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Why Californians Should Oppose the Energy Bill

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FACT SHEET

Why Californians Should Oppose the Energy Bill

The Energy bill provides plenty of reasons for opposition. It tramples states rights, punches holes in the Clean Water Act and Safe Drinking Water Act, gives away billions of dollars in special interest pork, and establishes massive pro-pollution subsidies and incentives. It does all this while doing nothing to address the nation's dependence on oil or the threat of climate change.

Californians, in particular, appear to be targeted by this bill. The energy bill lays the groundwork for drilling off the California coast. In fact, one provision would authorize the federal government to issue easements for activities supporting oil exploration and development off the California coast. The bill tilts management of public lands in California toward energy production. The bill requires Californians to provide hundreds of millions of dollars in subsidies to ethanol producers in the Midwest each year. It shields oil companies from liability for having to clean up California groundwater that they are responsible for contaminating. It slants the relicensing of hydroelectric projects in California towards the energy industry by excluding the state, cities, businesses, and Indian tribes from participation in the new relicensing process. And the bill fails to address any of the Enron-style market manipulations that cost California consumers billions of dollars.

The following is a more detailed explanation of some of the reasons Californians should oppose this energy bill.

The Energy Bill Protects MTBE Producers from Liability for Groundwater Contamination

House Energy and Commerce Committee Chairman Billy Tauzin has vowed that the final energy bill will contain a provision that provides liability protection for the producers of the gasoline additive methyl tertiary butyl ether (MTBE). MTBE has been linked to contaminated groundwater supplies throughout the country, and it will cost billions of dollars to clean it up. California has been affected more than any other state. For example, in Santa Monica, 75% of the drinking-water wells are now unusable because of MTBE contamination; in South Lake Tahoe, one-third of the city's 34 drinking water wells have been shut down because of MTBE contamination; and in Los Angeles, San Francisco, Santa Clara Valley, and Sacramento, numerous wells are affected by MTBE.

The form of liability that the bill would remove is precisely the form of liability that has successfully triggered a cleanup of the contamination in South Lake Tahoe. The MTBE liability waiver gives MTBE producers an escape from their financial and cleanup responsibilities, and instead imposes these burdens on taxpayers and local communities. For these reasons it is opposed by the National League of Cities, the U.S. Conference of Mayors, and other state and local officials throughout the country.[1]

The Energy Bill Requires California Motorists to Provide Hundreds of Millions of Dollars in Subsidies to Midwest Ethanol Producers

The energy bill will contain a requirement that a portion of the price of every gallon of gasoline sold in California will go to ethanol producers, which are located overwhelmingly in the Midwest. California motorists will pay for this ethanol even though in most cases the ethanol will not actually be in the gasoline they purchase. According to the American Petroleum Institute, at full implementation of the program, California would be required to purchase 556 million gallons of ethanol each year, at a cost of hundreds of millions of dollars, even if the state only used a fraction of that amount. The ethanol that California purchased but did not use would likely be used in the Midwest states.

The Energy Bill Tilts Management of 15.1 Million Acres of BLM Land in California toward Energy Production

Sec. 349 removes the discretion of the Secretary of Interior to deny applications to drill on public lands. While the text is ambiguous, this provision may also apply to national forests. Since the establishment of the BLM, the Department of the Interior has managed BLM land for many uses, including recreation and wildlife protection. Upon receiving an application for a permit to drill, sec. 349 allows the Secretary just 30 days to determine if any additional information is necessary in order to grant the permit to drill. Once the applicant provides this information, the Secretary is required to approve the application regardless of whether or not the application is inherently flawed. For example, a well may be sited near sensitive areas like streams or steep slopes, where drilling would have impacts that could not be mitigated. This section was in neither the House- nor the Senate-passed energy bills.

The Energy Bill Exempts the Construction of Facilities for Oil and Gas Exploration and Production from the Clean Water Act

Sec. 328 exempts the construction of facilities for oil and gas exploration and production from the Clean Water Act. The effects in California could be significant. There were over 100 applications for permits to drill and almost 100 new wells in California in 2002. Over 70,000 acres of BLM land alone in California is in producing status.[2] Oil and gas development also occurs on other federal lands, such as National Forests, state lands, and private lands.

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[1] Letter from National League of Cities, The U.S. Conference of Mayors, Association of Metropolitan Water Agencies, American Water Works Association, Association of California Water Agencies, National Association of Water Companies, and National Rural Water Association to Senator Daschle (Oct. 17, 2003).

[2] BLM, *Public Rewards from Public Lands* (Fiscal Year 2002).

The Energy Bill Opens the Outer Continental Shelf to Development Without Even Providing for Consultation with California

Section 321 would grant very broad authority to the Interior Department to allow activities on the Outer Continental Shelf (OCS) that support energy exploration, production, transportation, or storage. These activities could be authorized even within areas currently protected by congressional oil and gas leasing and development moratoria. This section contains no standards for issuing or revoking easements; does not require consultation with or concurrence of the Secretary of Commerce, which has jurisdiction over the living marine resources of the OCS that could be affected by these activities; and would permit industrial energy facility construction virtually anywhere on the OCS, with few exceptions. This provision does not require Interior to consult with California prior to issuing an easement, let alone involve California in the decision making process.

