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Legislative Bulletin……..……July 17, 2008

Contents:

H.R. 6515— Drill Responsibly in Leased Lands (DRILL) Act (*Rahall, D-WV*)

Order of Business: The bill is scheduled to be considered on Thursday, July 17th, under a motion to suspend the rules and pass the bill (therefore allowing no amendments to the bill, requiring a two-thirds vote for passage, and waiving all points of order). Normally, suspensions are not in order on Thursdays, therefore a motion to suspend the rules and pass H.R. 6515 will only be in order if the House passes H.Res. 1350, a special rule providing for the consideration of motions that the House suspend the rules on July 17, 2008, relating to "a measure concerning the domestic production of oil and natural gas."

NOTE: H.R. 6515 does **NOT** contain language related to the oil futures investors (disparagingly known as "speculators") and **does *NOT* open up any new lands for oil and gas exploration or development.**

Summary: H.R. 6515 would prohibit the Secretary of the Interior from issuing new leases anywhere (on land or under water) for the exploration for, or production of, oil or natural gas, unless the applicant:

- Certifies for each lease that he holds that he is "diligently developing" the federal lands in his existing leases to produce oil or natural gas—or is currently producing oil or natural gas from such lands; or
- Relinquishes his current leases under which oil and gas is not being "diligently developed."

This provision is nearly identical to the language in H.R. 6251 (except without requirements for five-year production windows), which failed on suspension last month with 176 Republicans voting no.

NOTE: "Diligently developing" and "diligently developed" are not affirmatively defined in the legislation. Instead, Congress would leave it to the Secretary of the Interior to issue a definition within 180 days of the enactment of this legislation.

Failure to comply with this "use it or lose it" language—or any related regulation—would trigger civil penalties under the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1719).

H.R. 6515 would also direct the Secretary of the Interior to conduct an "expeditious environmentally responsible" oil and gas leasing program in the National Petroleum Reserve of Alaska (NPRA), with at least one lease sale there every year (as opposed to every two years under current law) from 2009 through 2013. The Secretary of Transportation would be directed to facilitate, "in an environmentally responsible manner," the construction of pipelines necessary to transport oil and gas from or through the NPRA to existing pipelines or processing infrastructure on Alaska's North Slope. The President would be directed to facilitate, in coordination with key stakeholders listed in the bill, the construction of a natural gas pipeline from Alaska to U.S. markets "as expeditiously as possible."

Nothing in the bill provides for the opening of any *new* lands for energy exploration and development in NPRA or anywhere else.

NOTE: Operative terms in the legislation, such as "environmentally responsible" and "expeditious," are not defined.

The President, as a term and condition of any pipeline-related permit issued for the infrastructure referenced above, would have to require that pipeline operators, agents, and contractors negotiate to obtain a project labor agreement (PLA) for the employment of laborers and mechanics doing production, maintenance, and construction activities.

NOTE: A PLA is when the government awards contracts for public construction projects exclusively to unionized firms. This is done by including a union collective bargaining agreement in a public construction project's bid specifications, which would apply to already-unionized and non-unionized workers. As National Right to Work notes, "Project labor agreements usually require contractors to grant union officials monopoly bargaining privileges over all workers, use exclusive union hiring halls; force workers to pay dues to keep their jobs, and pay above-market prices resulting from wasteful work rules and featherbedding. The use of a project labor agreement usually results in cost overruns and higher construction costs for taxpayers. Qualified non-union contractors who wish to make lower-cost bids, and employees who wish to work non-union, are locked out of the project." For more information on PLAs, visit this webpage:
http://www.nrtw.org/neutrality/na_6.htm.

Every pipeline operator authorized to transport oil and gas produced under federal oil and gas leases through the Trans-Alaska pipeline, any new pipeline constructed under this legislation, or any other federally-approved pipeline from Alaska's North Slope would have to certify annually to the Secretary of Transportation that the pipeline is being "fully maintained and operated in an efficient manner," subject to civil penalties for violations (up to $100,000 per day per violation).

NOTE: "Fully maintained and operated in an efficient manner" is not defined in the legislation.

H.R. 6515 would also repeal the provision in current law allowing for the export of Alaskan oil to foreign nations (30 U.S.C. 185(s)) and would affirmatively prohibit the export of Alaskan crude oil.

Lastly, H.R. 6515 would direct the Secretary of the Interior to "take all steps necessary" to ensure that federal oil and gas lessees are making "prompt, transparent, and accurate" royalty payments. The Secretary would have to submit to Congress his recommendations for legislative action to improve the accurate collection of federal oil and gas royalties.

