Note: Outer Continental Shelf Oil and Gas Pipeline Regulation: Federal and State Interaction

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I. Introduction

A. *Overview*

The coastal regions and the Continental Shelf of the United States are unique, fragile environments that contain a variety of resources, both living and non-living. Outside of fisheries and other living resources, the Outer Continental Shelf (OCS) has vast reserves of natural resources. Recent estimates show at least half as much oil and a third as much natural gas as the entire United States onshore reserves.[1] Recent advances in technology allow for possible exploration and discovery at greater ocean depths,[2] which make it possible to place offshore facilities further from adjacent shorelines. As a consequence, meeting the transportation needs of the offshore development facilities will become more complex as the search for oil and natural gas takes place in deeper waters further out to sea.

This paper will address the evolving state of the law concerning regulation of oil and gas pipeline transportation in the OCS and coastal areas. The statutes and regulations controlling the lease for exploration and development of OCS areas must be examined. A discussion of rates, ratemaking and accounting will not appear here, but emphasis will be placed upon examining the interaction between federal, state and local regulations that determine the location, placement, and control of energy facilities, especially oil and gas pipelines, in the OCS. Emphasis will also be placed upon locating points of overlap between the regulating governmental agencies, and their effect on national energy and environmental policy.

B. *Assumptions*

Several assumptions must be made at this point. First, oil or gas produced in a federal OCS lease area that is pumped through a state OCS area is transported in interstate commerce. From a practical business standpoint and from case analyses, this appears to be a safe assumption. Second, the recent nature of several major statutes and their state counterparts leaves the total impact of such statutes rather uncertain. For exam-

1. Oil: 54.6 Billion Barrels Onshore, 28 Billion Barrels Offshore. Gas: 93.6 Trillion Cubic Feet Onshore, 39.4 Trillion Cubic Feet Offshore. U.S. Department of the Interior, Geological Survey Circular 860, Estimates of Undiscovered Recoverable Conventional Resources of Oil and Gas in the United States 22-23.

2. *Id.* at 7.

ple, the Coastal Zone Management Act (CZMA)[3] has specific provisions allowing states to develop and implement their own local land use plans in coastal areas. Only now are cases emerging that afford solid precedent. Third, this type of regulatory system, affording much public input, can engender litigation. The effects of possible litigation, while not the major focus of this paper, must always be considered. Fourth, much variation exists in state statutes affecting the OCS. Issues of high visibility or importance in one state, reflected in that state's statutes, are often times not addressed in another state's statutes. For example, air quality issues may be hotly debated in California, but of little importance in Alaska.

Finally, overland pipeline routes for oil and gas and the associated regulatory problems are not discussed here. One cannot assume that the same issues are present nor that locating such pipelines is without regulatory difficulty.

II. STATUTES

A. *OUTER CONTINENTAL SHELF LANDS ACT/SUBMERGED LANDS ACT*

1. *JURISDICTION*

The Submerged Lands Act (SLA)[4] and the Outer Continental Shelf Lands Act (OCSLA)[5] effectively divide the OCS area between the federal and state governments. From the low water mark of a coastal state to a distance of three miles, that state has exclusive jurisdiction, control and ownership of the submerged lands.[6] The OCS areas past the three mile limit are under the exclusive control of the federal government's ownership, control and regulatory process over that area.[7] Boundary disputes still occur between the state and federal governments,[8] making location and subsequent regulation of pipelines an unclear task. Finally, where a boundary dispute occurs or an oil field crosses the federal/state boundary, provisions exist for cooperative agreements and joint sales between the federal and state governments,[9] which allows lease sales, exploration and development to go forward.

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3. 16 U.S.C. §§ 1451-1464 (1976 & Supp. V 1981).

4. 43 U.S.C. §§ 1301-1342 (1976 & Supp. IV 1980).

5. 43 U.S.C. § 1331 (1976 & Supp. IV 1980).

6. 43 U.S.C. § 1312 (1976).

