

MEMORANDUM

To: Jonathan Klavens, Esq.
From: Jason Monfort
Date: September 26, 2006
Re: Joint Renewable Energy Permitting Offices

INTRODUCTION

Section 388 of Energy Policy Act of 2005 authorizes the Mineral Management Service (MMS) to lease the Outer Continental Shelf (OCS) for development of alternate energy.¹ The OCS covers all submerged lands lying seaward and outside of the area of lands beneath navigable waters, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.² Pursuant to this section, the Ocean Renewable Energy Coalition (OREC) has strived to set forth a permitting program devoted to efficient and cooperative development of renewable energy projects on the OCS.³ A major issue of consideration within this proposal is how a program can be implemented while minimizing jurisdictional conundrums, inefficient permitting, and administrative uncertainty. Pursuant to these concerns, OREC has proposed the creation of a Joint Renewable Energy Office (JOREO) to resolve overlapping jurisdiction and to promote cooperative efforts between MMS and the states on coastal zone management.⁴

OREC is a national trade association dedicated to promoting the advancement and commercialization of energy generation from clean, renewable ocean resources, including offshore winds, ocean waves, tidal and river currents, marine biomass, and ocean thermal gradients.⁵ OREC's members include developers of various forms of ocean renewable

¹ 43 U.S.C. 1337 (2000).

² 43 U.S.C.A. § 1331 (2000).

³ See Carolyn Elefant & Sean O'Neill, *Comments of the Ocean Renewable Energy Coalition on Alternative Energy Related Uses on the Outer Continental Shelf*, <http://oceanrenewable.typepad.com/orecmmscomments.pdf> (last visited Oct. 16, 2006).

⁴ *Id.* at 1.

⁵ *Id.* at ii.

technologies, financial entities with an interest in potentially funding ocean technologies, and prominent environmental and regulatory consulting firms.⁶

Functionally, JOREO would coordinate and receive all permit applications for individual projects as they are developed following completion of site bidding and award of site Options to Lease.⁷ This arrangement provides a "one-stop shop" for developers to submit their permit applications, obtain clarification of permitting requirements, and obtain status updates.⁸ JOREO also would provide MMS with immediate indication of developers' satisfactory, progress towards achieving permitting, and milestones in their site development plans, as a required condition for their options to lease.⁹ Furthermore, JOREO would better coordinate state and federal responses to permit applications and provide an effective means of identifying "qualifying corridors" for submarine power cable routing and associated shore crossings in strategic development areas, as part of the programmatic Environmental Assessment (EA) preparation prior to site bidding.¹⁰

This memorandum analyzes current operational joint offices that utilize efficient cooperative coordination techniques between federal and local agencies to streamline permitting so as to provide for an efficient and organized system of energy permitting. This memorandum will analyze 1) the Alaskan Joint Pipeline Office in Alaska, 2) the Federal Permit Streamlining Pilot Project, and 3) the state of Washington's Joint Aquatic Resources Permit Application system.

⁶ *Id.*

⁷ Elefant & O'Neill, *supra* note 2, at 34.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

BACKGROUND

1. DEVELOPED INTEREST IN OCEAN RENEWABLE ENERGY

Interest in ocean energy has developed since the mid-1970s, when oil embargos and inflationary conditions lead Congress to enact the Ocean Thermal Energy Conversion Act (OTEC).¹¹ This act was intended to promote development of OTEC projects in the hopes of reducing dependence on foreign oil.¹² Under this OTEC program, the National Oceanic and Atmospheric Administration (NOAA) developed a "one stop shopping" licensing regime, with a \$250,000 application fee, to process applications for OTEC licenses.¹³ However, due to the immature technological advancements at the time, no OTEC projects became fully operational.¹⁴ As a result, NOAA withdrew its OTEC licensing regulations, stating "when commercial interest in OTEC projects occurs, NOAA will issue a proposed rule appropriate to the regulatory needs at the time."¹⁵

In the 1990s, the utility industry went through a period of deregulation which produced low prices for electricity; ocean technologies could not compete with this low cost of energy, and as a result, the United States lost interest in the commercialization of ocean technology.¹⁶

With the rising costs of oil and gas, however, there has been renewed interest in ocean renewable energy sources.¹⁷ Ocean renewable energy refers to a range of technologies that utilize the oceans to generate electricity.¹⁸ There are six specific categories of Ocean Renewable

¹¹ *Id.* at 6.

