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# INTERSTATE COMPACT ON OIL AND GAS (12th Extension)

GOVERNMENT

Storage

MENTS

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HEARINGS

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BEFORE THE

SUBCOMMITTEE ON

COMMUNICATIONS AND POWER

OF THE

COMMITTEE ON

INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-SECOND CONGRESS

SECOND SESSION

ON

**H.J. Res. 586 and S.J. Res. 72**

JOINT RESOLUTIONS CONSENTING TO AN EXTENSION AND  
RENEWAL OF THE INTERSTATE COMPACT TO  
CONSERVE OIL AND GAS

APRIL 12 AND 27, 1972

**Serial No. 92-65**

Printed for the use of the  
Committee on Interstate and Foreign Commerce



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INFORMATION





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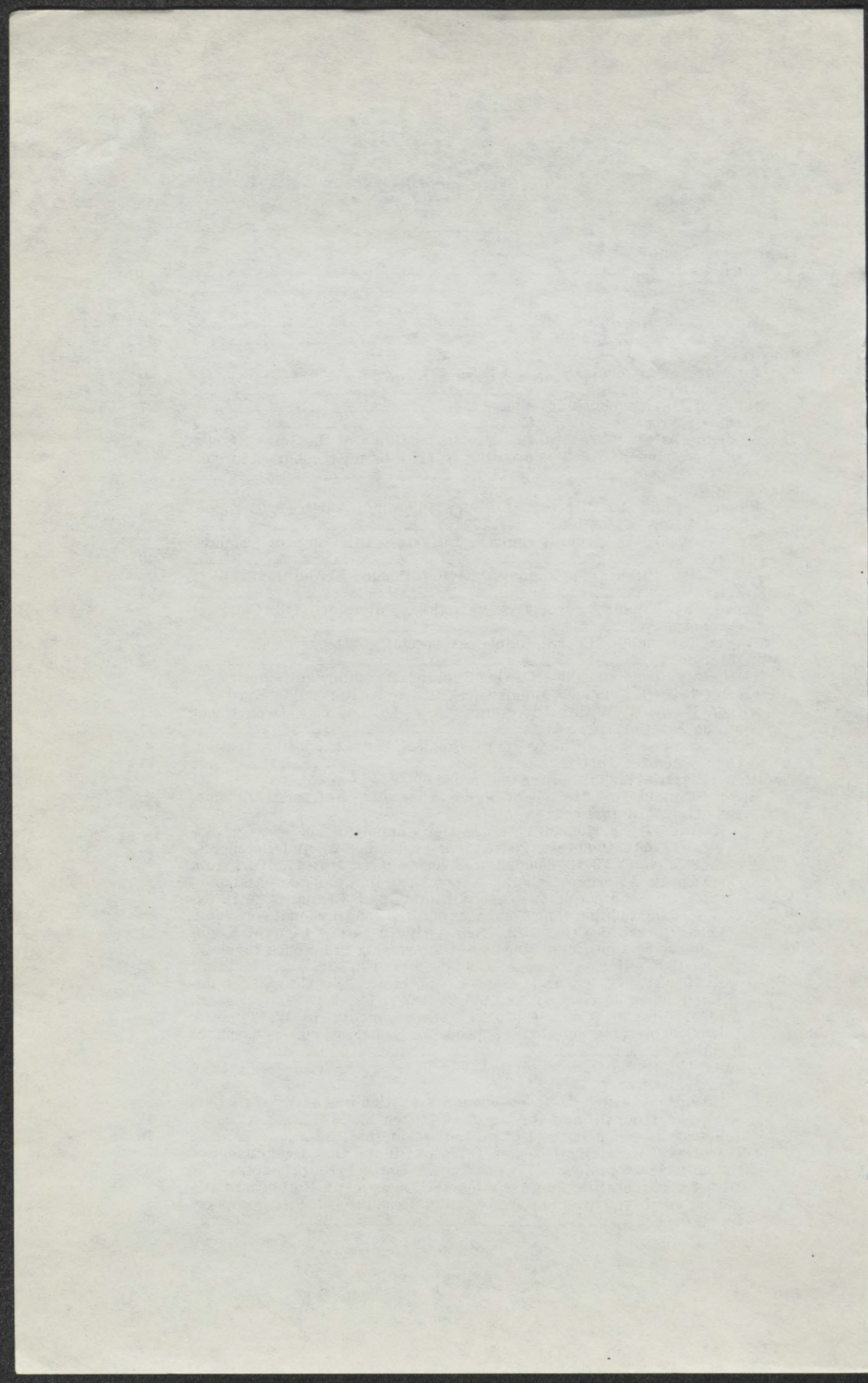
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## INTERSTATE COMPACT ON OIL AND GAS (12th Extension)

WEDNESDAY, APRIL 12, 1972

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON COMMUNICATIONS AND POWER,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The subcommittee met at 10 a.m., pursuant to notice, in room 2322, Rayburn House Office Building, Hon. Lionel Van Deerlin, presiding (Hon. Torbert H. Macdonald, chairman).

Mr. VAN DEERLIN. This morning the Subcommittee on Communications and Power has before it for hearing two joint resolutions: House Joint Resolution 586 which was introduced by the chairman of the full committee, Mr. Staggers, and Senate Joint Resolution 72. Both of these resolutions would grant the consent of the Congress to an extension of the Interstate Oil and Gas Compact. This would be the 12th extension since 1935.

The two joint resolutions differ in some respects. The Senate resolution would provide for a 3-year extension until September 1, 1974. The House joint resolution would provide for an indefinite extension of the Compact. It is my understanding that the Interstate Oil Compact Commission favors the extension for an indefinite period. Their representatives will give us their reasons for that position.

Another difference relates to the report to the Congress by the Attorney General pursuant to section 2 of the legislation. The purpose of the report is to scrutinize the activities of the States under this Compact.

The Senate joint resolution calls for the submission of that report 2 years after enactment of the resolution. The House joint resolution (as does previous legislation providing for the extension of the Compact) calls for the submission of an annual report.

The Department of Justice in its report on the legislation has urged that the requirement of regular reports be omitted and that there be substituted for this requirement continued surveillance by the Department with a report to be submitted to the Congress only if the activities of the States appear inconsistent with the purposes of the Compact.

At this point in the record there will be inserted reports on the legislation which we have received from various departments and agencies. There will also be inserted the report dated June 18, 1971, submitted by the Attorney General pursuant to section 2 of Public Law 91-158.

(The text of H.J. Res. 586 and S.J. Res. 72, together with departmental reports thereon, and the report of the Attorney General, dated June 18, 1971, follow:)



92D CONGRESS  
1ST SESSION

# H. J. RES. 586

---

## IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 1971

Mr. STAGGERS introduced the following joint resolution; which was referred to the Committee on Interstate and Foreign Commerce

---

## JOINT RESOLUTION

Consenting to an extension and renewal of the interstate compact to conserve oil and gas.

- 1       *Resolved by the Senate and House of Representatives*  
2   *of the United States of America in Congress assembled,*  
3   That the consent of Congress is hereby given to an extension  
4   and renewal of the interstate compact to conserve oil and gas,  
5   as amended, which was signed in its initial form in the city  
6   of Dallas, Texas, the 16th day of February 1935, by the  
7   representatives of Oklahoma, Texas, California, and New  
8   Mexico, and at the same time and place was signed by the  
9   representatives, as a recommendation for approval to the  
10   Governors and legislatures of the States of Arkansas, Colo-  
11   rado, Illinois, Kansas, and Michigan, and which, prior to



1 August 27, 1935, was presented to and approved by the  
2 legislatures and Governors of the States of New Mexico,  
3 Kansas, Oklahoma, Illinois, Colorado, and Texas, and which  
4 so approved by the six States last above named was deposited  
5 in the Department of State of the United States, and there-  
6 after was consented to by the Congress in Public Reso-  
7 lution Numbered 64, Seventy-fourth Congress, approved  
8 August 27, 1935, for a period of two years, and thereafter  
9 was extended by the representatives of the compacting States  
10 and consented to by the Congress for successive periods,  
11 without interruption, the last extension being for the period  
12 from September 1, 1969, to September 1, 1971, consented  
13 to by Congress by Public Law Numbered 91-158, Ninety-  
14 first Congress, approved December 24, 1969. The agree-  
15 ment to amend, extend, and renew said compact effective  
16 September 1, 1971, duly executed by representatives of the  
17 States of Alabama, Alaska, Arizona, Arkansas, Colorado,  
18 Florida, Illinois, Indiana, Kansas, Kentucky, Louisiana,  
19 Maryland, Michigan, Mississippi, Montana, Nebraska, Ne-  
20 vada, New Mexico, New York, North Dakota, Ohio, Okla-  
21 homa, Pennsylvania, South Dakota, Tennessee, Texas, Utah,



1 West Virginia, and Wyoming has been deposited in the De-  
2 partment of State of the United States, and reads as follows:

3 "AN AGREEMENT TO AMEND, EXTEND AND RE-  
4 NEW THE INTERSTATE COMPACT TO CON-  
5 SERVE OIL AND GAS

6 "WHEREAS, on the 16th day of February, 1935, in  
7 the City of Dallas, Texas, there was executed 'An Inter-  
8 state Compact to Conserve Oil and Gas' which was there-  
9 after formally ratified and approved by the States of  
10 Oklahoma, Texas, New Mexico, Illinois, Colorado and Kan-  
11 sas, the original of which is now on deposit with the  
12 Department of State of the United States;

13 "WHEREAS, effective as of September 1, 1971, the  
14 several compacting states deem it advisable to amend said  
15 compact so as to provide that upon the giving of Congres-  
16 sional consent thereto in its amended form, said Compact  
17 will remain in effect until Congress withdraws such consent;

18 "WHEREAS, the original of said Compact as so  
19 amended will, upon execution thereof, be deposited promptly  
20 with the Department of State of the United States, a true  
21 copy of which follows:



1     "AN INTERSTATE COMPACT TO CONSERVE  
2                     OIL AND GAS

3                     "ARTICLE I

4         " 'This agreement may become effective within any  
5 compacting state at any time as prescribed by that state,  
6 and shall become effective within those states ratifying it  
7 whenever any three of the States of Texas, Oklahoma,  
8 California, Kansas and New Mexico have ratified and Con-  
9 gress has given its consent. Any oil-producing state may  
10 become a party hereto as hereinafter provided.

11                     "ARTICLE II

12         " 'The purpose of this compact is to conserve oil and  
13 gas by the prevention of physical waste thereof from any  
14 cause.

15                     "ARTICLE III

16         " 'Each state bound hereby agrees that within a reason-  
17 able time it will enact laws, or if the laws have been enacted,  
18 then it agrees to continue the same in force, to accomplish  
19 within reasonable limits the prevention of:

20             " ' (a) The operation of any oil well with an in-  
21 efficient gas-oil ratio.

22             " ' (b) The drowning with water of any stratum  
23 capable of producing oil or gas, or both oil and gas, in  
24 paying quantities.



1           “(c) The avoidable escape into the open air or  
2           the wasteful burning of gas from a natural gas well.

3           “(d) The creation of unnecessary fire hazards.

4           “(e) The drilling, equipping, locating, spacing or  
5           operating of a well or wells so as to bring about physical  
6           waste of oil or gas or loss in the ultimate recovery  
7           thereof.

8           “(f) The inefficient, excessive or improper use of  
9           the reservoir energy in producing any well.

10          “The enumeration of the foregoing subjects shall not  
11         limit the scope of the authority of any state.

12                                 “ARTICLE IV

13          “Each state bound hereby agrees that it will, within  
14         a reasonable time, enact statutes, or if such statutes have  
15         been enacted then that it will continue the same in force,  
16         providing in effect that oil produced in violation of its valid  
17         oil and/or gas conservation statutes or any valid rule, order  
18         or regulation promulgated thereunder, shall be denied access  
19         to commerce; and providing for stringent penalties for the  
20         waste of either oil or gas.

21                                 “ARTICLE V

22          “‘It is not the purpose of this compact to authorize the  
23         states joining herein to limit the production of oil or gas for  
24         the purpose of stabilizing or fixing the price thereof, or



1 create or perpetuate monopoly, or to promote regimentation,  
2 but is limited to the purpose of conserving oil and gas and  
3 preventing the avoidable waste thereof within reasonable  
4 limitations.

5 "ARTICLE VI

6 "Each state joining herein shall appoint one repre-  
7 sentative to a commission hereby constituted and designated  
8 as THE INTERSTATE OIL COMPACT COMMISSION,  
9 the duty of which said Commission shall be to make inquiry  
10 and ascertain from time to time such methods, practices,  
11 circumstances, and conditions as may be disclosed for bring-  
12 ing about conservation and the prevention of physical waste  
13 of oil and gas, and at such intervals as said Commission  
14 deems beneficial it shall report its findings and recommenda-  
15 tions to the several states for adoption or rejection.

16 "The Commission shall have power to recommend  
17 the coordination of the exercise of the police powers of the  
18 several states within their several jurisdictions to promote the  
19 maximum ultimate recovery from the petroleum reserves of  
20 said states, and to recommend measures for the maximum  
21 ultimate recovery of oil and gas. Said Commission shall orga-  
22 nize and adopt suitable rules and regulations for the conduct  
23 of its business.

24 "No action shall be taken by the Commission except:  
25 (1) By the affirmative votes of the majority of the whole



1 number of the compacting states represented at any meeting,  
2 and (2) by a concurring vote of a majority in interest of  
3 the compacting states at said meeting, such interest to be  
4 determined as follows: Such vote of each state shall be in  
5 the decimal proportion fixed by the ratio of its daily average  
6 production during the preceding calendar half-year to the  
7 daily average production of the compacting states during  
8 said period.

9 "ARTICLE VII

10 "No state by joining herein shall become financially  
11 obligated to any other state, nor shall the breach of the  
12 terms hereof by any state subject such state to financial  
13 responsibility to the other states joining herein.

14 "ARTICLE VIII

15 "This compact shall continue in effect until Congress  
16 withdraws its consent. But any state joining herein may,  
17 upon sixty (60) days' notice, withdraw herefrom.

18 "The representatives of the signatory states have signed  
19 this agreement in a single original which shall be deposited in  
20 the archives of the Department of State of the United States,  
21 and a duly certified copy shall be forwarded to the governor  
22 of each of the signatory states.

23 "This compact shall become effective when ratified and  
24 approved as provided in Article I. Any oil-producing state



1 may become a party hereto by affixing its signature to a  
2 counterpart to be similarly deposited, certified, and ratified.

3 " 'Done in the City of Dallas, Texas, this sixteenth day  
4 of February, 1935.'

5 "WHEREAS, the said 'Interstate Compact to Conserve  
6 Oil and Gas' in its initial form has heretofore been duly re-  
7 newed and extended with the consent of the Congress to  
8 September 1, 1971; and

9 "WHEREAS, it is desired to amend said 'Interstate  
10 Compact to Conserve Oil and Gas' effective September 1,  
11 1971, and to renew and extent said compact as so amended:

12 "NOW, THEREFORE, THIS WRITING WIT-  
13 NESSETH:

14 "It is hereby agreed that effective September 1, 1971,  
15 the Compact entitled 'An Interstate Compact to Conserve Oil  
16 and Gas' executed within the City of Dallas, Texas, on the  
17 16th day of February, 1935, and now on deposit with the  
18 Department of State of the United States, be and the same is  
19 hereby amended by amending the first paragraph of Article  
20 VII thereof to read as follows:

21 " 'This compact shall continue in effect until Con-  
22 gress withdraws its consent. But any state joining herein  
23 may, upon sixty (60) days' notice, withdraw herefrom.'  
24 and that said compact as so amended be, and the same is  
25 hereby renewed and extended. This agreement shall become



1 effective when executed, ratified, and approved as provided  
 2 in Article I of said compact as so amended.

3 "The signatory States have executed this agreement in  
 4 a single original which shall be deposited in the archives of  
 5 the Department of State of the United States and a duly  
 6 certified copy thereof shall be forwarded to the Governor of  
 7 each of the signatory States. Any oil-producing state may  
 8 become a party hereto by executing a counterpart of this  
 9 agreement to be similarly deposited, certified, and ratified.

10 "Executed by the several undersigned states, at their  
 11 several state capitols, through their proper officials on the  
 12 dates as shown, as duly authorized by statutes and resolu-  
 13 tions, subject to the limitations and qualifications of the acts  
 14 of the respective State Legislatures.

"THE STATE OF ALABAMA

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary of State (SEAL)

"THE STATE OF ALASKA

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary of State (SEAL)

"THE STATE OF ARIZONA

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary of State (SEAL)

"THE STATE OF ARKANSAS

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary of State (SEAL)



## "THE STATE OF COLORADO

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary of State (SEAL)

## "THE STATE OF FLORIDA

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary of State (SEAL)

## "THE STATE OF ILLINOIS

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary of State (SEAL)

## "THE STATE OF INDIANA

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary of State (SEAL)

## "THE STATE OF KANSAS

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary of State (SEAL)

## "THE STATE OF KENTUCKY

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary of State (SEAL)

## "THE STATE OF LOUISIANA

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary of State (SEAL)

## "THE STATE OF MARYLAND

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary of State (SEAL)

## "THE STATE OF MICHIGAN

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary of State (SEAL)

## "THE STATE OF MISSISSIPPI

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary of State (SEAL)



## "THE STATE OF MONTANA

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary of State

(SEAL)

## "THE STATE OF NEBRASKA

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary of State

(SEAL)

## "THE STATE OF NEW MEXICO

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary of State

(SEAL)

## "THE STATE OF NEW YORK

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary of State

(SEAL)

## "THE STATE OF NORTH DAKOTA

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary of State

(SEAL)

## "THE STATE OF OHIO

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary of State

(SEAL)

## "THE STATE OF OKLAHOMA

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary of State

(SEAL)

## "THE COMMONWEALTH OF PENNSYLVANIA

By \_\_\_\_\_, Governor

Attest: \_\_\_\_\_

Dated: \_\_\_\_\_

Secretary of the Commonwealth

(SEAL)

## "THE STATE OF SOUTH DAKOTA

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary of State

(SEAL)

## "THE STATE OF TENNESSEE

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary of State

(SEAL)



## "THE STATE OF TEXAS

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary of State (SEAL)

## "THE STATE OF UTAH

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary of State (SEAL)

## "THE STATE OF WEST VIRGINIA

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary of State (SEAL)

## "THE STATE OF WYOMING

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary of State (SEAL)"

- 1        SEC. 2. The Attorney General of the United States shall  
 2        continue to make an annual report to Congress, as provided  
 3        in section 2 of Public Law 185, Eighty-fourth Congress, for  
 4        the duration of the Interstate Compact to Conserve Oil and  
 5        Gas as to whether or not the activities of the States under  
 6        the provisions of such compact have been consistent with  
 7        the purposes as set out in Article V of such compact.
- 8        SEC. 3. The right to alter, amend, or repeal the provi-  
 9        sions of the first section of this joint resolution is hereby  
 10       expressly reserved.



92<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. J. RES. 72

---

## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 8, 1971

Referred to the Committee on Interstate and Foreign Commerce

---

## JOINT RESOLUTION

Consenting to an extension and renewal of the interstate compact to conserve oil and gas.

1        *Resolved by the Senate and House of Representatives*  
2        *of the United States of America in Congress assembled,*  
3        That the consent of Congress is hereby given to an extension  
4        and renewal for a period of three years from September 1,  
5        1971, to September 1, 1974, of the interstate compact to  
6        conserve oil and gas, as amended, which was signed in its  
7        initial form in the city of Dallas, Texas, the 16th day of  
8        February 1935, by the representatives of Oklahoma, Texas,  
9        California, and New Mexico, and at the same time and place  
10       was signed by the representatives, as a recommendation for  
11       approval to the Governors and legislatures of the States of



1 Arkansas, Colorado, Illinois, Kansas, and Michigan, and  
2 which, prior to August 27, 1935, was presented to and ap-  
3 proved by the legislatures and Governors of the States of  
4 New Mexico, Kansas, Oklahoma, Illinois, Colorado, and  
5 Texas, and which so approved by the six States last above  
6 named was deposited in the Department of State of the  
7 United States, and thereafter was consented to by the Con-  
8 gress in Public Resolution Numbered 64, Seventy-fourth  
9 Congress, approved August 27, 1935, for a period of two  
10 years, and thereafter was extended by the representatives of  
11 the compacting States and consented to by the Congress for  
12 successive periods, without interruption, the last extension  
13 being for the period from September 1, 1969, to September  
14 1, 1971, consented to by Congress by Public Law Num-  
15 bered 91-158, Ninety-first Congress, approved December  
16 24, 1969. The agreement to amend, extend, and renew said  
17 compact effective September 1, 1971, duly executed by repre-  
18 sentatives of the States of Alabama, Alaska, Arizona,  
19 Arkansas, Colorado, Florida, Illinois, Indiana, Kansas, Ken-  
20 tucky, Louisiana, Maryland, Michigan, Mississippi, Montana,  
21 Nebraska, Nevada, New Mexico, New York, North Dakota,  
22 Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee,  
23 Texas, Utah, West Virginia, and Wyoming has been de-  
24 posited in the Department of State of the United States, and  
25 reads as follows:



1 "AN AGREEMENT TO AMEND, EXTEND AND RE-  
2 NEW THE INTERSTATE COMPACT TO CON-  
3 SERVE OIL AND GAS

4 "WHEREAS, on the 16th day of February, 1935, in  
5 the City of Dallas, Texas, there was executed 'An Inter-  
6 state Compact to Conserve Oil and Gas' which was there-  
7 after formally ratified and approved by the States of  
8 Oklahoma, Texas, New Mexico, Illinois, Colorado and Kan-  
9 sas, the original of which is now on deposit with the  
10 Department of State of the United States;

11 "WHEREAS, effective as of September 1, 1971, the  
12 several compacting states deem it advisable to amend said  
13 compact so as to provide that upon the giving of Congres-  
14 sional consent thereto in its amended form, said Compact  
15 will remain in effect until Congress withdraws such consent;

16 "WHEREAS, the original of said Compact as so  
17 amended will, upon execution thereof, be deposited promptly  
18 with the Department of State of the United States, a true  
19 copy of which follows:

20 "AN INTERSTATE COMPACT TO CONSERVE  
21 OIL AND GAS

22 "ARTICLE I

23 "This agreement may become effective within any  
24 compacting state at any time as prescribed by that state,  
25 and shall become effective within those states ratifying it



1 whenever any three of the States of Texas, Oklahoma,  
2 California, Kansas and New Mexico have ratified and Con-  
3 gress has given its consent. Any oil-producing state may  
4 become a party hereto as hereinafter provided.

5 "ARTICLE II

6 "The purpose of this compact is to conserve oil and  
7 gas by the prevention of physical waste thereof from any  
8 cause.

9 "ARTICLE III

10 "Each state bound hereby agrees that within a reason-  
11 able time it will enact laws, or if the laws have been enacted,  
12 then it agrees to continue the same in force, to accomplish  
13 within reasonable limits the prevention of:

14 "(a) The operation of any oil well with an in-  
15 efficient gas-oil ratio.

16 "(b) The drowning with water of any stratum  
17 capable of producing oil or gas, or both oil and gas, in  
18 paying quantities.

19 "(c) The avoidable escape into the open air or  
20 the wasteful burning of gas from a natural gas well.

21 "(d) The creation of unnecessary fire hazards.

22 "(e) The drilling, equipping, locating, spacing or  
23 operating of a well or wells so as to bring about physical  
24 waste of oil or gas or loss in the ultimate recovery  
25 thereof.



1           “(f) The inefficient, excessive or improper use of  
2       the reservoir energy in producing any well.

3       “The enumeration of the foregoing subjects shall not  
4       limit the scope of the authority of any state.

5                               “ARTICLE IV

6       “Each state bound hereby agrees that it will, within  
7       a reasonable time, enact statutes, or if such statutes have  
8       been enacted then that it will continue the same in force,  
9       providing in effect that oil produced in violation of its valid  
10      oil and/or gas conservation statutes or any valid rule, order  
11      or regulation promulgated thereunder, shall be denied access  
12      to commerce; and providing for stringent penalties for the  
13      waste of either oil or gas.

14                           “ARTICLE V

15      “‘It is not the purpose of this compact to authorize the  
16      states joining herein to limit the production of oil or gas for  
17      the purpose of stabilizing or fixing the price thereof, or  
18      create or perpetuate monopoly, or to promote regimentation,  
19      but is limited to the purpose of conserving oil and gas and  
20      preventing the avoidable waste thereof within reasonable  
21      limitations.

22                           “ARTICLE VI

23      “Each state joining herein shall appoint one repre-  
24      sentative to a commission hereby constituted and designated  
25      as THE INTERSTATE OIL COMPACT COMMISSION,



1 the duty of which said Commission shall be to make inquiry  
2 and ascertain from time to time such methods, practices,  
3 circumstances, and conditions as may be disclosed for bring-  
4 ing about conservation and the prevention of physical waste  
5 of oil and gas, and at such intervals as said Commission  
6 deems beneficial it shall report its findings and recommenda-  
7 tions to the several states for adoption or rejection.

8       ““The Commission shall have power to recommend  
9 the coordination of the exercise of the police powers of the  
10 several states within their several jurisdictions to promote  
11 the maximum ultimate recovery from the petroleum reserves  
12 of said states, and to recommend measures for the maximum  
13 ultimate recovery of oil and gas. Said Commission shall  
14 organize and adopt suitable rules and regulations for the  
15 conduct of its business.

