

The original documents are located in Box 63, folder “10/14/76 SJR126 Extension of the Interstate Compact to Conserve Oil and Gas” of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

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APPROVED
OCT 14 1976

8/10/14/76

THE WHITE HOUSE
WASHINGTON
October 12, 1976

ACTION
Last Day: October 15

MEMORANDUM FOR

THE PRESIDENT

FROM:

JIM CANNON



SUBJECT:

S.J. Res. 126 - Extension of the
Interstate Compact to Conserve Oil
and Gas

Attached for your consideration is S.J. Res. 126, sponsored by Senators Jackson and Johnston.

The enrolled resolution grants congressional consent, as required by the Constitution, to extend the Interstate Compact to Conserve Oil and Gas between 29 oil and gas producing States and six associate member States.

Congress has consented to extensions of the Compact at 2-year intervals from 1935 to 1972. The most recent consent expired on September 1, 1974. Thus, the Compact has been without the congressional consent required by the Constitution for over 25 months.

Additional information is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Kilberg) and I recommend approval of the enrolled resolution.

RECOMMENDATION

That you sign S.J. Res. 126 at Tab B.

Re: 10/15
ARCHIVES
10/15



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 9 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Resolution S.J.Res. 126 - Extension of
the Interstate Compact to Conserve Oil and
Gas
Sponsors - Sen. Jackson (D) Washington and
Sen. Johnston (D) Louisiana

Last Day for Action

October 15, 1976 - Friday

Purpose

Grants congressional consent, as required by the Consti-
tution of the United States, to extend the Interstate
Compact to Conserve Oil and Gas between 29 oil and gas
producing States and six associate member States.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Approval
Federal Energy Administration	No objection (Informally)
Department of Justice	No objection
Department of State	No objection

Discussion

Under the Interstate Compact to Conserve Oil and Gas,
the signatory States are bound to enact laws to accom-
plish certain specified types of oil or gas waste
prevention, to deny access to commerce of oil produced

in violation of its conservation statutes and to provide stringent penalties for the waste of oil or gas. The Compact also established an Interstate Oil Compact Commission composed of one member from each signatory State.

The Compact was originally executed by six member States and consented to by Congress, as required by Article I, Section 10, Clause 3 of the U.S. Constitution, in 1935. The Compact has now grown to include 29 oil and gas producing States and six associate member States. Congress has consented to extensions of the Compact at 2-year intervals from 1935 to 1972, the most recent consent having expired on September 1, 1974. Thus, the Compact has been without the congressional consent required by the Constitution for over 25 months.

The enrolled bill would grant congressional consent to an extension and renewal of the Interstate Compact to Conserve Oil and Gas from September 1, 1974 to December 31, 1978.

In its attached enrolled bill letter, Interior notes that energy conservation is becoming increasingly important in our efforts to maximize the use of our available resources, and the Department concludes that:

"... The Interstate Oil Compact Commission, which operates at no cost to the Federal Government for its operations, has played a very prominent role in energy resource conservation and can be relied upon in the future to continue to do so. We believe, therefore, that extension of the Compact, as provided in Senate Joint Resolution 126, would be in the national interest."



Paul H. O'Neill
Acting Director

Enclosures



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 5 - 1976

Dear Mr. Lynn:

This is in response to your request for the views of this Department with respect to S.J. Res. 126, an enrolled bill "Consenting to an extension and renewal of the interstate compact to conserve oil and gas."

We recommend that S.J. Res. 126 be enacted.

S.J. Res. 126 would provide Congressional consent to the extension of the interstate compact until December 1978. The Compact was originally ratified by six member States and approved by Congress in 1935, a time in our history when major oil field discoveries, unsophisticated technology, and the subsequent glut of oil and gas supplies resulted in substantial waste of oil and gas, in oil prices as low as ten cents a barrel, and in contamination of the topsoil and of underground water supplies. The oil producing States immediately concerned agreed on the urgency of some cooperative effort to deal with these problems. Thus, they entered into a compact whose articles of agreement include the following:

"The purpose of this Compact is to conserve oil and gas by the prevention of physical waste thereof from any cause." (Article II) and: "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 promote regimentation, but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations." (Article V).

The Compact has been extended twelve times since 1935. Its membership has grown from the six original States to 29 producing States and 6 associate member States. While the domestic energy supply situation has been drastically altered since 1935, the purpose of the Compact has remained unchanged.

With the energy crisis of 1973 came two basic realizations: First came the awareness, albeit painful at the time, of the importance of



oil and gas in sustaining our Nation's standard of living. Second came the realization that the Federal Government must of necessity expand its role in assuring future adequate domestic supplies of energy. Despite strenuous efforts by industry and Government to move the Nation toward full-scale utilization of non-conventional fuels, the fact is that until 1985 and even beyond, the United States will continue to rely on petroleum and natural gas as major energy sources. This, coupled with the fact that petroleum production has steadily declined since its peak in 1970, points to the continuing need to prevent wherever possible the waste of our oil and gas resources.

