

RSC Outlook: Energy & Natural Resources

February 2009

In response to last year's record high crude oil prices, energy and resources issues dominated much of the debate in the House during the waning summer months of the 110th Congress. In August of last year, House Republicans, led by RSC Members launched a "protest" on the House Floor by refusing to adjourn for the summer recess until Speaker Pelosi allowed debate on a comprehensive "all of the above" energy package.

The American Energy Act (H.R. 6566), introduced by the House Republican Leadership and cosponsored by a large number of RSC Members, would have lowered energy prices by "encouraging more conservation and efficiency, promoting the use of more alternative and renewable fuels, and expanding drilling on remote lands and far off American shores in an environmentally-safe way." House Democrats refused to consider H.R. 6566, and instead proposed legislation (H.R.6899) that contained tax increases, earmarks, and unfunded mandates. Many conservatives argued that the Democrat proposal would not increase our supply of domestic energy.

In light of these facts, the RSC has prepared the following policy brief highlighting a number of Democrat proposals that are likely to be considered over the course of the first several months of the 111th Congress. Many conservatives argue that these policies would make American energy less available, more expensive, and thus less affordable for poor and middle class Americans.

The Outer Continental Shelf (OCS): Last summer, facing record high oil prices, President George W. Bush lifted the presidential moratorium on drilling in the OCS. However, since 1982, a congressional ban also existed on much of the OCS through a rider on the annual Interior appropriations bill. The Continuing Appropriations Act for FY2009, which funds the federal government till March 6th of this year, omitted language that provided for the Congressional OCS moratoria along the Atlantic and Pacific coasts. (The only areas that are still off limits are National Marine Sanctuaries and most of the Eastern Gulf of Mexico.)

After the moratoria expired, the Bush Administration developed a five-year offshore drilling strategy to provide some certainty to the leasing process. The five-year plan is currently under review by the Obama Administration. House Democrats will likely look to severely restrict energy production on the OCS.

Many Republicans have consistently proposed expanding energy exploration and extraction on the OCS, the lands under the waters surrounding the United States (up to 200 miles), most of which have been statutorily off limits to energy development until last year. The Department of the Interior (DOI) released a comprehensive inventory of OCS resources in February of 2006 that estimated reserves of 8.5 billion barrels of oil (replacing Saudi imports for over 20 years) and

29.3 trillion cubic feet (tcf) of natural gas. Another 86 billion barrels of oil and 420 tcf of natural gas are classified as undiscovered resources. Additionally, ICF International conducted a study reporting that responsibly developing reserves in the OCS and Arctic National Wildlife Refuge (ANWR) would “create 160,00 new jobs, generate \$1.7 trillion for local, state and federal tax revenue, and provide a major shot in the arm to a flagging national economy.”

Last year, House Democrats proposed legislation (H.R. 6899) to “open” the OCS, but instead the legislation implemented vast restrictions on the OCS; including a ban on drilling within 50 miles from the coastline, state approval of drilling between 50 and 100 miles, and a patchwork of complicated hurdles in the leasing process. This legislation would not have done much to increase domestic drilling at all. According to Minerals Management Service (MMS) data, 88% of all the oil in the Pacific and Atlantic Oceans lies within 3 to 50 miles of the coastline. In addition, this legislation failed to include language expediting the inevitable lawsuits that would be filed by environmentalist groups once any areas of the OCS were actually opened.

Democrat Inconsistency Alert: The legislation does not allow states to receive revenue shares in any of the newly leased areas. Omitting state revenue-sharing makes it less likely that any state will want to allow such leasing (especially since states like Louisiana currently participate in revenue-sharing for their offshore leases), and thus reduces the likelihood that this legislation would actually bring more American energy onto the market.

Previous Action: On September 26, 2008 the House considered the Comprehensive American Energy Security and Consumer Protection Act (H.R. 6899), also referred to as the “No Energy Bill” by many Republicans. The legislation contained a number of provisions, including the restrictions on OCS drilling. This legislation passed the House 236-189, but the Senate did not take action.

Oil Shale Moratorium: The Energy Policy Act (EPA) of 2005 identified oil shale as a strategically important resource for energy independence and directed the Department of Interior to promote the commercial development of oil shale. Defined simply, oil shale is made up of kerogen deposits that reside within rock formations. A process involving heating the rock formation occurs to extract the matter, which produces synthetic oil that can be used immediately as fuel or refined for other purposes. Since the EPA, the Bureau of Land Management (BLM) has awarded six test leases for oil research, development, and demonstration programs to confirm whether an economically significant shale oil volume can be extracted under current operating conditions. According to the U.S. Department of Interior, the oil shale deposits in Colorado, Utah, and Wyoming (also referred to as the Green River Formation) have the potential of producing 800 billion barrels of oil, which is at least 3 times the volume that Saudi Arabia has in the ground.