16       ““No action shall be taken by the Commission except:  
17 (1) By the affirmative votes of the majority of the whole  
18 number of the compacting states represented at any meeting,  
19 and (2) by a concurring vote of a majority in interest of  
20 the compacting states at said meeting, such interest to be  
21 determined as follows: Such vote of each state shall be in  
22 the decimal proportion fixed by the ratio of its daily average  
23 production during the preceding calendar half-year to the  
24 daily average production of the compacting states during  
25 said period.



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1 Compact to Conserve Oil and Gas' effective September 1,  
2 1971, and to renew and extend said compact as so amended:

3 "NOW, THEREFORE, THIS WRITING WIT-  
4 NESSETH:

5 "It is hereby agreed that effective September 1, 1971,  
6 the Compact entitled 'An Interstate Compact to Conserve Oil  
7 and Gas' executed within the City of Dallas, Texas, on the  
8 16th day of February, 1935, and now on deposit with the  
9 Department of State of the United States, be and the same is  
10 hereby amended by amending the first paragraph of Article  
11 VIII thereof to read as follows:

12 " 'This compact shall continue in effect until Con-  
13 gress withdraws its consent. But any state joining herein  
14 may, upon sixty (60) days' notice, withdraw herefrom.'  
15 and that said compact as so amended be, and the same is  
16 hereby renewed and extended. This agreement shall become  
17 effective when executed, ratified, and approved as provided  
18 in Article I of said compact as so amended.

19 "The signatory States have executed this agreement in  
20 a single original which shall be deposited in the archives of  
21 the Department of State of the United States and a duly  
22 certified copy thereof shall be forwarded to the Governor of  
23 each of the signatory States. Any oil-producing State may  
24 become a party hereto by executing a counterpart of this  
25 agreement to be similarly deposited, certified, and ratified.



Secretary of State (SEAL)



## "THE STATE OF KENTUCKY .

By -----, Governor

Dated: -----

Attest: -----  
Secretary of State (SEAL)

## "THE STATE OF LOUISIANA

By -----, Governor

Dated: -----

Attest: -----  
Secretary of State (SEAL)

## "THE STATE OF MARYLAND

By -----, Governor

Dated: -----

Attest: -----  
Secretary of State (SEAL)

## "THE STATE OF MICHIGAN

By -----, Governor

Dated: -----

Attest: -----  
Secretary of State (SEAL)

## "THE STATE OF MISSISSIPPI

By -----, Governor

Dated: -----

Attest: -----  
Secretary of State (SEAL)

## "THE STATE OF MONTANA

By -----, Governor

Dated: -----

Attest: -----  
Secretary of State (SEAL)

## "THE STATE OF NEBRASKA

By -----, Governor

Dated: -----

Attest: -----  
Secretary of State (SEAL)

## "THE STATE OF NEW MEXICO

By -----, Governor

Dated: -----

Attest: -----  
Secretary of State (SEAL)

## "THE STATE OF NEW YORK

By -----, Governor

Dated: -----

Attest: -----  
Secretary of State (SEAL)

## "THE STATE OF NORTH DAKOTA

By -----, Governor

Dated: -----

Attest: -----  
Secretary of State (SEAL)

## "THE STATE OF OHIO

By -----, Governor

Dated: -----

Attest: -----  
Secretary of State (SEAL)



## "THE STATE OF OKLAHOMA

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary of State

(SEAL)

## "THE COMMONWEALTH OF PENNSYLVANIA

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary of State

(SEAL)

## "THE STATE OF SOUTH DAKOTA

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary of State

(SEAL)

## "THE STATE OF TENNESSEE

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary of State

(SEAL)

## "THE STATE OF TEXAS

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary of State

(SEAL)

## "THE STATE OF UTAH

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary of State

(SEAL)

## "THE STATE OF WEST VIRGINIA

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary of State

(SEAL)

## "THE STATE OF WYOMING

By \_\_\_\_\_, Governor

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary of State

(SEAL)"

- 1        SEC. 2. (a) The Attorney General of the United States
- 2 shall make a report to Congress not later than two years
- 3 after the date of enactment of this Act as to whether the
- 4 activities of the States under the provisions of such compact
- 5 have been consistent with the purposes as set out in Article
- 6 V of such compact.



1       (b) Section 2 of Public Law 185, Eighty-fourth Con-  
2 gress (69 Stat. 391) is hereby repealed.

3       SEC. 3. The right to alter, amend, or repeal the provi-  
4 sions of the first section of this joint resolution is hereby  
5 expressly reserved.

Passed the Senate August 6, 1971.

Attest:

FRANCIS R. VALEO,

*Secretary.*



U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C., June 29, 1971.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This responds to your request for the comments of this Department on H.J. Res. 586, a joint resolution "Consenting to an extension and renewal of the interstate compact to conserve oil and gas."

We recommend approval of the compact.

H.J. Res. 586 would give the consent of Congress to an extension and renewal of the interstate compact to conserve oil and gas, as amended. The compact was approved originally by six member states and consented to by the Congress in 1935. In accordance with its terms, the compact has been extended periodically since that time, each such extension being subject to congressional consent. H.J. Res. 586 would approve a change in the compact providing for its continuation until the consent of Congress is withdrawn. The compact was last extended to September 1, 1971 (Public Law 91-158). Currently, 29 states are members of the compact. The purpose of the compact is to conserve oil and gas by the prevention of physical waste thereof from any cause. The compact expressly provides that its purpose is not to limit oil or gas production, to stabilize or fix prices, to create or perpetuate a monopoly, or to promote regimentation.

The Department of the Interior has consistently supported extensions of the compact because conservation of the domestic energy supply is vital to national welfare. The Interstate Oil Compact Commission, established to implement the compact, has served this purpose by providing a forum for discussion of oil and gas conservation practices and a focal point for the study of state conservation laws, regulations and administrative procedures. It has supported technical and other work to improve oil and gas conservation and to disseminate information to the public.

While the compact would be amended to eliminate the necessity for periodic extensions subject to congressional approval, congressional oversight of the compact would, nevertheless, be continued since Congress could withdraw its consent at any time.

We note a number of technical changes which it would be desirable to make in the resolution. By reason of minor typographical differences, the compact as reproduced in H.J. Res. 586 is not entirely faithful to the original as it appears in 49 Stat. 939. The differences are:

In Article I, as printed in H.J. Res. 586, there is no comma after the word "Kansas", in line 8, on page 4 of the joint resolution. The original has a comma after the word "Kansas".

In Article III, as purportedly reproduced in H.J. Res. 586, page 4, line 17, the word "the" before the word "laws" does not appear in the original. Also in Article III, page 5, line 4, a comma should be inserted after the word "spacing".

In Article VI, page 6, line 11 of H.J. Res. 586, the comma after the word "circumstances" does not appear in the original. On page 7, line 1 and line 3, the initial letter in the word "states" should be capitalized.

In addition, in line 20 on page 8, the reference should apparently be to Article VIII rather than to Article VII.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

HOLLIS M. DOLE, *Secretary.*

DEPARTMENT OF JUSTICE,  
OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
Washington, D.C., March 1, 1972.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.J. Res. 586, a joint resolution consenting to an extension and renewal of the Interstate Compact to Conserve Oil and Gas.



The bill proposes to grant consent by the Congress, continuing unless specifically withdrawn, to an amended Interstate Compact to Conserve Oil and Gas, originally executed in 1935 for a four-year period, and thereafter successively renewed for similar terms. This interstate compact is intended to foster action by oil-producing States to conserve resources of oil and gas by ending wasteful production practices. Where the original compact was set for a term of four years, however, the current document is to be a permanent instrument, not requiring periodic reexecution; and, accordingly, the current consent resolution is intended to continue unless specifically withdrawn.

The Department of Justice has no objection to the indefinite extension proposal, in view of the inclusion of section 3 of the joint resolution, as usual and appropriate for such legislation, expressly reserving to Congress the right to alter, amend or repeal the consent resolution.

However, in view of the proposal to enact the resolution as an indefinite extension, the Department strongly urges careful reconsideration of the provisions of section 2. This section, included in the various consent resolutions since 1955, has required an annual report by the Attorney General as to the impact of State activity under the compact on competition in the oil industry. The various reports so far filed have reviewed in some detail the activities of the States under the compact and the independent structure of State conservation regulation governing the production of oil, and the relevance of these factors in competition in the oil industry.

This structure has not significantly changed in many years, and the activities of the States under the compact have not changed in any way which suggests a need for annual reports. This is particularly true with respect to the activities of the States taken under the authority of the compact, which, as consistently noted by the various Attorneys General since 1955, have only a remote and indirect impact on oil industry competition or on the levels of oil prices or supplies.

In view of these considerations, we believe that any reasonable concern by the Congress as to the competitive impact of this interstate agreement could be fully satisfied by a requirement that this Department maintain continuing surveillance, with reports to be filed from time to time concerning any State activities under the compact which might appear to be inconsistent with the purposes of that document. To accomplish this, we recommend that section 2 be amended to read as follows:

"Sec. 2. The Attorney General of the United States shall continue to survey the activities of the States under the Interstate Compact to Conserve Oil and Gas and shall report to Congress from time to time any activities by the States which appear to be inconsistent with the purposes set out in Article V of such compact."

We note that there is a printing error in the reference to Article VII of the compact in lines 19 and 20 on page 8. The reference should be to Article VIII.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD G. KLEINDIENST,  
Deputy Attorney General.

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EXECUTIVE OFFICE OF THE PRESIDENT,  
OFFICE OF MANAGEMENT AND BUDGET,  
Washington, D.C., June 17, 1971.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Rayburn House Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for views on H.J. Res. 586, a joint resolution "Consenting to an extension and renewal of the interstate compact to conserve oil and gas."

The Congress has given its approval to the renewal and extension of the compact for successive periods since its original execution in 1935, with the latest extension expiring September 1, 1971. H.J. Res. 586 would now give congressional consent to an indefinite extension of the compact while still requiring annual reports to the Congress by the Department of Justice on the activities of the States under Article V of the compact. The reports of the several Attorneys Gen-



eral since 1955 have concluded that the compact provides a useful forum for the discussion of oil and gas conservation problems and have raised no objection to the activities of the States under the compact.

The reports of the Department of the Interior and Justice call attention to certain technical changes which it would be desirable to make in the resolution. We also believe that annual reports by the Department of Justice are no longer needed. We therefore concur with the recommendation of the Department of Justice that H.J. Res. 586 be amended to provide for reports to the Congress from time to time rather than annually.

Subject to the Committee's consideration of these technical changes and of the recommendation of the Department of Justice regarding annual reports, the Office of Management and Budget would not object to the enactment of H.J. Res. 586.

Sincerely,

C. WILLIAM FISCHER,  
*Acting Assistant Director  
for Legislative Reference.*

DEPARTMENT OF STATE,  
*Washington, D.C., July 13, 1971.*

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives.*

DEAR MR. CHAIRMAN: The Secretary has asked me to reply to your letter of May 3, 1971 asking for comments on H.J. Res. 586 consenting to an extension and renewal of the interstate compact to conserve oil and gas.

This legislation is essentially domestic in nature and the Department of State has no objection to its passage.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

DAVID M. ABSHIRE,  
*Assistant Secretary  
for Congressional Relations.*

DEPARTMENT OF JUSTICE,  
OFFICE OF THE ATTORNEY GENERAL,  
*Washington, D.C., June 18, 1971.*

HON. CARL ALBERT,  
*Speaker of the House of Representatives,  
Washington, D.C.*

DEAR MR. SPEAKER: I have the honor to transmit the Report of the Attorney General pursuant to section 2 of Public Law 91-158, the Joint Resolution of December 24, 1969, consenting to an extension and renewal of the Interstate Compact to Conserve Oil and Gas.

Sincerely,

JOHN N. MITCHELL, *Attorney General.*

REPORT OF THE ATTORNEY GENERAL PURSUANT TO SECTION 2 OF THE JOINT RESOLUTION OF DECEMBER 24, 1969, CONSENTING TO AN INTERSTATE COMPACT TO CONSERVE OIL AND GAS

To the President of the United States of America and the Senate and House of Representatives of the United States of America in Congress assembled:

I have the honor to submit a report in compliance with section 2 of Public Law 91-158, a joint resolution consenting to an extension and renewal of the Interstate Compact to Conserve Oil and Gas for a period expiring September 1, 1971. That provision directs the Attorney General to continue to report annually for the duration of the Compact " \* \* whether or not the activities of the States under the provisions of such compact have been consistent with the purposes as set out in article V of such compact."<sup>1</sup>

Article V, in turn, states: "It is not the purpose of this compact to authorize the states joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof, or create or perpetuate monopoly, or to

<sup>1</sup> 83 Stat. 436, 441 (1969).



promote regimentation, but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations."

Since this report requirement was first imposed in the 1955 compact extension, and repeated in identical language in later extensions,<sup>2</sup> succeeding Attorneys General have uniformly construed it broadly to require report on the effects of oil conservation controls on oil industry competition and price behavior. This involves study of the complex inter-related State and Federal governmental system affecting crude oil production and supply with which the Compact is associated.

Since my last report in April, 1969, a number of developments have occurred, particularly at the Federal level. These various actions are too recent, however, for an appraisal of their effects on oil industry competition and price behavior. Accordingly, this Report will focus on the activities of the Interstate Oil Compact Commission established under the Compact, with particular outside developments noted in connection with the Commission's response to them.

#### I. REGULAR ACTIVITIES OF THE INTERSTATE OIL COMPACT COMMISSION

The Interstate Compact to Conserve Oil and Gas was first adopted in 1935 by six States. Its terms, until 1970, have remained unchanged as its signatories have increased to include 29 oil and gas producing States and four associate member States.

The Compact provides for an Interstate Oil Compact Commission of member State Governors and their official representatives. Working with the Commission are special committees, as required, and a number of standing committees with members appointed by the Governors of the individual States. The work of the Commission and its committees is largely carried on at its semi-annual meetings, with meetings of the Executive Committee in the intervals. Also participating at these meetings are official observers from Federal departments and agencies, the country of Venezuela, and various Canadian Provinces.<sup>3</sup>

Compact Commission action and influence are expressed in several ways. First, there is approval of positions taken in formal resolutions and adoption of committee reports. Then, there is publication of committee reports and studies on technical questions relating to conservation. Finally, there are direct communications to Federal officials expressing views on behalf of the Compact, and coordination and cooperation with Federal agencies and broad industry groups. All these activities of the Commission and its committees are coordinated and given staff assistance through the Compact Commission headquarters office in Oklahoma City, Oklahoma.<sup>4</sup>

*A. Commission Headquarters.*—Our last report had noted that the Commission's longstanding policy of not listing business affiliation with addresses of official representatives and committee members made it difficult, without considerable research, to evaluate the extent of oil and gas industry participation in Compact affairs. In apparent response, the 1970 Directory began the practice of such listing.

Additional effort was made to more closely involve the State Governors in Compact Commission affairs. A special committee was appointed to study ways to revamp the traditional format of Compact meetings in order to make it more convenient for a greater number of Governors to attend. Its report was adopted at the Executive Committee meeting in February 1970, and the revised format was used for the first time at the December Annual Meeting in Santa Fe, New Mexico.

The Commission hopes that the brevity of the essential proceedings will induce many more Governors of compacting States to take the time from their busy schedules to attend. It is believed, moreover, that the compression of committee reports, Executive Committee business and guest speakers into one ses-

<sup>2</sup> 69 Stat. 385 (1955), 73 Stat. 290 (1959), 77 Stat. 145 (1963) and 81 Stat. 560 (1967). A total of nine reports by the Attorney General have previously been submitted pursuant to this provision.

<sup>3</sup> In June 1970, Ontario was added to the list of Canadian Provinces sending official observers. The invitation was extended at the suggestion of the representative of New York, which works closely with Ontario on oil and gas matters involving the Great Lakes.

<sup>4</sup> For detailed amplification of this introductory sketch of the Compact and the organization and work of its Commission, see my last report, Att'y Gen., *Report Pursuant to Section 2 of the Joint Resolution of December 11, 1967, Consenting to an Interstate Compact to Conserve Oil and Gas* (April 1969), hereafter referred to as 1969 Report.



sion will be helpful in briefing the Governors in attendance more fully and personally on the work of the Commission and the conservation questions with which it deals. At the Santa Fe meeting five Governors were in attendance.

*B. Commission Action.*—As noted above, Commission action is most often taken in the form of resolutions adopted at meetings of the full Commission or the Executive Committee. Those of significance are usually concerned with aspects of Federal policy affecting oil and gas which are deemed to involve the conservation interests of the States.

At the 1969 Midyear Meeting at Casper, Wyoming, the resolutions adopted ran the gamut of these concerns. At a time when the Congress was considering major tax reform legislation, with reduction of the traditional oil depletion rate prominently featured, a Commission resolution urged that Congress should "examine with extreme care any proposal which would lessen the effectiveness of the differential taxation that has encouraged maximum discovery and availability of low-cost oil and gas supplies for the consuming public and the national security \* \* \*."<sup>5</sup> Another resolution noted that many Federal actions in the nature of "special treatments" had been taken in recent years to weaken, undermine and circumvent the basic oil import program established in 1959. It urged the new Cabinet Task Force, then beginning its study in depth of the program,<sup>6</sup> "to restore the stability and integrity to the program, reaffirming basic principles, and delineating specific guidelines." Finally, the Commission, taking cognizance of possible natural gas shortages in the near future, resolved that both industry and government should work together in an all-out effort to create the necessary incentives to encourage renewed and increasing search for natural gas.

At the December 1969 meeting in Salt Lake City, Utah, the Commission reaffirmed support of the existing mandatory oil imports control program, but urged modifications to ensure it would be fairly administered without exceptions. Indicating concern over "the number of unrealistic and impractical alternative proposals that have been submitted to the Cabinet Task Force by interests which, though well intentioned, evidenced no apparent knowledge of the nature of workings of petroleum conservation," the Commission expressed opposition to the use of any import tariff system or combination of a tariff-quota system. In arguing for retention of the existing system as best serving national security needs, however, the resolution made one significant concession. For the first time a Compact resolution acknowledged that "other secure Western Hemisphere sources" (i.e., Canadian and Venezuelan oil), not alone purely domestic supplies, would be available for an emergency and thus are an integral part of our assured national security supply.

At the February 1970 Executive Committee meeting in Dallas, Texas, shortly after the Cabinet Task Force report was issued, another resolution affirmed the Compact's past position on imports. It urged the President and Congress to reject "any type of complete or partial inclusion of a tariff factor," which had been recommended by the Task Force majority, "to supplant the present volumetric import control principle \* \* \*."<sup>7</sup> Again, at the Midyear Meeting in Columbus, Ohio, the full Commission urged the new Federal Oil Policy Committee, established after submission of the Cabinet Task Force report to appraise its recommendations and continue surveillance in this field, to reject the Task Force majority's proposals for a tariff plan and retain the import quota system.

<sup>5</sup> As finally enacted at the end of the year, the Tax Reform Act of 1969 lowered the percentage depletion rate applicable to oil and gas production from 27 1/2 percent to 22 percent. 83 Stat. 629, 26 U.S.C. § 613(b) (Supp. V, 1970).

<sup>6</sup> In March 1969, the President had created a Cabinet Task Force to conduct a comprehensive review of all aspects of our mandatory oil imports program. After long study its report was issued early in 1970. Cabinet Task Force on Oil Import Control, *The Oil Import Question, a Report on the Relationship of Oil Imports to the National Security* (February 1970).

<sup>7</sup> Adoption of this resolution illustrates the informality often surrounding Compact Commission proceedings. The resolution was proposed by Judge Jim C. Langdon, a member of the Texas Railroad Commission serving the Compact as chairman of its Legal Committee. He was in Dallas to attend the meeting of a Program Committee, held in conjunction with the Executive Committee session, to coordinate the program for the forthcoming Midyear Meeting. Though not the official representative of Texas, and thus with no official standing to participate, he moved the adoption of his resolution. It was promptly seconded and adopted.

It should be noted that the resolution was adopted unanimously, as is invariably the case with Compact Commission action. However, as has not infrequently been the case in the past, the representative of New York, a State far more oriented to consumption rather than production of oil and gas, abstained from the voting.



"as established in 1959." Finally, this resolution was reaffirmed at the Annual Meeting in Santa Fe. At that meeting, also, the Commission returned to the subject of natural gas. It urged, in view of the developing shortage, that Congress take immediate and effective action to correct the existing regulatory conditions with respect to natural gas production and pricing.

Typically, these resolutions are not sent directly to the Federal officials involved, but are forwarded to each of the Governors and official representatives of the compacting States "for such action as is deemed necessary." On occasion, however, there are direct communications. For example, along with other Governors the then Commission Chairman met with members of the Cabinet Task Force in November 1969, both as Governor of Kansas and IOCC Chairman, to urge Compact views on the Task Force. Again, on August 18, 1970, the Chairman wrote to the Federal Power Commission Chairman urging that the area pricing concept for natural gas be abandoned and that immediate increases in gas rates be adopted by the FPC. Finally, the Chairman sent a telegram to the President during the December, 1970 Annual Meeting, defending the work of State regulatory agencies and urging reconsideration of the decision to bring offshore production under direct Federal regulation and increase Canadian imports.<sup>8</sup>

The Commission, of course, has offered its cooperation to such agencies as the Federal Power Commission, the Public Land Law Review Commission, and the Energy Subcommittee of the Domestic Council. The Commission's General Counsel had presented the Compact's views to the Public Land Law Review Commission on two occasions in 1966 and 1967.<sup>9</sup> Later, in early 1970, he testified before the House Minerals Subcommittee on State market-demand regulation and the report of the Cabinet Task Force on Oil Import Control. In the Summer of 1970, he also participated in a conference of Government and energy industry officials held by the Domestic Council's Energy Subcommittee.

*C. Committee Activities.*—In recent years the Compact Commission has increasingly come to think of itself, and to be so regarded, as a focal point of coordination between the Federal Government and the States on mutual problems respecting oil and gas. An example of this was the request of the Department of the Interior in December, 1968 for data on recent oil well spacing trends in the producing States. This task was assigned to the Regulatory Practices Committee, and a special subcommittee was formed for the purpose. Questionnaires were sent to the States, and late in 1970 the committee issued its study, "Survey of Well Spacing Patterns, 1958-68."

During the survey period, other standing committees continued work in their respective technical fields, as described in my last report.<sup>10</sup> A number of other studies were issued. In December, 1969, for example, the Engineering Committee concluded work on, and approved for publication, its revised study, "Principles of Petroleum Conservation." The Energy Resources Committee continued its publication of updated statistics, for the years 1968 and 1969, as supplement to the 1964 Commission book, "A Study of Conservation of Oil and Gas in the United States." In December 1969 the Research Committee completed revisions on its earlier report, "Subsurface Disposal of Industrial Wastes," and the publication was thereafter reissued. Finally, in September, 1970 the Legal Committee issued the latest in its annual series, "1969 Legal Report of Oil and Gas Conservation Activities."

<sup>8</sup> Following an inflation alert by the Council of Economic Advisers in response to State market demand action cutting oil allowables, the Department of the Interior at the direction of the President had assumed control of oil and gas production on the Federal Outer Continental Shelf and also liberalized import controls on Canadian oil. See 35 Fed. Reg. 18559, 18528 (Dec. 5, 1970).

Shortly before, in November 1970, the Government had acted for the first time to invoke section 6 of the Presidential proclamation governing oil import controls. Proclamation No. 3279, 3 CFR, 1959-63 Comp., pp. 11, 13. Following oil industry price rises, the Office of Emergency Planning initiated an investigation to determine whether further Presidential action was needed and whether such price increases were necessary to accomplish the national security objectives of the import program.

<sup>9</sup> The Public Land Law Review Commission, established by Congress, completed its several years of study and hearings and issued its comprehensive report in June 1970. Among other recommendations affecting oil and gas, it urged that the Federal Government assume direct conservation regulation over production from the Outer Continental Shelf and that competitive leasing be revised to give more emphasis to royalty bids rather than cash bonus bids. Public Land Law Review Commission, *One Third of the Nation's Land*, 132-134, 188-189, 192 (1970).

<sup>10</sup> 1969 Report, pp. 25-31.



Two new committee groups were formed during the period. A Library Committee was established in 1970, comprised of three members from the Research Committee and one from each of the other technical committees. Its task was to assist in the modernization of the Commission's headquarters library and find ways to enable students of conservation to make better use of its facilities. In addition, following a resolution adopted in February 1970—just after issuance of the Cabinet Task Force report—requesting the Energy Resources Committee “to accumulate information and data relating to conservation policy and to the changes in the several producing states which result or may result from Federal actions on petroleum matters,” a special subcommittee on economic impact was appointed in April, 1970. So far, however, the subcommittee has done no more than organize itself and define its study objectives.

## II. NEW DEPARTURES FOR THE IOCC

During the survey period two significant actions marked new departures for the Interstate Oil Compact Commission. First, the Commission voted to amend the text of the Compact, the first such change in the thirty-five year history of the agreement. And, second, a special committee was formed to formulate new long-range goals for Commission activities.

*A. Amendment of the Compact.*—Article VIII of the original 1935 Compact stated: “This Compact shall expire September 1, 1937. But any State joining herein may, upon sixty (60) days notice, withdraw herefrom.”

Upon its expiration the States agreed, quoting the terms of the original instrument, to extend it for another two years, with the approval of Congress. This format was followed thereafter, originally for successive two-year terms of renewal and later for four-year terms.

Through the years there had been sporadic discussion of making the Compact a permanent instrument. It was pointed out that the Interstate Oil Compact was the only one of the numerous compacts among the States with a limited term of life, requiring periodic extension and Congressional approval. This question came to the fore again after 1967, when the States agreed once more to extend the Compact for four years but the Congress approved its renewal for only a two-year period. In 1969, when enactment of the joint resolution approving a further two-year extension was delayed until December 24, three months after the earlier legislation had expired, renewed discussion crystallized into action.