Throughout its history, the Interstate Oil Compact Commission, the administrative arm of the interstate compact, has served as an advisory body, providing a forum for discussion and cooperation among the producing States in their efforts to prevent the waste of energy resources and to promote efficient practices in the production of oil and gas. Although the Governors of the member States comprise the Commission itself, most of the actual work is conducted by committees whose members are selected on the basis of their legal, technical, or engineering capabilities. The committee members have undertaken research in such areas as technological and scientific advancements in production, secondary and tertiary recovery, pressure maintenance, leasing, physical and underground waste, conservation regulatory practices, and petroleum resources.

The Federal Government has benefited from the experience and expertise accumulated through the years by the Interstate Oil Compact Commission. For instance, the Commission cooperated with the Federal Power Commission in eliciting from State agencies not only necessary statistical data but also staff assistance for a study the FPC was undertaking on natural gas reserves. Upon suggestion by the Department of the Interior, the Interstate Oil Compact Commission conducted a comprehensive study of conservation of oil and gas in the United States. This study is periodically updated by the Commission. These are but two examples of where the Interstate Oil Compact Commission has served as a vital communication link, not only among member States, but also between the Federal and State Governments.

As for its future role, the Commission can provide a service to the Nation by continuing its research efforts in enhanced recovery technologies. Close to 90 percent of the United States' demonstrated petroleum reserves are onshore. However, the chief sources of

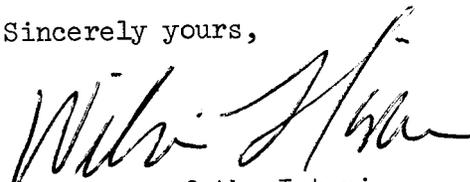
onshore petroleum production, except for Alaska, will require enhanced recovery from existing wells. In 1935, it was estimated that less than 10 percent of the oil in place was being extracted from the average reservoir due to poor conservation and limited technology. Today, that figure is greater than 32 percent. For every percentage point increase in recovery capability, it has been estimated that we can increase available reserves by another 4 billion barrels.

An equally important contribution which can be made by the Commission is in the field of end-use conservation; that is, in the promotion of efforts designed to minimize waste of energy resources by consumers. Since the Compact was last extended in 1972 the Commission has moved more and more in this direction. Every resolution, with the exception of one, adopted by the Commission before the Attorney General's latest report to Congress and the Executive went to print, was concerned with the wise and efficient use of energy by the consumer.

In short, the Interstate Oil Compact Commission, which operates at no cost to the Federal Government for its operations, has played a very prominent role in energy resource conservation and can be relied upon in the future to continue to do so. We believe, therefore, that extension of the Compact, as provided in Senate Joint Resolution 126, would be in the national interest.

Because of the past and prospective benefits to the Nation as a result of the Compact, we recommend that S.J. Res. 126 be enacted and that the bill be signed.

Sincerely yours,



Assistant Secretary of the Interior
William L. Fisher

Honorable James T. Lynn
Director, Office of
Management and Budget
Washington, D. C.



DEPARTMENT OF STATE

Washington, D.C. 20520

OCT 6 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C.

Dear Mr. Lynn:

I refer to Mr. James Frey's communication of October 1 requesting the Department of State's views on enrolled bill S.J. Res. 126. The Department of State perceives no objection to the joint resolution consenting to extension and renewal of the interstate compact of 1935 to conserve oil and gas. We would defer to the agencies concerned with the management and regulation of US domestic oil and gas reserves for analysis of the impact of the extension of the compact among the states.

Sincerely,

A handwritten signature in black ink, appearing to read "Kempton B. Jenkins".

Kempton B. Jenkins
Acting Assistant Secretary
for Congressional Relations

Department of Justice
Washington, D.C. 20530

October 6, 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill S.J. Res. 126 (94th Cong., 2d Sess.), "Consenting to an extension and renewal of the Interstate Compact to Conserve Oil and Gas."

The resolution proposes to grant the consent of Congress to another extension of the Interstate Compact to Conserve Oil and Gas, from September 1, 1974 to December 31, 1978. The Compact was originally executed in 1935 for a two year period and thereafter successively renewed for varying terms. It is intended to foster action by oil producing States to conserve resources of oil and gas by ending wasteful production practices.

Section 2 requires a continuation of periodic reports by the Attorney General for the duration of the Compact as to whether or not the activities of the Interstate Oil Compact Commission and of the States under the provisions of such Compact have been consistent with the purposes as set out in Article V of the Compact. This is essentially the same report requirement which has been imposed from 1955 to 1972. The Attorney General also shall review the activities of any advisory committees to the Commission and the States and report to Congress prior to the expiration of the Compact as to whether the activities of any such advisory committees could tend to create or maintain situations inconsistent with the antitrust laws.

While we have previously questioned the utility of these periodic reports (we think it would be more useful to report to Congress only when we perceive antitrust problems in the activities of the Compact and its advisory committees), the Department of Justice does not object to Executive approval of this bill.