7. O.C.S.L.A. Amendments of 1978, Pub. L. No. 95-372, 92 Stat. 632 (codified at 43 U.S.C. §§ 1331-1343) (1976 & Supp. IV 1980).

8. U.S. v. Louisiana, 363 U.S. 1 (1960); U.S. v. California, 381 U.S. 139 (1965); U.S. v. Louisiana, 394 U.S. 11 (1969); U.S. v. Maine, 420 U.S. 515 (1975); U.S. v. Louisiana, 446 U.S. 253 (1980).

9. 43 U.S.C. §§ 1345, 1337(g) (Supp. IV 1980).

2. Lease Programs, Structure and Public Input

The OCSLA provides the framework for five year OCS lease sales programs under the Department of Interior. The statute sets out principles that govern the five year program,[10] and no lease may be issued unless it is included in the approved leasing program.[11] Public notice and participation are provided for,[12] and the states have an opportunity to review the proposed five year program.[13] Finally, Congress has an opportunity for review, but no congressional approval of the program is needed.[14]

3. Exploration

Pre-sale exploration can occur in OCS areas, but the Secretary of the Interior can inspect or use any of the information gathered.[15] Pre-sale exploratory wells can be drilled after the requisite permits are obtained.[16] After specific OCS tracts are nominated,[17] but before selections for sale have been made,[18] tract information for nominated areas within the three mile limit of any state must be provided to that affected state.[19]

4. Environmental Studies

An environmental analysis is prepared pursuant to the National Environmental Policy Act (NEPA)[20] and a separate environmental evaluation by the Director of the Bureau of Land Management (BLM) then occurs.[21] The final nomination of tracts is made by the Secretary of the Interior after recommendations from the Director of the BLM.[22]

5. The Sale

A proposed notice of sale and a final notice are given[23] that contain information to the bidders, including bidding procedures.[24] The lease sale

10. 43 U.S.C. § 1344 (Supp. IV 1980).
11. 43 U.S.C. § 1344(d)(3) (Supp. IV 1980).
12. 43 U.S.C. § 1344(c) (Supp. IV 1980); 43 C.F.R. § 1310.1(a) (1981).
13. 43 U.S.C. § 1344(c)(2) (Supp. IV 1980); 43 C.F.R. § 3310.2 (1981).
14. 43 U.S.C. § 1344(d)(2) (Supp. IV 1980).
15. 43 U.S.C. § 1352 (Supp. IV 1980); *see also* Geophysical Corp. of Ala. v. Andrus, 453 F. Supp. 361 (1978).
16. 30 C.F.R. §§ 251.4, 251.61, 251.62 (1982).
17. 43 C.F.R. §§ 3312.1, 3314.1 (1981).
18. 43 C.F.R. § 3314.1 (1981).
19. 43 U.S.C. § 1337(g)(1) (Supp. IV 1980); 30 C.F.R. § 250.4 (1982).
20. 42 U.S.C. §§ 4321-4361 (1976), *pursuant to* 43 U.S.C. § 1344(b)(3) (Supp. IV 1980).
21. 43 C.F.R. § 1331.1(b) (1981).
22. 43 C.F.R. § 3314.1(b) (1981).
23. 43 C.F.R. §§ 3315.1(a), 3315.3 (1981).
24. 43 C.F.R. § 3315.4(a) (1981).

then occurs[25] where the lease is awarded to the highest bidder.[26] Bids may be disqualified or rejected,[27] and the Attorney General reviews each sale for anti-trust violations.[28]

6. Terms

The lease term is usually for 10 years,[29] but lease activities can be suspended for indefinite periods.[30] Once a lease is issued an exploration plan must be submitted to the United States Geological Survey (USGS).[31] This plan must detail the activities undertaken, describe the installations and equipment to be used, locate each well and provide current structure maps.[32] Each plan is reviewed by the Director of the USGS for severe environmental impacts[33] and, again, an Environmental Impact Statement (EIS) might be prepared.[34]