At the February, 1970 Executive Committee meeting, the IOCC General Counsel reported on the possibility of requesting Congress to extend the Compact on a permanent basis after August 31, 1971. At the suggestion of some Compact officials he had earlier undertaken a legal study to determine whether the organization of States could continue its work without the necessity of a formal Compact requiring congressional approval, but had concluded that a formal Compact on a permanent basis would be the better alternative. In his opinion, removing the expiration date in Article VIII would be the only change necessary in the Compact to ask for a permanent extension. He stated, however, that he would contact individual State legal authorities through the members of the Legal Committee to determine if such an amendment would require a new authorization by the State legislatures.

At the September, 1970 Executive Committee meeting in Tulsa, Oklahoma, the General Counsel reported the results of his canvass. It appeared that in only two or possibly three States would legislative action be necessary for approval of an amendment to the Compact. It was then moved that Article VIII be amended to read as follows: “This compact shall continue in effect until Congress withdraws its consent. But any state joining herein may, upon sixty (60) days notice, withdraw herefrom.”

The motion was adopted unanimously. It was agreed that the Compact, as so amended, would be circulated among the States for approval and then be submitted to the Congress in 1971.

The General Counsel explained that, although discussions on the matter had been held in Washington with various Congressional committee counsel, it could not be determined whether the Congress would agree to the indefinite term proposal. Nevertheless, he believed that regardless of what Congress should do, amending the Compact in this manner would be of benefit to the State Governors in relieving them of the necessity of re-executing the document periodically. It



would also relieve the headquarters office of the time-consuming burden of periodically recirculating the Compact for signature, a procedure which on occasion can take as long as fifteen months to complete.

*B. Long Range Goals for the Compact.*—At the December, 1969 Annual Meeting one of the general session speakers was Mr. Jack H. Abernathy, an independent drilling contractor who was presently serving as chairman of the National Petroleum Council. Long active in Compact affairs, Mr. Abernathy urged the Commission to abandon what he termed its relative passivity over the last 15 years. He called for a high-level committee of Governors to reappraise Compact activities in order to find ways in which the organization could be a more vital force in helping the compacting States make their views more effective at the Federal level on petroleum matters on which they agreed. Four current problem areas besetting the petroleum industry were cited, which he felt had a high probability of affecting the economic well-being of the producing States: pending tax reform legislation, which by reducing oil and gas percentage depletion rates could have the effect of cutting into State tax revenues considerably; proposed changes in import controls, which could similarly affect State tax revenues and reduce employment; impending natural gas shortages, of concern to producing States and their regulatory commissions; and the lack of an international oil policy by the United States.

In response, the Executive Committee authorized the Commission Chairman in February 1970 to form a special committee to study and make recommendations on the future goals, force and direction of the Compact. Governor Stanley K. Hathaway of Wyoming was appointed chairman of the Long Range Goals Committee, with Mr. Abernathy vice chairman, and a membership drawn from 16 of the compacting States. And for the general session of the Midyear Meeting a committee panel discussion was scheduled on proposals for new goals, followed by an open forum.

In this general discussion suggestions covered a wide spectrum of ideas. They included proposals for establishing an environmental protection committee and a liaison committee to coordinate with other environmental groups. Some stressed that the Compact should play a focal role in the State participation in formulating a national energy policy. Others felt the Compact could play a public relations role, disseminating data to improve the general public image of the petroleum industry within the compacting States. Finally, considerable attention was devoted to statistics, with suggestions that the Compact should actively foster improvement in the collection, coordination and publication of State Government statistics on industry operations. In this way, official Government data rather than industry-derived figures, which are always subject to charges of bias, would serve as a basis for necessary Federal and State policy determinations.

In this connection, Federal Power Commissioner Lawrence J. O'Connor, Jr., longtime FPC official observer at IOCC meetings, was asked specifically how the Compact could be more helpful to the Commission. He stated that the most meaningful improvement in the triangular Government-industry-consumer relationship would be some restructuring in the procedures for accumulating oil and gas industry reserves data. He conceded that participation by State regulatory personnel under the aegis of the Compact in developing these data would be an improvement over the present system of a confidential industry operation. Nevertheless, he believed that full public reliance on such data required meaningful Federal participation in their collection and assembly.

Following an August meeting of the committee to consider these and other suggestions submitted in response to a questionnaire distributed at the Midyear Meeting, Governor Hathaway presented the report and recommendations of the Long Range Goals Committee at the Compact's Annual Meeting in December 1970. The report noted that some suggestions, otherwise meritorious, were dropped because they were beyond the budgetary means of the IOCC. Other proposals were dropped because it was felt that they fell outside the scope of the Compact or related more to the industry's problems than to those of the producing States. The committee's recommended proposals for future Compact action were consolidated under the following four headings:

1. The IOCC should become an active participant in studies leading to development of a national energy policy for the United States. The report noted several efforts on the Federal level in this direction: an energy study committee formed by the Department of the Interior; a similar study by the National Petroleum Council; the work of the Domestic Council's Energy Subcommittee; and bills



introduced in Congress to create commissions for this purpose. Since any formulation of a national energy policy based on such studies would obviously have substantial effect on the producing States, it was recommended that the Compact, as the representative of the States, should take immediate steps to participate as an active force in this effort.

2. The IOCC should establish an Environmental Protection Advisory Committee, composed initially of two or more members from each of the present standing committees. Citing the Commission's longstanding conservation activity in aid of environmental protection—the elimination of gas flaring, the protection of earth and ground water through adequate drill casing, and the promotion of subsurface waste disposal, the Goals Committee felt that the Compact could beneficially cooperate with other environmental groups and lend the assistance of its developed expertise. The Advisory Committee, as envisioned, would have the following purposes: (1) to collect and distribute material on the work of State oil and gas regulatory agencies in aid of environmental protection, and assist in any public relations program about industry activities in this field; (2) to serve a liaison function—between the oil industry, State agencies and the Federal Government on environmental protection matters, and between the industry and other industries which could benefit from its developed expertise; (3) to furnish materials and advice to State regulatory agencies experiencing problems with State environmental commissions, and provide expert witnesses for environmental hearings; and (4) to foster studies on control of air pollution in oil production.

3. The IOCC should adopt an active and meaningful role in the gathering of statistical material, particularly as it relates to crude oil production and reserves. The report noted that the oil industry has more statistics and less credibility about those statistics than any other country. Since for long range planning, tax collection and other purposes each of the States must rely to a certain extent on the most meaningful of these statistics, which are prepared by major trade associations and continually subject to attack as to their veracity, it was concluded that the producing States have a material interest in assuring their accuracy and acceptance by others as authoritative. It was recommended, therefore, that the Commission explore the most productive means to enable its representatives to participate directly at the work level in the accumulation of statistics on reserves in order to ensure to the States and others the accuracy and validity of such data.

4. To protect the States, the IOCC should continue to study the recommendations in the report of the Public Land Law Review Commission. Though the impact of these recommendations for each of the producing States was not yet fully clear, it was concluded that some, if adopted, would obviously have far-reaching and dangerous effects on the economy and tax structures of the compacting States. Accordingly, the report advised that the Compact keep under close scrutiny, for periodic report to the member States, the development of any legislative or administrative action by Congress and Federal public land agencies in response to these recommendations.

The report of the Long Range Goals Committee was unanimously adopted. It is anticipated that implementation of its recommendations will be initiated early in 1971.

### III. CONCLUSIONS

During this survey period, as for earlier Reports, Department of Justice staff maintained surveillance of all Midyear and Annual Meetings of the IOCC. Minutes of Executive Committee meetings were monitored, and all committee activities and publications were carefully studied.

As a result, I reiterate the conclusion of my last Report that the Compact and its Commission play only a peripheral role with respect to the industry's competitive problems on prices and oil supply which stem in part from activities of individual compacting States, taken under authority other than the Compact, and related Federal action. Within the complex structure of State and Federal oil legislation the Compact itself provides only an organization for essentially research and educational purposes, with strictly limited powers and no authority over or responsibility for the regulatory activities of its member States.<sup>11</sup>

<sup>11</sup> See 1969 Report, pp. 47–50.



In the period under study the Compact Commission meetings have continued to serve principally as open forums for discussion of general conservation matters and problems of Government and industry. They have also served a valuable function in bringing together regulatory personnel from a variety of States to exchange views informally on mutual administrative problems. Compact committees have continued their research work in various regulatory, legal and technical areas to curb waste, improve reservoir management, and study outside developments which might adversely affect these efforts. At the same time, there has been increasing recognition and use of the Compact Commission's focal role as a vehicle for exchange of data and views on mutual Federal and State problems in the field of oil and gas.

Each individual State, as we have previously observed, regulates the production of oil and gas within its borders solely pursuant to its own authority, under laws devised and administered in terms of its own policy views. Essentially, the Compact binds its member States only to agree to conserve oil and gas by prevention of physical waste, though no recourse is provided to deal with a breach of the agreement. The States further agree to enact or maintain a minimum of laws of their own choosing to prevent a specified list of the most egregious forms of waste, which are all within normal State authority to control. Finally, the States agree to join in establishing and staffing an Interstate Oil Compact Commission to perform limited research and advisory functions in the field of conservation. Accordingly, from our study of the Compact and the recent operations of its Commission, as set forth in this Report, I once again find no reason to conclude that the activities of the States pursuant to the Compact—as apart from regulatory actions undertaken individually—have not been consistent with the purposes of the Compact as set out in article V of the agreement.

Respectfully submitted,

JOHN N. MITCHELL, *Attorney General*

Mr. VAN DEERLIN. Our first witness this morning will be the Honorable David R. Oliver, Acting Director, Office of Oil and Gas in the Department of the Interior.

Mr. Oliver?

**STATEMENT OF DAVID R. OLIVER, ACTING DIRECTOR, OFFICE OF OIL AND GAS, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY DOUGLAS H. HARNISH, JR., INDUSTRIAL SPECIALIST**

Mr. OLIVER. Good morning. I am David Oliver. I have with me Mr. Douglas H. Harnish, Jr., industrial specialist, Office of Oil and Gas, Department of the Interior. With your permission I would like to have Mr. Harnish join me.

Mr. VAN DEERLIN. We are delighted to welcome him here.

Mr. OLIVER. It is a pleasure to appear before you today to testify concerning House Joint Resolution 586, to consent to an extension and renewal of the interstate compact to conserve oil and gas.

The Interstate Oil Compact Commission was created in 1935. It is a cooperative advisory body which provides a forum for interstate cooperation. The purpose of the compact is to conserve oil and gas by the prevention of physical waste thereof from any cause and to further efficient practices in oil and gas production; 29 States are members of the compact and four other States participate as associated members. Official observers from Canada and Venezuela and from the Department of the Interior, the Federal Power Commission, the Department of Justice, and other Federal agencies are welcome at the meetings. The official observers from the Department of the Interior are the Assistant Secretary for Mineral Resources and the Director of the Office of Oil and Gas.



The commission is composed of the Governors of the member States who have authority to appoint committee members chosen from the best legal, technical, and engineering talent in the Nation.

Committee members, appointed by the commission, undertake research on petroleum resources, scientific and technological advancements in production, secondary recovery, pressure maintenance, leasing, physical and underground waste, and regulatory practices.

The principal committees of the Interstate Oil Compact Commission are: The energy resources committee, engineering committee, environmental protection advisory committee, public lands committee, regulatory practices committee, research committee, and the secondary recovery and pressure maintenance committee.

Some of the achievements of conservation stemming from the Interstate Oil Compact Commission have been the control of salt water pollution; the prevention of unnecessary flaring of gas; wider well-spacing, that is, the drilling of only one well on 80 or 160 acres rather than a more dense pattern; the unitization of properties in single pools or fields; the promotion of secondary recovery and pressure maintenance, that is, the increased recovery of oil by injecting water or other fluids into the oil field to drive out additional oil production or the injection of natural gas to preserve underground pressures and increase the recovery of oil. As a result, billions of barrels of oil will be produced to serve our Nation's needs rather than be wasted and left in the ground. Also, pollution of our streams and air has been prevented.

Petroleum is one of our most vital natural resources. The responsibility for producing this depletable resource without waste rests upon the oil and gas producing States and the Federal Government. The Interstate Oil Compact Commission, acting as an interstate advisory committee, furnishes a forum for the State, by cooperative action, to perform this obligation in the national public interest.

The Nation is now faced with two urgent and compelling needs of significance to oil and gas. The first of these is the need to protect and improve our environment. It demands that oil and gas resources be developed and produced in an environmentally acceptable manner, and also that increased supplies of these fuels be made available to meet environmental standards in fuel usage. The second is the more general need for clean energy, demands for which have grown much more rapidly than domestic supplies. If we are to maintain an adequate, secure energy supply, every reasonable effort should be made to induce the efficient production of our domestic petroleum resources. The Interstate Oil Compact Commission, by its composition and experience, is in a key position to aid in meeting both these needs.

The Interstate Oil Compact Commission has fulfilled a necessary role in the substantial progress that has been made in oil conservation. We believe that the extension of the compact, as provided for by the resolution, would be in the national interest.

I would be pleased to answer any questions you may have.

Mr. VAN DEERLIN. Thank you, Mr. Oliver.

In your listing of the principal committees of the commission you did not mention the Legal Committee. Was that an oversight?

Mr. OLIVER. I am sorry. It was an oversight; yes.



Mr. VAN DEERLIN. Mr. Keith, do you have any questions of Mr. Oliver?

Mr. KEITH. I don't at this time. I note Mr. Conte is in the audience. I would, perhaps, have some questions that would be relevant to Mr. Oliver's testimony following Mr. Conte. I have none at the moment.

Mr. VAN DEERLIN. Mr. Tiernan?

Mr. TIERNAN. I have some questions of Mr. Oliver but would join with my colleague from Massachusetts, Mr. Keith, and withhold those questions until we hear from Mr. Conte.

I ask permission for Mr. Oliver to stay in the committee room and will ask those questions of him later.

Mr. VAN DEERLIN. Is that satisfactory with you, Mr. Collins?

Mr. COLLINS. I would be glad to defer, but would like to make a statement.

I just want to tell Mr. Oliver how delighted we are to have him with us. I was proud to see in House Joint Resolution 586, this compact was founded in Dallas, Tex., some 35 years ago. It has an outstanding record of success and achievement during the period it has been in operation.

I am familiar with what you have done in reducing the flaring of gas where we used to waste so much gas through flaring it. Through your encouragement we are reserving that gas. Your work in water flooding has been helpful in recovering more of our national resources.

Another thing you have done constructively is spacing the wells, encouraging spacing farther apart so we get greater utilization of our facilities and a larger percentage of recovery of the national resources. These and so many other things have been accomplished through this joint effort of all of the States working together.

I will be interested in the comments of my colleagues and certainly favor extension of this very commendable project.

Mr. OLIVER. Thank you. I might say it is what they have done in co-operation with the ICC.

Mr. VAN DEERLIN. Will it be convenient for you to remain in the hearing room?

Mr. OLIVER. I will be happy to.

Mr. VAN DEERLIN. Thank you, very much.

We are privileged to have with us our colleague from Massachusetts, the Honorable Silvio O. Conte.

#### STATEMENT OF HON. SILVIO O. CONTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. CONTE. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, I want to apologize for being tardy.

Mr. VAN DEERLIN. I imagine the committee is in for a rigorous session.

Mr. CONTE. I am grateful for the the opportunity to testify in opposition to both House Joint Resolution 586, which would revive and extend indefinite congressional approval for the Interstate Oil Compact Commission and to Senate Joint Resolution 72, which would extend the compact for 3 years.



With your indulgence, Mr. Chairman, I would like to spend a few moments describing a number of positions taken on some of the major issues of government oil policy in the past few years. Let me simply assure you they do have a bearing on the subject at hand.

In 1969, at a time when Congress was considering reducing the oil depletion allowance, an association, meeting at Casper, Wyo., urged the Congress to "examine with extreme care any proposal which would lessen the effectiveness of the differential taxation that," the resolution claimed, "has encouraged maximum discovery and availability of low-cost oil and gas supplies for the consuming public and the national security."

Later, in December 1969, at a time when many of us were hearing encouraging reports of the results soon to come from the President's Cabinet Task Force on Oil Import Control, this same group issued another resolution expressing concern over "the number of unrealistic and impractical alternative proposals that have been submitted to the Cabinet task force by interests which, though well intended, evidenced no apparent knowledge of the workings of petroleum conservation."

Despite this "wise counsel," however, many will recall that the task force persisted in its "naive" course, thinking only of providing true national security at minimum cost to the consumer and the principles of a free market economy, and finally had the temerity to urge abolition of oil import quotas in its report of February 1970. True to form, that same month this association urged the President and the Congress to reject the "folly" of the task force's position. Twice more during the year this association reaffirmed its position against the task force.

Mr. VAN DEERLIN. When you refer to the "association" you are referring to the Compact Commission.

Mr. CONTE. That is right.

Finally, in December of 1970, the President himself was moved by an inflation alert issued by his Council of Economic Advisers, and was "impetuously seduced" into finding that State production controls, or prorationing, are not needed for national security, but in fact "actually interfere with the freedom of our domestic market system." I need hardly state that once more this association stepped forth into the breach to urge the President to reconsider his decision to bring offshore oil production under direct Federal regulation and to increase Canadian imports.

Let me end the suspense, for the few uninitiated present here this morning, by quickly stating that the association which took all these stands was not the American Petroleum Institute, not the Independent Petroleum Association of America, but, in fact, the very group we are asked once again today to invest with the trappings of Federal approval—the Interstate Oil Compact Commission.

This partial recitation of some of the Compact Commission's recent activities comes from the latest report of the Attorney General, dated June 18, 1971—a report commissioned by Congress for the express purpose of determining "whether or not the activities of the States under the provisions of such compact have been consistent with the purposes" of the compact.



What are those purposes? In fact, there is only one purpose, that of "conserving oil and gas by the prevention of physical waste thereof."

Now, I am not about to say to you today, Mr. Chairman and members of this committee, that any of these activities are inconsistent with the purposes of the compact. I do, however, suggest that none of the above listed activities is in any way in aid of the purpose of the compact. Let us grant, Mr. Chairman, that the Compact Commission causes no drain on the Federal treasury. Let us also grant that these State officials do indeed have every right to take the positions that they do. Still, we must ask the question: Does it make any sense at all for the Congress to place a stamp of Federal approval on such activities?

Before we answer that question we must spend a few moments examining the true function of the compact, which remains today what it was in 1935. Then we must ask ourselves whether there is a need for that function in today's world.

In examining the role of the compact we must acknowledge two central facts. First, that traditionally it was used in aid of a government oil policy which, until 1959, was left largely in the hands of the States. Since 1959, however, with the onset of the mandatory oil import quota system, the wisdom of continuing State authority over any part of government oil policy has increasingly come under question.

This State controlled government oil policy, of course, is well known as production control or prorationing. Under the guise of a simple concern for preventing physical waste, a system was developed in the thirties whereby production was rigidly controlled in order to maintain artificially high demand and prices. In support of that State effort—an effort which would otherwise have run afoul of the Constitution's command that only Congress can regulate interstate commerce—the Congress passed the Connally Hot Oil Act in 1935.

Whether we consider the stated purpose or the true purpose of prorationing, it was certainly logical in this setting for the oil producing States to have a mechanism for pooling their knowledge and experience in this area.

Events since World War II, however, drastically altered the oil business, severely limiting the ability of the States to administer a national oil policy. Foreign production was discovered in vast quantities at low costs, imports rose, and domestic oil development relatively declined. It was found to be expedient—economically expedient for the domestic oil industry and therefore politically expedient for its government protectors—to have the Federal Government impose oil import controls.

When we examine the oil quota program created in 1959, noting for example the responsibility placed on the Director of the Office of Emergency Preparedness to continually monitor domestic oil prices to determine if they were consistent with the price protection extended by quotas, it is easy to assume that the role of the States in affecting oil prices and supplies would now be superseded by the Federal Government.

Such a logical assumption, however, did not conform to the peculiar logic of the oil industry. From that realistic perspective, it is clear that quotas were in fact essential for continuing price control. An unlimited flow of imports was certain to spell the death of pro-



rationing. In fact, more than a decade later, this is precisely what the President's task force found. One reason it favored an end to the quotas was that the irrational system of market-demand prorationing would then fall like a house of cards.

As you well know, Mr. Chairman, recent years have seen growing criticism of the continuing validity of prorationing. I have already mentioned President Nixon's own doubts, expressed in December 1970. In this Congress more than 90 of my House colleagues have joined in my bill to repeal the Connally Act and thus end prorationing. I am especially proud that your chairman, Mr. Macdonald, your ranking minority member, Mr. Keith, and another member of your subcommittee, Mr. Tiernan, are among the cosponsors of this bill—H.R. 3548 and its identical companion bills H.R. 4930, H.R. 4931, H.R. 4932, H.R. 5187, and H.R. 6750.

It is sadly ironic that, both in the case of oil import quotas and prorationing, the evidence is mounting that these programs will soon collapse of their own weight. Just 2 days ago, Interior Secretary Morton again predicted that by 1985 we may need to import half of our petroleum requirements. This is, of course, of little comfort to the consumer who has already paid out of his pocket \$40 billion in artificially high prices due to quotas. There could be no more compelling evidence of the futility of this policy. It has failed totally to provide the national security it had claimed for it and at a terrible cost to the consumer.

A similar development has occurred with respect to prorationing. A month ago the Texas Railroad Commission announced it was lifting the lid on production of oil for April, setting the demand factor at 100 percent. The Louisiana Conservation Commission also claims it no longer has any substantial reserves.

While all these developments have taken place, Mr. Chairman, the Compact Commission itself has not failed to recognize that the role of the States in government oil policy is on the wane. The positions it has taken on the national issues I mentioned at the outset demonstrate this. The same attorney general's report further confirms this in describing the Commission's new long-range goals. Two of the Commission's chief concerns now are possible tax reform and changes in import controls, both of which, the Commission notes, could adversely affect State tax revenues.

Again, Mr. Chairman, I do not challenge the appropriateness of oil-producing-State officials expressing concern in this area, but I think we must ask whether it makes any sense to convey an aura of Federal respectability upon what is essentially a regional and industry-oriented lobbying effort.

The answer for me is clear. I respectfully urge the committee not to support this resolution. Further, while I do not see any need for ever renewing the life of this Commission, it is certainly clear that this committee ought not, and need not, act quickly on this resolution.

I want to commend Chairman Macdonald for helping to demonstrate that the work of the Commission can continue, and, in fact, has continued without this resolution. Since the most recent compact expired last September, there have been a number of meetings of the Commission and its executive committee. It might be claimed that some State funds for the Commission's activities presently depend on re-



newing the compact. If this is so, the Commission is free to go to the States to seek a new basis for funding.

If there is no need to act, there is, beyond that, strong reason not to act. As I have tried to suggest, the compact is only a part of the State's role in government oil policy. The major cog in that system is prorationing. This committee, which wrote the law establishing that system, should now, in my view, thoroughly reexamine the justification for the Connally Hot Oil Act.

While some might glibly suggest that the Connally Hot Oil Act is now a "dead letter," there are far too many questions unresolved before we can safely assume prorationing is dead.

It is possible, of course, to suggest that if prorationing is really on the way out, this subcommittee should simply report out my bill to repeal the Connally Hot Oil Act, in order to remove a useless law from the books.

While this result would, I believe, be correct, I have too much respect for this subcommittee to suggest it act hastily.

Rather, I propose that thorough hearings be held on my bill and any and all aspects of prorationing be examined. After such an examination, it may even seem appropriate to revive the compact in some form. Surely there should be no Federal support of any kind for a simple lobbying effort. That, in truth, is what the proponents of this resolution seek today. I trust you will agree that the Congress should have no part of this.

Thank you, Mr. Chairman.

MR. VAN DEERLIN. Thank you, Mr. Conte.

Is there some opposition to prorationing within the industry itself?

MR. CONTE. Oh, yes; there certainly is.

I have here, and I would like to submit it for the record if I may, an editorial from the Oil and Gas Journal issue of March 13, 1972, entitled "Market-demand proration has outlived its purpose."

It says, "It's hard to realize, but one chronic political problem for the petroleum industry is fast fading into limbo. Proration of crude production to market demand, long a favorite target of industry critics, is dying—if it isn't already dead.

"Market-demand proration for some time now has lost its usefulness in Oklahoma, Kansas, and New Mexico. The same trend is obvious for the two giant producing States of Texas and Louisiana."

I will submit this for the record.

(The article referred to follows:)

[From Oil and Gas Journal, Mar. 13, 1972]

#### MARKET-DEMAND PRORATION HAS OUTLIVED ITS PURPOSE

It's hard to realize, but one chronic political problem for the petroleum industry is fast fading into limbo. Proration of crude production to market demand, long a favorite target of industry critics, is dying—if it isn't already dead.

Market-demand proration for some time now has lost its usefulness in Oklahoma, Kansas, and New Mexico. The same trend is obvious for the two giant producing states of Texas and Louisiana.

The truth is a majority of wells and fields in the prorated states can't produce their present allowables or barely can do so. The demand for domestic crude is just surpassing the ability of producers to supply it under the existing climate for exploration.



State regulators would do the industry a favor if they would publicly acknowledge the moribund status of market-demand proration, discontinue taking nominations and setting statewide allowables at public hearings, and allocate production purely on the basis of good conservation rules.

The change could be effected within the framework of existing law. And the move would give oil critics one less cross on which to hang the industry.

Switching from market-demand to maximum efficient rate limits as a basis for production allowables actually doesn't represent a radical change.

Market-demand proration, despite arguments that it is a price-fixing device, has always served the cause of conservation. It was conceived in the days of ample domestic supply when constant overproduction represented waste of a valuable resource. It ended the boom-and-bust cycles that had characterized oil production from its beginning.

