Plan to Allow Retrieval of Alaskan Oil Could Upend Decades of Precedent

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By Shauna Coleman

On March 16, 2005, the U.S. Senate voted 51-49 to reject an amendment that would have removed the Alaska National Wildlife Refuge provisions in a Senate Budget Resolution, clearing the way for drilling in the refuge. Now that Congress has agreed on a 2006 budget, this action will allow drilling in the refuge as early as later this year.

For more than two decades, the oil industry has sought access to what is believed to be billions of barrels of oil beneath the 1.5 million-acre coastal plain area of the ANWR in a northeastern corner of Alaska called the Coastal Plain. Environmentalists have fought such development of the Coastal Plain, and have argued that despite improved environmental controls, a web of pipelines and drilling platforms would harm calving caribou, polar bears, and millions of migratory birds that use the coastal plain. On the other hand, the Bush Administration has called tapping the Coastal Plain’s oil a critical part of the nation’s energy security, particularly by reducing America’s reliance on imported oil, which currently accounts for more than half of the twenty million barrels of crude oil used daily. It is believed that the Coastal Plain area of the ANWR could supply as much as 1 million barrels day at peak production.

**HISTORY OF ANWR**

ANWR, like other American wildlife refuges, is governed by statutes and regulations, and is administered by the U.S. Fish & Wildlife Service. In 1960, the ANWR was "withdrawn" from mining, logging, and other exploitative uses under the general public lands laws. Later, the Eisenhower-era Interior Department ordered that a giant reserve be withheld from future exploitation, and in 1973 the ANWR was signed into law by President Richard Nixon.

In 1980, Congress specifically designated most of the ANWR as federally protected "wilderness" in the Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487 (1980). As applied to government-owned land like the ANWR, this designation triggers many protections under the 1964 Wilderness Act. Today, most of the ANWR remains protected under the 1964 Wilderness Act. However, not all of the 19-million acre ANWR land falls within the "wilderness" designation.

Section 1002 of ANILCA specifically excluded from the "wilderness" designation a small coastal plain area that was believed to be rich in oil and gas deposits. The Coastal Plain excluded from the "wilderness" designation totals

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about 1.5 million acres of the 19 million acre ANWR. At its widest points, it is about 100 miles across and about 30 miles deep and covers an area slightly larger than the state of Delaware.

ANILCA designated the Coastal Plain as a study area, and permitted the area to be evaluated for its oil and gas development potential.

Although the Coastal Plain did not enjoy the wilderness label, debates over whether drilling should be banned in the Coastal Plain ensued. In 1995, both the U.S. House and Senate approved Coastal Plain Development, which would permit drilling in the Coastal Plain. The entire measure was vetoed by President Clinton.

The issue of whether or not to drill in the Coastal Plain resurfaced again on March 16, 2005. During consideration of the Senate budget resolution, S. Con. Res. 18, an amendment, which struck certain language related to ANWR development, was defeated. This budget measure, which makes ANWR a financial matter allowing for drilling in the ANWR, is immune from a filibuster, a parliamentary technique used by drilling opponents to block legislation. The Senate budget bill, however, needs to be reconciled with the House Budget Resolution, H. Con. Res. 95, H.Rept. 109-17, which does not contain language pertaining to ANWR, before the measure can become law.

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Sarah Wilhoite
Earthjustice

SUPPORTERS’ ARGUMENTS

As noted in the Congressional Research Service’s issue brief for Congress, development advocates argue that ANWR oil would reduce U.S. energy markets’ exposure to crisis in the Middle East, boost North Slope oil production, lower oil prices, extend the economic life of the Trans Alaska Pipeline System, and create many jobs in Alaska and elsewhere in the United States. Further, development advocates, such as Arctic Power, maintain that ANWR oil could be developed with minimal harm.

According to Arctic Power, the Coastal Plain has the potential to retrieve billions of barrels and trillions of cubic feet of recoverable gas. This estimate rivals the initial reserves at Prudhoe Bay, North America’s largest oil field, which lies less than 100 miles west of ANWR. Furthermore, this abundance of recoverable oil, Arctic Power estimates, would only result in less than...
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one half of one percent of the land from actually being developed (roughly 2,000 to 5,000 acres).

Further, Arctic Power maintains that experience gained at Prudhoe Bay, along with rapidly evolving drilling and production techniques, will minimize environmental impacts and surface use in the ANWR. Currently, oil field facilities at Prudhoe Bay have been located and designed to accommodate wildlife and utilize the least amount of tundra surface. In fact, according to Arctic Power, millions of dollars of research on wildlife resources and their habitats on Alaska's North Slope, have shown that wildlife and petroleum development and production can, in fact, coexist.

