on a trip to Alaska to see first-hand the impacts of climate change on America’s only Arctic state.

In early May, MMS announced that it had signed a memorandum of understanding (MOU) with the Norwegian Petroleum Directorate. The non-binding MOU will promote cooperative resource management activities in exploration and production of oil and gas, the sharing of scientific and technical information, and cooperative research. Acting Director of the MMS, Walter Cruickshank, stated that the information exchange will enhance U.S. efforts to develop OCS resources in a safe and responsible manner.

## ADMINISTRATION

### *Denali Commission Funding Threatened under Obama Budget*

The FY 2010 Budget and Appropriations process is well underway. On February 26, President Obama released a \$3.55 trillion budget proposal for FY 2010. On May 7, 2009, as a follow-up to his initial overview document, the President issued detailed information on his proposed budget for FY 2010. The President’s budget proposes numerous cuts to Alaska programs, and the members of Alaska’s congressional delegation all issued statements denouncing the cuts, particularly for the Denali Commission. The budget proposes to terminate health resources funding for the Denali Commission, which received \$20 million in funding last year. In addition, the budget proposes a \$3 million cut in the Denali Commission’s job training program, which the Administration claims does not improve employment outcomes for participants, and a \$6 million cut in the Denali Access System, which the Administration stated is duplicative of highway funding. The budget also recommends a reduction in funding for Alaska Native Villages infrastructure (Safe Drinking Water Program), funded by the Environmental Protection Agency, from \$19 million to \$10 million, due to a history of management problems and in light of the Administration’s proposal to increase funding for other programs that accomplish the same goals.

Earlier this year, Senator Begich successfully introduced an amendment to the Budget Resolution that would require \$150 million in funding for the Denali Commission. The Budget Resolution is a non-binding spending blueprint for the appropriations process.

### *Parties Ask Court to Clarify Ruling that Vacated OCS Leasing Program*

As we reported previously, in *Center for Biological Diversity v. Dep’t of Interior* (D.C. Cir. Apr. 17, 2009), the U.S. Court of Appeals for the District of Columbia Circuit vacated and remanded the Department of the Interior’s (DOI) five-year oil and gas leasing program for the OCS on the grounds that DOI had not properly considered the environmental sensitivity of the leasing area. Recently, DOI and the American



Petroleum Institute (API) sought clarification of the court's order.

DOI and API are seeking to limit the impact of the court's order, which they allege will cause unnecessary and significant disruptions to the oil and gas leasing program. Specifically, DOI and API argue that, while the legal challenge to the leasing program only focused on the impacts to Alaskan waters, the court vacated the entire nationwide program. As a result, the court's order could potentially disrupt exploration and production activity in the Gulf of Mexico and call into question the validity of leases issued in the Chukchi Sea. DOI and API asked the court to remand the leasing program without vacating the entire program, which would allow DOI to address the identified violations without invalidating the issued leases. DOI will not authorize any activities under exploration plans on the Chukchi Sea leases during the remand proceedings, thereby maintaining the environmental status quo.

Environmental groups and some Alaska Native groups have asked the D.C. Circuit not to reverse its decision to vacate the leasing program. However, the groups do not oppose a clarification that would limit the court's decision to vacate the program only to Alaska's Beaufort, Chukchi and Bering seas. At this time, it is unclear if or how the court will modify its order regarding DOI's OCS leasing program.

### ***Secretary of Agriculture Vilsack Asserts Authority Over Roadless Areas***

On May 28, 2009, Secretary of Agriculture Tom Vilsack issued Memorandum 1042-154, which requires that the Agriculture Secretary personally approve any road construction or timber harvesting within the more than 58 million acres of the nation's roadless areas. Specifically, the memorandum applies only to prospective projects and requires that Secretary Vilsack approve or disprove "the construction and reconstruction of roads and the cutting, sale, or removal of timber in inventoried roadless areas on certain lands administered by the Forest Service."

The roadless rule, first adopted by President Bill Clinton in January 2001, severely limited development in approximately one-third of America's national forests. The Bush Administration revised this policy by providing state governors with the latitude to petition the U.S. Forest Service to determine the size of roadless areas within their states. The Bush Administration also settled a case with Alaska to specifically exempt certain areas of the Tongass National Forest from the roadless rule. After much litigation, the legal status of the roadless rule remains uncertain. Courts in California and Wyoming have issued conflicting decisions for and against the roadless rule, and appeals are currently pending in the Ninth and Tenth Federal Circuits.

Secretary Vilsack's order has been explained by Agriculture Department officials as a procedural timeout that will "provide consistency and clarity" that will help protect the national forests until a long-term roadless policy is developed. Department officials have said that they expect the Secretary to approve some projects that meet the Obama administration's standards for responsible forest management. Although this may be the case, it is generally accepted that the order will effectively stop planned timber sales in inventoried roadless areas of the Tongass.



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### FOR ADDITIONAL INFORMATION

Please contact our Alaska practice coordinators or any member of the practice below.

Rick Agnew*	206.829.1815	raa@vnf.com
Andrea Campbell	202.298.1991	alh@vnf.com
Howard Feldman	202.298.1828	hjf@vnf.com
John Iani	206.829.1812	lji@vnf.com
Tyson Kade	206.829.1808	tck@vnf.com
Sam Kalen	202.298.1826	smk@vnf.com
Alan Mintz*	202.298.1837	alm@vnf.com
Curt Moffatt	202.298.1885	jcm@vnf.com
Dan Press	202.298.1882	dsp@vnf.com
Tom Roberts	202.298.1930	tcr@vnf.com
Jonathan Simon	202.298.1932	jxs@vnf.com
Bill Van Ness	206.829.1801	bvn@vnf.com
Andrew VanderJack	202.298.1941	amv@vnf.com
Julia Wood	202.298.1938	jsw@vnf.com

*\* Alaska practice coordinators*

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