¹² 16 U.S.C.A. § 816-817 (2000); *Id.* at 14.

¹³ Elefant & O'Neill, *supra* note 2, at 7.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Darrell Blakeway & Carol Brotman White, *Tapping the power of Wind: FERC Initiatives to Facilitate Transmission of Wind Power*, 26 ENERGY L.J. 393, 393 (2005).

¹⁸ Elefant & O'Neill, *supra* note 2, at 7.

Energy: 1) Wave Energy Converters; 2) Tidal/Current; 3) Ocean Thermal Energy Technology (OTEC); 4) Offshore Wind; 5) Marine Biomass, and; 6) Marine Solar Power.¹⁹

1. FEDERAL REGULATION OF OCEAN RENEWABLE ENERGY

The Federal Energy Regulatory Commission (FERC) has authority under Section 23 of the Federal Power Act to require licenses for projects located either on or across: a) navigable waterways; b) commerce clause waters, with project interconnection into a grid; or c) on federal lands.²⁰ Since implementation, FERC has licensed hydroelectric projects located on rivers and other freshwater bodies of water capable of developing power generating head.²¹ However, in 2003, FERC asserted jurisdiction over licensing of hydroelectric projects located in ocean waters, as far as twelve miles into the ocean.²²

Under the Federal Energy Act, FERC has jurisdiction over entire projects, including both the generator and transmission lines.²³ In contrast to MMS, FERC's jurisdiction over the transmission portion of the project applies regardless of whether the lines are located on state or federal lands.²⁴ Furthermore, FERC's authority preempts certain state and federal laws.²⁵ This expansive scope of authority raises the potential for jurisdictional and regulatory conflict with MMS.²⁶

Overlapping and cumbersome regulatory processes can thwart development of energy projects.²⁷ Therefore, the federal government has taken measures to promote expeditious

¹⁹ *Id.* at 7-8.

²⁰ 16 U.S.C. §§ 816-17 (2000); *id.*

²¹ Elefant & O'Neill, *supra* note 2, at 14.

²² *Id.* at 14-15.

²³ 16 U.S.C.A. §§ 816-817; *Id.* at 14.

²⁴ 16 U.S.C.A. §§ 816-817; Elefant & O'Neill, *supra* note 2, at 14.

²⁵ Elefant & O'Neill, *supra* note 2, at 15.

²⁶ *Id.*

²⁷ *Id.* at 17.

development, while still ensuring adequate environmental protection.²⁸ President George W. Bush issued *Executive Order 13212: Actions to Expedite Energy Related Projects*.²⁹ This order directs agencies to "expedite review of permits or take other actions necessary to accelerate completion of energy related projects."³⁰

On December 21, 2005, a bipartisan task force on Improving the National Environmental Policy Act issued its "Initial Findings and Draft Recommendations" for improving and updating NEPA.³¹ The committee's recommendations include: 1) addressing delays in the process; 2) enhancing public participation and stakeholder involvement; 3) clarifying alternatives analysis under the National Environmental Policy Act (NEPA); 4) better federal agency coordination, 5) resolving studies issues; and 6) imposing a nineteen month limit on completion of an Environmental Impact Statement (EIS) and a nine month limit on completion of an Environmental Assessment (EA).³²

Pursuant to these recommendations, the creation of a joint renewable energy permitting office will have to include an efficient interagency and federal-state coordination system to ensure cooperation from the necessary departments. The following is an analysis of three models which provide instructive examples of how a joint renewable energy permitting office could be implemented.

DISCUSSION

1. THE JOINT PIPELINE OFFICE OF THE TRANS-ALASKA PIPELINE

In the 1970s, Congress researched the dependence on oil and natural gas in the United

²⁸ *Id.*

²⁹ Exec. Order No. 13212 (2001), 66 Fed. Reg. 28,357 (May 22, 2001).

³⁰ *Id.*

³¹ Taskforce on Improving the National Environmental Policy Act and Taskforce on Updating the U.S. House of Representatives, *Initial Findings and Draft Recommendations*, (December 21, 2005), http://resourcescommittee.house.gov/nepataskforce/report/nepareport_finaldraft.pdf. (last visited Oct. 16, 2006).

³² *Id.*; Elefant & O'Neill, *supra* note 2, at 17.