7. Discovery

Once a discovery has been made, a development/production plan must be submitted to the USGS[35] which is reviewed for environmental impacts[36] to determine if another EIS has to be prepared.[37] Each plan must specify the activities to be undertaken, the equipment to be used, the location of all facilities and schedules for development.[38]

8. Other Controls

A. Minerals Management Service

The Director or the Deputy Director of the Minerals Management Service (MMS)[39] has the authority to promulgate operating orders for OCS re-

25. 43 U.S.C. § 1337 (Supp. IV 1980).
26. 43 C.F.R. § 3316.1(a) (1981).
27. 43 C.F.R. § 3316.3-4 (1981).
28. U.S.C. § 1337(c) (Supp. IV 1980); 43 C.F.R. § 3316.5(d) (1981).
29. Unless the conditions found at 43 C.F.R. § 3316 (1981) are met.
30. 30 C.F.R. § 250.12 (1982).
31. In the past, exploration plans were submitted to the U.S.G.S. Presently, they are submitted to the Minerals Management Division, which replaced the Conservation Division of the U.S.G.S., *pursuant to* Sec. Order No. 3071 (1982).
32. 30 C.F.R. § 250.34-1 (1982).
33. 30 C.F.R. § 250.34-3 (1982).
34. 30 C.F.R. § 250.34-4 (1982).
35. 43 U.S.C. § 1351 (Supp. IV 1980); 30 C.F.R. § 250.34-2 (1982).
36. 30 C.F.R. § 250.34-3 (1982).
37. 30 C.F.R. § 250.34-4 (1982).
38. 30 C.F.R. § 250.34-2(a)(1)(i) to -2(a)(1)(vii) (1982).
39. *Supra* note 31.

gions.[40] These orders regulate the operation of activities in the OCS areas.

B. Corps of Engineers

The power to prevent obstructions to navigable waters is vested with the Army Corps of Engineers (COE).[41] Pipelines, pumping stations and storage facilities located in navigable waters will need COE permits before construction. However, the status of a certain structure as a hazard or obstruction to navigation is uncertain.

C. Federal Water Pollution Control Act

Finally, under the Federal Water Pollution Control Act, any discharge of pollution, without compliance with the Act, is illegal.[42] Compliance entails permits when the discharge is intentional and controlled. If oil were to spill accidentally, this would be an illegal discharge under the Act.

B. Coastal Zone Management Act

The Coastal Zone Management Act (CZMA)[43] provides for the transfer of authority to the states for land use decisions that will affect their coastal areas. The federal government provides grants to the states so each may develop its own coastal management plan.[44] The Secretary of Commerce approves the plan[45] after certain criteria are met.[46]

1. Amendments

The purpose of the CZMA was to encourage comprehensive state and local planning when managing coastal resources, in cooperation with the federal government. Prior to 1980, the main focus of the CZMA was to afford the states the authority and flexibility to regulate their unique coastlines, with federal assistance and cooperation.[47] With the passage of amendments in 1980, the goals of the CZMA changed from an environmentally protectionistic to a developmental point of view.[48] Most likely in response to the 1973-1974 Arab Oil Embargo and the corresponding high prices of oil and gas, Congress recognized the "national objective of attain-

40. 43 U.S.C. § 1344 (Supp. IV 1980); 43 C.F.R. § 250.11 (1981).
41. 33 U.S.C. § 1344 (Supp. V 1981); 43 U.S.C. § 1333(e) (Supp. IV 1980).
42. Act of June 30, 1948, ch. 758, 62 Stat. 1155 (codified as amended at 33 U.S.C. §§ 1251-1376 (1976 & Supp. V 1981), 33 U.S.C. § 1311(a) (1976)).
43. 16 U.S.C. § 1451-1464 (1976 & Supp. V 1981).
44. 16 U.S.C. §§ 1454-1455 (1976 & Supp. V 1981).
45. 16 U.S.C. § 1456 (1976 & Supp. V 1981).
46. 16 U.S.C. § 1455(c)(1)-(c)(9) (1976).
47. 16 U.S.C. § 1452 (Supp. V 1981).
48. Act of Oct. 17, 1980, Pub. L. No. 96-464, 94 Stat. 2060 (codified at 16 U.S.C. §§ 1451-1464 (Supp. V 1981)).

ing a greater degree of energy self-sufficiency."[49] Therefore, Congress responded to the changing times and amended the CZMA in 1980. However, these amendments left an inherent conflict of goals in the CZMA.

