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ATTACHMENT B

file

EXPORT OF ALASKAN OIL

Summary

At the present time the State of Alaska is effectively precluded by law from exporting Alaskan North Slope (ANS) oil. State royalty oil is subject to the same export control laws which govern other Alaskan oil production. If the State were able to acquire Cook Inlet oil (and assuming the correctness of our information that most of that oil does not cross a Mineral Lands Leasing Act (MLLA) §28(u) right-of-way), such oil can be exported on the basis of the President's Energy Policy and Conservation Act (EPCA) §103(b) finding that the export would be consistent with the national interest and consistent with the purposes of the EPCA. However, it first would be necessary to amend the Commerce Department's "Short Supply Control" regulations to allow such exports.

Statutory and Regulatory Background on Export of Alaskan Oil

There are several statutory provisions which may restrict the exportation of Alaskan crude oil, depending on the origin of the oil and whether it is transported by pipeline over certain Federal rights-of-way:

1. Section 7(d) of the Export Administration Act (EAA), as amended by the Trans-Alaska Pipeline Authorization Act (TAP Act), essentially forbids the export of ANS crude oil transported through the Trans-Alaskan Pipeline unless the President finds that within three months an equal amount of imports received in exchange for the ANS oil will lower U.S. refiner acquisition costs, and 75 percent of those savings will be reflected in wholesale and retail prices of the resulting products. Also, the statute provides that the President must report his findings to the Congress, and within 60 days Congress must pass a concurrent resolution of approval.

2. Section 203(c) of the TAP Act has the effect of making §28(u) of the MLLA applicable to ANS oil, subjecting it to the EAA's requirements and necessitating a Presidential finding that the exports will not diminish the total quantity or quality of oil available to the U.S. and are in the national interest. The statute provides that the President must report his findings to Congress; if within 60 days Congress passes a concurrent resolution of disapproval, further exports are prohibited.

3. Section 103(b) of the EPCA requires the President to promulgate an export control regulation, under which he may permit crude oil exports if he determines that such exports are consistent with the national interest and with the purposes of the EPCA.

4. Finally, under the Outer Continental Shelf Lands Act, any oil produced from the OCS may be exported only on the basis of a published Presidential finding that such exports will not increase reliance on imported oil or gas, are in the national interest, and are in accord with the EAA.

The first two of these provisions involve Congressional approval or veto provisions which are affected by the Supreme Court's recent decision in I.N.S. v. Chadha, holding unconstitutional a one-House veto.

The effect of the Chadha decision on MLLA §28(u) would appear to be that the objectionable Congressional review provision does not affect the remainder of §28(u), which can be read as surviving intact, so that the Presidential finding would not be subject to a resolution of disapproval. However, the language of EAA §7(d) and its legislative history raise the possibility that the Congressional review provision of that section cannot be severed from the statute's language authorizing export of Alaskan oil on the basis of the President's finding; in that case, Chadha has the effect of turning §7(d) into an absolute prohibition on export of ANS oil. Of course, this is conjectural, and at this point it cannot be stated definitively what effect Chadha has had on permitting exports of Alaskan oil.

In addition to these statutory provisions, the Commerce Department has adopted "Short Supply Control" regulations under the EAA. These regulations impose strict limits on the export of any crude oil, but the EAA allows them to be amended without following the procedures prescribed in the Administrative Procedure Act.

Discussion

The State of Alaska receives royalties both on ANS crude oil and on a smaller volume of non-ANS production (principally Cook Inlet). The State might try to swap ANS for Cook Inlet production, and export the latter. At present, however, the export of ANS oil by the State is effectively precluded by EAA §7(d).

Cook Inlet production, approximately 70,000 bpd, is not subject to EAA §7(d) because that oil is not transported through the Trans-Alaska Pipeline, nor is it subject to the OCS Act export restrictions. Whether such production is subject to MLLA §28(u) depends on whether the oil transits a §28(u) pipeline; reportedly, most of it does not, but this must be verified. The EPCA's required finding is not viewed as a serious obstacle to export, if the policy decision is in favor of export. Therefore, it appears that the export of Cook Inlet oil is not prohibited by statute, and could be accomplished on the basis of amendments to the Commerce Department's regulations. This possibility has not yet been discussed with the Commerce Department; among other things, it remains to determine whether an environmental impact statement or environmental assessment would be necessary in this connection, although the former seems quite unlikely.

Also, while the focus here is on the legal issues concerning export, it should be noted that the current producers and refiners of this oil may not be anxious to release it for export. This production is a very sweet, low sulfur crude (35 degrees API, 0.1 percent sulfur). Union is refining about 30,000 bpd in San Francisco for lube oils and waxes, and a major retrofit would be necessary to substitute ANS crude. Tesoro uses the other 40,000 at their Nikiski refinery and is planning a switch to ANS crude, pending negotiations with the State of Alaska for royalty oil; but this is planned over a period of two years and some retrofit of the refinery also is needed.