States.³³ The Department of the Interior and other Federal agencies had, over a long period of time, conducted extensive studies of the technical aspects and the environmental, social, and economic impacts of a proposed trans-Alaska oil pipeline, including a consideration for a trans-Canada pipeline.³⁴ Congress found that the earliest possible construction of a trans-Alaska oil pipeline from the North Slope of Alaska to Port Valdez would make the extensive proven and potential reserves of low-sulfur oil available for domestic use and would best serve the national interest.³⁵

Congress authorized the Secretary of the Interior and other appropriate Federal officers and agencies to issue and take all necessary actions to administer and enforce rights-of-way, permits, leases, and other authorizations that were necessary for or related to the construction, operation, and maintenance of this trans-Alaska oil pipeline system.³⁶ This included roads and airstrips, as that system is generally described in the final EIS issued by the Department of the Interior on March 20, 1972.³⁷ The Secretary could modify the route of the pipeline to provide greater environmental protection.³⁸

Today, the Trans-Alaskan Pipeline System (TAPS) is the transportation system that moves crude oil from the Alaska North Slope to the Valdez Marine Terminal.³⁹ The system includes 800 miles of 48-inch diameter crude oil pipeline, pump stations, communications sites, material sites, a work pad and access roads, and other related facilities.⁴⁰ TAPS contributes approximately thirteen percent of the nation's domestic oil production, reducing dependence on

³³ L.J. Clifton & B.J. Gallaway, *History of Trans Alaska Pipeline System*, (2001), http://tapseis.anl.gov/documents/docs/Section_13_May2.pdf, page 1.3-1 (last visited Oct. 1, 2006).

³⁴ 43 U.S.C.A. § 1652 (2000).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ <http://www.jpo.doi.gov/TAPS/TAPS.htm>.

⁴⁰ *Id.*

foreign reserves.⁴¹

On March 24, 1989, the *Exxon Valdez* ran aground on Bligh Reef in Prince William Sound and spilled 257,000 barrels of oil into the water.⁴² This spill brought about changes designed to prevent future spills as devastating as the *Exxon Valdez* oil spill.⁴³ It was an impetus to the establishment of a coordinated regulatory body to oversee the planning, construction, operation, and maintenance of all Alaska pipelines and associated facilities.⁴⁴

In 1990, Alaskan Governor Steve Cowper and the Department of Natural Resources Commissioner Lennie Gorsuch, in coordination with the Secretary, assigned Jerry Brossia with the task of establishing and running coordinated pipeline oversight for TAPS and gas pipeline construction.⁴⁵ Pursuant to this charge, Brossia worked with the Bureau of Land Management (BLM) and the State Department of Natural Resources to establish a one-stop permitting system with coordinated oversight of common carriers of oil and gas pipelines in Alaska.⁴⁶ While the BLM and the State Department of Natural Resources were the primary agencies involved in the permitting system, other State and Federal agencies with similar management or regulatory authority for pipeline systems were invited to become members in the office.⁴⁷ These agencies included the State Departments of Fish and Game, Environmental Conservation, and Division of Governmental Coordination and the Federal Departments of Transportation, Fish and Wildlife, U.S. Army Corps of Engineers, and Environmental Protection Agency.⁴⁸ This coordinated office

⁴¹ *Id.*

⁴² Clifton & Gallaway, *supra* note 32, at 1.3-3.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *The Joint Pipeline Office Chronology of Events*, <http://www.jpo.doi.gov/JPO/chronology.htm> (last visited Oct. 16, 2006).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

would be named the Joint Pipeline Office (JPO).⁴⁹ TAPS is currently owned by six pipeline companies, operated and maintained by the Alyeska Pipeline Service Company, and regulated by federal and state agencies through the JPO.⁵⁰

The JPO consists of six state and six federal agencies sharing similar regulatory or management responsibilities related to oil and gas pipelines in Alaska, TAPS.⁵¹ Representatives from six of the twelve agencies are co-located and coordinate oversight of pipelines and issue right-of-way leases and other permits needed for oil and gas projects.⁵² Cooperative agreements were developed between agencies to share staff, knowledge, equipment, and office space.⁵³ This unique working environment eliminates duplication of work, is more customer oriented, and simplifies complicated and lengthy government processes.⁵⁴ This organization has the ability to tap the knowledge of member agencies, share expertise, and coordinate permitting, technical reviews, and the issuance of leases and rights-of-way.⁵⁵

In 1991, this coordinated effort led to the elimination of individual permits for projects that were similar in nature and general permits were developed which helped streamline the permitting process, making it more efficient.⁵⁶ In addition, a technical resource library was established to house all pipeline-related documents and files submitted to the State.⁵⁷

Alaska Department of Natural Resources (ADNR) and BLM, as land managers, co-

⁴⁹ *Id.*

⁵⁰ *How TPS is Managed*, <http://tapseis.anl.gov/guide/managed.cfm> (last visited Oct. 16, 2006).