Sincerely,



Michael M. Uhlmann
Assistant Attorney General

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 11

Time: 3:55pm

FOR ACTION: Max Friedersdorf *MF* cc (for information): Jack Marsh
 George Humphreys *GH* Ed Schmults
 Bobbie Kilbegg *BK*
 Glenn Schleede *GS*
 Steve McConahey *SM*

FROM THE STAFF SECRETARY

DUE: Date: ~~George~~ Humphreys

Time: 5:30pm

SUBJECT:

S.J. Res. 126-Extension of the Interstate Compact to Conserve Oil and Gas

ACTION REQUESTED:

- | | |
|---|---|
| <input type="checkbox"/> For Necessary Action | <input type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief | <input type="checkbox"/> Draft Reply |
| <input checked="" type="checkbox"/> For Your Comments | <input type="checkbox"/> Draft Remarks |

REMARKS:

please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 11

Time: 345pm

FOR ACTION: Max Friedersdorf
George Humphreys
Bobbie Kilberg
Glenn Schleede
Steve McConahey

cc (for information): Jack Marsh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: October 11

Time: 530pm

SUBJECT:

S.J. Res. 126-Extension of the Interstate Compact to
Conserve Oil and Gas

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

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opm Delivery 10/11/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

ION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 11

Time: 345pm

FOR ACTION: Max Friedersdorf
George Humphreys
Bobbie Kilberg
Glenn Schleede
Steve McConahey

cc (for information): Jack Marsh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: October 11

Time: 530pm

SUBJECT:

S.J. Res. 126-Extension of the Interstate Compact to
Conserve Oil and Gas

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

*Richard G. ...
Schleede*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 11

Time: 345pm

FOR ACTION: Max Friedersdorf
George Humphreys
Bobbie Kilberg
Glenn Schleede
Steve McConahey

cc (for information): Jack Marsh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: October 11

Time: 530pm

SUBJECT:

S.J. Res. 126-Extension of the Interstate Compact to
Conserve Oil and Gas

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

*I Recommend
Approval
Calk*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

WASHINGTON

October 12, 1976

MEMORANDUM FOR: JIM CANNON

FROM: MAX L. FRIEDERSDORF *M.L.F.*

SUBJECT: S.J.Res. 126 - Extension of the
Interstate Compact to Conserve Oil & Gas

The Office of Legislative Affairs concurs with the agencies
that the subject resolution be signed.

Attachments

CONSENTING TO EXTENSION OF INTERSTATE COMPACT
TO CONSERVE OIL AND GAS

APRIL 29, 1976.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany S.J. Res. 126]

The Committee on Interior and Insular Affairs, to which was referred the joint resolution (S.J. Res. 126) consenting to an extension and renewal of the interstate compact to conserve oil and gas, having considered the same, reports favorably thereon with amendments and recommends that the joint resolution as amended do pass.

The amendments are as follows:

1. Page 1, lines 4-5, strike "until Congress withdraws its consent," and insert "to December 31, 1978,".
2. Page 12, line 1, insert "(a)" after "Sec. 2".
3. Page 12, line 2, strike "continue to make biannual" and insert "make a biennial".
4. Page 12, line 2, strike "as provided" and all of line 3.
5. Page 12, line 8. Add the following:

(b) The Attorney General shall also review the activities of any advisory committees to the Commission and the States, and not later than June 30, 1978, report to Congress as to whether the activities of any such advisory committees could tend to create or maintain situations inconsistent with the antitrust laws of the United States.

I. PURPOSE

S. J. Res. 126 would extend, until December 31, 1978, the consent of Congress to the Interstate Compact to Conserve Oil and Gas.

II. BACKGROUND AND NEED

The Interstate Compact to Conserve Oil and Gas was originated by six member States and consented to by the Congress in 1935. Its membership has now grown to include 30 oil and gas producing States and six associate member States. These are:

Member States

Alabama, Alaska, Arizona, Arkansas, California, 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.

Associates

Georgia, Idaho, North Carolina, Oregon, South Carolina, and Washington.

When the Compact was originally ratified, major oil field discoveries and the subsequent glut of oil and gas supplies had resulted in substantial loss of oil at the surface, in wholesale flaring of gas, and in oil prices as low as 10 cents a barrel. As a result, there was contamination of the topsoil and contamination of underground water supplies. The oil producing States immediately concerned agreed on the need for some cooperative effort to deal with these problems.

The purpose of the Compact is "to conserve oil and gas by the prevention of physical waste thereof from any cause." (Article II.)

The Compact expressly states that:

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

The Compact binds each signatory State to enact laws to accomplish certain specified types of oil or gas waste-prevention. It also binds them to enact measures to deny access to commerce of oil produced in violation of its valid conservation statutes, and to provide stringent penalties for waste of oil or gas. Since most States already had enacted such measures prior to entering the Compact, the key substantive provision was that establishing an Interstate Oil Compact Commission composed of one member from each signatory State. Its duty was:

* * * 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 at such intervals as said Commission deems beneficial it shall report its findings and recommendations to the several States for adoption or rejection.

Congress has consented to extensions of the Compact at 2-year intervals from 1935 to 1972. The most recent Congressional consent expired on September 1, 1974. Thus, the Compact has been without the Con-

gressional consent required by Article I, Section 10, Clause 3 of the Constitution for over 18 months.