But the possibility of domestic overproduction is becoming more remote all the time in the face of steadily rising demand for oil and declining reserves. Going through the motions of fitting production to the market has become a futile exercise.

The concept of proration—allocating production among wells or fields—still has a useful purpose, however. It is needed to buttress conservation and to guarantee ratable take and must be retained.

Allowables in the future, though, should be:

Keyed to a well's maximum efficient rate so that its producing life or that of the reservoir is not endangered.

Geared to prevent gas flaring by limiting production to capacity of the available gas-processing facilities.

Set to assure all producers a fair share of various facilities for getting their crude to market.

Used to encourage other conservation practices, such as efficient spacing of wells and field units to undertake secondary-recovery operations.

Basing proration on these standards, and dropping the single factor of market demand, would recognize realities and represent sound political strategy.

Mr. COLLINS. May I ask, was that a general editorial comment? Did they say specifically who favored that approach or is it just a magazine article or newspaper report?

Mr. CONTE. That is the petroleum bible.

Mr. COLLINS. I wondered which oil companies or petroleum operators favored that comment or is it a general editorial opinion?

Mr. CONTE. Right.

Mr. COLLINS. Did you have additional information?

Mr. CONTE. Just this brief comment. I suppose it is not completely fair to say that this trade journal now favors enactment of my bill to repeal the Connally Act. But if the journal really believes that prorationing has "outlived its purpose," then it logically should support my bill.

Some cynics are questioning whether the journal is really sincere in its call for an end to prorationing. The editorial repeatedly suggests that the best reason to end it is to silence its critics. At one point it says the move "would give oil critics one less cross on which to hang the industry."

Well, if this is a bluff, Mr. Chairman, I say let's call it. It is not a bluff, I welcome support for my bill, even from this unexpected source.

Mr. VAN DEERLIN. Mr. Tiernan?

Mr. TIERNAN. Thank you, Mr. Chairman.

I want to commend you on your very fine statement with regard to House Joint Resolution 586. As the chairman indicated, the request received for the continuation of the compact is that it not be for a limited time, but indefinitely. How do you feel about that?

Mr. CONTE. I am definitely opposed.



Mr. TIERNAN. The Attorney General also suggested there be no requirement for reports to the Justice Department, but continued surveillance.

Mr. CONTE. I am also in opposition to the Attorney General's proposal. His reports have been one of the few bright spots here.

Mr. TIERNAN. Do you think the Attorney General and the Justice Department are complying with the intent of the compact in view of the report they filed with this committee? In reading the Attorney General's report, it would appear the conclusions are just observations that the compact has far exceeded the intent of what was the compact.

Mr. CONTE. I wouldn't say they are keeping within the intent.

Mr. TIERNAN. The Justice Department doesn't seem to say anything is wrong with that. In the conclusion they point out the compact is not only concerned with reserving the resources but is concerned about policies enumerated by other Federal agencies. Yet the Justice Department doesn't seem to be critical?

Mr. CONTE. I think they should be critical.

Mr. TIERNAN. Don't you think we should be concerned? If in fact the committee decided to continue the compact, should we put language in the legislation requiring a strict conformance with the authorization that we grant to States to enter into the compact?

Mr. CONTE. By all means.

Mr. TIERNAN. It is necessary that they have a compact in order to meet the constitutional requirements; is that correct?

Mr. CONTE. No. I do not believe the compact is necessary. As I stated, the Commission continues to operate without a compact.

Mr. TIERNAN. There is nothing in the compact with regard to any enforcement that in fact we do restrict them to the authority granted by the Congress to join this compact.

The purpose of this compact is to conserve oil and gas by prevention of waste thereof from any cause. There is no question they far exceeded that authority?

Mr. CONTE. By all means.

Mr. TIERNAN. Is there anything in the compact that requires the Justice Department to take any action against the Association of States and the compact?

Mr. CONTE. I don't believe so.

Mr. TIERNAN. Do you think the committee should consider it?

Mr. CONTE. I think the committee should consider it. We have not looked into that aspect but I think it is an area in which the committee can look into it. This thing is really ridiculous. When you mention the compact's intent, that is to conserve petroleum and oil and, at the same time consider that the Government has stepped in and imposed import controls which more rapidly deplete our reserves, the inconsistency is striking.

Mr. TIERNAN. I thank the chairman.

No further questions.

Mr. VAN DEERLIN. Do you suggest the Commission should be placed under the Hatch Act perhaps?

Mr. CONTE. It wouldn't be a bad idea.

Mr. VAN DEERLIN. Mr. Collins?

Mr. COLLINS. Mr. Conte—

Mr. CONTE. A lot of wells would run dry.



Mr. COLLINS. Do you read this report from the Justice Department every year?

Mr. CONTE. No, not every year, but counsel here has been with me—how long, 3 years, he reads it.

Mr. VAN DEERLIN. For the record, please identify him.

Mr. CONTE. John Finn, minority counsel for the Small Business Committee.

Mr. COLLINS. Does he outline different points for you each year that he thought needed change?

Mr. CONTE. Oh, yes.

Mr. COLLINS. My experience has been in Congress that we have so many reports that are just reports, I wonder if the reports shouldn't merely just stress areas where there is a controversy.

What have you brought out in this report that has been worth while in years? You say you believe in an annual report.

Mr. FINN. Well, I think it is interesting to note in a number of the Attorney General's reports, while they have found very little to do to respond directly to their basic assignment, namely, to answer the question, is the Compact Commission carrying out its responsibilities consistent with the requirements of the resolution, many of these reports have gone well beyond that to at least explore other activities such as prorationing, and I would suggest it is at least useful that these Attorney General's Reports have highlighted the absurdities of prorationing.

While they do not flatly come to the conclusion that I think should be there—that all of this activity is totally unrelated to the purposes of the compact—they at least bring to the light of day all of these essentially lobbying activities.

Mr. TIERNAN. Would the gentleman yield?

Mr. COLLINS. I yield.

Mr. TIERNAN. In relation to that article 5 the compact says, "It is not the purpose of this compact to authorize the States joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof," but clearly the compact through the committee has suggested that the President is wrong in recommending the removal of import quotas. So it seems to me they fly right in the face of the authority in the language of the compact.

Mr. COLLINS. The interests of the compact has been on conservation and many in Congress today are interested in conservation. Is it the opinion of your colleagues that you have taken a stand America should turn its back on conservation?

Mr. CONTE. Of course not. You know better than that. I am for conserving our natural resources but by the same token I won't give this a stamp of approval if it is just a gimmick to lobby for higher prices for their commodity and that is what it is.

In addition, the oil import quota program, which was also imposed under the guise of national security was the biggest phoney that has ever come down the pike. It was strictly a political, economic issue. It was put in to help the oil industry get a better price for their commodity and now they are caught in a bind; even with the tremendous prices they have been able to charge in this country, they have not developed new reserves so they are going to gradually do away with the quota system.



Mr. COLLINS. Let me remind my colleague, who says oil companies are getting an extremely high price. We have been in hearings during the past few months on gas shortage, and we have heard the price is artificially low for oil and gas. The coal competitor said they wished we would turn the oil and gas price loose and let it rise to a fair market price. They said gas prices are a third below what they should be. The coal industry said the price is artificially low.

Mr. CONTE. What coal company?

Mr. COLLINS. The spokesman for the industries.

Mr. TIERNAN. The association itself.

Mr. CONTE. The oil industry already owns 20 percent of U.S. coal production. This is one of the worst collusions perpetrated on the American taxpayer and consumer. The Attorney General should go after and break up these mergers. It is a scandal what is happening in this country.

Mr. TIERNAN. Are you saying the prices of coal are rigged in this country?

Mr. CONTE. Well, I am not going to—there is the potential of the price being rigged.

Mr. TIERNAN. On what basis do you make that statement?

Mr. CONTE. Look at the shortage of coal we had last year, the Tennessee Valley Authority at one point had only about 10 days' supply of coal left. They couldn't get coal, then the price went up in some cases by nearly 100 percent. Don't tell me that doesn't suggest the rigging of prices. If I was the Attorney General, I would look into that.

Mr. COLLINS. Let me ask you something in connection with pricing. You all make shoes up in Massachusetts:

Mr. CONTE. We used to make shoes. The cheap labor down South stole all the industry. What else do you want to talk about?

Mr. FREY. Wait a minute.

Mr. COLLINS. Let's say it costs \$10 a pair to make shoes. Let's say the cost of making shoes is \$10 a pair, but the market is only paying \$9 for them. How many shoes would you be making if they cost \$10 and sell for \$9? They wouldn't sell many pairs of shoes on that basis.

On the other hand if the price of shoes went to \$11, you would start selling shoes. Couldn't coal be the same way, when they priced coal at a fair price, they started selling?

Mr. CONTE. People in New England, who are really getting socked by artificially high oil prices due to the quota system, are also being socked by imports. At the same time you put quotas on oil, there is a flood of imports of shoes, textiles, and everything else.

These people sell shoes for \$9, they couldn't hold on to those shoes. They don't even have warehouses to hold the shoes. Coal is a commodity you leave in the ground, you can sit back and wait.

Mr. COLLINS. You have to pay the coal miners.

Mr. CONTE. No, you don't, you pay them when you dig the coal. You can lay them off, create a strike, a labor dispute, which I'm told has been done to get rid of large inventories.

Mr. COLLINS. You aren't saying coal companies are curtailing use of labor to create a shortage?

Mr. CONTE. I won't make any such bold accusation; this is something for the Attorney General. The possibilities are here, and cer-



tainly, now that the oil companies have gone into the purchase of coal and uranium, as well as natural gas, the possibilities for price rigging are staggering and I think this is not healthy for this country.

Mr. COLLINS. As you know, fuel oil is not subject to this import control quota, is that right?

Mr. CONTE. Residual oil is not. Residual was decontrolled in 1966 for the east coast.

Mr. COLLINS. That is the big volume that goes into providing the basic heat?

Mr. CONTE. Our big need in New England is for No. 2 home heating oil, this is the one the consumer uses and the housewife uses. If you want to help me, join me to get rid of these quotas and we will make you an honorary citizen of New England. [Laughter.]

Mr. TIERNAN. I don't know what they will do in Texas.

Mr. FREY. I am not sure he is on your side or against you.

Mr. COLLINS. I appreciate it.

Mr. CONTE. I have great respect for the gentleman.

Mr. COLLINS. I lived in Boston 2 years, it is a wonderful, delightful city.

Mr. CONTE. I knew there was something good about you.

Mr. COLLINS. When I studied in Harvard they didn't teach me the facts the way you understand them.

Mr. CONTE. They are very simple, a question of supply and demand.

Mr. COLLINS. That is exactly right. We have in hearings recently, where we have found the production of gas has dropped in half in recent years. Last year we consumed twice as much gas as we came in with new discovered reserves. The drilling is now half of what it was 20 years ago and that is supply and demand. Also the fair market price is below what has been allowed as a gas price. When they cannot drill and make money, they just stopped drilling.

Let me ask you one other thing. This LNG that you have up there in Boston, are you familiar with that?

Mr. TIERNAN. Liquefied natural gas.

Mr. COLLINS. What I am talking about is that Massachusetts is more and more looking to the Middle East as its source of fuel. Passing on to this national security issue, do you think it is good for us to be dependent on the Middle East for our natural fuel?

Mr. CONTE. Congressman, I was on the Foreign Aid Appropriations Subcommittee for several years, and every time the Under Secretary of State for Latin America appeared before us, I would ask him that question of national security. He agreed with me a hundred percent. He thought it was ridiculous to set up this quota system and hurt our friends.

We were getting oil from Venezuela at that time. I always reminded my opposition that in World War II, talking about national security, our entire Atlantic Fleet was dependent on Venezuela oil. Now, we can't expect to go there in time of emergency and, say, hey, we need oil. Venezuela will thumb her nose at us. We have to establish markets through the years so when there is an emergency we can go there and get this oil and fuel from them.

No, I don't think it is good to be that dependent on Middle East oil, Persian Gulf oil, but I think if we end quotas now, we can stop depleting our own limited reserves so rapidly.



Mr. COLLINS. You said Massachusetts is not in the market for buying oil from South America with Venezuela as its source.

Mr. CONTE. Not so much today as before. The States have passed new laws requiring a low-sulfur content in oil.

Venezuela does not naturally produce low sulfur content oil, and desulfuring plants are not sufficient.

Mr. COLLINS. You are in agreement with the law Massachusetts passed?

Mr. CONTE. That is another ball game. I won't get into that.

Mr. COLLINS. This is the law that governs life in Massachusetts. Are you in favor of their law?

Mr. CONTE. I am not here to testify on Massachusetts State law. I will say its timing is questionable. I happen to come from the western part of the State and I happen to be a very practical individual and also a great conservationist.

But when New York, Vermont, Connecticut, and New Hampshire, which border my district, allow a higher sulfur content in their fuel there is no fence or barrier that says you can't blow your smoke in my district. And Massachusetts standards are already more stringent than Federal law will require by 1975.

Mr. COLLINS. It really does concern us. I will be glad to yield and come back.

Mr. VAN DEERLIN. Fine. Mr. Frey?

Mr. FREY. I will yield my time.

Mr. CONTE. Mr. Collins, you studied the bill I filed with Congressman Harrington and some other Congressmen to set up a national defense petroleum reserve in case of a national emergency?

Mr. CONTE. That would help in case of an emergency. It represents a true concern for national security, unlike quotas which actually threaten our security.

Mr. COLLINS. We come out with the basic fact that we turn our back on Venezuela because of the high environment standards, for which Massachusetts is to be commended. We are also interested in maintaining national stability and national security. Would it be good for us in this country to be dependent on the Middle East for our oil and gas reserves?

Mr. CONTE. I think we should never have to worry about that oil and gas under the ground in the United States. I'd rather have it there than see us continue to squander it as we have with the quota system.

The oil industry has had it both ways, keeping it there through rationing and come in through the quota system, driving the price up as high as they could. And they have done it at the expense of my constituents and others across the Nation.

Mr. COLLINS. Your constituents are bringing in LNG and paying more for LNG than for natural gas. If you are looking for cheap deals, why did you take that LNG one?

Mr. CONTE. I can't say I took it.

Mr. COLLINS. Well, LNG sells for what, compared to natural gas in Boston?

Mr. CONTE. I don't know.

Mr. COLLINS. Isn't it about a third more?

Mr. CONTE. It is higher.



Mr. COLLINS. If it costs a third more, how have they been gouging on gas or oil prices through this compact condition?

Mr. CONTE. You will have to talk to industry, I am speaking solely for the consumer who needs desperately No. 2 fuel oil. And it is the major gas companies, like El Paso, which have pressed for imported LNG.

Mr. TIERNAN. Will the gentleman yield?

The reason we have to go to LNG is we can't get additional oil from gas fields in certain parts of the country, Texas, Louisiana, and others. That is because of the fact the oil industry has decided not to drill, as the gentleman from Texas indicated, because the return they are getting on their investment is not the same as they can get in other parts of the world.

Mr. COLLINS. I have seen oil men getting out of this business, going into the cookie business, the publishing business, any other business. It just isn't true, this bit about the fat cat in oil.

Mr. FREY. Do I have any time left?

Mr. VAN DEERLIN. Certainly you have.

Mr. FREY. One question before you go. This area is new to me. It is my first year on the subcommittee. I read the material last night they sent over. You talk about the prices and the artificial creation of the prices which are higher.

Can you just brief me on the increase in the prices, what the price increase has been, say over the last 5 years?

Mr. CONTE. We have statistics and can supply them for the committee. Since the quota went in, your State was also affected. According to the President's Cabinet Task Force on Oil Import Control, the average Florida family of four paid \$100 in 1969 in artificially higher prices due to quotas.

Mr. FREY. In 1966 we became a member of this.

Mr. CONTE. I started fighting 12 or 13 years ago. Florida used to join me all the time. Nationally, it cost the U.S. consumer \$5 billion a year as of 1969 in artificially higher prices.

Mr. FREY. Where do you get that figure?

Mr. CONTE. From President Nixon's own Task Force. They came out with a recommendation to do away with these quotas, but had a turn about of 180 degrees when the oilmen from Texas, Louisiana, and Oklahoma put the heat on.

Mr. FREY. You have a lousy Texas accent. [Laughter.]

You would supply it?

Mr. CONTE. Yes, we will send it up. That is the best figures you can have.

(The following information was received for the record:)

#### SOURCE OF CONSUMER COST OF OIL IMPORT QUOTAS

The source for the annual consumer cost of oil import quotas in Florida is President's Cabinet Task Force on Oil Import Control, *The Oil Import Question: A Report on the Relationship between Oil Imports and National Security* (February, 1970) pages 26-27.

The source for the total annual consumer cost of oil import quotas, \$5 billion, is also the Task Force Report, page 22, paragraph 207.

Earlier, Mr. Frey had asked about the record of price increases over the last five years. It might be worth noting, first, that in 1959, the price of domestic crude oil was approximately \$2.80/barrel. Prices of crude oil and its derivatives



have been increased many times since 1959. The domestic wellhead price is presently approximately \$3.40/barrel, and the world market price is between \$1.80 and \$2.40/barrel.

According to the hearing record of the Small Business Subcommittee of the Senate Banking, Housing, and Urban Affairs Committee (October 14, 1971, Hearings on the Cost and Adequacy of Fuel Oil, Page 322), the wholesale tank car price of No. 2 home heating oil in New England has increased from 9.4 cents per gallon in 1964 to over 12 cents per gallon in 1971; the retail price increased in that period from 15.37 cents per gallon to 19.84 cents per gallon. Recently, prices of some oil products were increased, in August, 1971—just one week before price controls were publicly announced—and again in April, 1972.

Mr. TIERNAN. Mr. Chairman?

Mr. VAN DEERLIN. Yes, Mr. Tiernan.

Mr. TIERNAN. Following up what you said, Mr. Congressman, wouldn't it be in the national interest to preserve what oil reserves we have and remove the import quota at the present time due to the fact we have no emergency situation and use the oil from the Middle East rather than increase the supply of oil in our own country?

Mr. CONTE. Yes, I brought that out and also brought it out in the testimony.

Mr. TIERNAN. Wouldn't we be preserving our own natural resources and prices?

Mr. CONTE. Yes, sir; the bill I filed to create a national defense petroleum reserve would do that, keep that oil in the ground.

Mr. TIERNAN. Nothing would provide for restricting the oil production other than preserving the resource by the compact?

Mr. CONTE. No.

Mr. VAN DEERLIN. Thank you, Mr. Conte, you have surely enlivened the proceedings this morning. I don't have much to do with the plans for the summer convention out in San Diego but it would seem to me they could avert a dull one by making Mr. Collins and Mr. Conte joint chairmen of the Platform Subcommittee on Resources.

Mr. CONTE. I couldn't think of a better guy to serve with. Thank you.

Mr. FREY. That is one thing you wouldn't need, something to enliven the convention. [Laughter.]

Mr. VAN DEERLIN. Would it be convenient with you, Mr. Oliver, to let the third witness, Mr. Byrd, the general counsel of the Commission, testify now?

Mr. OLIVER. At your pleasure.

Mr. VAN DEERLIN. His testimony might suggest still further questions to you. That is all right with you?

Mr. OLIVER. Yes, sir.

Mr. VAN DEERLIN. Mr. Byrd, I see you are joined by Mr. W. Timothy Dowd, executive secretary of the Compact Commission and I understand you are going to present testimony on behalf of Governor Hathaway.

**STATEMENT OF RICHARD C. BYRD, GENERAL COUNSEL, INTER-STATE OIL COMPACT COMMISSION; ACCOMPANIED BY W. TIMOTHY DOWD, EXECUTIVE SECRETARY**

Mr. BYRD. He has filed a prepared statement. I will be glad to read it or ask it be incorporated in the record and summarize briefly and answer any questions the committee might have.



Mr. VAN DEERLIN. Fine. Perhaps, for the record, both you and Mr. Dowd should indicate the time you have been with the Commission, and what your background is.

Mr. TIERNAN. Before proceeding, Mr. Chairman, I would object to a summary of the statement. I have not received it. I would prefer to have it read. Governor Hathaway's statement I just received. Under the rules of the committee, we should have them in advance and I would like it read so I may follow along the testimony of Governor Hathaway.

Mr. VAN DEERLIN. All right, there is plenty of time.

Mr. BYRD. First, my name is Richard C. Byrd. I am a lawyer from Ottawa, Kans. I have the title of general counsel but it is not a full time job. I have served as chairman of the Corporation Commission of Kansas that has the regulatory authority for the conservation of oil in Kansas.

Mr. Dowd has been with the Commission for 3 years and he is the executive secretary of the Compact Commission. His office is in Oklahoma City.

Mr. VAN DEERLIN. Mr. Dowd is full time with the Commission?

Mr. BYRD. Yes, he is. I am a practicing attorney and part time with the Commission.

On behalf of the Governor of Wyoming we thank the committee for the opportunity to make this statement.

I will read his statement.

**STATEMENT OF HON. STANLEY K. HATHAWAY, GOVERNOR OF WYOMING, AND CHAIRMAN, INTERSTATE OIL COMPACT COMMISSION (AS READ BY RICHARD C. BYRD)**

"My name is Stanley Hathaway and I am chairman of the Interstate Oil Compact Commission. I am appearing in support of House Joint Resolution 586. This resolution, if adopted by the Congress, would extend the Interstate Compact to Conserve Oil and Gas for the 12th time since 1935. The Interstate Oil Compact is an agreement entered into by virtually all of the oil- and gas-producing States for the purpose of preventing the physical waste of oil and gas.

"With the discovery of enormous fields in the 1920's and early 1930's, the need for an interstate oil compact became obvious. The situation turned into a national problem so acute that the States of Oklahoma and Texas found it necessary to declare martial law in the oil fields. A congressional committee, in 1934, after thorough investigation of the situation, said, 'We strongly urge upon the oil-producing States the adoption of State compacts to deal with the problems of production of petroleum with which individual States are powerless to cope \* \* \*. A State compact \* \* \* is the solution of those problems of petroleum production which cannot be solved with modification of the "law of capture" and other legislation operating within State boundaries.'

"Almost immediately—in December 1934—Governor-elect E. W. Marland of Oklahoma called a conference of representatives of the oil-producing States. As a result of this conference, a meeting was held in Dallas, Tex., in February 1935. The Interstate Compact to Conserve



Oil and Gas was first signed at this meeting in Dallas on February 16, 1935, and subsequently approved by Congress the same year. The original compact instrument provided that it would expire on September 1, 1937. It has periodically been renewed continuously since that time.

"Each time this instrument has been renewed it has been necessary to circulate a new compact among the member States, which now number 29. This has been a burden on the compacting Governors, the Congress, and the staff. As a result, the Governors who are members of the executive committee, and the representatives, decided in September 1970 to amend the language which had previously appeared in article VIII to read as it reads in the measure being considered by this committee today. I quote from that article:

"This compact shall continue in effect until Congress withdraws its consent. But any State joining herein may, upon 60 days' notice withdraw herefrom."

"We feel that such an article better serves the needs of the Congress and of the oil-producing States. It permits the Congress to withdraw its consent at any time it sees fit in the future. At the same time, it retains to the States the right to withdraw upon 60 days' notice at any time any State should so desire.

"The membership of the Interstate Oil Compact Commission now consists of 29 oil-producing States: Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Montana, Nebraska, Nevada, New Mexico, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wyoming.

"In addition to these States, Georgia, Idaho, North Carolina, Oregon, and Washington are associate members. An associate member is a State not now having oil- and gas-production, but having prospects for such production.

"The purpose of the compact is best expressed by the language of the compact itself. Article II states, 'The purpose of this compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.'

"Article VI states that it is the duty of the Commission '... to make inquiry and ascertain from time to time such methods, practices, circumstances, and conditions as may be disclosed for bringing about conservation and the prevention of physical waste of oil and gas,' and to report '... its findings and recommendations to the several States for adoption or rejection.'

"In our efforts over the past 36 years, conservation has worked hand in glove with environmental affairs. We, in the compact, have promoted legislation to require casing so as to protect underground fresh water reservoirs from oil-producing and other harmful substances. We have been active in reduction and elimination of salt water disposal pits on the surface. We have promoted the use of wider spacing of wells, which has the dual effect of helping to maintain economic reservoir extraction methods while minimizing the esthetic disruption of numerous derricks in a field.

"In future years, our environmental efforts are expected to intensify. We recently created the Environmental Protection Advisory Com-



mittee, to put our emphasis to a greater extent on these problems as they relate to the conservation of oil and gas.

"At the same time, we look forward to helping solve the serious energy shortage which the United States now faces.

"When the compact was organized in 1935, it was estimated that less than 10 percent of the oil in place was being extracted from the average reservoir. Ninety percent or more was abandoned and left behind because of a combination of poor conservation practices and limited technology. Today, mainly because of the efforts of the oil-producing States, that average has been increased to 36 percent of the oil in place in a reservoir. While this is three and one-half times better than the situation that existed in 1935, it is not yet enough. For every percentage point that this figure can be raised, the reserves available amount to 4 billion barrels. There is an obvious need to continue to find and develop new reserves in the United States, but technological advances in production techniques can result in equally dramatic increases in producible reserves.

"I would like to outline for you briefly some of the internal workings of the Compact. I am sure it will be of interest to you to know that the compact is financed entirely by voluntary State contributions. It does not accept advertising in any of its publications, nor does it accept any money from individuals, corporations, companies, or organizations. It is purely an endeavor and accomplishment of the States.

"In Oklahoma City, the Commission has its own office building that was contributed by the State of Oklahoma. There are five full-time employees. Our agency is proud to say that it has always stayed within its budget—in fact, it has been able to build up a reserve fund from the State contributions. We are proud that most of the work of the Commission is done by its standing committees. These committees are composed of the outstanding men in their professions. All of this work is done voluntarily and without charge to the Commission.