⁵¹ *What is the Joint Pipeline Office*, http://www.jpo.doi.gov/JPO/What_is_JPO.htm (last visited Oct. 16, 2006).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Senate Hearing before the Senate Committee on Energy and Natural Resources on the Alaska Natural Gas Pipeline, S. Hrg. 107-352, Senate Committee on Energy and Natural Resources, 107th Cong. (Oct. 2, 2001) (Statement of Drue Pearce, senior Advisor to the Secretary for Alaska Affairs Department of the Interior), available at <http://www.blm.gov/nhp/news/legislative/pages/2001/te011002b.htm>.

⁵⁶ See *The Joint Pipeline Office Chronology of Events*, *supra* note 34.

⁵⁷ *Id.*

manage the activities of the JPO.⁵⁸ The State Pipeline Coordinator's Office (SPCO), an office within the JPO, is responsible for the administration and oversight of pipeline right-of-way (ROW) leases issued under Alaska Statute AS 38.35, the "Alaska Right-of-Way Leasing Act."⁵⁹ The administration of these leases includes processing ROW applications, drafting leases for Commissioner approval, implementing the public review process, issuing of project specific authorizations, and monitoring compliance with lease conditions.⁶⁰ SPCO oversees twenty-one pipelines in Alaska from the North Slope to the Kenai Peninsula.⁶¹

The JPO develops an annual work plan that includes objectives, authority, strategy, commitments, functions, and organizational structure.⁶² JPO's commitments and objectives must comply with the requirements of the Government Performance and Results Act. Alaska has agreed to work with BLM to implement an activity-based costing initiative to meet federal budgeting requirements.⁶³

There are a number of general objectives JPO strives to accomplish in the work plan: compliance with the Federal Grant, State Lease, and state and federal laws, regulations and industry accepted codes and standards; continued safe movement of oil through TAPS through risk reduction by understanding hardware condition, ensuring follow through on Reliability Centered Maintenance (RCM) action items, effective failure planning, and addressing noncompliance promptly; protection of the environment and public safety through monitoring modification, maintenance, and operation of high-risk systems; prompt and effective response to incidents and events on TAPS to assess, contain, correct and clean up damage, as well as to

⁵⁸ *What is the Joint Pipeline Office*, http://www.jpo.doi.gov/JPO/What_is_JPO.htm (last visited Oct. 16, 2006).

⁵⁹ *State Pipeline Coordinator's Office*, <http://www.jpo.doi.gov/SPCO/SPCO.htm> (last visited Oct. 16, 2006); *see* Alaska Stat. § 3835 (2005).

⁶⁰ *State Pipeline Coordinator's Office*, *supra* note 58; *see* Alaska Stat. § 3835 (2005).

⁶¹ *State Pipeline Coordinator's Office*, *supra* note 58.

⁶² *What is the Joint Pipeline Office*, *supra* note 57.

⁶³ *Id.*

prevent recurrence; sustaining a TAPS culture respectful of commitments made to Alaska Natives, diversity, and concerned employees; follow-through on renewal commitments made in the Final Environmental Impact Statement (FEIS) mitigating measures, the Record of Decision (ROD), and the Commissioner's Final Written Determination; coordination among agencies regulating TAPS; and management of TAPS oversight information to provide detailed tracking, trending, and reporting capabilities.⁶⁴

