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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-8175

ANDREW WHEELER, MAJORITY STAFF DIRECTOR
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August 14, 2003

Honorable Donald L. Evans
Secretary of Commerce
U.S. Department of Commerce
Washington, DC 20230

Dear Secretary Evans:

We understand that the National Oceanic and Atmospheric Administration (NOAA) recently published, and is seeking comment on, its proposed rule to revise the federal consistency appeal regulations under the Coastal Zone Management Act of 1972 (CZMA). We urge you to review more closely the implications of this proposed rule, as well as the underlying statute, to ensure that CZMA consistency appeals do not unduly delay federally authorized and environmentally compatible energy projects in interstate commerce.

In recent years, the consistency appeals process at the Department of Commerce has allowed certain coastal states to impede oil and gas exploration and production in the federal Outer Continental Shelf (OCS). Now, two interstate gas pipeline projects are being blocked, even though Congress long ago granted the Federal Energy Regulatory Commission pre-emptive authority to site and license gas pipelines. These actions have resulted in domestic job loss, diminution of our national energy security, and reduced royalty revenues to the federal and state governments.


In short, we have serious concerns that the consistency appeals process has caused undue delays in energy projects. Furthermore, NOAA's proposed rule, while providing clarity to some definitions, fails to ensure that consistency appeals decisions are made in a timely fashion.

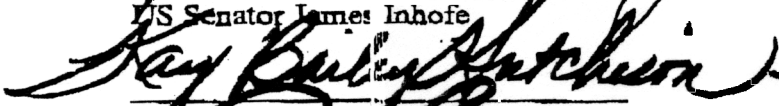
More specifically, NOAA's proposal establishes an unnecessarily long 270-day window for record closure. Congress granted the Department of Commerce a limited function to evaluate states' coastal zone consistency with the interstate activities of federal permitting. The CZMA specifically authorizes the Department of Commerce to review consistency appeals. As such, Commerce must examine the full administrative record and decision of the federal permitting agency, receive appeal briefs of the parties, and make a timely decision. Since the federal permit agency's decision must have fully considered the expertise of all relevant federal and state agencies, as well as project need, alternatives, and coastal impact mitigation to satisfy court review, the Department of Commerce should close its record immediately upon receiving final party briefs. At that point the Secretary has all record evidence necessary to decide any appeal.

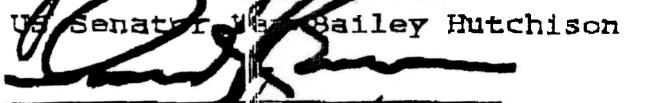
Further, NOAA's proposed deadline exceptions for additional environmental or biological opinions are not needed for any appellate review and would simply delay the appeal. This aspect of NOAA's proposal negates the intent of Congress directing the Department of Commerce to decide these appeals expeditiously.

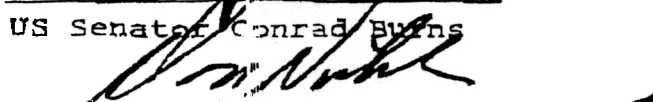
We request that NOAA change its proposal to comply with congressional intent in the CZMA. Any NOAA rule must emphasize expeditious appeals decisions, rather than administratively lengthening deadlines and creating an unneeded exception that effectively erodes congressional intent. We request that you meet with us to discuss the issue in more detail.


Sincerely,



 US Senator James Inhofe



 US Senator Kay Bailey Hutchison



 US Senator Conrad Burns

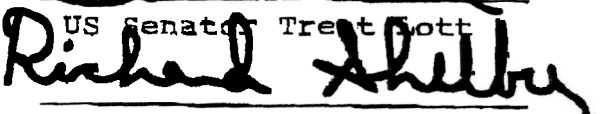

 US Senator Jon Nichols

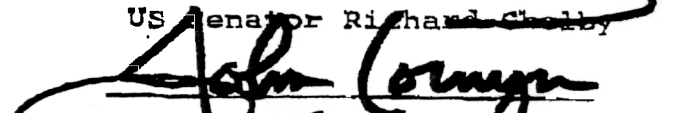

 US Senator Sam Brownback

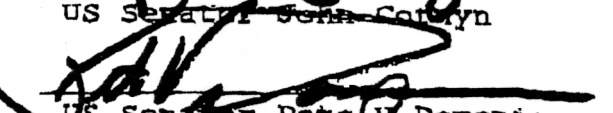

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