The 1972 extension called for a report by the Attorney General "as to whether the activities of the Interstate Oil Compact Commission and the States under the provisions of such compact have been consistent with the purposes as set out in article V of such compact, and have been limited to activities related directly to the immediate purpose of such compact as set out in Article II of such compact."

The Attorney General's report was to be submitted no later than June 30, 1974. However, the Committee did not receive it until August, 1975. The Attorney General concluded:

From our individual perspective, however, and based on our close surveillance of Compact activities in terms of our report responsibilities, we see no occasion to recommend that Congress withhold its approval to renewal of the Compact.

The findings and conclusions of the Attorney General's report are set out below under Executive Communications.

III. LEGISLATIVE HISTORY

S.J. Res. 126 was introduced by Senator Jackson on September 11, 1976, at the request of the Interstate Oil Compact Commission. Hearings were held on March 24, 1976.

IV. COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Interior and Insular Affairs, in open business session on April 28, 1976, by unanimous vote of a quorum present recommends that the Senate pass S.J. Res. 126 if amended as described herein.

V. COMMITTEE AMENDMENTS

1. This amendment limits the extension of Congressional consent to December 31, 1978, or roughly 4 years from the expiration of last consent to extension. (September 1, 1974.) Previous extensions have been limited to 2 years. As introduced, S.J. Res. 126 provided for an unlimited extension.

2, 3, and 4. These are technical conforming amendments.

5. This calls for a special report from the Attorney General on the activities of advisory committees used in connection with activities related to the purposes of the Compact.

Oil and gas industry personnel frequently meet to advise the Compact Commission and its member States. The Committee believes that the Attorney General should carefully review the activities of these advisers to see if they are consistent with the antitrust laws.

VI. COST AND BUDGETARY CONSIDERATIONS

Enactment of S.J. Res. 126 will have no cost or budget implications. No expenditure of Federal funds is involved.

VII. EXECUTIVE COMMUNICATIONS

The pertinent legislative reports and communications received by the Committee from the Department of the Interior, Office of Management and Budget, and the Department of Justice in relation to S.J. Res. 126 are set out below:

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., March 4, 1976.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U. S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of this Department with respect to S.J. Res. 126, a Senate joint resolution, "Consenting to an extension and renewal of the interstate compact to conserve oil and gas."

We recommend that S.J. Res. 126 be enacted.

The Compact was originally ratified by six member States and approved by Congress in 1935, a time in our history when major oil field discoveries and the subsequent glut of oil and gas supplies resulted in substantial loss of oil at the surface, in wholesale flaring of gas, and in oil prices as low as ten cents a barrel. As a result, there was contamination of the topsoil and contamination of underground water supplies. The oil producing States immediately concerned agreed on the urgency of some cooperative effort to deal with these problems. Thus, they entered into a compact whose articles of agreement read as follows:

"The purpose of this Compact is to conserve oil and gas by the prevention of physical waste thereof from any cause. It is not the purpose of this compact to authorize the States joining herein to limit, 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 promote regimentation, but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations."

The Compact has been extended twelve times since 1935. Its membership has grown from the six original States to 29 producing States and 6 associate member States. While the domestic energy supply situation has been drastically altered since 1935, the purpose of the Compact has remained unchanged.

With the energy crisis of 1973 came two basic realizations: First, came the awareness, albeit painful at the time, of the importance of oil and gas in sustaining our Nation's standard of living. Second, came the realization that the Federal Government must of necessity expand its role in assuring future adequate domestic supplies of energy. Despite strenuous efforts by industry and Government to move the Nation toward full-scale utilization of non-conventional fuels, the fact is that until 1985 and even beyond, the United States will continue to rely on petroleum and natural gas as major energy sources. This, coupled with the fact that petroleum production has steadily declined since its peak in 1970, points to the continuing need to prevent wherever possible the waste of our oil and gas resources.

Throughout its history, the Interstate Oil Compact Commission, the administrative arm of the interstate compact, has served as an advisory body, providing a forum for discussion and cooperation among the producing States in their efforts to prevent the waste of energy resources and to promote efficient practices in the production of oil and gas. Although the Governors of the member States comprise the Commission itself, most of the actual work is conducted by committees whose members are selected on the basis of their legal, technical, or engineering capabilities. The committee members have undertaken research in such areas as technological and scientific advancements in production, secondary and tertiary recovery, pressure maintenance, leasing, physical and underground waste, conservation regulatory practices, and petroleum resources.

The Federal Government has benefited from the experience and expertise accumulated through the years by the Interstate Oil Compact Commission. For instance, the Commission cooperated with the Federal Power Commission in eliciting from State agencies not only necessary statistical data but also staff assistance for a study the FPC was undertaking on natural gas reserves. Upon suggestion by the Department of the Interior, the Interstate Oil Compact Commission conducted a comprehensive study of conservation of oil and gas in the United States. This study is periodically updated by the Commission and, I believe, is undergoing revision at present. These are but two examples of where the Interstate Oil Compact Commission has served as a vital communication link, not only among member States, but also between the Federal and State Governments.