2. *Certification*

Separate from the coastal state's own plan are the activities carried out in the federal OCS areas. Four types of activities in the OCS are required to be certified by the state to ensure the activity will be consistent with the state's coastal zone management plan. First, activities supported or conducted by federal agencies that directly affect the coastal area need certification.[50] Second, any federal agency undertaking any development project in the coastal zone of a state must be certified.[51] Third, private activities which affect the land or water uses in the coastal zone and require a federal license or permit mandate consistency certification.[52] Fourth, federally assisted activities of a state or local government which affect a coastal zone are required to be certified.[53] The OCSLA makes this consistency certification a prerequisite to gaining the federal license or permit necessary for development activities,[54] as does the CZMA.[55]

3. *Diversity*

Each coastal state has the option to develop its own Coastal Zone Plan (CZP). The result is that a wide variety of regulatory structures are emerging. Implementation and enforcement are left to state mechanisms as well as the determination of local standards. Each state also allows for local participation in varying degrees. For example, the Alaska Coastal Management Plan creates an Alaskan Coastal Policy Council[56] that affords local boroughs and municipalities a fair amount of control over standards and enforcement.[57] The Washington state program, called the Shoreline Management Act of 1971, sets up timetables for local governments to complete their shoreline inventories and master programs,[58] but notes:

> This chapter establishes a cooperative program of shoreline management between local government and the state. Local government shall have the pri-

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49. 16 U.S.C. § 1451(j) (Supp. V 1981).
50. 16 U.S.C. § 1456(c)(1) (1976).
51. 16 U.S.C. § 1456(c)(2) (1976).
52. 16 U.S.C. § 1456(c)(3) (1976 & Supp. V 1981). Certification must be attached to the plan.
53. 16 U.S.C. § 1456(d) (1976).
54. 43 U.S.C. § 1340(c)(2) (Supp. IV 1980); 15 C.F.R. § 930 (1982); 30 C.F.R. § 250.34-1(a)(6)(ii) (1982).
55. 16 U.S.C. § 1456(c)(3)(A)-(c)(3)(B) (1976 & Supp. V 1981).
56. Alaska Stat. § 44.19.155 (1980).
57. Alaska Stat. § 46.40.030 (1982).
58. Wash. Rev. Code Ann. § 90.58.080 (1982).

> mary responsibility for initiating and administering the regulatory program of this chapter. The (state) department shall act primarily in a supportive and review capacity with primary emphasis on insuring compliance with the policy and provisions of this chapter.[59]

C. *Department of Energy Organization Act*[60]

Public Law 95-91 on August 4, 1977, established the Department of Energy (DOE)[61] but reserved to the states the authority of any matters exclusively within state jurisdiction.[62] Interstate Commerce Commission jurisdiction over the transportation of oil was transferred to the DOE[63] and, subsequently, within DOE, the ICC regulatory functions concerning rates or charges for the transportation of oil by pipeline were transferred to the new Federal Energy Regulatory Commission (FERC).[64]

1. *Federal Power Commission Authority*

The Federal Power Commission's authority over gas pipelines was transferred to the DOE and the FERC,[65] including the power to issue certificates of public convenience and necessity.[66] FERC is also vested with the responsibility to regulate the transportation of gas as an industry affected with public interest, pursuant to the Natural Gas Act,[67] under the DOE Organization Act.[68]

This power to regulate has been interpreted to be very broad by the United States Supreme Court.[69] More specifically, recent regulations provide that any holder of an OCS lease:

> contemporaneously with the submission of a development and production plan to the USGS, must submit to FERC that portion of any development and production plan which relates to production of natural gas and the facilities for transportation of natural gas.[70]