"Many technical reports have been issued by the Commission based upon the work of the standing committees. A recent report on pollution and disposal of materials was issued and was available to all of those who are now in the detailed work of the protection of fresh water, both above and below ground.

"There have been five publications on which the production cost was so high we found it necessary to make a charge. In each instance, however, the charge was less than the actual cost.

"I feel sure that, through its work, the Interstate Oil Compact Commission deserves some credit for the new laws that have been passed in recent years. It is interesting that the oldest producing State in the Union, where oil was first discovered—namely, Pennsylvania—passed a conservation law in 1962. Also, Kentucky, one of the older producing States, passed a conservation law in 1962. Within the last few years, New York, Ohio, Idaho, Iowa, West Virginia, and North Carolina have passed conservation laws that are almost identical with the suggested law prepared by the Legal Committee of the Interstate Oil Compact Commission. There has been considerable progress by the States in modernizing their laws, rules, and regulations. As a result of these new laws the States have encouraged wider spacing of wells so as to eliminate unnecessary wells.



"We think that Alaska was most fortunate when, as a territory, it adopted the suggested oil and gas conservation law as recommended by the Interstate Oil Compact Commission.

"The members and staff of the Interstate Oil Compact Commission have always been ready to offer assistance to any agency, State or Federal, in our area of interest. There are now a number of studies in which the Compact has actively participated as partner with the Office of Oil and Gas of the Department of Interior, the Bureau of Mines of the Department of Interior, the Federal Power Commission, the American Petroleum Institute, the American Gas Association, and the National Stripper Well Association. Similarly, I would like to take this opportunity to offer all of the facilities, members, and staff of the Compact to this committee and the Congress as a whole. We stand ready to assist in any way that we can in any way the Congress might ask.

"In conclusion, I would like to thank the committee for permitting me to come and state the views of the Interstate Oil Compact Commission on this legislation. On behalf of the other Governors of the oil-producing States which are members of this compact, I urge the adoption of House Joint Resolution 586.

"Thank you."

That concludes Governor Hathaway's statement.

I will be glad to answer any questions the chairman or members of the committee might have. The answers will be mine, I wouldn't presume and be presumptuous and speak for Governor Hathaway.

Mr. VAN DEERLIN. That is understood.

Mr. Tiernan?

Mr. TIERNAN. Thank you, Mr. Chairman.

Thank you, Mr. Byrd, for your statement on behalf of Governor Hathaway.

You, as an attorney, in recommending that we continue the compact, do you have any questions with regard to the language in article II of the compact, that it should be broadened in view of the activities being carried on under the compact?

Mr. BYRD. Well—this—I will agree with the Congressman, article II is quite limited in its scope and we in the past have tried to confine our activities to things we could relate directly to the prevention of waste. We discussed this at some length on several meetings, particularly when talking of the Environmental Protection Committee which we set up. It is possible that in the future we would want to broaden the scope of this compact to include clearly the protection of the environment.

Mr. TIERNAN. You have read the Attorney General's report?

Mr. BYRD. Yes.

Mr. TIERNAN. It is clear in that report the activities carried on under the compact, in my opinion, clearly exceed the authority under article II. What is your feeling about that?

Mr. BYRD. Well, I don't agree with you that they clearly exceed the authority. I don't know what specific point you are referring to in the Attorney General's report. He talks about the long-range goals of the compact and there are four goals set out there, one of them being



participation in development of a national energy policy for the United States, the IOC should be active in that. That is not inconsistent.

Mr. TIERNAN. On page 9 in the Attorney General's report, in footnote 7 he points out, "Adoption of this resolution illustrates the informality often surrounding Compact Commission proceedings."

This is the resolution:

The full committee urged the new Federal Oil Policy Committee, established after submission of the Cabinet Task Force report to appraise its recommendations and continue surveillance in this field to reject the Task Force majority's proposals for a tariff plan and retain the import quota system as established in 1959.

That would not come under the authority cranked in by Congress approving the compact. The purpose of the compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.

Mr. VAN DEERLIN. If the gentleman will yield, wasn't another point here that the gentleman who proposed the resolution had no standing as a member of the Commission?

Mr. TIERNAN. He was merely a member of the Texas Railroad Commission, which has a great deal to do with the gas and oil industry.

Mr. VAN DEERLIN. But the question in the Attorney General's report was whether he had parliamentary standing to offer the motion?

Mr. TIERNAN. Exactly.

Mr. BYRD. With that question I might agree with the Attorney General but as to whether or not the resolution itself is so unrelated to the physical waste of oil and gas, I would disagree. It was discussed at that meeting and the committee felt if the import quotas were done away with and in lieu thereof the tariffs substituted that the President's Committee recommended, and the purpose was to decrease the price of domestic oil and to increase the amount of foreign oil, this would cause the premature abandonment of 300,000 stripper wells in the United States, which we thought would constitute a waste of domestic oil reserves.

Mr. TIERNAN. I suppose if you stretch the broadest interpretation you can get that under there. I think another point is in the Attorney General's report to the President and the Congress. On page 4 he makes reference to the fact that the Commission's long-standing policy of not listing business affiliations with addresses of official representatives and committee members makes it difficult without considerable research to evaluate the extent of oil and gas industry participation in compact affairs.

Apparently as a result of that report, a 1970 directory has been prepared by the compact and in the report by the committee. November 4, 1969, on the hearings it indicates in the table on page 60 of that report that there is a great deal of participation by integrated and independent producers.

Mr. BYRD. Yes, sir.

Mr. TIERNAN. In fact, the legal committee clearly has a majority from private industry and its associates make up a clear majority of that committee of the compact, is that correct?

Mr. BYRD. The consistency of the committee may be predominantly from industry. That is a kind of catch-all committee, the legal committee, everybody wants on it. The chairmanship of the committees



have always historically been headed by State regulatory people. But the policy of this Commission is formulated by the executive committee, which is the Governor's.

Mr. TIERNAN. From the basis of your testimony on behalf of Governor Hathaway it was clearly the legal committee that makes the recommendations and changes and laws. You cite the example of the adoption in 1962 by the State of Pennsylvania of the conservation resolution which was prepared by the legal committee and that committee, as I read it, had 59 members from the oil and gas industry out of 96 members?

Mr. BYRD. I am not familiar with the present consistency of the committee.

Mr. TIERNAN. That is as of 1968, the chart submitted by the compact?

Mr. BYRD. The consistency of the members of the committees comes about this way, each Governor recommends to the then chairman of the compact membership from his State on each committee.

Now, they don't vote, the industry could not control the vote on that committee. The committee would be representative and each State would have two votes, some of the States, Texas, Oklahoma, and Kansas may have several members on the legal committee but only two votes.

Mr. TIERNAN. The chairman indicated in the official Justice Department's report to the committee, the fact that members may pass or introduce resolutions adopted by the Commission that are not officially any part of the Commission.

Mr. BYRD. I would say that Judge Langdon is not an official representative and not a member of the executive committee, but he is chairman of the legal committee, he is a member of the Texas Railroad Commission.

We have attempted by our bylaws, since this incident you refer to—

Mr. TIERNAN. Excuse me, let's go back, you stated earlier, that the chairman of the legal committee was someone appointed by the Governor?

Mr. BYRD. Right.

Mr. TIERNAN. Now you say Judge Langdon is not—you know, I don't follow you.

Mr. BYRD. Judge Langdon is not an industry representative, he is a member of the State Regulatory Authority in Texas. He is not from industry.

Mr. TIERNAN. But again, to go back, he was in Dallas attending the meeting of the program committee held in conjunction with the executive committee session. He is not a member but he makes the resolution. This is the point the Attorney General is pointing out.

Mr. BYRD. I would agree with the Attorney General. Our business sessions are democratic and open—anybody can stand up and move anything.

We have, in recent years, or recently, adopted some procedures for resolutions where they do now have to be submitted in advance and go to the resolutions committee in advance of being considered by the executive committee. We hope this will prevent resolutions coming from the floor.



Mr. TIERNAN. When was that changed?

Mr. BYRD. The rule has been in existence prior to this time but it has been invoked in the last executive committee meeting. In fact, it was in effect for 2 or 3 years.

Mr. TIERNAN. How do you feel about the compact adopting resolutions in opposition to tax reform legislation designed to reduce oil depletion allowances? Does that come within the scope of the compact as passed by the Congress, you know, renewed every 2 years since 1935?

Mr. BYRD. I am not certain that I am clear as to what resolution you are talking about.

Mr. TIERNAN. It is a resolution included in the report by the Attorney General in June 1971. How about the resolution adopted by the compact in opposition to change in the oil import quota system and replacing it with a system of import tariffs as proposed by President Nixon's Cabinet task force report. How about that, does that come within the scope?

Mr. BYRD. On the import program; yes.

Mr. TIERNAN. Third, adopting a resolution in opposition to assumption by the Federal Government of control for the direct conservation regulation over production from the Outer Continental Shelf?

Mr. BYRD. Very definitely.

Mr. TIERNAN. And the Outer Continental Shelf—you think that has something to do with control under the compact?

Mr. BYRD. The State of Louisiana has the right to protect mineral owners and leases under State jurisdiction. Those fields overlap. If you have a Federal agency regulating production and controlling the development program on a portion of a field in the Outer Continental Shelf and the State agency trying to do the same on the portion under their jurisdiction, there has to be coordination or you can't fulfill the obligation.

Mr. TIERNAN. That doesn't come under the authority the Congress granted to the compact "by prevention of physical waste thereof."

Mr. BYRD. If you create a dual situation in a common reservoir where waste is going to result, I think this is what the compact is for.

Mr. TIERNAN. It says the resolution is in opposition to an assumption by the Federal Government of control of the oil and gas in the Outer Continental Shelf.

Mr. BYRD. Congressman, a reservoir—each is a unique situation—there is a maximum rate of efficient production. I agree the Continental Shelf law gives the United States jurisdiction. Under the State jurisdiction, if they can't come to agreement as to how to produce that common reservoir in the most efficient way, we will have waste.

Mr. TIERNAN. That is assuming the Federal control over the Continental Shelf will produce waste. That doesn't necessarily follow.

The next, the chairman wrote to the Federal Power Commission urging that the area pricing concept dealing with natural gas be abandoned, does that come under the—

Mr. BYRD. What page?

Mr. TIERNAN. In the Attorney General's report. This is a résumé, made by the staff, of the Attorney General's report. What would you think, assuming that resolution was adopted by the compact seeking



amendment to the Federal resolution dealing with natural gas. Page 10.

Mr. BYRD. Your reference is to the chairman writing to the Federal Power Commission?

Mr. TIERNAN. Exactly.

Mr. BYRD. That was not a resolution.

Mr. TIERNAN. Do you think that comes within the scope of article II of the compact?

Mr. BYRD. Well, Congressman, I think pricing is definitely a conservation tool; yes.

Mr. TIERNAN. Now, urging the Federal Power Commission to abandon area pricing and authorize immediate price increases in gas rates, do you think that is within the scope?

Mr. BYRD. The compact was originally on record in support of Federal pricing for a reason consistent with the prevention of waste. If you are going to set prices for gas—

Mr. TIERNAN. I ask you as general counsel for the compact and as a practicing attorney, whether or not the urging of the Federal Power Commission to abandon area pricing concepts for natural gas and immediate increases in gas rates come within article II of the compact.

Mr. BYRD. Yes, I think so.

Mr. TIERNAN. And becoming a focal point for formulating State positions on natural energy policies, do you think that is within the compact?

Mr. BYRD. If they deal with the prevention of waste.

Mr. TIERNAN. But it doesn't, it says formulating State positions on national emergency policies.

Mr. BYRD. They can have an effect on the amount of gas recovered from reservoirs. Like the pricing of natural gas, we have oil wells in Oklahoma being, unfortunately, flared because the prices that can be paid won't justify the producers to conserve it. This is a waste. Then years ago we had more because the price was lower.

Mr. TIERNAN. Mr. Byrd, let me ask you this, my understanding is the compact expired as of September 17, or some date in September 1971.

Mr. BYRD. The consent of Congress.

Mr. TIERNAN. Can you operate without consent of Congress?

Mr. BYRD. In my opinion; yes.

Mr. TIERNAN. Then why do we need this legislation?

Mr. BYRD. Because the way the compact is written it requests consent. I think the compact could be redrawn.

Mr. TIERNAN. You don't think there would be any constitutional question if you have no legislative consent by Congress?

Mr. BYRD. No; because we are advisory and do not affect political boundaries.

Mr. TIERNAN. So if we don't enact this legislation the compact will continue to operate as it is operating now?

Mr. BYRD. We have continued since last September.

Mr. TIERNAN. So in your opinion there is no need for this legislation?

Mr. BYRD. I disagree about the need, there is some question as to whether Federal agencies would participate.



Mr. TIERNAN. Do you think the States could contract without approval of Congress?

Mr. BYRD. Yes, as long as it does not affect the political structure of the United States.

Mr. TIERNAN. I better go back and study constitutional law. Don't contracts between States have to be approved by Congress?

Mr. BYRD. Not all of them.

Mr. TIERNAN. You don't think this would affect commerce?

Mr. BYRD. No; I don't think it affects commerce. We have had some opinions by Mr. Zimmermann, Council of State Governments, as to whether or not this compact requires consent.

Mr. TIERNAN. I can't follow the consistency or logic that the response you make to me as a member of the committee is justified, then I don't see why the Congress should enact this legislation.

Mr. COLLINS. Will the gentleman yield?

Mr. TIERNAN. Yes.

Mr. BYRD. We want your consent. The Governors originally entered the compact with the provision that we get your consent.

Mr. TIERNAN. Why would you get our consent if you don't need it?

Mr. BYRD. We want it.

Mr. TIERNAN. Why?

Mr. BYRD. So we get cooperation of the Federal agencies, and participation.

Mr. TIERNAN. You wouldn't get the Federal participation?

Mr. BYRD. I don't know. I haven't really discussed it with them.

Mr. VAN DEERLIN. You mentioned opinions of the Council of State Governments?

Mr. BYRD. Yes; Frederick L. Zimmermann.

Mr. VAN DEERLIN. May those be submitted for the record?

Mr. BYRD. Yes.

(The information referred to follows:)

THE COUNCIL OF STATE GOVERNMENTS DISASTER STUDY,  
Washington, D.C., April 28, 1971.

Mr. W. TIMOTHY DOWD,  
*Executive Secretary, Interstate Oil Compact Commission,*  
*Oklahoma City, Okla.*

DEAR MR. DOWD: I am perfectly willing for my letter to be used in testimony before Congressional Committees.

I was very much interested in your point with respect to Congressional approval. State legislatures today have generally become wiser in leaving out the intrusion of a requirement of Congressional consent in the state enacting legislation.

It seems to me that you do not have to go to the states for amended consent and that you could remedy the situation at the national level. If Congress takes out the requirement of periodic review leaving its consent stand, Congress has consented; Congress has not withdrawn its consent, so that it would meet the requirements of the state statutes. Similarly, if Congress substitutes some procedure which permits Congress to call up the compact for review at any time but eliminates the requirement for repassage every four years, Congressional consent would not be disturbed. You are, of course, quite right; the compact does not need Congressional consent at all because it is an *advisory compact*. However, I do not think that Congress will be willing to withdraw completely from its role in this agreement. What you may be able to get is an alleviation of the present rigid requirement of renewal every four years through the substitution of a more reasonable procedure.

Sincerely,

FREDERICK L. ZIMMERMANN,  
*Project Director.*



Mr. BYRD. I would like to make a copy, this is the only one I have.

Mr. VAN DEERLIN. Yes.

Mr. COLLINS?

Mr. COLLINS. The compact very much seeks and desires this legislation, don't they?

Mr. BYRD. Absolutely.

Mr. COLLINS. My colleague from Rhode Island raises the question about the necessity that you might be involved in a constitutional question. This might be tested in court, and you wouldn't get Federal agency cooperation. The compact facilitates cooperation and action.

On the record I want to make it clear the compact wants this legislation continued. Would you also prefer it be continued indefinitely instead of this short term?

Mr. BYRD. Yes; mainly because of the inconvenience of circulating the petition. The new compacts, as I understand it, again from my source the Council of State Governments, a lot of new State compacts have been written so they get initial consent and the consent is granted until withdrawn. This is where we got the idea.

Mr. COLLINS. Let me emphasize one fact Governor Hathaway's report brought out. In 1935 only 10 percent of the oil in place was extracted?

Mr. BYRD. That is correct.

Mr. COLLINS. But today it is 36 percent?

Mr. BYRD. Yes.

Mr. COLLINS. We have improved our conservation to where now we are getting three and a half times more oil out of the same area.

Mr. BYRD. That is right.

Mr. COLLINS. We are doing a great job. You are interested in conservation, as conservation and environment are two of your major objectives?

Mr. BYRD. Yes, sir.

Mr. COLLINS. Do all States have the same provisions limitations?

Mr. BYRD. No.

Mr. COLLINS. I would like my colleague to get this.

Mr. BYRD. There are only five of the major producing States that have provisions for prorating to market demand.

Mr. COLLINS. Few States have proration limitations on market demands.

Mr. BYRD. Yes. The only two in effect exercising that statute today are Texas and Louisiana and they have recently gone to 100 percent.

Mr. COLLINS. In Oklahoma, for example, they can run all the oil they want?

Mr. BYRD. Yes; they still set allowables to prevent the physical damage to the reservoir. They set allowables but don't provide the market demand because the demand exceeds the available production.

Mr. COLLINS. There seems to be an opinion that all States have these production limits but really just one or two try to set up conservation reserves; don't they?

Mr. BYRD. You have to understand the reason for limitation on production, and the reason, of course, is that once you have available supply that exceeds the purchasers requirements—there is only so much storage and so much transportation—if a situation exists where available production exceeds the purchasers' requirements, if you



didn't have somebody limiting production, the integrated companies in a reservoir would only produce their own oil.

If they had a market, I mean if—there is usually only one or possibly two gathering lines into an oil reservoir and, if that is owned by company X and they can get all the oil they want or need out of their wells, they are not going to buy any oil from wells owned by company B and you get in a situation where you can't prevent migration of the oil from one lease to another. The purpose of market demand statutes was to prevent the physical wastes of overproduction.

Mr. COLLINS. Overproduction is not a problem in this country?

Mr. BYRD. No; but the validity of the statutes, the reason for the statutes still exists because we may get an 80-percent increase in oil imports, we may get Alaskan crude, whatever are the reasons.

Any time the available production from the field exceeds the current market, then somebody has to step in and say, "You have got to divide this market up," or you are not going to have any independents producing oil.

Naturally if I need 5,000 barrels out of a field, I have 10 wells and I can get the requirements out of my well and can also buy it from somebody else, I will run it out of my well, unless the State tells me how to produce. There has never been a time when the market demand in any State was not set higher than what the purchasers said they wanted.

The allowable was also set higher than what they said they wanted and the allowable from the State was in excess of what they bought. In every instance. If you are going to set your allowables in excess of what they want and what they take, how can it have an effect on price? This is a misnomer.

Mr. COLLINS. I don't know about price. You said you are concerned about demand. We have a demand in this country for gas. We have plenty of demand for gas. Is there any reluctance to furnish all the gas and oil that is available with sound conservation standards?

Mr. BYRD. No. They are producing in gas fields at the highest rates consistent with conservation policies in all States.

Mr. COLLINS. In Oklahoma they have some excellent gas fields, and in Louisiana. These gas fields are flowing. Take Louisiana, which you say does have regulation. Are they letting producers sell gas? For instance, let's get into specifics, I understand in some Eastern cities distributors have told industrial users we just do not have enough gas available for you.

Mr. BYRD. This is true.

Mr. COLLINS. Is there any reluctance to limit gas fields providing they follow sound conservation practice? On the other hand, are States allowing maximum production with sound conservation practices?

Mr. BYRD. Yes; and probably in some fields a little more than they should. In the Hugoton field in Kansas, for example, there is some danger of water coming because of excess production over and above what the conservation system should allow just to meet emergencies.

Mr. COLLINS. In the early thirties, the big east Texas field was discovered. Would we have any oil and gas left there now if we had not established conservation and proration?

Mr. BYRD. No; Congressman, the situation that existed, when the east Texas field was first found, they were running oil in creek beds,



ponds, everything else. Oil by its nature moves within the reservoir rock and under the law of capture, you had to get it out and sell it, even it is 20 cents a barrel. The only thing you are going to get, if there are no restrictions on it, is what you produce, what you actually capture. In the east Texas field, the waste of oil, reservoir energy, was unbelievable before the institution of proration in that field.

Mr. COLLINS. Thank you very much.

Mr. VAN DEERLIN. Mr. Frey?

Mr. FREY. Thank you, Mr. Chairman.

You were here and heard the earlier testimony and you partially answered the question about the price fixing and the \$5 billion that this compact has cost. Maybe you can further discuss this matter.

Mr. BYRD. I heard the Congressman's testimony. I think his figure about the cost was taken from the majority report of the Cabinet study on imports. They did try to arrive at some figure as to what the limitation of oil imports was costing. There was a minority report filed in that instance.

I don't think he meant to imply that the compact was costing the people of New England \$5 billion annually. The compact has nothing to do with price or regulation of oil imports. We are an advisory committee and disseminate information on the technical aspects of oil finding and producing and trying to assist the States in doing a job of conservation.

Now the estimate, the \$5 billion he talked about was an estimate made by some economist, it's the difference in the cost of the price of oil if you just let all of the cheap foreign oil into the United States in lieu of domestic production. Within a year after the report was filed, the cost of that cheap foreign oil went up considerably and I am sure they will readjust the estimates.

Mr. FREY. If I understand his testimony, it was that the compact, in essence, in setting these quotas was in essence controlling prices, which was driving the prices of the oil up in New England.

Mr. BYRD. The compact sets no production controls.

Mr. FREY. He doesn't agree with you?

Mr. BYRD. I am sorry, I don't agree with him.

Mr. FREY. If you would, briefly go through again why you don't agree and don't think this is true.

Mr. BYRD. The compact has no authority to tell a State what to produce, what allowables are set, we don't make market estimates or anything.

Mr. FREY. It gives them the right to set allowables or quotas?

Mr. BYRD. No; the compact merely provides a vehicle where the States can get together and discuss their mutual conservation problems. It is an advisory organization, purely. It has no authority at all.

Mr. TIERNAN. Would the gentleman yield?

I think the point that Mr. Conte was trying to make is the compact has gone on record in the President's Task Force report which recommended the removal of import quotas and the import quotas affected the costs of oil in New England because it costs more to get oil from Texas, Louisiana, and other parts of our country than it would for foreign oil. That is the way I understand it.

Mr. BYRD. He didn't mean to imply we were setting production quotas.



Mr. FREY. There is no contention that anything under this compact is causing any problems, that is, regarding price, or anything like this?

Mr. TIERNAN. He thinks that the compact is used as a vehicle to support the policy of restricting imports and, as a result, that adversely affects the cost of oil to New England.

Mr. FREY. Thank you for straightening out Mr. Conte's statement for me, I appreciate it.

Mr. BYRD. The next to the last page of the Attorney General's report points out essentially the compact binds its member States only to a degree to conserve oil and gas by the prevention of physical waste, though no recourse is provided to deal with a breach of the agreement.

The States further agree to enact and maintain a minimum of laws of their own choosing to prevent a specific specified list of the most egregious forms of waste, which are all within normal State authority to control.

Each State has its own statute regulating the production of oil and gas. The compact doesn't do it. We have assisted them in upgrading these statutes and have promulgated and recommended statutes. We do not enforce the State statutes at all.

Mr. FREY. Thank you.

Mr. VAN DEERLIN. Mr. Byron?

Mr. BYRON. Has the compact taken any position on the off-shore drilling done on the east coast?

Mr. BYRD. No; we have had correspondence from the State of Maine, I think, regarding the regulations. I think their legislature was considering adopting an oil and gas conservation statute and we notified them we were available to assist them and would be glad to work with them and I think we sent them a copy of the Uniform Conservation Act. Whether they adopted it, I am not aware.

Mr. BYRON. Haven't the attorneys general of some of the States brought actions to make decisions on what portion of the Continental Shelf is under State jurisdiction and what portion under Federal jurisdiction along the east coast?

Mr. BYRD. I read of this, that is all I know.

Mr. BYRON. The compact is not a party to any such action?

Mr. BYRD. No.

Mr. VAN DEERLIN. Thank you, Mr. Byron.

Mr. Byrd, just to nail it down for the record, reference was made by Mr. Tiernan to the Attorney General's report that on August 18, 1970, the chairman of the commission wrote to the Federal Power Commission Chairman urging that the area pricing concept for natural gas be abandoned and that immediate increases in gas rates be adopted by the FPC. Of course there wouldn't be any question at all about the propriety of his writing as an individual. It is assumed that he wrote as chairman of the commission in this instance.

Mr. BYRD. Mr. Dowd can probably answer that better. He, I am sure, his office being in Oklahoma and knowing the Governor, could answer that question.

Mr. VAN DEERLIN. How about it, Mr. Dowd?

Mr. DOWD. Mr. Chairman, I am embarrassed because until I read that in the Attorney General's report I had completely forgotten that and have no recollection of it. I would say that you probably



summed it up, the chairman at that time was Governor Dewey Bartlett of Oklahoma. This I know.

I would be happy to furnish for the record that letter, place it in this committee's record. The specific answer to your question is that if the chairman decided to dictate, write, and sign such a letter, I don't know how anyone would stop him.