Operationally, the various JPO sections perform the following planned functions: Process authorizations, approvals, permits, and amendments required under the TAPS Grant or Lease; Process Notices to Proceed (NTP) and conduct technical compliance reviews of TAPS and other pipelines; Process applications under 43 CFR 2800, 43 CFR 2910, 43 CFR 3660, Alaska Stat. § 27.19, Alaska Stat. § 38.05.120, Alaska Stat. § 38.05.850, Alaska Stat. § 38.05.920, Alaska Stat. § 41.14, and Alaska Stat. § 46.15, and Alaska Stat. § 46.40; Monitor stipulation compliance on a risk-based priority; Monitor projects on a risk-based priority; Conduct technical oversight of Alyeska Pipeline Service Company's (APSC) implementation of RCM methodology to identify failure management policies necessary to preserve the functions of critical TAPS systems; Monitor and issue NTPs related to TAPS Strategic Reconfiguration project; JPO Oil Spill Group reviews and approves oil spill plans, monitors compliance with oil spill plans, and conducts oil spill drills; The JPO Corrosion Group monitors APSC's corrosion program; and the JPO tracks commitments and requirements agreed to by APSC in various Memorandums of Agreement/Memorandums of Understanding (MOA/MOU).⁶⁵

In 1994, JPO was one of the first recipients of Vice President Al Gore's "Hammer

⁶⁴ *Id.*

⁶⁵ *Id.*

Award" for reinventing government.⁶⁶ In 1996, JPO staff was awarded the "Excellence in Government Service Award" from Governor Tony Knowles for their unique contributions to government efficiency through interagency partnerships.⁶⁷ These awards demonstrate that the JPO has proven to be an effective model for joint coordination in the streamlining of energy permitting and administration.

2. FEDERAL PERMIT STREAMLINING PILOT PROJECT OF THE ENERGY

POLICY ACT OF 2005:

In an attempt to improve communication and reduce redundant efforts among agencies, Congress passed the Energy Policy Act of 2005.⁶⁸ The Act specifically required the Secretary of the Interior to establish a Federal Permit Streamlining Pilot Project, also known as a "one-stop shopping" program, to improve cooperative efforts among agencies and to streamline the permitting process.⁶⁹

The goal of the Pilot Project is to focus on interagency coordination and efficiency in the processing of permits required to support oil and gas use authorizations on federal land.⁷⁰ This one-stop shopping technique, as with the Alaskan Joint Pipeline Office, allows for improved customer service and efficient uses of government resources.⁷¹ The project is also intended to maintain or enhance high standards of safety and environmental protections through an oil and gas inspection and enforcement program, and to improve information sharing among the

⁶⁶ *The Joint Pipeline Office Chronology of Events*, *supra* note 34.

⁶⁷ *Id.*

⁶⁸ Emma Brown, *Oil Drillers Get 'One-Stop Shopping' at No Extra Cost*, Nov. 14, 2005, http://www.hcn.org/servlets/hcn.Article?article_id=15905 (last visited Oct. 16, 2006) (quoting Cameron Hardy, Sen. Thomas' press secretary).

⁶⁹ 42 U.S.C.A. § 15924 (2000); *id.*

⁷⁰ Gale Norton Et Al., *Implementation of Section 365 of the Energy Policy Act of 2005 Pilot Project to Improve Federal Permit Coordination*, June 2006, http://www.blm.gov/nhp/spotlight/epa2005/BLM_MOU_WO_300-2006-06.pdf, 2 (last visited Oct. 16, 2006).

⁷¹ *Id.* at 3.

participating agencies and parties.⁷²

The Pilot Project consists of specific Bureau of Land Management Field Offices which serves as the Pilot Project offices.⁷³ These field offices are in: 1) Rawlins, Wyoming; 2) Buffalo, Wyoming; 3) Miles City, Montana; 4) Farmington, New Mexico; 5) Carlsbad, New Mexico; 6) Grand Junction/Glenwood Springs, Colorado, and; 7) Vernal, Utah.⁷⁴ These offices are considered Federal signatory parties and each was specifically selected to participate because they are seven of the West's most busy BLM field offices; they process seventy percent of the drilling permit applications nationwide.⁷⁵

These Federal signatory parties are required to assign, to each office, an expert in the regulatory issues relating to the specific offices. Specifically, the signatory parties are to assign an expert in the following fields: 1) consultations and preparation of biological opinions under Section 1536 of Title 16; 2) permits under Section 1344 of Title 33; 3) regulatory matters under the Clean Air Act (42 U.S.C. 7401 et seq.); 4) planning under the National Forest Management Act of 1976 (16 U.S.C. 472a et seq.); and 5) the preparation of analyses under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).⁷⁶

For the purposes of coordination and processing of oil and gas use authorizations on Federal land under the administration of the Pilot Project offices, the Secretary is granted the authority to provide or transfer funds necessary to the following organizations: 1) the United States Fish and Wildlife Service; 2) the Bureau of Indian Affairs; 3) the Forest Service; 4) Environmental Protection Agency; 5) the Corps of Engineers; and 6) the States of Wyoming,

⁷² *Id.*

⁷³ *See id.*

⁷⁴ *Id.* at 1.