2. *Transfers of Authority*

The federal government's transfer of authority concerning natural gas to DOE and FERC appears complete. However DOE's and FERC's regula-

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59. Wash. Rev. Code Ann. § 90.58.050 (1982).
60. 42 U.S.C. §§ 7101-7375 (Supp. V 1981).
61. 42 U.S.C. § 7131 (Supp. IV 1980).
62. 42 U.S.C. § 7113 (Supp. IV 1980).
63. 42 U.S.C. § 7155 (Supp. IV 1980).
64. 42 U.S.C. § 7172(b) (Supp. IV 1980).
65. 42 U.S.C. § 7172(a) (Supp. IV 1980).
66. 42 U.S.C. § 7172(a)(1)(D) (Supp. IV 1980).
67. 15 U.S.C. § 717 (1976).
68. 42 U.S.C. § 7172(a)(1)(C)-(a)(1)(D) (Supp. IV 1980).
69. United Gas Pipeline Co. v. Fed. Power Comm'n., 385 U.S. 83 (1966).
70. 30 C.F.R. § 250.34-2(q) (1982).

tion of the transportation of oil only extends to "the regulatory function establish[ing] rates or charges for the transportation of oil by pipeline or establish[ing] the valuation of such pipelines."[71] FERC does not appear to have complete authority over the regulation of oil pipelines. For example, FERC does not appear to have veto power over the location of an oil pipeline through the certification of public convenience and necessity process. FERC does have licensing and permitting authority for the construction of works for the development and utilization of power across, along, from, or in navigable waters pursuant to the DOE Organic Act.[72]

III. Conflicts

A. Pipeline Rights-of-Way

The federal agencies have control over pipelines in the federal OCS area by virtue of the federal statute (OCSLA) and the federal lease granted to the explorer/developer. In terms of authority over location, the Director of the USGS must approve the design, construction and the plan of installation of OCS pipelines that are contained in a lease area, utilized lease area or contiguous leases of the same owner or operator.[73]

The OCSLA provides for the procurement of rights-of-way through submerged lands for the transportation of oil or natural gas by pipeline.[74] These rights-of-way can extend through either lease areas under the OCSLA or nonlease areas.[75] Environmental protection must be maximized through the use of the best available and safest technologies, including the safest practices of pipeline burial.[76] Any established pipeline must provide transportation service to oil or natural gas produced from the OCS leases in the vicinity, without discrimination, based upon proportionate amounts established by the FERC. FERC may hold public hearings and must consult with the Secretary of Energy in determining the proportionate amounts.[77] Any failure to comply with these provisions could lead to the forfeiture of the grant of the rights-of-way.[78] The OCSLA also provides that pipelines in the OCS region must be operated in an open and non-discriminatory manner.[79]

For pipeline authority granted after September 18, 1978, FERC can, upon request by shippers that are able to provide a guaranteed level of throughput and on the condition that the shipper bear its proportionate

71. 42 U.S.C. § 7172(b) (Supp. IV 1980).
72. 42 U.S.C. § 7172(a)(1)(A) (Supp. IV 1980).
73. 30 C.F.R. § 250.20 (1982).
74. 43 U.S.C. § 1334(e) (Supp. IV 1980).
75. *Id.*
76. *Id.*
77. *Id.*
78. *Id.*
79. 43 U.S.C. § 1334(f)(1)(A) (Supp. IV 1980).

share of the costs and risks, order the expansion of throughput capacity, after notice to all interested parties and a full hearing.[80] Finally, the Attorney General must be consulted by the Secretary of State and FERC concerning specific conditions to be added to any grant of rights-of-way for pipelines.[81]

1. Mediation

The CZMA provides for a limited mediation mechanism if a federal agency and a coastal state disagree over the development or implementation of a management program or the administration of such a program.[82] If any such differences should develop, the Secretary of Commerce, with the cooperation of the Executive Office of the President, must seek to mediate such differences.[83] This process must include public hearings in the affected local area.[84]