According to Arctic Power, millions of dollars of research on wildlife resources and their habitats on Alaska's North Slope, have shown that wildlife and petroleum development and production can, in fact, coexist. Each year, Arctic Power maintains, thousands of waterfowl and other birds nest and reproduce around the Prudhoe Bay fields, and a healthy and increasing caribou herd migrates through this area to calve and seek respite from annoying pests. For example, the Central Arctic Herd, which calves in the Prudhoe Bay and Kuparuk oil fields, has increased from 3,000 animals to more than 23,400 animals. Facilities in the Coastal Plain area would also be designed to protect this important species and its habitats.

OPPONENTS' ARGUMENTS

Opponents to drilling argue that intrusion on this ecosystem cannot be justified on any terms. Sarah Wilhoite of Earthjustice, a non-profit environmental law firm, maintains that drilling in the Refuge will not solve the United States' energy problems. "It is not worth damaging America's greatest national wildlife refuge for what the U.S. Geological Survey says would be far less oil than the U.S. consumes in a single year," she said.

Wilhoite argued that it is misleading and untrue to say oil drilling will not harm the environment because the result of developing the Coastal Plain would be "a sprawling industrial complex of drilling sites spread throughout 1 and a half million acres of critical wildlife habitat."

Any industrial complex requires added infrastructure to allow for workers and transportation of oil and gas, Wilhoite noted. "Hundreds of miles of pipelines and roads, airstrips, power lines and pumping stations and housing for workers would be needed, as well as tankers to transport this oil - risking further oil spills in critical habitat," she added.

In addition, the presence of a new field would not lower oil prices. Oil prices are determined by global supply and demand factors, and not the presence or absence of an individual field. Wilhoite maintained that "even the oil companies admit none of the oil would reach the market for 10 years."

Rather, Wilhoite believes that conservation and fuel-efficient alternatives are the answer to energy needs. "Energy experts agree that making cars more fuel-efficient, and investing in renewable forms of energy, are the most effective things the U.S. can do right now to decrease dependence on foreign oil and increase national security," she said. "We should rely less on oil and gas and expand development of alternative forms of energy like wind, solar, and ethanol."

Furthermore, even well-planned and executed oil exploration and development would have significant and lasting impacts on the environment of the Coastal Plain. Wilhoite said that "the harm to wildlife habitat for polar bear, caribou, and millions of migratory birds would be permanent and irreparable."
OTHER POSITIONS

Legal scholars suggest that drilling in the ANWR raises several legal implications with respect to U.S. environmental laws. Specifically implicated are the Endangered Species Act, the National Environmental Policy Act, the Clean Air and Clean Water Acts, and 1964 Wilderness Act. According to Loyola University Chicago School of Law Prof. Allen Shoenberger, these laws will remain in force with respect to the ANWR should drilling begin, "unless the bill enacted eliminates one, several or all of them."

The above-mentioned laws address many environmental issues at stake with the proposed drilling. The Endangered Species Act, 16 U.S.C. §§ 460 et. seq. (1973), was designed to protect species listed by the government, either as endangered or threatened. The Coastal Plain is home to several of these listed species. Under the ESA, actions of the federal government may only be taken in the presence of listed species where those agencies can be sure their actions will not further jeopardize the species. Depending on how and in what areas drilling occurs, the ESA could be a serious hurdle for the drilling industry.

Second, the National Environmental Policy Act, 42 U.S.C. §§ 4321 et. seq. (1969), requires that all agencies of the federal government produce what is known as an environmental impact statement for any "major action" executed or funded by them that will "significantly affect the quality of the human environment." This duty often has the tendency to expand into an enormous analytical burden, and thus could be a potential major obstacle for drilling.

Third, the operations' pollution control technologies will come under the strictest of scrutiny under the Clean Air and Clean Water Acts. The Clean Air Act, 42 U.S.C. §§ 7401 et. seq. (1970), requires that "new sources" to be created in the drilling operations are subject to the most searching "best-available technology" reviews by regulators. Under the Clean Water Act, 91. Stat. 1566 (1977), the same may happen for any discharge of pollutants to waters or wetlands or dredging or, depending on how the operation is built, for any withdrawals of water from local surface water bodies.

Although the Coastal Plain does not enjoy a "wilderness" designation, it is surrounded by the designated "wilderness" of ANWR. As such, the government will have an obligation to tightly confine the effects of drilling. If it fails to meet its obligation, private suits may be brought to force it to do so, as the U.S. Court of Appeals for the Ninth Circuit held in 1981 when it affirmed an Alaska district court's ruling in Trustees for Alaska v. Watt, 690 F.2d 1279 (9th Cir. 1982).

In addition to U.S. environmental laws, some maintain that international agreements might also be implicated and international organizations might try to intervene to protect against potential environmental abuses.

Despite these legal hurdles, "the real action on this issue still rests with Congress," Wilhoite said.

CONCLUSION

It is likely that Congress is a long way from passing any legislation that would allow drilling in the Arctic National Wildlife Refuge. The Senate version of the budget resolution that barely passed in March has not even begun conference with the House version. Although Congress passed a budget in late April, they are still a long way from passing reconciliation to put that budget into practice.