Mr. VAN DEERLIN. No, of course no one could or should be able to. But if he writes as a member, as the chairman of the Commission and consulted you in the matter, or consulted Mr. Byrd, I suppose you might have considered whether or not it was consistent with the restraint contained in article V of the compact, which says, "It is not the purpose of this compact to authorize the State joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof." Obviously that is a negative statement, it says it is not the purpose, it does not say thou shalt not.

Mr. Dowd. As Mr. Byrd previously testified, I think you have to recognize that price of itself can be a conservation tool, or to put it another way, there is an awful lot of \$5 oil down in the ground.

I am not advocating \$5 as the price of crude oil but what I am saying is there is a lot of oil and that it is uneconomic to produce at this time at current prices because of depth, porosity, permeability, and so forth. So that price can be considered as conservation.

Second, if I understand the Attorney General's—if I recall what the report said, the Governor advocated abandonment of area price concepts, which in and of itself, without seeing what the letter in fact says, is not necessarily advocating an increase or decrease in prices but an abandonment of the current method of regulating price.

Mr. VAN DEERLIN. Except that the report here says he urged an immediate increase in gas rates. He thought that should be adopted by the Federal Power Commission?

Mr. Dowd. I withdraw that portion of my statement then.

Mr. BYRD. We have had heated debates and I, as general counsel of the commission, many times I have urged the rewriting and reworking of the resolution so it would be within the confines of the scope of the compact. And, of course, these things are ultimately approved by Governors, or their personal representatives, and a lot of them are not technical people.

Mr. VAN DEERLIN. You are invariably present and available as counsel, aren't you?

Mr. BYRD. Yes, and sometimes I am overruled. A specific instance, at the time when the resolution was adopted where the purpose of some Government action was to reduce the price of oil, the resolution that was adopted at that time had a provision in it which I insisted upon. This was the resolution referred to in the Attorney General's report adopted in Dallas, February 16, 1970.

We had a provision in it saying, "While it is not the purpose of the Interstate Compact Commission to concern itself with controlling prices, inasmuch as it is the announced intention of the Cabinet Task Force to artificially manipulate the price of crude oil by a selective, arbitrary, and variable tariff system, it is only fitting that the impact be called to the attention of those that will be called to judge the Cabinet report."



Their purpose was to affect the price, that was the stated purpose of the Cabinet Committee report. So then we thought we were obligated to point out what effect this could have on the ability of the States to perform their statutory functions. We try to couch all of our resolutions in terms that are consistent with the limited purpose of the Compact. I will agree sometimes it is difficult.

Mr. TIERNAN. Thank you, Mr. Chairman.

How long have you been general counsel?

Mr. BYRD. Since I resigned from the Kansas Corporation Commission in 1962 to go back to law.

Mr. TIERNAN. Page 11, the Attorney General refers to you as general counsel having presented the compact's views?

Mr. BYRD. On the Public Land Law Review.

Mr. TIERNAN. On two occasions?

Mr. BYRD. Yes.

Mr. TIERNAN. Then in 1970 you testified before the House Mineral Subcommittee on the State Market Demand Regulation and before the President's Cabinet Task Force?

Mr. BYRD. Yes.

Mr. TIERNAN. No one overruled your participation in that?

Mr. BYRD. No, those were strictly on prevention of waste basis. I will furnish copies of my testimony.

Mr. TIERNAN. Now, you can maybe make an argument, which in my opinion I don't agree with, but I think there is an area of greyness here with regard to off-shore production under direct Federal regulation but with increasing Canadian imports. How do you bring that in under the scope of the compact?

Mr. BYRD. Well, Congressman, in order for the States to fulfill their obligations, you have to have some stability.

Mr. TIERNAN. Mr. Byrd, the purpose of this compact is to conserve oil and gas by the prevention of physical waste thereof from any cause within the States of Texas, Oklahoma, California, Kansas, New Mexico, or any other States joining in the compact?

Mr. BYRD. Yes.

Mr. TIERNAN. Did you justify opposition to the President's policy on increasing Canadian quotas, that does not come under the compact?

Mr. BYRD. It affects the market.

Mr. TIERNAN. That doesn't affect anything in the States of California, Oklahoma, or Texas with the conservation of gas and oil by the prevention of physical waste?

Mr. BYRD. I disagree. The continuity of a producing rate in a reservoir and the availability of production from that reservoir will determine the amount of oil you get out of that reservoir.

Mr. TIERNAN. No. It determines the price you are talking about.

Mr. BYRD. I disagree.

Mr. TIERNAN. You tell this committee you don't need the consent of Congress for this compact?

Mr. BYRD. That is my opinion.

Mr. TIERNAN. That is your opinion. Do you think you would have many of the people serving on these committees, Engineering Resources, Engineering of Public Lands, do you think any member, or the independent producers would participate in this compact if you didn't have consent of Congress?

Mr. BYRD. I never asked.



Mr. TIERNAN. You, as attorney for Standard of New Jersey, would you be a member of this Legal Committee without Congress approving the compact?

Mr. BYRD. I see no reason why not.

Mr. TIERNAN. No reason at all?

Mr. BYRD. No.

Mr. TIERNAN. No problem with antitrust laws?

Mr. BYRD. No. The validity of the State proration and conservation statutes has been debated among lawyers as to whether or not it is dependent on the Connally Hot Oil Act or consent of Congress.

Mr. TIERNAN. Well, as general counsel, why would you go through the trouble of having this compact consented to by the Congress?

Mr. BYRD. Well, as I said, the way it is presently drawn, we have to. It says within the compact itself that the States join subject to the consent of Congress. We want the consent of Congress. We want the participation of the Federal agencies in it.

But whether or not it is desirable and whether or not it is necessary is different in my opinion. I have done some independent research in addition to the letter we received from the Council of State Governments and it seems to be the legal opinion of most authorities that an advisory compact does not need the consent of Congress.

Mr. TIERNAN. Then you say this is an advisory compact?

Mr. BYRD. Yes, and the Attorney General so terms it. But you can write it, which we did, so that it requires the consent. That is the way it is written.

Mr. TIERNAN. Suppose we didn't pass this resolution; you will continue to operate?

Mr. BYRD. We will probably continue to operate but they might have to rewrite the compact. Now it says States join subject to consent of Congress.

Mr. TIERNAN. It still baffles me as to why you want the consent of Congress if in fact it doesn't have any legal assistance, doesn't help the States in carrying out what they purport to be the purpose of physical waste, then why?

Mr. BYRD. You have to understand the history to understand why it was written that way. This thing grew out of a tremendous effort back in the thirties, there was a lot of agitation by the States that the Federal Government take over, and the Federal Government at that time concluded—Congress concluded rather than the Federal Government—the National Petroleum Council or some other suitable Federal agency do this effort, and they recommended the States do it through a compact.

There was a division, not only in the States but among the industry as to how it should be done. Secretary Ickes was on one side, other people on the other. Historically it was Congress that urged the compact upon the States and I think that is the reason why the consent was originally written in.

Mr. TIERNAN. Do you think this compact affects interstate commerce?

Mr. BYRD. No.

Mr. TIERNAN. It doesn't?

Mr. BYRD. No.

Mr. TIERNAN. If it did, it would have to have the consent of Congress.



Mr. BYRD. If it affects the political boundaries or interstate commerce, it might have to have, but it is purely advisory.

Mr. TIERNAN. Your Legal Committee does draft proposed legislation for States to adopt?

Mr. BYRD. We have drafted a recommended conservation statute; yes.

Mr. TIERNAN. You indicated in your testimony of Governor Hathaway it was adopted in 1962 in Pennsylvania and 1962 in Kentucky?

Mr. BYRD. We make it available to the State legislature.

Mr. TIERNAN. You go stronger than that, the Governor's statement says, as I read it, that we deserve some credit for the new laws that have passed in recent years. It is interesting that the oldest producing State in the Union, namely Pennsylvania, passed a conservation law in 1962 and also Kentucky passed a conservation law in 1962. You take credit for that?

Mr. BYRD. We hope to have been helpful in getting them to upgrade their statutes. Yes.

Mr. TIERNAN. OK.

Mr. VAN DEERLIN. Thank you, Mr. Tiernan.

Mr. Brown?

Mr. BROWN. I have two questions. Will the approval or disapproval, you can state which, of this compact have any bearing on supply of oil?

Mr. BYRD. Well, we hope that we have been effective in prevention of waste and we hope we will be effective in the future in prevention of waste and disseminating information about improvements in the techniques and technology of recovery of oil and gas. If we have been of some benefit to producing States in the past, we hope we will in the future. So, yes, it could have some effect.

What we concern ourselves with, I know the Attorney General dwells on resolutions that we pass that concern Federal policies but the great effort of the compact is of getting more oil out of the ground, more gas out of the ground, exotic measures of secondary recovery. As Governor Hathaway points out we have increased recovery from 10 to 36 percent.

Mr. TIERNAN. It will increase the supply to the public?

Mr. BYRD. By the decrease of waste and the improvement of recovery techniques.

Mr. TIERNAN. What effect will the compact have on the price to the consumer of oil and natural gas in your opinion?

Mr. BYRD. None whatsoever. We are forbidden by the compact itself from concerning ourselves with price, as are most of the State statutes that create the conservation commissions, they cannot concern themselves with price.

Mr. TIERNAN. Thank you.

Mr. VAN DEERLIN. Mr. Byrd, counsel tells me we don't have a listing of the committee members of the compact. If you could, would you provide those who are serving or have served since January 1, 1969?

Mr. BYRD. We can do that.

Mr. VAN DEERLIN. I wonder if it would be practical to submit minutes of the Commission's proceedings for that time?

Mr. BYRD. Yes, they are printed and published.

Mr. VAN DEERLIN. And these will include any and all resolutions adopted during that time, would they?



Mr. BYRD. Yes.

Mr. VAN DEERLIN. All right.

Mr. BYRD. Since 1969?

Mr. VAN DEERLIN. Yes, that would cover the time frame we are involved with in these resolutions.

Mr. VAN DEERLIN. Any further questions?

Mr. DOWD. You say since 1969, you mean including?

Mr. VAN DEERLIN. Since January 1, 1969.

Mr. DOWD. All right, thank you.

(The information requested, consisting of lists of members and minutes of meetings of the Interstate Oil Compact Commission, from January 1969 through December 1971, may be found in the committee files.)

Mr. VAN DEERLIN. Mr. Oliver, we appreciate your having remained as you did under the conditions you agreed to remain and I wonder if you two would return to the witness table for any comments or questions based on what has transpired since you were here before.

**STATEMENT OF DAVID R. OLIVER, ACTING DIRECTOR, OFFICE OF OIL AND GAS, DEPARTMENT OF INTERIOR; ACCOMPANIED BY DOUGLAS H. HARNISH, JR., INDUSTRIAL SPECIALIST—Resumed**

Mr. OLIVER. We will do the best we can.

Mr. VAN DEERLIN. Mr. Oliver, for openers, has the testimony you heard from the intervening witnesses in any way changed your judgment of the recommendations you gave the subcommittee on your opening appearance this morning?

Mr. OLIVER. I see no reason for any change.

Mr. VAN DEERLIN. Would you care to comment any further?

Mr. OLIVER. I think anything else I said would be a reiteration of our position.

Mr. VAN DEERLIN. Mr. Tiernan?

Mr. TIERNAN. Thank you, Mr. Chairman.

Mr. OLIVER, if the resolution was not adopted, would you, as Acting Director of the Office of Oil and Gas in the Department of Interior, cooperate and assist in the compact?

Mr. OLIVER. I would have to check with our counsel before taking any action under those circumstances.

Mr. TIERNAN. You apparently presently participate in the proceedings of the compact by observers, is that correct?

Mr. OLIVER. The Director of the Office of Oil and Gas and the Assistant Secretary of the Interior do participate. I am in an acting capacity and have not recently had occasion to. In the past I attended one meeting.

Mr. TIERNAN. When was that?

Mr. OLIVER. About 1967, I believe.

Mr. TIERNAN. 1967?

Mr. OLIVER. Yes.

Mr. TIERNAN. Is it the position of your office that House Joint Resolution 586 is necessary for the compact?

Mr. OLIVER. This, I think, is very close to the question I previously answered. I would have to give the same answer. I would have to check with counsel.



Mr. TIERNAN. I ask unanimous consent the witness be allowed to present the opinion of counsel from the Department of Interior as to those two questions.

Mr. VAN DEERLIN. Surely; that is proper.

(The following material was supplied for the record:)

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
Washington, D.C., May 12, 1972.

To : Director—office of oil and gas.

From : Associate solicitor—mineral resources and general legal services.

Subject : Interstate Oil Compact Commission.

You have asked for our opinion in respect of the following two questions posed to members of your staff during the hearings of April 12, 1972, on H.J. Resolution 586, before the Subcommittee on Communications and Power of the House Committee on Interstate and Foreign Commerce :

1. Whether the Interstate Oil Compact Commission could function if Congressional consent were not renewed by the Congress; and

2. Whether the Office of Oil and Gas could continue its past relationship with the Commission if the Commission were not given such consent.

By the Joint Resolution of August 27, 1935 (49 Stat. 939), Congress granted its initial consent for a period of some two years to the Interstate Compact to Conserve Oil and Gas. Prior to Congressional approval, the Compact had been ratified by the required number of States. Since that time, the Congress has expressly consented to an extension and renewal of that Compact on eleven occasions (five times for a period of two years and six times for a period of four years). There is pending before the Congress identical joint resolutions (H.J. Resolution 586 and S.J. Resolution 72), either of which, if approved, would grant the consent of Congress to an amendment, extension, and renewal of the Compact pursuant to which it would continue in effect until Congress withdraws its consent.

The purpose of the Compact as set out in Article II is to conserve oil and gas by the prevention of physical waste from any cause. Article V specifies that it is not the purpose of the Compact to authorize the ratifying States to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof, or create or perpetuate monopoly, or to promote regimentation.

Article III requires that each ratifying State agree to enact or maintain laws to produce a minimum of physical waste by preventing, within reasonable limits, a number of specified forms of waste. Under Article IV each ratifying State agrees to enact or maintain laws to deny access to commerce for oil produced in violation of its conservation laws and regulations and to provide stringent penalties for the waste of either oil or gas.

The Interstate Oil Compact Commission is established under Article VI, which prescribes that it shall be composed of a representative from each State ratifying the Compact. Under Article VI, the Commission is empowered to make studies and ascertain methods and practices for effecting conservation and the prevention of physical waste of oil and gas, and to report its findings and recommendations to the ratifying States for adoption or rejection. The Commission is empowered also to recommend the coordination of the exercise of the police powers of the respective States within their respective jurisdiction to promote the maximum ultimate recovery from the petroleum reserves of said State and to recommend measures for the maximum ultimate recovery of oil and gas.

Article I, Section 10, Clause 3 of the Constitution provides in part that :

No State shall, without the consent of Congress, \* \* \* enter into any agreement or compact with another State, or with a foreign power \* \* \*. There are very few cases which deal with this clause, but the Supreme Court, in *Virginia v. Tennessee*, 148 U.S. 503, 518 (1893), indicated that not every compact or agreement requires the consent of Congress. This doctrine is reflected in the views of legal commentators and in the existence of some compacts among the States that have not been presented to the Congress.<sup>1</sup> Further, the Congress

<sup>1</sup> Frankfurter and Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustment*, 34 Yale L. J. 685 (1925) ; Note, *Some Legal and Practical Problems of the Interstate Compact*, 45 Yale L. J. 325 (1935) ; Dunbar, *Interstate Compacts and Congressional Consent*, 36 Va. L. R. 735 (1950) ; Zimmerman and Wendell, *The Interstate Compact Since 1925* (1951) ; Zimmerman and Wendell, *The Law and Use of Interstate Compacts* (1961).



has in some instances indicated by its actions that consent to particular compacts was not required.

We are not, however, faced with a situation in which for the first time a question is raised whether or not Congressional consent would be required to a compact establishing an interstate oil commission such as the present one. Over thirty-five years ago the Congress determined that the Interstate Oil Compact, of which Article VI establishing the Interstate Oil Compact Commission is a part, was one which fell within the Compact Clause, and, as pointed out earlier, the Congress has periodically reiterated its consent to the compact for stated periods of time. The right to alter, amend, or withdraw the consent has consistently and expressly been reserved and, since 1955, the Attorney General has been charged with the duty of reporting to the Congress as to whether or not the activities of the States under the compact have been consistent with the purposes set forth in Article V.

In these circumstances, we are of the opinion that a refusal by the Congress further to consent to the Interstate Oil Compact would remove the legal basis upon which it rests. Should the Commission take a different view and continue to function, we would nonetheless feel constrained to advise the Office of Oil and Gas that it should not participate in the activities of a body established by a compact from which the Congress had withdrawn consent.

BRUCE WRIGHT,  
*Associate Solicitor,*  
*Mineral Resources and General Legal Services.*

Mr. TIERNAN. No further questions.

Mr. VAN DEERLIN. Mr. Brown, any questions?

Mr. BROWN. No; no questions.

Mr. COLLINS. I have no further questions.

Mr. VAN DEERLIN. Mr. Frey?

Mr. FREY. No questions.

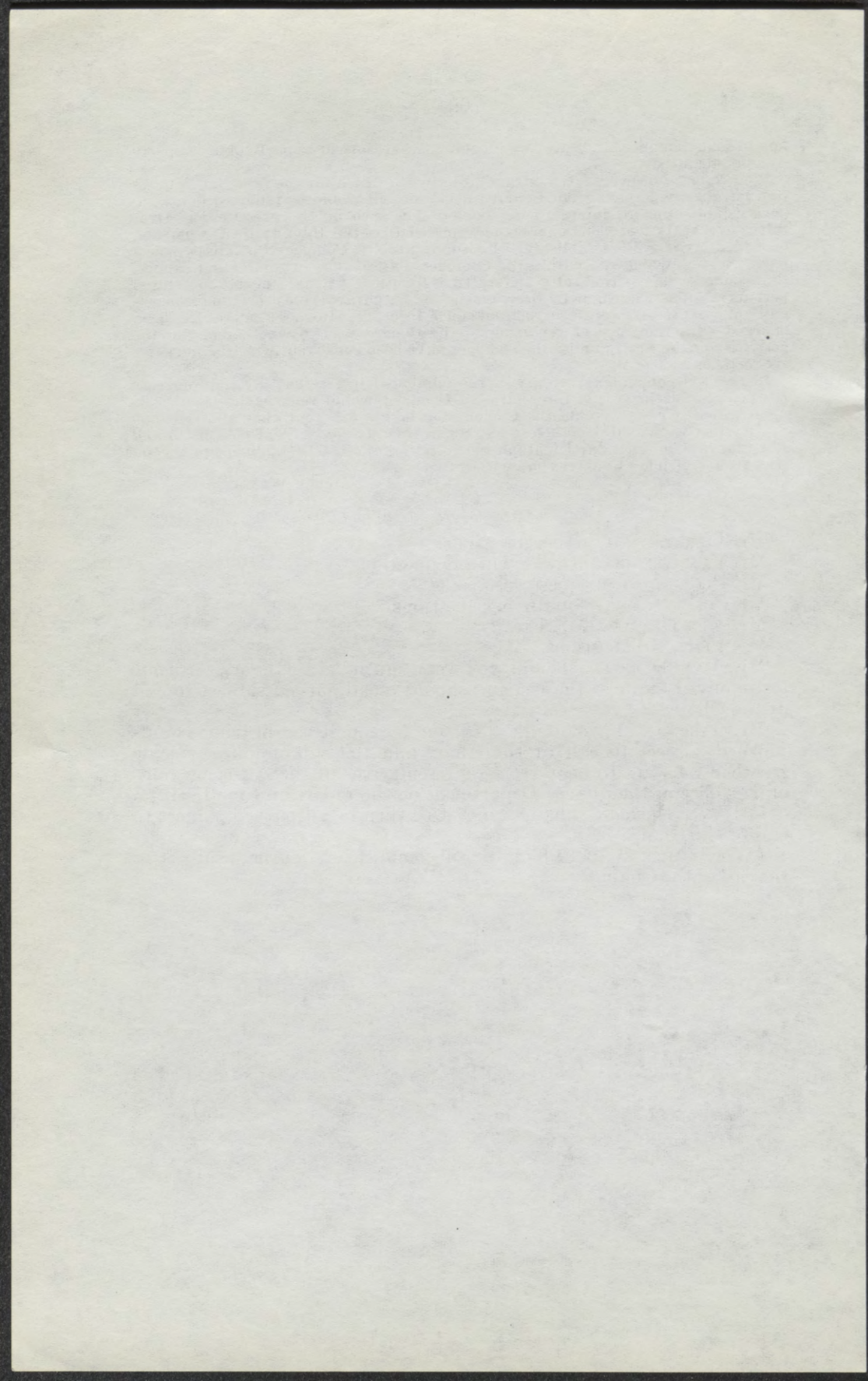
Mr. VAN DEERLIN. Thank you very much, Mr. Oliver, for your testimony. I suppose the hearing should be adjourned subject to call of the Chair.

Mr. TIERNAN. I would like to make a request the hearing be adjourned subject to call of the Chair and the subcommittee decide whether we want to hear from representatives of the Attorney General's Office or the Justice Department on the report of June 18, 1971.

Mr. VAN DEERLIN. The hearings will then be adjourned subject to call of the Chair.

(Whereupon, at 12:10 p.m. the subcommittee adjourned, subject to the call of the Chair.)







# INTERSTATE COMPACT ON OIL AND GAS

(12th Extension)

THURSDAY, APRIL 27, 1972

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON COMMUNICATIONS AND POWER,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The subcommittee met at 10 a.m., pursuant to notice, in room 2523, Rayburn House Office Building, Hon. Lionel Van Deerlin presiding (Hon. Torbert H. Macdonald, chairman).

Mr. VAN DEERLIN. The hearing will come to order on House Joint Resolution 586 and Senate Joint Resolution 72, both dealing with extension of the interstate oil compact.

The House will be going in at 11 o'clock this morning. I should imagine that the business at hand will not take us beyond that point.

We are pleased to welcome as the witness for the Justice Department this morning, Mr. Donald I. Baker, Director of Policy Planning in the Antitrust Division.

Good morning, Mr. Baker.

**STATEMENT OF DONALD I. BAKER, DIRECTOR OF POLICY PLANNING, ANTITRUST DIVISION, DEPARTMENT OF JUSTICE; ACCOMPANIED BY JOSEPH J. SAUNDERS, CHIEF, PUBLIC COUNSEL AND LEGISLATIVE SECTION**

Mr. BAKER. I am glad to be here. I find it is my third morning in a row sitting across from this very table.

I am pleased to be here to submit the views of the Department of Justice on House Joint Resolution 586.

On my right is Mr. Joseph J. Saunders, who is Chief of the Public Counsel and Legislative Section in the Antitrust Division. It is his section which is responsible for carrying out responsibilities under the prior congressional legislation.

The compact which we are considering is virtually identical in form to that which first became effective in 1935 upon the consent of the 74th Congress. Congressional consent has since been given an additional 11 times to extensions of the compact for fixed periods. House Joint Resolution 586 would give indefinite consent, unless withdrawn, to the extension and renewal of the compact.

The Department of Justice has no objection to the proposed extension of the compact and congressional approval thereof. The Depart-



ment, however, urges that the reporting provisions of section 2 be amended along lines that I shall later discuss.

The purpose of the compact, as set forth in article V, is limited to conserving oil and gas and preventing the avoidable waste of these energy resources within reasonable limitations. The compact specifically provides that it is not its purpose to authorize the joining States to limit the production of oil or gas for the purposes of stabilizing or fixing price or to create or perpetuate monopoly. The power of the Interstate Oil Compact Commission is likewise limited. The Commission has only fact finding and reporting functions and is to report its findings and recommendations to the States for adoption or rejection.

In 1955, the Attorney General was first required to make an annual report to Congress whether or not any activities of the States under the compact have been inconsistent with the purposes of the compact. Ten reports on this subject, the latest dated June 18, 1971, have now been submitted to Congress. No report has found the role of the compact or the activities of the States under the compact, within the complex structure of State and Federal regulation of the petroleum industry, to have been objectionable.

The first report of the Attorney General, which constituted a detailed examination of conservation and competition in the petroleum industry, concluded (at page 56) with respect to the Interstate Oil Compact Commission that:

No action has been taken by the Commission, so far as the record is now available, to compel any State to take action or to withhold action. Nor do the published materials indicate that the Commission directly serves as a control center to coordinate production limitation for control purposes.

The report noted that the Commission had a substantial and important effect on the conservation of oil by State agencies, but found this effect was mainly the result of voluntary adherence by the States to the views of the Commission. The second report of the Attorney General found much the same. In that report it was stated, at page 19:

In short, the charter of this interstate agency gives it no control over the actions of its member States. In its operations through the years, moreover, it has not tried to exercise any such control. Furthermore, our examination of its records produced no indication of any attempts, tacit or otherwise, to coerce any State into selection of any particular technique of conservation.

The basic findings of these early reports concerning the activities of the oil compact and Commission were repeated in later reports. The report of April 1969, stated—at page 12—that:

It is clear that this Compact not only falls far short of earlier proposals for a central agency to control oil production, but in fact provides neither machinery nor power to coordinate State action,

and at page 49:

In the final analysis, the role of the compact within the complex structure of State and Federal oil legislation appears on detailed review to have been unobjectionable.

The latest report, which was submitted to Congress in 1971, reiterated these conclusions and found, at page 23, the compact and Commission play:

\* \* \* only a peripheral role with respect to the industry's competitive problems on prices and oil supply.

and found, at page 25:



\* \* \* no reason to conclude that the activities of the States pursuant to the compact—as apart from regulatory actions undertaken individually—have not been consistent with the purposes of the compact as set out in article V of the agreement.