As for its future role, the Commission can provide a service to the Nation by continuing its research efforts in enhanced recovery technologies. Close to 90 percent of the United States' demonstrated petroleum reserves are onshore. However, the chief sources of onshore petroleum production, except for Alaska, will require enhanced recovery from existing wells. In 1935, it was estimated that less than 10 percent of the oil in place was being extracted from the average reservoir due to poor conservation and limited technology. Today, that figure is greater than 32 percent. For every percentage point increase in recovery capability, it has been estimated that we can increase available reserves by another 4 billion barrels.

An equally important contribution which can be made by the Commission is in the field of end-use conservation; that is, in the promotion of efforts designed to minimize waste of energy resources by consumers. Since the Compact was extended in 1972, it appears that the Commission is, in fact, moving more and more in this direction. It was interesting to note that every resolution, with the exception of one, adopted by the Commission before the Attorney General's latest report to Congress and the Executive went to print, had been concerned with the wise and efficient use of energy by the consumer.

In short, the Interstate Oil Compact Commission, which operates at no cost to the Federal Government for its operations, has played a very prominent role in energy resource conservation and can be relied upon in the future to continue to do so. We believe, therefore, that extension of the Compact, as provided in Senate Joint Resolution 126, would be in the national interest.

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,

WILLIAM FISHER,
Assistant Secretary of the Interior.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.O., March 29, 1976.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate,
Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of January 8, 1976, for the views of the Office of Management and Budget on Senate Joint Resolution 126, "Consenting to an extension and renewal of the interstate compact to conserve oil and gas."

The Office of Management and Budget concurs in the views expressed in the reports of the Departments of the Interior and Justice and, accordingly, has no objection to enactment of Senate Joint Resolution 126 with the amendments to section 2 proposed by the Department of Justice.

Sincerely yours,

JAMES M. FREY,
Assistant Director for
Legislative Reference.

DEPARTMENT OF JUSTICE,
Washington, D.O., April 6, 1976.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on S.J. Res. 126, consenting to an extension and renewal of the interstate compact to conserve oil and gas.

The bill proposes to grant the consent of Congress to another extension of the Interstate Compact to Conserve Oil and Gas, this time from September 1, 1974 until such time as Congress may withdraw its consent. The Compact was originally executed in 1935 for a two-year period, and thereafter successively renewed for varying terms. It is intended to foster action by oil-producing States to conserve resources of oil and gas by ending wasteful production practices.

Section 2 requires a continuation of periodic reports by the Attorney General for the duration of the Compact as to whether or not the activities of the Interstate Oil Compact Commission and of the States under the provisions of such Compact have been consistent with the purposes as set out in Article V of the Compact. This is essentially the same report requirement which has been imposed from 1955 to 1972. However, the last Compact extension in 1972 expanded the scope of report to include also whether these activities were related directly

to the immediate purpose of the Compact as set out in Article II of the Compact.

The Department of Justice has no objection to the proposal for indefinite extension of the Compact, in view of the inclusion of section 3 of the Joint Resolution. That provision expressly reserves 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.

In responding to a request for views on a proposal for a similar indefinite extension of the Compact in 1972, the Department suggested modification of the requirement for regular reports. We urged that there be substituted for this requirement a 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. See *Interstate Compact on Oil and Gas (12th Extension)*, Hearings Before the Subcommittee on Communications and Power of the House Committee on Interstate and Foreign Commerce, 92d Cong., 2d Sess. 26-27 (1972). We continue to adhere to that view.

The various consent resolutions since 1955 have required reports by the Attorney General, usually on an annual basis, as to the impact of State activities under the Compact on competition in the oil industry. The 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 to 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 substantial way which suggests the 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 activities of the Interstate Oil Compact Commission or other 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 Interstate Oil Compact Commission and the States under the Interstate Compact to Conserve Oil and Gas and shall report to Congress from time to time any activities by the Commission or the States which appear to be inconsistent with the purposes set out in Article V of such Compact."

We would note finally that the text of Section 2 of S. J. Res. 126 contains two apparent errors. The first refers to a requirement for a "biannual" report (every six months) rather than a "biennial" report (every two years). Legislative history since 1955 indicates that the latter was intended. The second error is in the language that the

Attorney General "shall continue to make" a biannual (or biennial) report "as provided in section 2 of Public Law 92-322, 92d Congress * * *." However, that legislation actually called for a single report by the Attorney General at a specified time, not a series of reports.

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,

MICHAEL M. UHLMANN,
Assistant Attorney General.

REPORT OF THE ATTORNEY GENERAL

Pursuant to Section 2(a) of the Joint Resolution of June 30, 1972, Consenting to an Interstate Compact to Conserve Oil and Gas as of June 30, 1974. (Part III.)

III. FINDINGS AND CONCLUSIONS

After this review of Compact Commission activities over recent years, we must consider whether these varied activities meet the dual criteria set by the Congress for our report. Are they consistent with the antiprice-fixing and anti-monopoly purposes of Article V of the Compact? Are they also related directly to the immediate purpose of the Compact set out in Article II: conservation of oil and gas by the prevention of physical waste from any cause? We turn first to the latter, the more difficult question.