⁷⁵ *Id.*; Brown, *supra* note 67.

⁷⁶ 42 U.S.C.A. § 15924(c); Norton Et Al., *supra* note 69, at 2.

Montana, Colorado, Utah, and New Mexico.⁷⁷

The Bureau of Land Management (BLM), an agency which administers more than 261 million surface acres of public land and 700 million acres of subsurface mineral estate, administers the Pilot Project.⁷⁸ Specifically, the BLM provides office space and administrative support to other agencies, establishes oil and gas use authorization priorities to effectively coordinate interagency efforts, distributes funds to participating agencies, coordinates and prepares reports to congress, and generally oversees the project as it progresses.⁷⁹

The Fish and Wildlife Service (FWS) is responsible for assisting other Federal agencies and the public in the conservation, protection and enhancement of fish, wildlife, plants, and their habitats.⁸⁰ The FWS' specific responsibilities are to work with the BLM field office in an integrated manner to expedite necessary consultation and coordination procedures, to coordinate its requisite reviews and integrate its decision making processes with the BLM processes regarding land use planning, oil and gas leasing, and issuance of drilling permits.⁸¹ All FWS Pilot Program staff is under the direct supervision of the FWS.⁸²

The Bureau of Indian Affairs (BIA), an organization responsible for the administration and management of 56 million acres of land held in trust by the United States for American Indians and their tribes, is generally responsible for developing forest lands, leasing assets on these lands, directing agricultural programs, protecting water and land rights, developing and maintaining infrastructure and economic development.⁸³ In the Pilot Project, the BIA is centered out of the BLM Farmington Field Office. At this location, the BIA expedites the necessary

⁷⁷ 42 U.S.C.A. § 15924(h).

⁷⁸ Norton Et Al., *supra* note 69, at 4.

⁷⁹ *Id.*

⁸⁰ *Id.* at 4-5.

⁸¹ *Id.*

⁸² *Id.*

⁸³ Norton Et Al., *supra* note 69, at 6.

consultation and coordination with Navajo interests in the checkerboard landownership area.⁸⁴

The Mineral Revenue Management (MRM) Division of the Mineral Management Service (MMS) collects, amounts to, and distributes revenues associated with mineral production from leased Federal and Indian lands.⁸⁵ In the Pilot Project, the MRM is responsible for transferring fifty percent of the offshore oil and gas rental income from the United States Treasury to the BLM Permit Processing Improvement Fund, established by 365(g) of the Energy Policy Act, for the general administration of the Pilot Project.⁸⁶

The Bureau of Reclamation, an organization responsible for administering federal water projects in seventeen western states, is the largest wholesaler of water in the country.⁸⁷ The Reclamation brings water to more than thirty-one million people and is the second largest producer of hydroelectric power in the western United States.⁸⁸ Through an existing national interagency agreement, dated March 25, 1983, the BLM Carlsbad and Farmington Field Offices have the authority to lease and approve Applications for Permit to Drill (APD) on Reclamation land.⁸⁹ The Reclamation remains active in the Pilot Project, working in an integrated manner to expedite necessary consultation and coordination with Reclamation responsibilities and working closely with participating agencies to identify efficiencies in processing oil and gas authorizations.⁹⁰

The United States Army Corps of Engineers (USACE) is responsible for administering laws for the protection and preservation of waters of the United States, pursuant to the

⁸⁴ *Id.* at 6-7.

⁸⁵ *Id.* at 7.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Norton Et Al., *supra* note 69, at 7.

