

October 1, 2008

Congress Allows Moratorium on Offshore Drilling to Expire

Today, the 26-year old congressional moratorium on oil and gas exploration and production activities in certain Outer Continental Shelf (“OCS”) areas expired. Through the annual appropriations process, Congress has restricted such activities in approximately 85% of the OCS, including off the Atlantic and Pacific coasts as well as a small portion of the eastern Gulf of Mexico. This year, however, in the face of growing public support for OCS oil and gas development, Congress did not include the leasing prohibition in legislation funding federal government agencies and programs beyond September 30, 2008, the end of the fiscal year. The expiration of the congressional moratorium, coupled with President Bush’s July 2008 decision to lift the Executive Withdrawal on oil and gas leasing operations on the OCS, marks a dramatic shift in the United States’ domestic energy policy with regard to production. Despite the expiration of the moratorium, however, certain members of Congress have vowed to revisit this issue again next year.

Background on OCS Moratorium

In 1982, as part of the funding bill for the Department of the Interior, Congress imposed a moratorium on oil and gas leasing for 736,000 acres offshore California. Over the course of the next decade, Congress on several occasions expanded the moratorium to include virtually all OCS acreage off the Atlantic and Pacific coasts. In 1990, President George H. W. Bush issued a Presidential Directive that enacted a blanket moratorium until 2000 on a significant portion of the OCS acreage subject to the congressional moratorium. Separate and apart from the congressional moratorium, the Executive Withdrawal served to independently limit offshore development. In 1998, President Clinton extended the Executive Withdrawal through 2012. On July 14, 2008, however, President Bush lifted the OCS Executive Withdrawal. Shortly thereafter, the Minerals Management Service (“MMS”) issued a Request for Comments on the preparation of a new 5-year OCS leasing program to cover 2010 through 2015. The current plan started in 2007 and ends in 2012.

The MMS estimates that about 17.84 billion barrels of oil and 76.46 trillion cubic feet of natural gas are technically recoverable in areas that were subject to the moratorium. These numbers, however, are generally viewed as conservative given that little offshore exploration has taken place in these areas for more than 20 years.

Expiration of the Congressional Moratorium

With the beginning of fiscal year 2009 for the federal government, the congressional moratorium has expired. As discussed above, this is a result of Congress not explicitly prohibiting funding for pre-leasing and leasing activities in these areas. In the wake of President Bush’s decision to lift the Executive Withdrawal, the congressional moratorium was the primary obstacle to the development of a vast majority of OCS lands. For the time being, that obstacle has been removed. As part of a separate statutory ban, a significant portion of the eastern Gulf of Mexico will not be available for leasing until 2022.

Because the MMS does not expect the entire leasing process, including the holding of lease sales, to be completed for several years, members of Congress opposed to expanded OCS development will have an opportunity to revisit the issue. Congress’ ability to reinstate the moratorium could also be dependent on the policies of the next administration. Because there appears to be greater support for some level of

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offshore oil and gas development in these previously off-limit areas, it is unlikely, but not impossible, that the congressional moratorium could be reinstated. The more likely scenario is that Congress could make adjustments to the Outer Continental Shelf Lands Act (“OCSLA”) or other applicable laws to either limit offshore development or use royalty revenues to fund renewable energy or conservation programs.

Proposed New MMS 5-Year Leasing Program (2010 - 2015)

On August 1, 2008, the MMS initiated the development of a new 5-year leasing program through the issuance of a Request for Comments. Given President Bush’s lifting of the Executive Withdrawal, the MMS included areas of the OCS in its leasing program that were previously off-limits, despite the fact that Congress’ moratorium was still in place. Interior Secretary Kempthorne noted that this action could give the next administration a two-year head start in expanding energy production from federal offshore jurisdictions that were, at the time, off-limits. The current leasing program took effect on July 1, 2007, at a time when the price of a barrel of oil was about \$64. This program will expire in 2012. The 5-year program process enables the federal government, states, industry, and other interested parties to plan for steps proposed to lead to OCS oil and gas lease sales. The comment period for the Request has ended. After reviewing the comments, MMS will prepare a draft proposed program for further public comment. The next administration will have the opportunity to proceed with the new proposed plan or stop the process and reinstate the Executive Withdrawal. Again, this will be determined by the next president’s approach to offshore oil and gas development.



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