During the 110th Congress, House Democrats passed and President Bush signed into law the Energy Independence and Security Act of 2007 (EISA). A provision was included (Sec. 526) that prohibits federal agencies from contracting to buy coal-based fuels, and fuels from coal-to-liquids, oil shale and tar sands. Rep. Waxman (D-CA) included this provision to ensure “federal agencies are not spending taxpayer dollars on new fuel sources that will exacerbate global warming.” In addition to the still-disputed claim that these technologies will increase global CO₂ emissions, Section 526 undermines an Air Force program to fly half of all stateside missions on synthetic-fuel by 2016 to reduce our dependency on foreign oil. In response to this action, former RSC Chairman Jeb Hensarling introduced legislation (H.R. 5656) to repeal section 526 from

federal law. No hearings were held on the bill, but Mr. Hensarling offered H.R. 5656 as an amendment to the FY09 Military Construction and Veterans Affairs Appropriations Act. The Amendment passed the House by voice vote, but failed to become public law.

Later in the 110th Congress, House Democrats also proposed legislation (H.R. 6899) to repeal a Congressional moratorium on oil shale development on federal lands. However, like the OCS provision, it did very little to encourage exploration of oil shale and other synthetic fuels. The legislation would leave oil shale development to each state; however, this undermines shale development because it establishes a patchwork of convoluted regulations. In addition, states would be given no revenue-sharing and no financial incentive to allow drilling; making it less likely that any of them will want to allow such leasing.

The Continuing Appropriations Act for FY 2009, which funds the federal government through March 6th of this year, did allow the moratorium to expire. However, it is likely the 111th Congress will consider legislation to re-impose the moratorium, potentially with provisions similar to H.R. 6899 to falsely convince the American public they are serious about ending our need for foreign oil.

Democrat Inconsistency Alert: The Department of Defense entered into the unconventional fuels program to increase our use of fossil fuels from North America and increase our reliance to fuels imported from the Canadian tar sands. Section 526 bans the U.S Military from purchasing fuels from these tar sands, which currently accounts for shipments of over 1 million barrels per day. Despite claims we need to reduce or dependency on foreign oil, the Waxman provision make us more dependent and does nothing to lower CO2 emissions.

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Cap & Trade: According to media reports, it is highly likely that Chairman Waxman will introduce a climate change bill by Memorial Day. President Obama made addressing climate change one of his top priorities during his campaign. Recently, he proposed a plan that starts with a federal cap and trade system that will reduce emissions to 1990 levels by 2020 and reduce them by another 80% by 2050. Additionally, the plan would invest \$15 billion each year for 10 years to invest in solar power, wind power, and next generation biofuels. The President claimed to be open to “safe nuclear power” as part of this agenda, however, this remains unlikely as many House Democrats stand opposed to nuclear power altogether.

A cap and trade system sets a limit, or cap, on carbon dioxide emissions from fossil fuel use. The effect would amount to rationing emissions from fossil fuels that produce carbon dioxide. Essentially, the federal government would set some sort of cap on total carbon dioxide emissions and establish a yet to be defined carbon allowance on each utility or company (also undefined what companies would be subject to an allowance). Those companies that emit less carbon dioxide than permitted by the allowance may trade credits to other companies that exceed the allowance. Many conservatives commonly call this proposal “cap and tax”.

Cap and trade proposals have existed in concept for almost 40 years, but did not gain serious attention until the Kyoto Treaty was proposed in 1997, which binds most developed nations to a cap and trade system for the six major greenhouse gasses. The United States overwhelmingly refused to ratify the treaty (95-0 [vote](#)) because many in Congress believed it would place us at a severe economic disadvantage for little environmental gain. According to Thomas Wigley, author of "The Kyoto Protocol: CO₂, CH₄ and Climate Implications" (*Geophysical Research Letters*) full implementation would only reduce the Earth's future temperature by an estimated 0.07 degrees Celsius by 2050--an amount too small even to verify.