A. Activities in relation to Article II

In determining whether the activities of the IOCC and the States under the Compact have been limited to activities related directly to the Compact's immediate purpose set forth in Article II, it is useful first to consider the legislative context of the current report requirement. That review makes clear that the key background question is the meaning of the phrase "physical waste," as set forth in Article II. Thus, we next consider how the term has been used by the Compact Commission in recent years in relation to its meaning in the context of the Compact as originally drafted. Finally, we appraise the degree to which IOCC activities conform to the legislative standard for our report.

1. *Congressional Amendment of the Report Requirement.* S.J. Res. 72 and H.J. Res. 586, identical measures to renew Congressional consent to the Interstate Compact to Conserve Oil and Gas and to continue it in effect until such time as Congress withdraws its consent, were introduced in Congress in April, 1971. After hearings, the Senate Committee on Interior and Insular Affairs reported the resolution with minor amendments,⁴¹ and as so amended it passed the Senate on August 6, 1971.⁴² The resolution was amended to extend the Compact for a three-year period in lieu of the indefinite extension originally provided. But no change was made in the traditional substance of the

⁴¹ S. Rep. No. 356, 92d Cong., 1st Sess. (1971).

⁴² 117 Cong. Rec. 30215-30217 (1971).

report required of the Attorney General; it was still to be "whether 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."⁴³

In the House, however, hearings were not held until April, 1972. Then, considerable concern was expressed to Compact representatives over certain activities of the IOCC, particularly those dealing with Federal Government policy in the field of oil and gas.⁴⁴ As subsequently stated in the report of the Committee on Interstate and Foreign Commerce, Congressmen were concerned over "activities on the part of the Interstate Oil Compact Commission which appear to fall outside, or at best, have a very tenuous connection with, the limited purposes of the Compact to which the Congress has consented."⁴⁵

The Committee reported that, as referred to in the Attorney General's report submitted on June 18, 1971, these "extra-curricular" activities involved the following matters:

- (1) opposition to tax reform legislation designed to reduce the oil depletion allowance;
- (2) opposition to changes in the oil import quota system;
- (3) opposition to assumption by the Federal Government of control over production of oil and gas on the outer continental shelf;
- (4) seeking amendments to Federal legislation dealing with the establishment of natural gas rates;
- (5) urging the Federal Power Commission to abandon area pricing for natural gas and to authorize immediate increases in gas rates; and
- (6) becoming a focal point for formulating State positions on national energy policies.

These matters had been the frequent subjects of resolutions adopted by the Commission. It was clear that the House Committee's concern was not with the general range of IOCC work or the activities by committees in its name. It was limited to the semiannual resolutions adopted by the Commission which usually originated in the Energy Resources Committee and were forwarded via the Resolutions Committee.

The Congressional subcommittee had questioned the IOCC's General Counsel about the relationship of these activities to the stated purposes of the Compact set forth in Articles II and V. He asserted that all of these activities were related to the Compact purposes and that the pricing of oil and gas affected the conservation of oil and gas since ". . . pricing is definitely a conservation tool . . ." He was contend-

⁴³ However, the Senate Interior Committee rejected a recommendation by the Department of Justice that although our surveillance should be continued, statutory report by the Attorney General in future be made only from time to time as circumstances warranted. See, S. Rep. No. 858, *op. cit.*, p. 2.

⁴⁴ Interstate Compact on Oil and Gas (12th Extension), *Hearings Before the Subcommittee on Communications and Power of the House Committee on Interstate and Foreign Commerce*, 92d Cong., 2d Sess. 56-57 (1972).

⁴⁵ H.R. Rep. No. 1098, 92d Cong., 2d Sess. 4 (1972). During the hearings the subcommittee had also been concerned over the expressed view of the Compact Commission's General Counsel that the Compact did not in fact require the consent of the Congress because the Compact agency performed merely advisory functions. In response to its request, the Acting Attorney General submitted a supplemental report on the legislation which took issue with this contention. As a result, on the basis of interpretations of the Constitution's Compact Clause by the judiciary and legal scholars quoted in the Acting Attorney General's report, as well as on the practical construction by the Congress expressed in its initial consent in 1935 and its periodic extensions and renewals to this day, the Committee report concluded that the Interstate Compact to Conserve Oil and Gas is subject to the Commerce Clause and thus does require Congressional consent. *Id.* at pp. 3, 4.

ing, in effect, that these policy recommendations came within the scope of "prevention of physical waste thereof from any cause," as correctly understood. He was also pointing out that while any action attempting to control prices was forbidden to the Compact Commission, it still must recognize that the level of prices for oil or gas at a particular time was a factor impacting in maximum ultimate recovery and possible physical waste.

Disagreeing, the House Committee report expressed the opinion that these activities of the Commission and its officials transcended the limited purposes for which the Compact was entered into and consented to by the Congress. In other words, they "fall outside, or at best have a very tenuous connection with" what the Committee took to be the meaning of "prevention of physical waste from any cause."