2. Coastal Energy Impact Program

A second, more practical effort to help the states impacted by coastal or OCS energy development is the Coastal Energy Impact Program (CEIP) established in amendments to the CZMA.[85] CEIP consists of a system of grants to states having federally approved coastal zone management programs impacted by coastal or OCS energy development activity.[86] The program does not provide any new mechanisms for avoiding possible adverse impacts, but funds efforts to mitigate such impacts once they occur. CEIP finances state programs for the study and planning of new or expanded coastal or OCS energy facilities.[87]

The conflict between state and federal authority over pipelines becomes critical when a pipeline is to cross both federal and state lands to reach the shore. The states have ownership and regulatory control of the lands from their coastline to a three mile limit by virtue of the SLA.[88] The federal government retains ownership and control over all other OCS submerged lands.[89] Theoretically, the conflict is handled in one of two ways: cooperative agreements and consistency certification.

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80. 43 U.S.C. § 1334(f)(1)(B) (Supp. IV 1980).
81. 43 U.S.C. § 1334(f)(3) (Supp. IV 1980).
82. 16 U.S.C. § 1456(h) (1976).
83. *Id.*
84. *Id.*
85. Pub. L. No. 89-454, 90 Stat. 1019 (1976); Pub. L. No. 95-372, 92 Stat. 690 (1978); Pub. L. No. 96-464, 94 Stat. 2064 (1980) (codified at 16 U.S.C. § 1456a (1976 & Supp. V 1981)).
86. 16 U.S.C. § 1456a(b)-(c) (1976 & Supp. V 1981).
87. 16 U.S.C. § 1456a(c) (Supp. V 1981).
88. 43 U.S.C. § 1312 (1976).
89. 43 U.S.C. § 1334 (Supp. IV 1980).

3. *Cooperative Agreements*

First, the location of any pipeline right-of-way could be included in the cooperative agreement between the affected state and the federal government.[90] However, these agreements usually only cover the lease sale area and the sale itself, to allow exploration and development of common areas. Because pipeline rights-of-way generally are located after a discovery of oil and gas, they are rarely included in such cooperative agreements.

4. *Consistency Certification*

The second method available to control the location of pipelines through federal and state areas is the state's CZPs. Because each federally licensed or permitted activity must obtain a certificate of consistency if its proposed activity, as found in the development and production plan, will affect the land or water use in the affected state's coastal zone, a further look at the state's CZP is mandated. The California CZP is a complex one that has delayed coastal development projects and increased the cost of the same.[91] The Alaska and Washington state plans are contrasted because the programs have different levels of local interaction and state control.

a. *Alaska's Coastal Zone Plan*

Alaska's CZP encourages the development of district coastal management programs based upon a municipality's existing or new comprehensive plan or a comprehensive statement of needs, policies, objectives and standards.[92] The local programs, in existing municipalities, then control what land and water uses will take place in that municipality's area. In an unorganized borough (not an uncommon entity in Alaska) coastal resource service areas may be organized to draft district coastal management programs.[93] If the local program seizes upon strictly non-development or non-industrialized uses of the coastal area, the required consistency certificate may be difficult, if not impossible, to obtain.

b. *Washington's Coastal Zone Plan*

The Washington State Shoreline Management Act of 1971 provides that the local government will have "the primary responsibility for initiating and administering the regulatory program."[94] The same difficulties in obtaining consistency certification exist here, as they do in Alaska.

However, the Washington program further requires a permit from the

90. 43 U.S.C. § 1344(d)(3) (Supp. IV 1980).
91. Bright, *Sohio Guade Oil Pipeline: A Case History of Conflict*, 11 Transp. L.J. 243 (1980).
92. Alaska Stat. § 46.40.030 (1982).
93. Alaska Stat. §§ 46.40.110, 46.40.180 (1982).
94. Wash. Rev. Code Ann. § 90.58.50 (1982).