Democrat Justifications for "Use It or Lose It": This legislation contains the "use-it-or-lose-it" part of the Democrat energy agenda, in which Democrats have countered Republican calls for opening the Arctic National Wildlife Refuge (ANWR), additional areas of the Outer Continental Shelf (OCS), and additional areas of the intermountain West to oil and gas exploration and development with an insistence that energy companies are under-producing or not producing on current leases on federal lands. Some Democrats have asserted that upwards of 68 million acres of federal lands currently leased for oil and gas exploration and development are not actively being used. Further, they assert, 4.8 million barrels of oil per day and 44.7 billion cubic feet of natural gas per day may be "extrapolated" from the oil companies' "unused" federally-leased lands. These Democrats have asserted that the federal government should not issue any new leases in ANWR, the OCS, or the intermountain West until these existing leases are fully utilized.

Counter-Assertions to "Use It or Lose It":

Already the Law. Under current law (30 U.S.C. 226(e) and 43 U.S.C. 1337(b)), federal energy lease holders already must produce oil or natural gas within five to ten years after drilling on the federal land begins, depending on certain circumstances. The Secretary of the Interior has the power to cancel any such lease if the energy company fails to comply (30 U.S.C. 188(a) and (b)). As the American Petroleum Institute (API) points out, all the capital spent by an energy company to acquire and keep a lease, which can be millions of dollars for a single lease, is lost if the lease is canceled and/or returned to the federal government.

No Incentive to Let Leases Go Idle. Energy companies have no financial incentive to let leases sit idle. On the contrary, as the energy advocates at Winnigreen point out, the federal government requires companies to pay up-front bonus fees and annual rents on the leased areas, *regardless of whether they produce oil and gas*. If the annual payment is not made, the leases are forfeited, so it is very much in the companies' interest to work to produce oil or gas from them. Because of the uncertainty of exactly where and how much oil or gas is in an area, companies often secure a large amount of leases in an area in hopes that some are productive. Until a well comes on line, those leases may seem to be in the unproductive stage, but they often are not—and are certainly not sitting idle out of neglect or some design to pay for, but never use, federal leases.

No Activity Today Does Not Mean No Activity Ever. According to the American Association of Petroleum Geologists (AAPG), "Finding oil and natural gas traps, places where oil and natural gas migrate and concentrate, buried under thousands of feet of rock is like finding the proverbial

needle in a haystack…. One cannot assume oil and natural gas are evenly distributed across a given lease or region. Rather, exploration is about unraveling the geologic history of the rock underneath that grid block, trying to understand where oil or natural gas may have formed and where it migrated…. Successful exploration begins with an idea—a hypothesis of where oil may be found."

Geologists use this sophisticated modeling to then suggest places to drill, places to modify their drilling, and places to abandon drilling (or to never drill in the first place). While some portion of these assessments is based on geological considerations, some other portion is also made on financial considerations. That is, just because oil is found somewhere doesn't mean it is automatically financially sensible to bring it up.

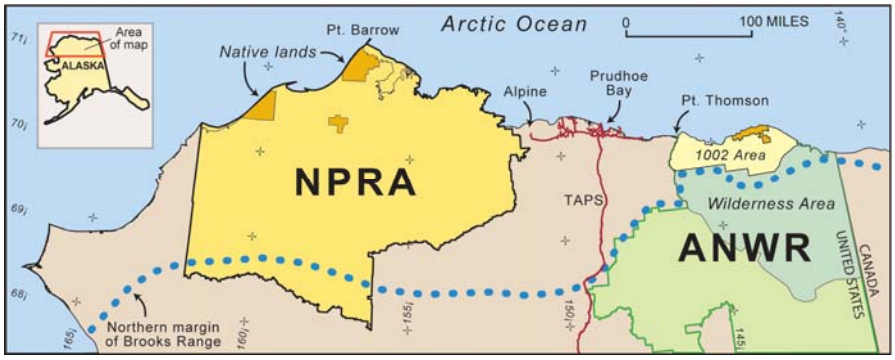
The AAPG and API note that the process of leasing, evaluating, drilling, and developing an oil or natural gas field typically takes five to ten years. While some fields become active sooner, others are hampered by permitting or regulatory delays, as well as by administrative delays (like labor problems or data shortages).

Therefore, the AAPG asserts, "Policies that increase exploration costs, decrease the available time to properly evaluate leases, and restrict access to federal lands and the Outer Continental Shelf do not provide the American people with short-term relief from high prices and undermine the goal of increasing stable long-term supplies."