Rather than recommending that Congress withhold its consent to extension of the Compact, the Committee decided on an amendatory wording to assure that henceforth the Compact Commission would limit its activities strictly to Article II purposes as it conceived them. It therefore further amended the resolution to require that the Attorney General also report on whether the activities of the Commission and the States have been limited to activities *related directly* to the immediate purpose of the Compact as set out in article II. It seems clear that these more restrictive terms were intended to guard against the Commission's continued issuance of resolutions on subjects which the Committee regarded as having merely a very indirect or "tenuous" relationship to Article II.

In further explanation of its course the Committee stated that "[T]hese views . . . are not designed in any way to prevent State officials, members of the oil and gas industry or other individuals from expressing their views on the aforementioned subjects. The Committee feels, however, that concerted action under the aegis of the Compact with regard to various aspects of this Nation's energy policies on the part of State officials, industry members, and other individuals are not in the national interest. Such concerted action is likely to put special producer interests against special consumer interests, thus making more difficult rather than facilitating the formulation by the Congress of urgently needed, long-range energy policies."⁴⁶

As so amended, the House considered and passed the resolution and the Senate subsequently concurred.⁴⁷ The resolution became law on June 30, 1972.

2. Physical Waste Defined. At the Commission's Midyear Meeting immediately following issuance of the Committee report and House amendment many were privately upset, but believed the Commission was in no position to comment officially. It was generally felt that the Commission had not exceeded the scope of the Compact purpose, that its activities had been entirely proper, and that the House amendment would not affect the activities of the IOCC. Still, open opposition to the House amendment might be considered an admission of wrongdoing. Accordingly, the Commission's response was indirect and circumspect.

The Commission has continued to issue similar resolution on the same subject-matter as before. But the resolution adopted at that

Midyear Meeting and others since have been prefaced by a definition of "prevention of physical waste from any cause" as found in Article II:

"The Compact believes that waste includes the failure to find, develop and direct the full potential domestic petroleum resources to fill the present and future consumer needs. Such failure is not limited to operating practices of those who develop the petroleum resources, nor the action or lack of action by state regulatory agencies, but can result from federal policies as well."

This language is very broad and general. Rather than clarifying what the Commission means by waste, the explanation raises more problems.

For example, the "full potential" domestic petroleum resources to be found, developed and directed to fill consumer needs certainly would include all producing reservoirs in the United States and all those recently discovered and still in the process of definition. But it would also seem to include all underlying oil not yet discovered and perhaps never to be discovered. Under this interpretation failure to discover, or cause to be discovered, every last pocket of oil or gas locked beneath our soil or waters would seem to expose the oil companies, the State regulatory agencies and the Federal Government to a charge by the IOCC that they are engaged in physical waste.

Again, the phrase "full potential" resources would seem to mean not only finding all the oil underlying the United States, but developing all of it. This might mean, on the one hand, that an operator's abandonment of a discovery well whose show of oil appears less than sufficient for commercial development is an exercise of physical waste. It would seem under this reading that the State agency or even the Federal Government should be required to forbid this abandonment—a step they have never thought of taking.

On the other hand, does the phrase mean that all producing reservoirs must be drained of *all* their oil? In hearings on the last extension of the Compact, the IOCC's chairman, while conceding much more had to be done, pointed out with pride that recovery from the average reservoir had risen from 10 percent of the oil in place when the Compact was organized in 1935 to a present level of 36 percent—three-and-a-half times better.⁴⁸ Under this interpretation it would appear that the producers and governmental agencies—including the IOCC—are guilty of physical waste to the extent of the remaining 64 percent.

In practice, it is unlikely that technology can ever be developed to attain "full" recovery. Thus, the word "potential" may well be intended to modify the phrase to mean only the maximum practicable under such future technology. But the cost of production under such increasingly sophisticated and effective technology is likely to rise to increasingly unacceptable levels. Under such circumstances, it would seem that the IOCC would not be justified in continuing to take action or advocate action in the name of physical waste prevention, regardless of cost, in order to assure that all oil in this country has been recovered.

Similar problems exist with the word "direct": the failure to direct resources—once found and developed—to fill present and future needs.

⁴⁶ *Id.* at pp. 4-5.
⁴⁷ 118 Cong. Rec. 19623-19625, 21918 (1972).

⁴⁸ *Hearings, op. cit.*, p. 52

This may have a connotation of above-ground physical losses in the course of transmission from extraction through refining and distribution to the consumer. On the other hand, it may refer alternatively to a failure to establish an appropriate balance as between present and future needs of consumers, or a failure to provide mechanisms to assure appropriate priorities of uses, so that petroleum resources are not "directed" to "inferior end uses."⁴⁹

The second sentence quoted above may be read as suggesting a balance of blame for these failures constituting waste. Some could be laid to operating practices by the industry, others to inadequate State regulatory effort, and still others to poor Federal policies. But in practice most Commission action in resolutions and statements of policy for many years past has been directed toward Federal Government policies.⁵⁰ True, the technical work of the Compact committees is made available to the State agencies if they choose to use it. This work could be helpful in improving State agency performance, and might also be of use to the industry. But this is availability, not strong advocacy by the Commission.

In any event, whatever the precise range of meaning of this definition, it can be agreed that it is certainly very broad. It would seem to permit Compact recommendations in the name of waste prevention or virtually every subject dealing in some way with oil or gas.