The Energy Bill Undercuts California's Role in Decisions That Affect Its Coast

Section 325 undercuts the central tenet of the Coastal Zone Management Act (CZMA) — that states have a right to object to federal activities that adversely affect their coastal zones. The bill would impose unreasonable deadlines on the Secretary of Commerce in ruling on appeals filed against a coastal state's determination that a particular OCS activity is not consistent with that state's coastal zone management program. Such appeals often pose difficult and challenging issues of fact, law, and policy, and the time required to review and analyze them carefully should not be subject to arbitrary and inflexible deadlines. Although there was a bipartisan agreement that addressed this issue in the House, the agreement was discarded in favor of this new provision, which was not passed by either house of Congress. According the California Coastal Commission:

> This provision would severely restrict the ability of coastal states to exercise their right to protect coastal resources pursuant to the federal consistency review provisions of the CZMA that have been in law for more than thirty years. Section 325 would eliminate meaningful state participation in the appeal to the Secretary of Commerce of consistency decisions relative to OCS oil drilling and other federal activities by imposing unreasonable and unworkable time limitations for the processing of the appeal.[3]

The Energy Bill Designates Rights-of-Way for Pipelines and Transmission Lines across National Forests and Other Public Lands

Section 351 requires the Secretaries of Interior and Agriculture and other federal agencies to designate new rights-of-way across federal lands in a process that would trump traditional land management planning and environmental reviews. While the federal officials must consult with utility industries, they are not directed to involve the state government, local governments, nearby communities, or the public in this process. Once the corridors are established, the federal agencies, in consultation with utility industries, must establish procedures to expedite applications to construct oil and gas pipelines and electricity transmission lines in these

[3] Letter to Senator Pete Domenici from Mike Reilly, Chair, California Coastal Commission (Oct. 1, 2003).

corridors. As there are almost 45 million acres of federal lands in California, this provision could have effects throughout the state.

The Energy Bill Excludes California Citizens, Farmers, Small Businesses, the State, and Indian Tribes from a New Process for Hydroelectric Relicensing

California has the largest number of FERC-regulated hydroelectric projects in the country. Over 300 dams in California are regulated by FERC. The hydroelectric title of the energy bill will exclude all stakeholders from a new relicensing process except the energy companies that own the hydroelectric projects. In this new process, the energy companies will be allowed to suggest alternatives to relicensing requirements and will be able to pursue them through a "trial-type" process that only they can use. The potential losers are anyone that uses the water, such as municipalities or farmers, the recreation industry (fishing, whitewater), Indian tribes, and the environment. The effects to California of this provision could be substantial. Approximately 70 dams are currently being relicensed and an additional 150 dams will undergo relicensing in the next 10 to 15 years.

The Energy Bill Mandates Approval of a Transmission Line That Is Neither Necessary Nor Cost-Effective in the Cleveland National Forest

Section 354 requires the Department of Interior and Department of Agriculture to issue all "grants, easements, permits, plan amendments, and other approvals" to allow for the siting and construction of a transmission line through the Trabuco Ranger District of the Cleveland National Forest in Southern California. This congressional approval is not contingent on any reviews regarding the need for the project or the environmental impacts of the project. San Diego Gas and Electric has already attempted to get this project approved by the California Public Utilities Commission (CPUC). The CPUC denied the project because it was unnecessary and not cost-effective to ratepayers. In its decision, the CPUC stated:

> The evidence shows that SDG&E will continue to meet the reliability criteria until at least 2008, even under the conservative planning assumptions utilized in today's analysis. Therefore, the proposed project is not needed for reliability purposes.
>
> Because the proposed project cannot be justified on the basis of reliability, the Commission evaluated whether the proposed Valley-Rainbow Project would provide positive economic benefits to SDG&E ratepayers and California generally. The evidence shows that the proposed project is not cost-effective to ratepayers except under the extreme assumptions that six consecutive years of 1-in-35 year drought conditions occur, all new generation available to serve California is located in San Diego or northern Baja California, Mexico, and a major transmission project (Path 15) is constructed in Northern California. Under all other assumptions, the projected costs exceed the projected benefits, thus the proposed project cannot be justified on economic grounds.[4]

San Diego Gas and Electric appealed this decision, but its appeal was denied.[5]

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[4] CPUC Decision 02-12-066, *Opinion on the Need for Additional Transmission Capacity to Serve the San Diego Gas and Electric Company Service Territory* (Oct. 21, 2002).