Magical Data. The Democrat assertion that 4.8 million barrels of oil per day and 44.7 billion cubic feet of natural gas per day may be "extrapolated" from the oil companies' "unused" federally-leased lands has not been substantiated. As the AAPG noted, finding exactly where petroleum is, how much of it there is, and how much is recoverable in a financially sensible way is a matter of complicated scientific analysis and frequent re-evaluation. Thus, the 4.8 million barrels and 44.7 billion cubic feet figures are highly suspect.

Technological Efficiencies Can Make It Unnecessary to Use All Leases. As API points out, on the OCS, for example, companies often bid on several contiguous leases in a geographical area it believes will have underlying oil and natural gas resources. A strategically placed exploratory well on a single lease may give the company enough data to determine the petroleum potential of many leases. Thus, it may appear that the other leases are dormant, but that is not often the case.

Background on the National Petroleum Reserve of Alaska (NPRA):



The National Petroleum Reserve of Alaska (NPRA), also known as the Naval Petroleum Reserve, is an energy reserve set aside by a President Harding executive order in 1923, in order to assure availability of fuels for the Navy, which had been converting its ships from coal to oil. In 1981, stewardship of NPRA passed from the Navy to the Department of the Interior. The Naval Petroleum Reserves Production Act (P.L. 96-514) authorized the Secretary of the Interior to conduct oil and gas leasing and development in NPRA.

As is apparent in the map above, NPRA lies west of the Arctic National Wildlife Refuge (ANWR) and west of Prudhoe Bay, encompassing some of the most desolate areas of Alaska. NPRA contains about 440 barrels of oil per acre (compared to ANWR's 5,475 barrels per acre), which translates to 281,600 barrels per square mile (compared to ANWR's 3.5 million barrels per square mile).

NPRA contains a potential 10.6 billion barrels of recoverable oil (compared to ANWR's minimum 10.4 billion barrels), potentially equal to 16 years of Saudi imports.

Some NPRA oil and gas fields are more than 250 miles from the existing pipeline infrastructure (compared to ANWR's 75-mile distance to the pipelines). NPRA's oil and natural gas fields are spread over about 23 million acres (compared to 1.9 million acres for ANWR).

All NPRA lands **that are available** to be leased under current Bureau of Land Management (BLM) planning documents (about 3 million acres) have been offered for lease in the past or will be offered before the end of the year. But not all of NPRA is currently available for lease. To see maps of the NPRA leases since 1999, visit this webpage: http://www.blm.gov/ak/st/en/prog/energy/oil_gas/npra/npra_maps.html.

Much of NPRA was opened under the Clinton Administration, on the notion that exploration can be done in an environmentally safe manner. Opening up *all* of NPRA for oil and gas leasing would require a legislative exemption for NPRA from the National Environmental Policy Act and the BLM Land Use Planning process.

There currently is no active production in NPRA because of a variety of lawsuits, appeals, and the refusal of the U.S. Corps of Engineers to grant a permit to allow an oil pipeline to traverse a river. Furthermore, drilling windows in NPRA are set by regulation at 3-4 months (as opposed to year-round), forcing exploration and development drilling to take even longer than it otherwise would without such restrictions.

H.R. 6, as it first passed the House in January 2007 as one of the signature Democrat bills in the 110th Congress, contained a provision ***removing*** certain incentives for energy exploration in NPRA. See Section 205(c) here.

Sources for the above information on NPRA: Winningreen, U.S. Geological Survey, House Natural Resources Committee (Republican staff), the Congressional Research Service, and the office of Alaska Representative Don Young.

Analysis of the NPRA Provisions: Republicans generally believe in an "all of the above" approach to expanding America's energy supply, and as such, many may support a stand-alone bill expediting the permitting of NPRA and otherwise making it easier to get more energy supply from NPRA. However, while NPRA and ANWR contain comparable amounts of known oil reserves, numerous factors point to ANWR as being a more suitable place to focus Congress' immediate attention. Some may also question why Democrats would retreat from their no-new-drilling posture for NPRA but not for ANWR—and similarly wonder why just last year the Democrat Majority *removed* incentives for NPRA exploration and now suddenly want to reverse that course.

As indicated above, NPRA's resources are much more spread out than are ANWR's, are significantly farther from existing pipeline infrastructure than are ANWR's, and are subject to pending lawsuits and other actions to block the construction of NPRA infrastructure. H.R. 6515 will not open any additional areas to leasing nor deal with the litigation issues involved. Further, the project labor agreement requirements could serve to slow, and increase the costs of, energy exploration and extraction.

In short, some conservatives may view the NPRA section of this bill as a useful but largely insufficient step toward tapping even the *NPRA's* reserves—let alone a sufficient step toward achieving American energy independence in general.