Concern has been expressed that the interstate oil compact is a vehicle whereby the individual States limit production to increase price. The reports found that the compact has not been utilized for this purpose and found that each State has consistently displayed a markedly individualistic course in its decision whether or not to prorate production—sixth report, page 25. In general, the compact and Commission have been given what the Senate report on the pending Senate joint resolution on extension of the compact has called “a clean bill of health.” But the compact is only one part of a system, part State, part Federal, part inhibition by regulatory control, and part grant of special incentives (see eighth report, p. 22). These other elements have been examined in the reports of the Attorney General and have been found to be attended by serious questions about the competitive performance of the oil industry as a whole.

Far more important than the interstate oil compact and commission on conservation practices has been the Connally Act (15 U.S.C. § 715–715m) which has been called the keystone of the entire conservation mechanism (fourth report, p. 11). The Connally Act was a Federal consent to State market controls and a Federal enforcement of State prohibitions on interstate shipment of oil (eighth report, p. 30). But developments in recent years have diminished any real possibility of State control of crude oil prices. In addition to large supply deficits, low-priced overseas production is increasingly available as is Outer Continental Shelf production which is outside State control (see eighth report, p. 28).

While there has been growing inability on the part of the States to balance out supply from sources outside the State control system, direct Federal involvement in oil supply control has markedly increased. The most important aspect of Federal involvement is the mandatory prohibition of imports except under established quotas. As noted in the sixth report (p. 9) “Federal import controls are now a keystone of the crude oil domestic price support system.” This fact places on the Federal Government final responsibility for the effectiveness of the market controls which have become so prominent a part of the conservation system (sixth report, p. 10).

With the findings of these reports, it becomes clear that the interstate oil compact has never had a great voice, if any, in individual State decisions to limit production or fix prices, and what voice, if any, it once had has become less important as individual State decisions have become less important. In sum, the reports have found evidence of anticompetitive practices in the petroleum industry, but have not found that the interstate oil compact is a contributor to these practices. Consequently, the Department has no objection to renewal of the compact.

In view of our 15-year experience that the compact has not been the source of anticompetitive practices in the petroleum industry, the Department finds little reason to continue the annual reporting requirement, particularly since the current joint resolution calls for extension indefinitely into the future.



The Attorney General has consistently recommended that the report requirement not be enacted. As noted above, all 10 reports have found the activities of the States pursuant to the compact not inconsistent with the purposes of the compact, and show that the activities of the States under the compact have not changed in any way which suggests a need for annual reports. Meanwhile, the reporting requirement has placed a burden upon the Department which necessarily detracts from its normal enforcement activity (first report, p. 8). Additionally, in several cases the pendency of antitrust litigation has limited the scope of the reports (third report, p. 6).

An examination of all 10 reports indicates that the report requirement has become less valuable. The first four reports were lengthy and detailed examinations of the oil industry for, as noted in the fifth report, at page 6:

Each earlier report examined different parts of the related system of controls affecting crude oil supply. \* \* \* The last report rounded off the analysis of the main elements of the system leaving for future reports only significant changes in the system.

The more recent reports have not discussed the aspects of the petroleum industry previously examined, and have consequently been briefer and even somewhat repetitious.

The Department believes that there is now little value in a requirement that it report annually on matters which, experience shows, have a quite low threshold of antitrust concern. The activities and power of the interstate oil compact and Commission are limited and State activity pursuant to the compact need not, in our opinion, be reported yearly. We are wholly agreeable to regarding the compact as a vehicle from which to watch industry activity and indeed would willingly continue to survey activities under it. But we think that report to the Congress should be required only when circumstances warrant and there is something pertinent and useful to bring to Congress attention. For this reason, the Department recommends amendment to section 2 of House Joint Resolution 586 to provide that, while our responsibility to watch the activities of the States under the compact will continue, the duty to report will exist only when these activities appear to be inconsistent with the purposes of the compact. We respectfully request that section 2 be amended to read as follows:

Sec. 2. The Attorney General of the United States shall continue to survey the activities of the States under the Interstate Compact to Conserve Oil and Gas and shall report to Congress from time to time any activities by the States which appear to be inconsistent with the purposes set out in Article V of such compact.

This amendment is consistent with the realities of State activity pursuant to the compact and is compatible with the normal enforcement activities of the Department of Justice.

In conclusion, the Department of Justice has no objection to the instant extension proposal. However, we do urge amendment of section 2 to delete the annual report requirement of the Attorney General. Such an amendment would conserve our limited resources and still provide adequate Department surveillance of activities under the compact.

Mr. VAN DEERLIN. Thank you, Mr. Baker.

Do you feel that oversight by the Justice Department would be as easily maintained over the industry's practices if the interstate com-



compact were no longer extended? In our earlier hearings, it did seem that the congressional surveillance here was so incidental to the organization's activities that maybe it has become something of form without substance.

Mr. BAKER. You said congressional. Do you mean all of our surveillance?

Mr. VAN DEERLIN. All of our surveillance.

Mr. BAKER. Speaking first of the Government surveillance, the activities of the compact, this has been carried out in a straightforward businesslike manner. We have attended the meetings and reviewed the minutes and so forth.

To the other part of your question, to the extent that an antitrust Government-type surveillance of the industry would be improved by not having the compact, I don't see this cutting much one way or the other. The compact activities are largely related to conservation and so forth. We are going to have to survey the oil industry from the standpoint of competitive practices, whether or not people meet on conservation.

Mr. VAN DEERLIN. Mr. Tiernan?

Mr. TIERNAN. Thank you very much, Mr. Chairman. Mr. Baker, did you in your capacity have anything to do with the report of June 18, 1971, from the Attorney General to the Congress?

Mr. BAKER. I believe so, sir, yes. I reviewed it at the time it was prepared.

Mr. TIERNAN. How long have you been with the Department of Justice?

Mr. BAKER. I have been with the Department of Justice since 1966. I have been Director of Policy Planning since June of 1971. Prior to that I was Deputy Director of Policy Planning.

Mr. TIERNAN. In response to the question the chairman just asked, you feel that the compact largely relates to conservation of the natural resources; is that correct?

Mr. BAKER. That is right.

Mr. TIERNAN. Directing your attention to the Attorney General's report to the Congress, there is considerable reference to the extracurricular activities of the members of the compact indicating, for example, that the Congress should undertake steps for immediate effective action to direct existing regulatory conditions with respect to natural gas production and pricing. Do you consider that within the scope of the compact or just peripheral?

It is on page 9 at the bottom of the page. It refers to the annual meeting in Santa Fe. Did you attend that meeting?

Mr. BAKER. No.

Mr. TIERNAN. Did anyone from the Department attend that meeting?

Mr. SAUNDERS. With very few exceptions we have attended them. I can't say for certain at this time that we did, but I assume we did, Congressman.

Mr. TIERNAN. Let me have a response to my question, Mr. Baker. Do you consider that peripheral, or do you consider that activity within the scope of the intent of the compact?

Mr. BAKER. I would consider it to be peripheral.

Mr. TIERNAN. Do you consider it within the scope of the compact?



Mr. BAKER. It seems to me that you have three categories of conduct that should be considered. One is the strict conservation kinds of activities which are the heart of the compact. The second are the activities which article V says are not the purposes of the compact, and then you may have a whole range of activities which are in neither of those two categories. I think this activity probably falls in the "neither" category.

Mr. TIERNAN. Which category would you put it in?

Mr. BAKER. I would put it in the category that it was neither central to the question of conservation nor was it contrary to the purpose.

Mr. TIERNAN. Why have a purpose clause in the compact? We say the purpose of the compact is to do one thing; then we specifically say they cannot do certain things, and then you say this falls within another category. I can't follow that line of response.

In other words, the Congress is asked to consent to a compact for a specific purpose. I asked you whether or not you consider this activity within that purpose. I am not asking you whether it is a specific violation of the negative clause but merely whether or not in your opinion that is within the scope of the compact.

Mr. BAKER. Mr. Tiernan, my feeling is that there is some relationship here between the problems of gas shortage and so forth and the purposes of conservation.

On the other hand, I don't see it serves any particularly useful purpose to have these people who are responsible for State regulation, and so forth, meeting and saying to them "Suddenly we have come to a magic boundary and you can't talk about anything else," where what we are talking about in no way is illegal.

Mr. TIERNAN. Do you think it is significant to the Congress that counsel for the compact testified before this committee that he doesn't necessarily control all the action taken by the compact in resolution or by letters of members attending the sessions? Are you concerned about that, or do you think the Congress should be concerned about that?

Mr. BAKER. I would be concerned if he couldn't prevent the members of the compact from engaging in illegal activities.

Mr. TIERNAN. Let me ask you, before you say anything further, would you consider any activity outside the scope of the compact illegal?

Mr. BAKER. Not necessarily, no. Taking this conduct, this is rather like the conduct that was involved in a Supreme Court case of 10 years ago called *Eastern Railroad Presidents' Conference v. Noerr Motor Freight*, in which the question was whether a group of private individuals, competitors, could get together and urge the Congress—and in this case it was the State legislature—to take an anticompetitive action. The Supreme Court said it was protected and it was legal.

Mr. TIERNAN. This is your report.

Mr. BAKER. Right.

Mr. TIERNAN. On the bottom of page 8 you point out specifically that at the February 1970 executive committee meeting in Dallas, Texas, where the Cabinet report of the President's report was issued, a resolution was made affirming the position with regard to imports. Would you please now tell me how that resolution has any relationship to the purposes which the Congress has consented to under the purpose clause of this compact?



Mr. BAKER. The relationship of the whole import question to conservation of oil seems to me to be, as I said in my statement, related to the question of conservation and rates of production. But beyond that, where I think you and I may be having difficulty—or I am having difficulty in understanding—is that there are groups who, to my mind, are kind of analogous to this who engaged in this kind of activity. I would give you the example of the Conference of State Bank Supervisors which meets and offers views on Federal policy in the banking area.

Mr. VAN DEERLIN. Would the gentleman yield? Specifically with regard to the bank supervisors, or the case you cited earlier of the railway executives under the Supreme Court decision, do either of these operate under Federal sanction?

Mr. BAKER. Neither operates under the compact.

Mr. VAN DEERLIN. Obviously, no one questions the constitutional right of these gentlemen to take far more extreme positions than these resolutions on their own. But operating under the Government sanction of a supervised interstate compact, they come together under ground rules which permit this rather free and easy approach to public issues—including the voting, in one instance, by a man who wasn't even certified as a member of the body passing the resolution. He just sauntered in around lunchtime.

Mr. TIERNAN. Mr. Baker, do you consider the activity of the chairman sending a telegram to the President during the December 1970 annual meeting defending the work of State regulatory agencies, and urging reconsideration of the decision to bring offshore production under direct Federal regulation, and increasing Canadian imports within the scope of the compact?

Mr. SAUNDERS. Was that action taken in the name of the compact States and the compact commission?

Mr. TIERNAN. I will read you your report on page 10. This is from the Attorney General. It says:

Finally, the chairman sent a telegram to the President during the December 1970 annual meeting defending the work of the State regulatory agencies and urging reconsideration of the decision to bring offshore production under direct Federal regulation and increasing Canadian imports.

The footnote goes on further. I would assume that was taken on behalf of the chairman—

Mr. BAKER. He didn't find himself as chairman of the compact.

Mr. TIERNAN. It says chairman. I don't have anything other than what I have from the report. I would assume that the Justice Department, in reviewing the telegram, must have realized he was chairman of the compact or you wouldn't have made that note of it.

Mr. BAKER. My reaction to this is rather along the same lines of the earlier ones on the resolution. I can see an argument as to the relationship between offshore production and the questions of conservation. I don't see that activity as being clearly inconsistent with the purposes of the compact or otherwise illegal.

Mr. TIERNAN. Mr. Baker, this is a compact between the States, and the Congress has consented to that compact. We have had testimony indicating it is not necessary for the Congress to consent to the compact between States. What is the position of the Justice Department?



Mr. BAKER. As you know, there is a general feeling that not all agreements under joint arrangements between States have to take the form of a compact and require Congressional consent. I tried to review, after talking to Mr. Borchardt, what our position had been over a period of years on this issue. The closest recent example I could find was an opinion given in March 1962 by the then Deputy Attorney General Katzenbach to Senator Clinton Anderson with relation to the Great Lakes compact, a situation with which you are probably familiar.

The letter basically reviewed the law in this area and concluded that the purpose of the compact clause in the Constitution was to prevent State infringements on Federal sovereignty, and it was really a question of concern for the Congress to determine whether they thought such infringement was taking place.

In the case of the Great Lakes compact, Mr. Katzenbach pointed out it involved foreign relations; it involved control over navigable waters of the United States, and it was very much involved with matters that were sort of central to Federal concern.

In translating this kind of analysis to the oil compact, we have had, particularly with the Connally Act, a very substantial deference to the States in this area and Federal steps to insure that State restrictions, which would normally infringe Federal power, were permitted and upheld. I don't see this as being as clear a case one way or the other as the Great Lakes situation. I would regard this as a close question. To me, that still does not answer the question of whether the members of the compact meeting as a compact are absolutely restricted to a list of authorized activities as opposed to not infringing on certain prohibited activities.

Mr. TIERNAN. Taken in the name of the chairman of the compact, would you still make that response?

Mr. BAKER. I misheard your question.

Mr. TIERNAN. You are saying individual members. But the chairman of the compact sent the telegram to the President stating they are in opposition to his task force report. Do you think that is an individual action or an action on behalf of the compact?

Mr. BAKER. I think that is an action on behalf of the compact. It is an attempt to influence public action here in Washington. I think in close cases we would tend to—

Mr. TIERNAN. Defending the work of the State regulatory bodies?

Mr. BAKER. That, to me, is—the compact is a gathering of State regulatory—

Mr. TIERNAN. Urging the decision to bring offshore production under Federal control, on the Continental Shelf and where States who are not members of this compact have an interest. Do you think that is within the scope of the compact?

Mr. BAKER. I think it is related to the purposes of conservation.

Mr. TIERNAN. What about Canadian imports? Canada is not a party to this compact. Do you think that comes within the scope of this compact?

Mr. BAKER. I think it is sufficiently related to the purposes of the compact that I wouldn't—

Mr. TIERNAN. The compact is between the States: The original act spelled out the States. Other States have joined and Canada is not a



party to this compact. The purpose of the compact is to preserve oil and gas from physical waste from any cause between the States who are members of the compact. Canada is not. How can you say it is within the scope of the compact to have the chairman writing the President and taking this position on Canadian imports? We dignify those policy statements by consenting to the compact.

Mr. VAN DEERLIN. Perhaps, Mr. Baker, you will decide that does not require a further response than you have already given.

Mr. BAKER. I was just trying to make sure we consider the thing fully. Clearly, there is a relationship between the amount of oil that comes in under the import program and the workings of State prorationing schemes. As I said in my statement the import of oil and the barrier that those restrictions impose are an absolutely central aspect of the whole thing at the moment. This is largely a matter of Federal concern. But it is related to the State prorationing.

Mr. TIERNAN. You can't have it both ways. You can't say on one hand it is not necessary for the Congress to consent to the Compact and then on the other hand say it is all right to delve into these things which definitely have an effect on commerce.

Mr. BAKER. I said it was a close question. I did not make the flat statement that the Congress did not need to consent. If I did, I would like the record to reflect that fact.

Mr. TIERNAN. In other words, the Justice Department doesn't take a position with regard to whether or not this compact meets the consent of Congress?

Mr. BAKER. That is correct.

Mr. VAN DEERLIN. Thank you.

Mr. COLLINS?

Mr. COLLINS. Mr. Baker, I appreciate very much having the opportunity of reviewing this matter with the committee. I believe it rather strange to find the Justice Department, whom I have always considered very, very active—and in our area we perhaps sometimes think are overactive—raising the question that you are too passive in nature. I know in our own community they took the biggest company and Justice Department smashed it in eight different ways and never asked for any advice. When we come in here and talk about the Justice Department in any way being friendly to the idea of restraint or overdoing this matter of participation, I want to go into three or four factors.

The first in this: Do we restrain any compact or any agreement in the matter of freedom of speech? I think this is a basic issue here. Do you in your Department have any sort of directives telling you of free speech limitations on groups in this country? My colleague over here keeps raising the question: Has the compact talked beyond the scope of their responsibility?

Mr. BAKER. I addressed myself briefly to this point. What I tried to set up seemed to me to be three kinds of situations. One is a situation which were matters which went directly to the heart of the compact; other situations which were directly prohibited, such as controlling prices and controlling monopolies; and the third was in neither of the former categories, such as trying to influence the Congress with respect to the decisions of the Congress by offering the views of the State regulators and so forth.



My answer was that when we are dealing with speech and we are dealing with petitions to the Government, we should be extremely careful about limiting the rights of people that do it. I hope that is responsive to your question.

Mr. COLLINS. That is right. I think we have so much bureaucracy in Washington today that, if we are getting into the field of telling every commission what they are entitled to say and telling them how they are to say it, we won't have any freedom left in this country as far as individual expression? As I understand it, there is no dispute here about the question of law. They are only expressing opinions; is that correct?

Mr. BAKER. They are expressing their opinions and, frankly, I have never heard of these resolutions. I have never heard of any of them. If they were talking to each other it might have been. In other words, they do have the right to speak up.

We get into this question of whether or not conservation affects international sources or not and whether we have the right to speak out on international matters. Canada and the United States basically, have many close working arrangements. When I say "arrangements," we always deal as though it is more than a neighboring country and that it is a related economic situation.

Mr. COLLINS. Can you recall situations where we have had parties or groups or compacts of any type that have spoken out or have voiced opinions where you have had conflicts within your Department with Canada?

Mr. BAKER. That requires one to research one's memory in a way that it is hard to do.

Mr. COLLINS. I would like to say at this time with respect to Canadian oil that much of the Canadian oil has been developed by South-western U.S. men who are in the oil business. They have been keenly concerned in finding the oil, developing it, drilling and everything about it, and there is a definite economic relationship to encourage Canada to go as extensive as they can.

I will say that there is not an oil producer in Canada who wants to limit production. I don't see how there could be any restraint feature between the United States and Canada involved here. Any American who produces gas, or has an oil interest in Canada will want to see Canada continue to produce and expand. As far as I know, we have nothing in this country to say about what Canada does, do we?

Mr. BAKER. We have something to say about their oil that comes into the United States.

Mr. COLLINS. Take gas. We have a shortage in this country. Canada has put restraints on the amount of gas that can come into the United States. This is not part of the U.S. compact. Canada did this. We have not asked them to put any restraints on this. You have never heard of any requests where we have asked Canada to place quotas or limitations?

Mr. BAKER. No.

Mr. COLLINS. I don't think you have heard of any requests where we have told Canada to hold back on anything as far as I know.

I want to take another subject which is very closely linked to conservation. My colleague over here from Rhode Island is one of the greatest environmentalists on the floor. He is aware of what has hap-



pened within the past few years in regard to the environmental impact in relation to gas.

Gas is a clean fuel. As a result, it has come into tremendous demand. Supply can't keep up with demand. Take sour crude oil, and you are familiar with the sour crude situation and what has happened there. Sour crude has sulfur fumes and, as a result, is not as popular as the sweet crude that we have in some areas.

This has an impact on conservation, too, because there is more demand for the sweet crude and less for the sour.

They ask why should we speak to foreign relations issues. Venezuela has sour crude. As it affects the demand in our economy we need to take into account there will be less interest in importing sour crude; wouldn't that be true?

Mr. BAKER. I see your point.

Mr. COLLINS. And much of the Arab oil is sour. Only in Libya can we depend on getting sweet crude.

Over in the Middle East they have sour crude production, and as we determine U.S. demands we will consider internal production and whether we need more of their sour crude. Also, what we can do to take the sulfur out of sour crude where we can import it without having this gaseous sulfur condition in the air.

Mr. BAKER. Clearly, our demands for clean air, and so forth, have to be taken into consideration in formulating broader energy policies.

Mr. COLLINS. From whatever source, domestic or foreign.

Mr. BAKER. That is correct.

Mr. COLLINS. Let me go into a few things that have to do with drilling. The more demand we have, the more encouragement it is going to have on exploration. In the testimony it was brought out that we have increased three and a half times over our recovery ability in the oil industry. In other words, oil companies used to be able to recover 10 percent of the oil and gas. Now through conservation and research and development with this compact and other groups they are now recovering 35 percent.

If producers became too intensive in trying to recover oil and gas we would have poor conservation practices and drop back to where we were only recovering 17 or 18 percent. Or I will put it in the positive: It is proper for the oil industry to do everything it can to encourage full conservation and full recovery in the oil and gas business. Is there any reason why they shouldn't try in every way to work together and get full recovery?

Mr. BAKER. Generally, yes. The purpose of the Connally Act, and so forth, is to encourage sound conservation methods. Obviously, as an institution, we are very concerned about fair and competitive prices in oil, too. You do have two policies which are interrelated in this field.

Mr. COLLINS. The Justice Department talks as though the oil business is in one or two States. Do you take into account that the large stockholders of these companies live in New York, Ohio, and Pennsylvania, and that most companies are owned basically up in the North?

Mr. BAKER. Our concern, from the standpoint of antitrust endorsement, is what goes on in the market.

Mr. COLLINS. This is not a restraint of trade in just a few States, because there is more impact of ownership in the industry among the



States where the stockholders live. Let me put it this way: New York State—and I have not seen the statistics, but I am sure, is the major stockholding State for most of the oil companies in America. Would there be any question about that? Would my colleagues raise an issue on that? Pennsylvania is probably second, and then Ohio and Illinois.

Mr. BAKER. And you may have a few in California.

Mr. COLLINS. I am sure. But they have the dual interest, because they also are big producers.

But this matter of what affects the oil industry affects the entire United States. I am saying that this compact does not represent merely a few States banded together. The economic interest of oil and gas ownership is a nationwide economic impact.

Mr. BAKER. There is no doubt, because these same States you are talking about are also major users. A person like myself who has grown up in the northeast is well conscious of the importance of energy policy.

Mr. COLLINS. We have raised this question in here and before other committees: To what extent should an oil compact be allowed to analyze our internal security and our future as far as foreign affairs. Is there any reason why this compact could not concern itself with our stressing U.S. overdependence on imports? Are compacts prohibited from discussing imports?

Mr. BAKER. As I said earlier, I think there is some relationship between the level of the imports and conservation measures at the State level.

Mr. COLLINS. There very definitely is. You are absolutely right.

Mr. TIERNAN. Would the gentleman yield?

Mr. COLLINS. Yes.

Mr. TIERNAN. You have been saying this consistently. I don't read this in the purpose of this compact. It says conserving gas and oil by the prevention of physical waste. It doesn't say anything at all about limiting imports.

Mr. BAKER. The conditions under which oil is sold, it seems to me, are related to the methods of production and are related in turn to conservation.

Mr. TIERNAN. Physical waste, Mr. Baker. Imports have nothing to do with the practices between the States to preserve gas and oil by preventing physical waste. Do you think the pricing is a conservation tool?

Mr. BAKER. The indication is that the compact was not to be involved with the question of controlling prices.

Mr. TIERNAN. The general counsel for the compact says that pricing is a conservation tool. Do you agree with that statement or don't you?

Mr. BAKER. I would say that pricing is a factor in conservation, yes.

Mr. TIERNAN. And you think pricing is a conservation tool? How do you then, under article V, square where we, the Congress, specifically say:

It is not the purpose of this compact to authorize the States joining herein to limit the production of oil and gas for the purposes of stabilizing or fixing the price thereof or to create or perpetuate monopolies or to promote regimentation, but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within a reasonable limitation?



How do you bring import quotas in under that kind of language?

Mr. BAKER. What I felt is this: If you look back at the conditions which gave rise to the original compact and you look back to the conditions which give rise to the Connally Act, clearly Congress was concerned then. There was a general concern at the time about the oil marketing—which may be a charitable phrase—situation at that time. It was to try to obtain more orderly recovery of oil that was behind the situation.

I think there is a relationship between market conditions and between physical conservation. I think, if the compact were sitting, and the only thing they were doing is passing resolutions on imports of oil and so forth, I would be in a better position to be concerned about this. As our reports made clearly, they are basically carrying on and exchanging methods of conservation and so forth. It is basically an information exchange kind of organization, and these things I tend to regard as fairly incidental.

Mr. TIERNAN. Getting back to your statement, apparently you recognize the fact that the initial thrust of the legislation was not what was ultimately passed by the Congress in this Compact; is that correct? You make reference to it in your statement, although I can't pick it out in your statement. I did not get your statement in advance.

Mr. BAKER. Right.

Mr. TIERNAN. Getting back to the question Mr. Collins asked, I join with Mr. Collins from Texas and suggest that if he thinks under the terms of this contract that the Justice Department is interfering with the expression or right of free speech by any of these States, I say we don't need the compact. The general counsel of this compact himself testified before the committee that they are continuing to operate without the sanction or consent of the Congress right now. The compact expired September of 1971.

So I join with my colleague and say, insofar as I am concerned, I don't think the Justice Department should be involved in this, and I don't think the Congress should give consent to this compact. If they say we don't need it, why should we pass it? Why should we dignify the lobbying activities of this compact? That is what it is. You don't say it specifically in the report, but you can certainly read the telegram from the chairman to the President with regard to the physical waste of gas and oil.

I can see the purpose of the compact in that area. But they are outside that area on many, many occasions, as is cited in the Attorney General's report. You cite them to us, and this is the reason we like to have these reports from Justice. They point up the areas in which they have gone beyond the scope intended by the Congress, and the history of the legislation indicates this. This is the reason I asked you the question. You did not give us a definitive answer as to whether or not this compact needs the consent of Congress. You went back to Katzenbach's letter.

I tried to ask you whether or not the letter to the President was outside the scope of the compact and might interfere with Congress and have some effect on the constitutional requirements that agreements between States be with the consent of Congress. I would just as soon get you off the hook. I would like to relieve you of the burden of filing these reports.