⁸⁹ *Id.*

⁹⁰ *Id.* at 7-8.

requirements of Section 10 of the Rivers and Harbors Act of 1989 (RHA).⁹¹ Under the RHA, the USACE may authorize work or structures in or affecting the course, condition, location, or capacity of navigable waters in the United States.⁹² Under the Clean Waters Act, the USACE may authorize the discharge of dredged or fill material into the waters of the United States, using the least environmentally damaging practicable means necessary.⁹³ In the Pilot Project, the USACE is to expedite environmental permits, consult with the BLM regarding adjustment or establishment of priorities, and work in an integrated manner to expedite necessary consultation and coordination with USACE responsibilities.⁹⁴ The USACE also must provide an annual summary progress report to the BLM.⁹⁵

The United States Forest Service is responsible for the surface management of 192 acres of National Forest Land.⁹⁶ The Mineral Leasing Act of 1920 as amended and the Mineral Leasing Act for Acquired Lands define the role of the US Forest Service in the management of renewable energy resources.⁹⁷ The Forest Service works with the BLM to ensure that management goals and objectives for oil and gas exploration and development activities are achieved, that activities are conducted to minimize effects on surface resources, and that the lands affected by operations are rehabilitated.⁹⁸ The BLM issues and administers oil and gas leases on Forest Service lands only after the Forest Service has made a leasing availability decision and taken the action necessary for the BLM to offer available land for lease.⁹⁹ Once a federal lease on National Forest land has been issued, the Forest Service has full authority to

⁹¹ *Id.* at 8.

⁹² *Id.*

⁹³ *Id.* at 8-9

⁹⁴ Norton Et Al., *supra* note 69, at 8-9.

⁹⁵ *Id.*

⁹⁶ *Id.* at 9.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

approve and regulate all surface-disturbing activities associated with oil and gas exploration and development through analysis and approval of the Surface Use Plan of Operations.¹⁰⁰ In the Pilot Project, the Forest Service provides an employee who, as project manager for proposed oil and gas projects on Forest Service Land, is responsible for facilitating the timely processing, implementation, and inspection of oil and gas-related permits on Forest Service Lands; he or she must ensure that all oil and gas permit applications on National Forest Service lands are issued in compliance with section 366 of the Energy Policy Act of 2005 and the BLM's Onshore Order Number 1.¹⁰¹

The Environmental Protection Agency (EPA) is responsible for administering a wide range of environmental laws.¹⁰² Relevant to the permitting of oil and gas projects, EPA is responsible for ensuring that permits comply with the Clean Water Act, issuing permits for activities that involve discharge of pollutants subject to the requirements of the National Pollutant Discharge Elimination system, reviewing state and tribe issued permits, and working in an integrated manner to expedite necessary consultation and coordination with EPA responsibilities.¹⁰³

While the Pilot Project involves significant cooperation between Federal and State agencies, the act specifically states that it does not affect the operation of any Federal or State law or any delegation of authority made by the head of a federal agency whose employees are participating in the project.¹⁰⁴

The Pilot Project is funded with fees the federal government already collects from

¹⁰⁰ Norton Et Al., *supra* note 69, at 9.

¹⁰¹ *Id.* at 10-11.

¹⁰² *Id.* at 11.

¹⁰³ *Id.*

¹⁰⁴ 42 U.S.C.A. § 15924(j).

companies and individuals who have leased mineral rights.¹⁰⁵ Those fees, which nationwide amounted to an estimated \$36 million in 2005, are usually split evenly between the state in which they are collected and the federal treasury—the pot that Congress draws upon for general appropriations; the half that normally goes to the treasury will be diverted to fund the Pilot Program.¹⁰⁶

The Pilot Project is an excellent example of a system of optimal coordination among various state and local agencies in an attempt to promote efficiency, coordination and cooperation in the promotion of energy development and permitting.

3. THE STATE OF WASHINGTON'S JOINT AQUATIC RESOURCES PERMIT APPLICATION

In February 2006, Washington Governor Christine Gregoire signed a Regulatory Improvement Executive Order that said, "Citizens and businesses deserve state agencies that will be innovative and creative in simplifying their procedures for permits, licenses, regulatory compliance and all other business operations".¹⁰⁷ In response to this Executive Order, in an attempt to streamline the environmental permitting process in the State of Washington, the Governor's Office of Regulatory Assistance, the Department of ecology, fish and wildlife, and natural resources and other city, county and federal agencies developed a single permit application form.¹⁰⁸ The intent of this single application was to consolidate what were originally seven to nine different application forms over ten different permit actions.¹⁰⁹ It is titled the "Joint Aquatic Resources Permit Application" (JARPA). Unlike the Pilot Project, JARPA is merely an

¹⁰⁵ Brown, *supra* note 67.