Committee Action: On July 17, 2008, H.R. 6515 was introduced and referred to the Natural Resources Committee, which took no subsequent public action.

Possible Conservative Concerns:

"Use It or Lose It". As the Republican staff of the Natural Resources Committee points out, some of the Democrats saying "use it or lose it" are the same ones who voted for the "Section 2509 Amendment" in 1992 that gave oil companies up to ten years, rather than five years, to explore for onshore oil and to complete required studies and permits. (Roll Call #474, October 5, 1992, for H.R. 776, which became Public Law 102-486) Those Democrats who understand that oil leasing is not a quick and consistent activity and who thus voted to give oil companies more time to find and produce oil on federal leases include Rep. Nancy Pelosi (D-CA), Rep. Steny Hoyer (D-MD), Rep. Nick Rahall (D-WV), Rep. Norman Dicks (D-WA), Rep. John Murtha (D-PA), Rep. Allan Mollohan (D-WV), Rep. Jim Moran (D-VA), Rep. George Miller (D-CA), and Rep. Ed Markey (D-MA).

Some conservatives may be concerned that, at a time when gas prices are soaring and the need to increase the supply of American energy has never been greater, it would be harmful to do anything to restrict the development of American energy, which this legislation would do. This legislation would send a signal to the energy markets that petroleum had better come up quick or not at all, a move that could actually trigger higher energy prices and discourage investment in energy exploration.

Some conservatives may be concerned that the "use it or lose it" provisions are being used to assuage the concerns of Democrat-allied environmentalist groups that have been disturbed by calls for more exploration in America.

NPRA. While many conservatives would likely support a stand-alone effort to expedite the permitting of NPRA and otherwise making it easier to get more energy supply from NPRA, some conservatives cite numerous factors, discussed above, pointing to ANWR as being a more suitable place to focus Congress' immediate attention. Some conservatives may also question why Democrats would retreat from their no-drilling posture for NPRA but not for ANWR—and similarly wonder why just last year the Democrat Majority *removed* incentives for NPRA exploration and now suddenly want to reverse that course.

Some conservatives may be concerned that NPRA's resources are much more spread out than are ANWR's, are significantly farther from existing pipeline infrastructure than are ANWR's, and are subject to pending lawsuits and other actions to block the construction of NPRA infrastructure. H.R. 6515 would not open any additional areas to leasing, nor deal with the litigation issues involved. Further, the project labor agreement and "environmentally responsible" requirements could serve to slow, and increase the costs of, energy exploration and extraction.

On balance, some conservatives may view the NPRA section of this bill as a useful but largely insufficient step toward tapping even the *NPRA's* reserves—let alone a sufficient step toward achieving American energy independence in general.

Boon to Unions. Some conservatives may also be concerned about the requirement that all pipeline construction facilitated by this legislation be completed using Project Labor Agreements (PLAs), which are requirements in federal construction contract that only unionized workers be used. According to National Right to Work, more than 80% of construction contractors are nonunionized.

Gifts to the Trial Lawyers. As highlighted throughout the "Summary" section above, some conservatives may be concerned at the omission of definitions for numerous key terms in the legislation, such as "diligently developing" and "environmentally responsible." One could argue that this pervasive lack of definitions is a boon to the trial lawyers, who will certainly relish the opportunity to force judges to create applicable definitions, further delaying the development of American energy.

Oil Export Ban. Lastly, some conservatives may be concerned with the anti-free-market restrictions on exporting Alaskan oil and may note that such restrictions demonstrate a fundamental misunderstanding of the global nature of petroleum markets.

Administration Position: Although a Statement of Administration Policy (SAP) for H.R. 6515 was not available at press time, reports indicate that the Administration will oppose this legislation. The SAP for H.R. 6251, the stand-alone "use it or lose it" bill, included a veto threat.

Cost to Taxpayers: A CBO cost estimate was not available at press time. Reports indicate that the "use it or lose it" provision would reduce revenues (from fewer leases). Such a revenue-

reduction without any offsets would normally be a PAYGO violation, but since this bill is being considered under suspension of the rules, no PAYGO point of order may be lodged.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Although a CBO analysis of the mandates in the bill is unavailable, presumably the provisions of the legislation would not be considered mandates under the Unfunded Mandates Reform Act, since companies are technically not *required* to lease lands from the federal government for energy exploration.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Though the bill contains no earmarks, and there's no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

Constitutional Authority: A committee report citing constitutional authority is unavailable.

Outside Organizations: The American Petroleum Institute is strongly opposed to the bill.

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