governmental entity having administrative jurisdiction for any substantial development undertaken on the shoreline.[95] The applicant must also bear the burden of proof that a proposed substantial development is consistent with the criteria established by that governmental entity.[96]

c. *Federal Energy Regulatory Commission's Authority*

Contrasted with the Alaska and Washington state CZPs is FERC's wide reaching power over construction, extension, and abandonment of natural gas pipeline facilities, the granting of certificates of public convenience and necessity and the right of public domain.[97] These broad powers could come into conflict with a state or local government's power under the CZP, drawn up and approved by the federal government.

d. *Projection of Pipeline Routes*

A third alternative method to locate pipeline routes was tried by Suffolk County prior to a lease sale under the OCSLA. The county contended that the EIS should project the pipeline routes to predict the possible onshore zoning and coastal environmental problems. The United States Court of Appeals for the Second Circuit[98] found that such speculation would not aid in the EIS process. The court reasoned that projected routes would be of no avail because:

> no oil had as yet been discovered within the half-million acres of ocean bottom, some 50 miles by 50 miles in size, which was under consideration for lease, and . . . one could not specify the location or locations where it could be discovered, much less the quantity and quality of oil that might be discovered. Any projected routes would of necessity, therefore, have to be arbitrary, and might bear no similarity to the routes that would actually be proposed upon discovery of oil.[99]

The EIS in this case did contain numerous references to state and local regulatory powers and procedural requirements that could be invoked to restrict coastal pipeline location and advised that the state and local authorities would control pipeline sites, routes and use their land use controls.[100] The court concluded that this was sufficient to meet the requirement that the environmental aspects of transportation of oil and gas be considered in the EIS.[101]

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95. Wash. Rev. Code Ann. § 90.58.140(2) (1982).

96. Wash. Rev. Code Ann. § 90.58.140(7) (1982).

97. 42 U.S.C. § 7172(a)(1)(D) (Supp. IV 1980). Transferred this Fed. Power Comm'n authority to F.E.R.C. *pursuant to* 15 U.S.C. § 717(f) (1976).

98. Suffolk County v. Secretary of the Interior, 562 F.2d 1368 (2d Cir. 1977).

99. *Id.* at 1376.

100. *Id.* at 1376.

101. *Id.* at 1377.

IV. Conclusion

Historically the federal government dominated OCS lease sales, and development under the OCSLA, especially prior to the SLA. This is contrasted by the present state and local government authority to control the local coastal land use decisions in their area. The OCSLA has created a complex layered system of laws and regulations, basically following the exploration, development and production phases of the OCS lease. Compliance with the planning for the system is difficult and time consuming. The end result of this system, combined with the state CZPs and boundary disputes, is that the cost of development, and especially transportation, of OCS leases will continue to rise. Secondly, the development and consumption of OCS resources will be delayed.[102]

A regulatory system affording input, reflection, study, cooperation and compromise usually produces better, more dynamic results. The OCS coastal regulation of oil and gas pipelines is such a system with certain qualifications. First, the Department of Energy must eliminate confusion surrounding jurisdiction and regulation of OCS pipelines. Identification of regulatory authority and specific regulations will lend stability to the regulatory structure and induce timely compliance.

Second, local political entities need to define their coastal zone policies more completely and in further detail. By setting out objectives, criteria and procedures, companies are better able to respond to local needs and comply with reasonable requirements which will finally speed resource development.

Third, too many studies are done on the same project. Data must be collected and consolidated to lend efficiency to resource management questions. Because OCS pipelines pose a unique set of study problems, all levels of government should have timetables established for projection of possible routes, before discovery, and pipeline project environmental studies after discovery occurs.

Oil and gas, like other minerals, are of localized occurrence and must be developed. They must be transported as efficiently as possible to market or the refinery. Because the state and local governments control coastal land use decisions, oil and gas producers must be willing to meet both the federal conditions under the lease and the local coastal use and permit requirements. By so doing, a tension is created between our present energy policy promoting self-sufficiency and the existing environmental statutes affording states, and localities, control over coastal resources in their jurisdictions. On balance, this writer believes healthy tension in a federal

102. See Bright, *supra* note 91, at 243.

system is much preferred to a one-sided policy dictated by one of the parties to that system.

Thomas E. Hames