¹⁰⁶ *Id.*

¹⁰⁷ Wash. Exec. Order No. 06-02 (2006) available at http://www.governor.wa.gov/execorders/eo_06-02.pdf (last visited Oct. 16, 2006).

¹⁰⁸ *Permit Streamlining*, <http://www.governor.wa.gov/gdro/publications/strategy/strategy/permit.pdf> (last visited Oct. 16, 2006).

¹⁰⁹ *Id.*

online streamlining system utilized to promote an efficient system of issuing permits within the State of Washington.¹¹⁰

JARPA is used for the following permits: 1) U.S. Army Corps of Engineers(Corps): Section 10 and 404 permits; 2) U.S. Coast Guard: General Bridge permits and Private Aids to Navigation permits (PATON); 3) Washington Department Ecology [401 Water Quality Certifications](#); 4) Washington Department of Fish and Wildlife Hydraulic Project Approvals; 5) Washington Department of Natural Resources: Use Authorizations for State-Owned Aquatic Lands ; 6) Shoreline Conditional Use Permits; 7) Shoreline Substantial Development Permit; 8) Shoreline Variance; 9) Shoreline Exemptions, and; 10) Shoreline Revisions.¹¹¹

To obtain a permit through this streamlining system, an organization or company need merely begin the process by filing out an on-line application.¹¹² Most agencies will require more information not specifically required on the application; the application is forwarded to the appropriate agency which starts the review process, and the agency usually discovers what other information they need to make a decision regarding the permit.¹¹³ Therein, the agency will request that information from the organization or company to continue the process.¹¹⁴

While the JARPA model does not involve as much coordination between federal and state agencies as the Pilot Program, as it is only used for the State of Washington, it is a useful example of how the internet can be utilized to create an efficient state permit program.

CONCLUSION

The task of creating and implementing a permitting office for projects on the OCS

¹¹⁰ See *id.*; *Introduction to the JARPA*, http://epermitting.org/site/alias__resourcecenter/jarpa_introduction/10042/introduction.aspx (last visited Oct. 16, 2006).

¹¹¹ *Introduction to the JARPA*, *supra* note 109.

¹¹² *Process Overview*, http://epermitting.org/site/alias__resourcecenter/9979/default.aspx (last visited Oct. 16, 2006).

¹¹³ *Id.*

¹¹⁴ *Id.*

inherently involves jurisdictional, efficiency and administrability problems. However, the programs described above demonstrate that complex permitting programs can be shaped to form a comprehensive system that bypasses these typical problems.

As renewable energy projects proposed and developed on the OCS will involve fall under state and federal authority, determinations of which level of government for specific issues is a necessity for any permitting program. The MMS has proposed the use of Memoranda of Understanding to resolve jurisdictional issues between the different levels of government. These MOUs will provide for intergovernmental cooperation, but the recurring factor in both the JPO and the Pilot Program is integration of federal and state agencies, not as consultants, but as operational members working within the permitting system and office to ensure optimal satisfaction and results. The JPO, which includes six state agencies and six federal agencies, all working together to achieve a common goal in individual offices, provides ample evidence that this integrated model produces efficiency and results.

Renewable energy projects proposed and developed on the OCS will also involve complex uncertainties that will necessitate expertise in numerous fields of law. In addition, the free-market system of leasing proposed by the MMS will allow market forces to increase the time-sensitivity of permitting. As a result, the proposed JOREO should employ experts in specific fields of science and law that the OREC finds necessary to the type of projects anticipated. In addition, the internet should be utilized, as the JARPA program demonstrates, to provide for online applications, and access to forms and information. The JARPA online permitting system consolidated numerous forms into an online application, which has decreased administrative paperwork and costs, which promotes fast, effective and efficient permitting.

The coordination of multiple state and federal agencies and experts will increase

uncertainty and unaccountability; developers may be unsure who to contact and employees may be unsure for what they are responsible. The Pilot Project provides an effective solution to these problems. The explicit assignment and delegation of duties to members of individual agencies and departments will allow developers to know who they should contact for information on particular aspects and allow employees to be certain of their duties within the program. This will allow for increased aggregate certainty and accountability.

The three cooperative permitting systems described in this memorandum provide ample evidence that a joint permitting office is not only feasible, but necessary to an efficient system that promotes renewable energy on the OCS. Utilizing the positive characteristics of these three models will allow OREC and MMS to develop an efficient and effective permitting system.

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