However, the Obama Administration is intent on passing some form of cap and trade legislation despite the major economic consequences. The last major cap and trade proposal considered in the 110th Congress was the Lieberman-Warner Climate Security Act (S. 2191). According to studies by Charles River Associates, Lieberman-Warner would reduce household spending by \$800 to \$1,300 per household by 2015 and raise utility prices by 36 to 65 percent in that same time frame. Additionally, they estimate S. 2191 would result in the loss of 1.2 to 2.3 million jobs due to the impact of higher energy costs on economic activity.

Democrat Inconsistency Alert: According to the Congressional Budget Office, a 15% reduction in carbon emissions would cost the poorest 20% of the population \$680 in 2006. Mr. Obama's plan is much more ambitious and would certainly cost these individuals much more. At a time when we are spending nearly a trillion dollars "stimulating" the economy to assist lower and middle class Americans, many conservatives may believe that it makes little sense imposing a regressive tax on families trying to pay for heat in the winter.

Previous Action: S. 2191 was considered in the Committee on Environment and Public Works, but never reached the Senate Floor for a vote in the 110th Congress. The Select Committee on Energy Independence and Global Warming had a number of hearings on cap and trade, but no substantive legislation was considered in the House.

Renewable Portfolio Standard (RPS): In the spring, it is anticipated House Democrats will continue to push for an RPS standard of up to 25% by the year 2020. Under a RPS, electric utilities must generate a minimum percentage of output from renewable energy sources. If they fail, they must purchase tradable credits that would offset and equal amount of renewable energy.

President Obama included this policy in his platform and has stated he would like swift action on this proposal. Currently, less than 5% of the nation's electricity comes from renewable sources. This does not include nuclear energy (20% of total supply) or hydroelectric power (7% of total supply), which many conservatives would argue are renewable sources of fuel. The most glaring problem with a mandated one-size-fits-all standard is the obvious absence of the consideration of market forces associated with renewable energy. Additionally, and equally important, is that this will result in much higher electricity costs for consumers – when they can least afford it - in areas where renewable resources are less available and could place new strains on electricity reliability.

Democratic Inconsistency Alert: Just as House Democrats are passing a nearly trillion dollar stimulus to help low-income Americans, they are likely to impose essentially an electricity tax costing billions, with the heaviest burden falling on the poorest Americans and on residents in states without renewable resources.

Previous Action: This provision was contained in consideration of H.R. 6, the Energy Independence and Security Act which passed the House on December 6th 2008, 264 to 163, and became P.L.110-140. However, the RPS provision was not included in the conference report, as regional differences between coal and oil patch Democrats – along with a veto threat from President Bush – derailed efforts to include the RPS in public law.

“Use-It-or-Lose-It”: House Democrats used this term to describe legislation they argued would encourage companies holding oil and gas leases to quickly bring them to development and production. Democrats claimed that 68 million acres of public land is available for immediate drilling, and introduced legislation that would require the Secretary of Interior to identify that a company is “diligently developing” leases. If the Secretary could not confirm, a lease would be revoked.

Unfortunately, the existence of a lease does not guarantee the discovery of any particular quantity of recoverable oil or natural gas. Additionally, these claims do not take into account lands that are under exploration, the environmental permitting process, litigation from environmental organizations, or lands that have been proven to be unviable at current market prices. 68 Million acres may sound like a lot, but almost 658 million acres, or 94% of all federal land, remains off-limits to exploration, according to Investors Business Daily. Additionally, it is unclear why this legislation is even necessary, since those holding oil and gas leases have every incentive to explore and extract as fast as they can (since they are paying fees for the leases, even when they are not producing). It is anticipated that Democrats will likely use this strategy again to try and convince the public that additional leasing on federal land is unnecessary and to increase federal land acquisition or wilderness area designations.

Democrat Inconsistency Alert: 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)). Democrats have done nothing to speed the development of oil and gas leasing (like expediting lawsuits) but under this policy they want to punish companies for not developing leases fast enough.

Previous Action: On June 26, 2008, the House considered the Responsible Federal Oil and Gas Lease Act under suspension of the rules. The legislation failed 223-195 on suspension.