The Energy Bill Fails to Address the Market Manipulation That Occurred in Western Energy Markets

Republican energy staff have repeatedly made it clear that there is no interest in strengthening the law to prevent the kinds of rampant market manipulation that occurred in 2000 and 2001 in California and other Western states. Although Enron's manipulations are the most well-publicized, FERC and California have documented that other companies, such as Reliant, also blatantly worked to price-gouge consumers. By conservative estimates, California lost over $9 billion to market manipulation. Although 193 members supported the Dingell electricity amendment, which would have prohibited Enron-style market manipulation,[6] the Republicans have been unwilling to include any meaningful protections.

The Energy Bill Limits Competitive Liquefied Natural Gas (LNG) Imports into California

Due in part to illegal activities by El Paso Natural Gas, which limited competition in California's natural gas market, California endured record-high natural gas prices in 2000 and 2001. These prices in turn drove up the price of electricity from natural gas–fired electricity generation plants, costing Californians billions. Several LNG facilities are currently in the permitting process in California to allow LNG to be imported from abroad. These facilities should help meet natural gas demands in the state while preventing California from being so dependent on one source of gas and avoiding price gouging in the future. Sec. 320 restrains the authority of FERC to require these facilities to be "common carriers," thus allowing the builder of the facility to have a monopoly on any LNG supplies imported.

The Energy Bill Guts California's Ability to Review Natural Gas and LNG Pipeline Proposals Approved by Federal Regulators

Under the Coastal Zone Management Act, California has the right to review natural gas and LNG pipeline proposals. If the state finds that the proposal is not in the best overall interests of the state, it can reject it. This decision can then be appealed to the Secretary of Commerce, who reviews the entire record — both the federal approval and the state's rejection — in deciding the appeal. However, if Sec. 330 is enacted, the only information that would go to the Secretary would be that compiled by federal regulators, which is essentially the information supporting their approval of the project. Information supporting California's rejection will <u>not</u> be part of the appeal record. The Secretary's decision would be made from a limited record, skewed toward development and away from coastal protection.

This provision is completely unnecessary. Since enactment of the CZMA, thousands of these types of projects have been reviewed. Yet only 15 projects have resulted in appeals to the Secretary. Seven appealed decisions supported the states' position, seven supported industry, and one was worked out to the satisfaction of all parties.[7]

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[5] CPUC Decision 03-06-030, *Order Denying Request to Modify* (June 9, 2003).

[6] Dingell Amendment, H.R. 6, Roll Call No. 133 (Apr. 10, 2003).

[7] Department of Commerce, Advanced Notice of Proposed Rulemaking , *Procedural Changes to the Federal Consistency Process*, 67 Federal Register 44409 (July 2, 2002).

The Energy Bill Requires the Department of Energy to Examine the Feasibility of Building New Nuclear Reactors at DOE Sites in California

Section 630 requires the Department of Energy to examine the "feasibility of developing commercial nuclear energy generation facilities at Department of Energy sites in existence on the date of enactment of this Act." The term "Department of Energy sites" is undefined in the legislation, but DOE has a number of presences in California. For example, Lawrence Berkeley National Lab (Berkeley, CA) and Lawrence Livermore National Lab (Livermore, CA) are both DOE labs. The Western Area Power Administration (Folsom, CA) is a self-contained entity within the Department of Energy, much like a wholly owned subsidiary of a corporation. The Western Area Power Administration also owns shares of major transmission lines in California.

Requires an Inventory of Oil and Gas Resources off the California Coast

Section 334 includes a provision that was unanimously repudiated by the House and not included in the Senate bill. It requires the Interior Department to inventory the oil and gas resources of the entire Outer Continental Shelf (OCS), including the protected moratorium areas, and requires that the Secretary report to Congress on impediments to the development of OCS oil and gas, including moratoria, lease terms and conditions, operational stipulations, approval delays by the federal government and coastal states, and local zoning restrictions for onshore processing facilities and pipeline landings. This section provides a foundation for an attack on the moratoria, as well as on the rights of coastal states and local governments to have a say in offshore development and related onshore industrial development. This section conflicts with the OCS protections initiated by President George H.W. Bush in 1991 and extended by President Clinton, as well as with the bipartisan congressional moratorium that has been in place for more than two decades. This section was eliminated from the House bill by the adoption of the Capps amendment on the House floor. At the time, both Chairman Pombo and Chairman Tauzin committed not to reinsert the language in conference. This provision was not in the final Senate bill either. It is unclear whether it will be in the final bill.

In opposing the provision the California Coastal Commission has stated:

> The provision seriously undermines the longstanding bipartisan legislative moratorium on new mineral leasing activity on submerged lands of the OCS that has been included in every Appropriations bill for more than twenty years. Moreover, the Section 334 would allow for the use of 3-D seismic technology that has been found to have adverse affects on marine mammals, as well as threaten the viability of commercial fishing. The effect of Section 334 is to weaken the prohibitions on development off the California coast that were first put in place in 1990 through executive order by President George H. W. Bush and then extended to the year 2012 by President Bill Clinton.[8]

[8] Letter to Senator Pete Domenici, *supra* note 3.