I don't think that is the case here. My own feeling is that these people who attend these meetings do receive a shield and do receive some protection from antitrust proceedings as to the provisions of the compact.

Mr. BAKER. I just flatly disagree on that last point. I don't think there is any protection from antitrust that is given by the compact.

Mr. TIERNAN. Can we get a statement from the Justice Department saying it is necessary for the Congress to consent to this compact?

Mr. BAKER. No.

Mr. TIERNAN. You won't take this position? The Justice Department doesn't want to take——

Mr. BAKER. We said we had no objection to continuation of the compact.

Mr. TIERNAN. That is not the same——

Mr. BAKER (continuing). As saying we think it should be definitely carried forward. I agree with you, sir.

Mr. TIERNAN. In other words, you are saying that the Congress does have to consent to the compact? Are you saying the Congress has to consent to this compact or not?

Mr. BAKER. What I am saying is that this is really a matter for Congress. It is not a clear question that you have joint State activity infringing on Federal power and, therefore, it is really a matter of congressional determination whether to regard it as a compact.

Mr. TIERNAN. You are representing the Justice Department. In order to assist me, as a member of this committee, do you mean to tell me you are not going to give us a position as to whether or not this compact has to be consented to by the Congress from a constitutional point of view, bringing it in under article X?

Mr. BAKER. As I said, there are a variety of different arrangements between States which do not rise to the dignity of the compact. At the other extreme, there are things which are compacts and have to be done in that form. I say I find this one, in view of the nature of the activities, to be a close question. Basically, this is an information exchanging kind of organization which, in practical terms, seems to me to be rather closely analogous to something like the Conference of State Bank Supervisors, which as the chairman said, is not done pursuant to compact.

Mr. TIERNAN. Right. So why do we have to consent to this compact?

Mr. VAN DEERLIN. He merely says there is no objection to it.

Mr. BAKER. We have no objection to it. In other words, there are two aspects of the thing: First of all, whether the compact gives anyone an antitrust shield. We say it doesn't.

Then there are the broader questions of whether or not it is desirable to have the compact and to have it in a compact form with some congressional oversight or not. That is a decision which we really respectfully defer to you, the Congress.

Mr. TIERNAN. Would you recommend that Congress consent to a compact which would authorize the producing States that enter into the compact to engage in joint activities for the purpose of securing the maximum benefits to those States when it comes to formulating Federal oil and gas policies?

Mr. BAKER. Let me make sure I understand it. Maybe I can restate it and then you can point out to me where I have misunderstood it.



Mr. TIERNAN. Let me restate it. Would you recommend that Congress consent to a compact which authorized the producing States to engage in joint activities for the purpose of securing the maximum benefits to those States when it comes to formulating Federal oil and gas policies?

Mr. BAKER. I would not recommend that compact, no. It seems to me these are activities which the States are perfectly free to carry out or not on a joint basis as they do with Governors' conferences and so forth and so on.

In that way, just to make sure, as Mr. Saunders suggested—maybe I have not made myself clear—we are not recommending the enactment of this resolution, the one that covers all of the conservation activities. We are simply saying we have no objection to it. I think that is clear.

Mr. VAN DEERLIN. Mr. Collins?

Mr. COLLINS. I want to go back and review some of these points Mr. Tiernan raised to see if I understand them.

Now, you mentioned the exchange of information, which we consider a highly desirable factor. There is nothing wrong with having an exchange of information between the States and the Federal Government, is there?

Mr. BAKER. No, sir.

Mr. COLLINS. Do you consider it a highly desirable function where the States and Federal Government give each other the benefit of the information we have available?

Mr. BAKER. It seems to me the general commitment of the administration of effective action at the State level would tend to support this kind of exchange. This is really an area in which we, as the Department of Justice, are necessarily going to defer to you as the Congress, as to what the net benefits are.

Mr. COLLINS. One question that might come up if we do not continue this compact would be that Federal agencies would be reluctant to furnish any information to a State compact unless they had an agreement that had been approved on the Federal level. In other words, one advantage to having a federally approved compact is that all of these available statistics—and in the Federal Government we get so many statistics we certainly need to find a way to use them. Since we have a compact agreement here where we are using them, these agencies in turn will cooperate in every way with the compact.

Mr. SAUNDERS. That wouldn't be a necessary method, though, because the Congress, if it really felt without a Congress that that should be done, could make provision for that in connection with the appropriations of the various agencies which they would want to do that.

Mr. COLLINS. You don't think from the Justice Department's position there is any hesitancy or limitations on agencies furnishing States all of the facts and figures they have?

Mr. BAKER. No. My experience has not been that there has been hesitation on this point. My understanding is that the compact has served as a useful way of collecting various types of information. Of course, this is a useful function.

Mr. COLLINS. I might ask Mr. Tiernan at this time if he has any objection to the fact that any agency could furnish any information in any way, shape, or form to any States?



Mr. BAKER. Mr. Collins, we are talking about nonconfidential information.

Mr. COLLINS. Of course, what is secret and what is not? The size of your oil reserves affects the national security. You could come back and say everything is confidential.

Mr. SAUNDERS. I believe there is now information which is regarded as confidential and would not be considered under the compact.

Mr. COLLINS. I happen to be one of those who believes that secret records should be kept confidential, but I didn't know there was any question along that line on oil and gas domestic reserves and consumption.

Mr. SAUNDERS. Although the problem there is not confidentiality, I don't think the existence of the compact should have any bearing on internal information which they are not under any restraint to make available.

Mr. COLLINS. We made the point on pricing and its effect on conservation. I don't know whether I understood my colleague or not. If we go a step further and have complete open pricing, which many in my area think is a very practical and permanent solution for trade, this would definitely have a negative impact on conservation. Suppose we had open pricing. What would be the impact of higher prices on production or conservation? Does the Justice Department take any exception to the present restraints that are now placed on pricing?

Mr. BAKER. Just to make sure I understand what you mean by "open pricing"—

Mr. COLLINS. I would just as soon, personally, see us get out of all of Government regulations we have now, and have an open market on pricing. Let the oil and gas price seek its own level. Let us say, gas sold at the price of coal, for example. Gas is selling on the market at a price one-third below coal. As a result, the cost of production of gas has not been economical, which has tended to cut back on discoveries and production. Would the Justice Department come out and advocate free open-market pricing?

Mr. BAKER. Our basic position in most of these fields has been in favor of deregulation. We shared the concern of, say, the Council of Economic Advisers about the problems of gas pricing where you artificially constrain. Of course, we have been generally in favor of more open markets in oil than in energy generally. The Department was among those who on the oil task force supported the tariff type of solution.

Mr. COLLINS. One thing I would like to emphasize very strongly is that pricing is directly related to conservation. The fact that we are not producing enough gas and the fact that consumers think we are overconserving is due to the fact that the price is so low that we are not able to expand our production or drilling activities.

Now, I want to raise one point about physical conservation, which is the basic strength of the compact. I forgot the exact words, but it says something about physical conservation and where that leads. As you know, physical conservation has to do with the entire range of production. In other words, if we ignore physical conservation we might, for instance, not use all of the paysands. When we drill an oil well we might find three or four pays as we go down. Full conservation would utilize all those paysands.



Another thing that comes up is how water flooding is utilized and in what form and how extensively water flooding has increased recoveries.

Other considerations include bracing; control of flaring from wells; and spacing for drilling of wells.

This physical conservation is very basic to the whole conservation procedure. The only thing I would like to say in closing is that there is no question about any laws regarding restraint of trade in the compact.

Mr. BAKER. That is our understanding.

Mr. COLLINS. And the compact has not acted in collusion in any way to affect pricing, have they? There has been no collusion between the States?

Mr. BAKER. That is right.

Mr. COLLINS. What they have done is spoken up, and they are speaking up not only for their own States but for the people who own the properties, which represents all of the States in America. What it gets back to basically is: Is the Federal Government going to rule that only through Federal bureaucracy can we issue statements? It looks to me like a basic issue. Are we going to let individuals or States as a compact group express themselves, or can only the Federal Government come out with opinions.

Mr. BAKER. The individual alternatives is individuals as individuals expressing themselves.

Mr. TIERNAN. Mr. Chairman, I have one more question.

Mr. VAN DEERLIN. Mr. Tiernan.

Mr. TIERNAN. Mr. Baker, one area I forget to ask you about is: Do you feel that resolutions adopted by the compact in opposition to tax reform legislation designed to reduce oil depletion allowances is within the scope of this compact?

Mr. BAKER. That is getting further afield. It is concerned with the incentives for recovery of oil.

Mr. TIERNAN. The compact says prevention of—

Mr. BAKER. I understand your point. As I say, I think that is fairly far afield from the purpose of the compact. On the other hand, as I have said several times, I think reasonable latitude in expressing views on public issues is probably desirable.

Mr. TIERNAN. On page 3 at the top of your statement, as follows from the bottom of page 2, you make mention of the first report of the Attorney General. In quoting from that report it says that no action has been taken by the Commission so far as the record is now available. Do you find that language disturbing at all?

Mr. BAKER. If what you are asking me is whether there is a negative implication, that this conduct has been taken for which there is no record available, I would rather—

Mr. TIERNAN. Isn't that cautious language defined in a report of the Attorney General to the Congress—isn't that language really very guarded? There is no way of them getting into trouble with that language, is there?

Mr. BAKER. I think that lawyers are by training cautious. I can assure you, if the implication—

Mr. TIERNAN. What if the member is a lawyer; is he supposed to be cautious?



Mr. BAKER. If the implication that the person writing this report was saying there was no record available, but behind my back I suspect there is something that is flatly contrary to the compact, I would just say that the implication is wrong. We have had very first-rate people conducting the surveillance, people who are very much dedicated to brisk and efficient antitrust enforcement and noncollusion, and all of the other things in this area. I would cross this particular phrase off to legal and bureaucratic caution rather than any implication of wrongdoing. I understand your question.

Mr. TIERNAN. It disturbs me as a Member of the Congress to have the general counsel of the compact come before us and say, in his opinion, it is not necessary for the Congress to consent to this compact constitutionally.

Do you as a representative of the Justice Department say that you are not going to take a position that it is necessary, but you are not going to take a position that it is not necessary? You are very cautious, too.

Mr. BAKER. On a difficult question like this one, I believe it is better to admit it is a difficult question than to come thundering down on one side or the other.

Mr. TIERNAN. When I asked the general counsel why should we consent to it, he said they wanted Federal agencies' cooperation. What do you think of that?

Mr. BAKER. As Mr. Saunders and I said a few moments ago, I have not, either in my role of dealing with State agencies on nonoil matters or from what I have heard in this field, seen reluctance on the part of those of us in the Federal Government to deal forthrightly and be as helpful as we can with States on an individual basis.

Mr. TIERNAN. That gives rise to my next question, in saying: Why should we burden ourselves in consenting to this compact and burden the Justice Department with reports? I will never adopt your amendment even if it means a lot of work. If we agree to this, we are going to get reports from the Department, and not just surveillance. I have a lot of fun with the reports.

Mr. BAKER. I am glad they serve a useful public purpose.

Mr. TIERNAN. They do. I did want to comment on that.

Mr. VAN DEERLIN. Perhaps you would like to accept an invitation to submit a formal opinion for inclusion in the hearings.

Mr. BAKER. As to whether congressional consent is required?

Mr. VAN DEERLIN. Yes.

Mr. BAKER. I would rather submit the letter that I was referring to from the earlier hearings which would provide a basis for your consideration.

Mr. VAN DEERLIN. It seems to me, if and when this legislation comes to the floor, that the absence of a definitive opinion from the Justice Department might make it rather vulnerable. Would you agree to do that?

Mr. BAKER. If this committee is concerned about this matter, we will do so.

Mr. VAN DEERLIN. I wonder what other documentation for the completion of the record might be desirable.

Mr. TIERNAN. I would like, if it is possible, the letter made reference to—in 1962 from the then Deputy Attorney General Katzenbach.



Mr. BAKER. We will be glad to send up a copy. It is contained in the hearings on the Great Lakes compact.

Mr. TIERNAN. I don't have reference to that.

Mr. BAKER. It is entitled "Great Lakes Basin Compact, Hearings Before the Committee on Foreign Affairs, House of Representatives, 89th Congress, Second Session, on H.R. 937," et cetera, on September 27, and October 4, 1966. It appears at pages 10 through 13 of those hearings.

Mr. TIERNAN. Thank you very much. We will include it in the record when we get it.

Mr. VAN DEERLIN. Are there any court decisions or any other letters that, in your opinion, ought to be included in the record?

Mr. BAKER. If it will not interfere with the committee's assembly of the record, we have undertaken that we would provide you with a discussion of this compact in terms of the constitutional principles. If there are any that are relevant and particularly helpful, we will send those up at the same time. I presume if you are leaving a slot in the record for our letter you can leave a slot for any of these other things.

Mr. VAN DEERLIN. What do you think we are talking about in the matter of time, Mr. Baker?

Mr. BAKER. This is a matter which the office of legal counsel will probably want to be involved in. I am hesitant to give you a firm commitment on behalf of people who are in quite a separate section. The best thing would be to talk to them today, and I call Mr. Borchardt and let him know what the timing is. He could then pass it on to interested members. Is that a workable procedure? I really can't give close to a running guess, because I am not sure what their situation is up there at the moment.

Mr. VAN DEERLIN. Mr. Collins?

Mr. COLLINS. No further questions. Thank you, Mr. Chairman.

Mr. VAN DEERLIN. In that case, the hearings will close.

(The following material and letter were received for the record:)

DEPARTMENT OF JUSTICE,  
OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
Washington, D.C., May 17, 1962.

Hon. CLINTON P. ANDERSON,  
Chairman, Committee on Interior and Insular Affairs,  
U.S. Senate, Washington, D.C.

DEAR SENATOR ANDERSON: This is in further response to your letter of March 5 with reference to the testimony on March 2, 1962, before the Senate Interior and Insular Affairs Committee, of Marvin Fast, Executive Director of the Great Lakes Basin Compact Commission. By your letter, you transmitted a copy of the transcript of the March 2 hearing and called attention to the opinion stated therein by Mr. Fast and Dr. Wendell that under the doctrine of *Virginia v. Tennessee*, 148 U.S. 503, a compact such as the Great Lakes Basin Compact would not necessarily require congressional approval. You asked to be advised whether the *Virginia v. Tennessee* doctrine is as broad as contended and whether congressional approval of a compact is necessary before the compact becomes operative.

The question whether congressional consent is necessary or appropriate to an interstate compact is initially a question for the Congress. However, in the event the participating states should put a compact into effect without congressional approval, such action may be open to challenge in the courts, and the failure to obtain consent could, in some cases, ultimately prove costly to the states and the national government alike. In this connection, I note that legislation to approve the Great Lakes Basin Compact is now pending, see S. 1748, 87th Cong., 1st Sess.



The questions which you ask do not arise within the Executive Branch of the government and hence are not an appropriate subject for an opinion of the Attorney General. The following informal comments may, however, be helpful to you in your further consideration of those questions.

Article I, sec. 10, cl. 3 of the Constitution provides that "no state shall, without the consent of Congress \* \* \* enter into any Agreement or Compact with another state \* \* \*." The phrasing of the Article is unequivocal; congressional consent is required for "any Agreement or Compact" (emphasis added), and the cases so indicate. See e.g., *Green v. Biddle*, 8 Wheat, 1 (1823), and *Holmes v. Jennison*, 14 Pet. 540 (1840). However, the consent of Congress may be given subsequent to the entering into of the compact and maybe implied. *Virginia v. Tennessee*, 148 U.S. 503, 521 (1893).

No doubt there are many forms of cooperation between states which do not rise to the dignity of a compact or agreement within the meaning of Article I, sec. 10, cl. 3. Familiar examples include: mutual assistance in dealing with damage from a natural disaster; arrangements for exchange of tax or other governmental information (see e.g., *Diaz Wholesale Grocery Inc. v. Martin*, 278 Ky. 105, 129 S.W. 2d 181 (1930), cert. den., 308 U.S. 609 (1939)); and certain arrangements for joint consultation such as the Council of State Governments and the periodic conferences of state governors, attorneys general, insurance commissioners, etc. The few judicial decisions under the compact clause do not indicate a clear line of demarcation between such informal working arrangements and those agreements which come within the compact clause of the Constitution, and hence require the consent of Congress. And the practice of the states and Congress has not been wholly consistent. See examples appended to Frankfurter and Landis, *The Compact Clause, a Study in Interstate Adjustments*, 34 Yale L. J. 685 (1925), and the more recent example of the Southern Regional Educational Compact, discussed in Dunbar, *Interstate Compacts and Congressional Consent*, 36 Va. L. Rev. 753 (1950).

In *Virginia v. Tennessee*, 148 U.S. 503, 519 (1893), the Supreme Court suggested that the requirement of congressional consent may be applicable only to "the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States." See also *Stearns v. Minnesota*, 179 U.S. 223, 224 (1900). The quoted statement was made in connection with a holding that a mere agreement to appoint commissioners to run a boundary line, not involving any commitment to adopt the line so run, did not require congressional consent. (See 148 U.S. at 517-521). The Court went on to hold that the further agreement mutually to accept the boundary line did require congressional consent (p. 521) and that such consent could be implied from the "subsequent legislation and proceedings of Congress." (p. 522). Alternatively, the Court held the boundary established by prescription, having been acquiesced in by both states for some 90 years. (pp. 522-4).

Accordingly, the holding in *Virginia v. Tennessee* stands merely for the proposition that congressional consent to interstate compacts may be implied instead of expressed and may be given after the compact is agreed to by the states concerned. The court's dictum, quoted above, was in connection with its conclusions that the consent of Congress need not have been given at the time of preliminary arrangements for the appointment of a commission to make a survey but could effectively be given at a later time.

The testimony before your committee of Mr. Fast and Dr. Wendell relies heavily on this dictum, and essentially reiterates the reference, in Zimmerman and Wendell, *The Interstate Compact since 1925*, p. 34, to a "line of decisions" adopting "the political balance doctrine." The authors further comment that "Political balance is identifiable more readily as a principle than as a formula easy to apply in specific cases." *Ibid.* As evidence of the "line of decisions" and this "doctrine" there are cited the dictum, above referred to, in *Virginia v. Tennessee* and two state cases upholding reciprocal agreements, without congressional consent, to exchange tax information. We are not aware of any decision of a federal court holding valid an interstate compact to which Congress had not given previous or subsequent consent. I do not believe the dictum in *Virginia v. Tennessee*, uttered in a very limited context, can be said to have established the so-called "political balance doctrine" relied on in the testimony referred to in your letter.

In a passage quoted in *Virginia v. Tennessee*, *supra*, Story states that the purpose of the requirement of congressional consent of interstate compacts and



agreements is "to check any infringement of the rights of the national government." (Story, *Commentaries on the Constitution*, sec. 1403). It seems clear that Congress, and not the state involved, must be the judge of whether a proposed compact would infringe the rights of the national government—i.e. whether entering into and carrying out the compact would be inconsistent with any legislative action taken or to be taken by Congress, or with any interest of the nation.

Thus in a recent case the Supreme Court quoted with approval the following passage from Frankfurter and Landis, *op. cit. supra*. 34 Yale L. J. at 694-5:

"But the Constitution plainly had two very practical objectives in view in conditioning agreement by States upon consent of Congress. For only Congress is the appropriate organ for determining what arrangements between States might fall within the prohibited class of 'Treaty, Alliance, or Confederation', and what arrangements come within the permissive agreements may affect the interests of States other than those parties to the agreement: the national, and not merely a regional, interest may be involved. Therefore, Congress must exercise national supervision through its power to grant or withhold consent, or to grant it under appropriate conditions. The framers thus astutely created a mechanism of legal control over affairs that are projected beyond State lines and yet may not call for, nor be capable of, national treatment. They allowed interstate adjustments but duly safeguarded the national interest." *Petty v. Tennessee-Missouri Commission*, 359 U.S. 275, 282n.

And the District Court for the District of Columbia has stated that "the duty of Congress to protect substantive federal interests such as interstate commerce and national defense in its actions under the compact clause is a clear one." *United States v. Tobin*, 195 F. Supp. 588, 606 (1961).

The question whether the Great Lakes Compact requires congressional consent was discussed in the Committee reports on legislation (S. 1416) to approve the compact which was passed by the Senate at the 85th Congress. The Senate Committee stated: "The Committee believes that this is a compact to which (Congressional) consent should be given." S. Rept. 1883, 85th Cong. 2d Sess., p. 6. The House Committee, after setting forth arguments pro and con, stated: "It seems clear that it would be more prudent to secure congressional consent rather than to forgo consent and thereby throw doubt on the validity of the compact and on the Commission's activities." H. Rept. 2587, 85th Cong., 2d Sess., p. 5.

The Great Lakes Basin Compact (the text of which is set out in S. 1746) is a highly formal agreement, open to membership by eight states and two provinces of Canada. (Art. II). Its purposes include "to promote the orderly, integrated, and comprehensive development, use and conservation of the water resources of the Great Lakes Basin." (Art. I). The Great Lakes are a major navigable waterway; actions with respect to them are also matters of international concern, and various aspects of the Great Lakes have been the subject of international agreements with Canada. See *e.g.*, the Treaty Relating to Boundary Waters, etc. of January 11, 1909, TS No. 548 and the Convention on Great Lakes Fisheries of September 10, 1954, TIAS 3326. While the powers of the Commission appear to be primarily to collect and report on data and to make recommendations which the members agree merely to "consider" (Arts. VI and VII), the formulation of such comprehensive recommendations is itself an important function which may significantly influence the legislative action of the member states and thus shape the future development of the Great Lakes Basin. This appears to be recognized in the Compact itself by the formality of its provisions with respect to voting (Art. IV, B-E). Moreover, serious question with respect to the proper conduct of international relations may be presented by the proposed establishment of an agency representing certain states and Canadian provinces to formulate recommendations on matters which may be regarded as a more appropriate subject for diplomatic negotiations conducted by the national governments of the two nations involved.

Such an agreement, which could result in actions of great importance relating to a major navigable waterway over which Congress has broad legislative powers, and which may affect both the substance of and the proper channels for conducting our international relations with Canada, potentially affects, "substantive federal interests." Hence, in my opinion, it requires Congressional consent under the compact clause. Since, under *Virginia v. Tennessee*, *supra*, Congressional consent may be given subsequent to the entering into of a compact, it may be that certain preliminary organizational steps could properly be taken prior to action by Congress on consent legislation. I express no opinion with



respect to the lawfulness of any particular action that may have been taken to date under the Compact.

Sincerely,

NICHOLAS DEB. KATZENBACH,  
*Deputy Attorney General.*

DEPARTMENT OF JUSTICE,  
OFFICE OF THE ATTORNEY GENERAL,  
Washington, D.C., May 12, 1972.

HON. TORBERT H. MACDONALD,  
*Chairman, Subcommittee on Communications and Power, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This supplements the report of March 1, 1972, of the Department of Justice on H.J. Res. 586, a joint resolution consenting to an extension and renewal of the interstate compact to conserve oil and gas.

At the hearings there on April 12, 1972, the General Counsel of the Interstate Oil Compact Commission stated that the compact agency is "advisory and do[es] not affect political boundaries" (sic), that he does not think that the compact "affects commerce," and that the States parties thereto could contract with each other without congressional consent "as long as it does not affect the political structure of the United States." He added that the Commission had an opinion of Frederick W. Zimmermann of the Council of State Governments in his letter of April 28, 1971, to the Commission's Executive Director that this compact does not require the consent of Congress under the Compact Clause (Art. I, § 10, cl. 3) of the Constitution. Nevertheless, the General Counsel urged enactment of the resolution, on the ground that it would aid in obtaining cooperation by Federal agencies.

At the hearings on April 27, 1972, Donald I. Baker, Director of Policy Planning, Antitrust Division, the witness for this Department, was asked whether the Department is of a view that the compact does not require such consent. With respect to that question he referred to Deputy Attorney General Katzenbach's letter of May 17, 1962, to Senator Clinton P. Anderson, then Chairman of the Senate Committee on Interior and Insular Affairs, as reproduced in *Hearings on Great Lakes Basin Compact Before the House Committee on Foreign Affairs* [H.R. 937 et al.], 89th Cong., 2d Sess. 10-13. At the conclusion of the April 27th session, the Subcommittee asked the Department to submit informally a written response to that question with respect to the compact to conserve oil and gas.

There are no later judicial decisions requiring a modification of the views expressed in the Department's 1962 letter as to scope of the Compact Clause. Accordingly, the Department adheres to the views expressed therein. The material in the last three paragraphs of that letter as to the Great Lakes Compact and the possible impact of the activities of the Great Lakes Commission on navigable waters in the Great Lakes and international relations with Canada does not apply to the interstate compact to conserve oil and gas.

There is, however, one sentence in that material that refers to the impact of the activities of that Commission on the States which are parties to the Great Lakes Basin Compact. That sentence in the penultimate paragraph of that letter reads as follows:

"While the powers of the [Great Lakes] Commission appear to be primarily to collect and report on data and to make recommendations which the members agree merely to "consider" \* \* \* the formulation of such comprehensive recommendations is itself an important function which may significantly influence the legislative action of the member States."

Consequently, the contention that under the interstate compact to conserve oil and gas the compact agency performs merely advisory functions does not necessarily furnish a basis for concluding that such compact is not subject to the Compact Clause.

Independently of that matter, the initial consent of Congress to the compact to conserve oil and gas and to extensions and renewals thereof would seem to be a practical construction by Congress that this compact is subject to the Compact Clause.

Sincerely,

RICHARD G. KLEINDIENST,  
*Acting Attorney General.*

(Whereupon, at 11 :20 a.m., the subcommittee adjourned.)