National Petroleum Reserve of Alaska (NPRA): In the 110th Congress, House Democrats consistently pointed to this area of land that lies west of Prudhoe Bay as an acceptable alternative to drilling in the Arctic National Wildlife Refuge (ANWR). Unfortunately, the NPRA is located in one of the most desolate areas in Alaska containing only 440 barrels of oil per acre - compared to ANWR’s 5,475 barrels per acre. Additionally, some NPRA oil and gas fields are more than 250 miles from existing pipeline infrastructure - compared to ANWR’s 75-mile distance to the pipelines. Today, no production exists at the NPRA because of these factors and pending litigation on environment issues. The NPRA is currently not a viable location for increased energy production, let alone an alternative to opening the vast reserves of ANWR. With the Democratic opposition to drilling in ANWR absolute, it is likely they will use the NPRA as an attempt to falsely convince the public drilling in ANWR is unnecessary.

Democrat Inconsistency Alert: Ironically, one of the signature Democrat bills in the 110th Congress dealing with energy (H.R. 6), contained a provision removing certain incentives for energy exploration in NPRA (Sec. 205)

Previous Action: On July 17th, 2008 the House considered passage of the Drill Responsibly in Leased Lands Act (H.R. 6515) under suspension of the rules. The legislation failed by a vote of 244-173.

Strategic Petroleum Reserve: The Strategic Petroleum Reserve (SPR) is a federally maintained petroleum stockpile intended to make up for any shortfall caused by a temporary supply disruption. Facing gasoline prices approaching 4 dollars a gallon, House Democrats passed legislation in May of 2008 to suspend shipments to the SPR for the rest of 2008. With current prices now hovering around 45 dollars a barrel, interest has renewed in refilling the SPR. Before President Bush left office, he issued an order directing a return for relatively small deliveries to the SPR beginning in 2009.

The sharp decline in the price of a barrel of gasoline had nothing to do with the modest release of petroleum over that 7 month period. Releasing reserves from the SPR is not an energy policy and only undermines our commitment to national security. At current capacity, the SPR only holds approximately 58 days worth of supply to replace our imports. While the SPR is not likely to be an issue while oil prices remain below \$100 pp/bl, it will be if prices return to the levels seen in the summer of 2008.

Democrat Inconsistency Alert: The SPR policy is nothing more than Democrats playing politics and attempting to distract voters from their inability to provide voters with a cost effective energy plan that eliminates our addiction to foreign sources of oil. The SPR policy is meaningless considering the fact we have no way of stopping OPEC or other oil producing nations from dropping production by an equivalent—or larger—amount, offsetting any supposed price effects that an SPR drawdown would have. Additionally, Democrats admit with this provision that supply effects price, but continue to oppose attempts to increase supply (ANWR, OCS, ect).

Previous Action: On May 13th, 2008 the House passed the Strategic Petroleum Reserve Fill Suspension and Consumer Protection Act (H.R. 6022), which became Public Law 110-232. Additionally, the House considered, and passed, the Consumer Energy Supply Act (H.R. 6578) on July 24th 2008. This legislation directed the Secretary of Energy to sell 70 million barrels of crude oil.

OPEC Litigation: The 110th Congress also considered legislation that would have permitted the United States to sue the Organization of Petroleum Exporting Countries (OPEC). The Gas Price Relief for the Consumers Act (H.R. 6074) would have placed antitrust violations on foreign states that collectively limit petroleum prices or maintain the price of oil. Additionally, it would not immunize a foreign state “from the jurisdiction or judgments of the courts of the United States”. Proponents of the legislation argued that the bill would help reduce oil prices.

Ironically, this policy was brought up in 1979 and found to be unconstitutional. A California District Court concluded that the United States had no standing to sue the organization because OPEC is not an individual nation, and the U.S. does not participate as a member of OPEC. Perhaps just as interesting is that this ruling was upheld by the liberal 9th Circuit Court of

Appeals. While it would be to our advantage to ensure OPEC is not intentionally manipulating the price oil, litigation will do absolutely nothing to reduce the cost of high oil prices. The most effective way to marginalize the impact of OPEC is to reduce our dependency on them.

Democrat Inconsistency Alert: Democrats in Congress consistently accused Republicans and the Bush Administration of meddling in world affairs, undermining the sovereignty of nations. Placing OPEC under the jurisdiction of the United States judicial system seems to violate the sovereignty of twelve separate nations. Further, they do all they can to stop new production in the U.S. and Canada but want to sue for more production in the Middle East, Africa, and South America. However, they do remain consistent in the fact they believe trial lawyers can solve the world's problems.

Previous Action: On May 20th, 2008 the House passed the Gas Price Relief for Consumers Act (H.R. 6074) under suspension of the rules by a vote of 324 - 84. The Senate did not take action on the bill.

Note: *This document is not intended to be exhaustive of every possible action on energy.*

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