This breadth of meaning is all the more remarkable in view of the background to initial adoption of the Compact in 1935 and the plain language the Compact contains. As prior reports of the Attorney General and various background materials make clear, the final provisions of the Compact were a blend of conflicting views of what a Compact should embody, epitomized by the positions of Governors Allred of Texas and Marland of Oklahoma. At that time the Texas statute specifically excluded the concept of "economic waste" as a basis for controls over oil production. Consequently, Governor Allred viewed as inappropriate any Compact provision having the effect of binding Texas to adopt conservation measures grounded more on economic than physical factors. For this reason the language of Section II specifically limits the purpose of the Compact to the prevention of *physical* waste of oil and gas.⁵¹

This interpretation is buttressed by consideration of how this purpose is applied in the following section of the Compact. Section III binds each State to enact or maintain laws to prevent within reasonable limits six specific forms of waste. Some refer to above-ground waste at the well site, others to below-ground waste, and one to a mixture of both.

But all refer immediately to a concrete loss of a physical substance, rather than to economic factors such as disincentives to produce attributable to adverse price levels.

⁴⁹ See *supra*, p. 10, for a similar unclear statement on this theme, contained in the resolution adopted at the 1973 Midyear Meeting.

⁵⁰ In all the resolutions adopted in the period under review, there was only a single recommendation for State action. Urging the formulation of effective unitization laws in all the States was one of a number of recommendations adopted at the 1973 Mid-year Meeting. It was repeated in the statement of policy adopted at the Annual Meeting that year. Similarly, these resolutions have included only occasional general exhortations to the industry to do its part to alleviate the energy crisis by increasing exploration and production.

⁵¹ See *First Report*, pp. 48-52; *Second Report*, pp. 9-13; Interstate Oil Compact Commission, *The Compact's Formative Years 37-49* (1964); Murphy, *The Interstate Compact to Conserve Oil and Gas: An Experiment in Co-operative State Production Control*, 17 *Mississippi Bar Journal* 314 (1946).

Two forms of waste listed, for example, were the venting or wasteful burning of gas from a natural gas well and the creation of unnecessary fire hazards. The former was a common practice in those days, while the latter arose in part from open-ditch storage—and associated leakage—of oil produced in a mad race to prevent underground drainage by other operators. Both refer directly to the physical loss of hydrocarbon already brought to the surface but unable to be used because of wasteful practices.

There is also a catchall provision against drilling, equipping, locating, spacing or operating wells so as to bring about physical waste or loss in ultimate recovery. In the context of the period, the reference to "equipping" wells referred at least in part to inadequate safety equipment to control pressures, leading to blowouts and gushing of oil, with attendant fire hazards; while "operating wells" included the factor of slipshod above-ground storage, leakage and loss associated with rampant over-production.

On the other hand, the balance of this item dealt with the closely spaced, uncoordinated drilling of a multitude of adjacent leaseholds, where rapid production by everyone to avoid underground drainage had the effect of dissipating natural reservoir pressures and rendering most of the oil in place unrecoverable. By 1935, although sophisticated methods of secondary and tertiary recovery had not yet been developed, petroleum engineering had already advanced to the recognition that careful management practices to preserve reservoir pressures would make possible over time the recovery of a much greater proportion of the estimated oil in the reservoir. This concept informs the remaining forms of waste listed in Section III: operation with an inefficient gas-oil ratio; drowning of an oil or gas stratum with water; and the generalized injunction against the inefficient, excessive or improper use of reservoir energy.

These illustrative examples of what the compact framers meant by physical waste have several threads in common. Whether dealing with waste above ground or still in the underground reservoirs, they all concern operations immediately at the wellhead; they all deal with practices by the operator; they all relate to oil that is already discovered; they all concern directly the physical loss of oil or gas through destruction or rendering it unrecoverable; and they all imply operations at whatever levels of recovery techniques and knowledge of reservoir engineering are current. None implies a direct relationship between physical waste and externally-imposed governmental policies which might ultimately affect levels of production. In short, the Compact's framers knowingly and specifically dealt with direct physical waste, as the term is commonly understood, with no significant admixture of indirect "economic waste" factors.⁵²

⁵² The one possible exception is concern with measures to avert abandonment of marginal or stripper wells. From the beginning this has been a traditional concern of the Compact as well as of the States. It is now a concern of the Federal Government. At the State level, the economic measures utilized have involved exemption from production limitations, leading to maximization of potential income from the well. At the Federal level, as epitomized in current price controls on crude oil, these measures involve special price relief.

In each case the rationale for this special economic treatment is that if the income from this marginal production becomes insufficient to support the operating costs of pumping out these few barrels per day and return a fair profit, then the well will ultimately be capped and abandoned. After that is done, it is generally concluded, there would be no reasonably conceivable economic climate which would make it profitable to undertake the heavy investment required to reopen the well. Thus a portion of known reserves, otherwise recoverable, would be lost forever. And while this portion may be small as to each individual well, the number of domestic wells in this category is very large and the proportion of our total production and reserves they represent is quite substantial.

3. *Conformity to the Legislative Criteria.* As we have suggested, the recent explanations by the Compact Commission of what it understands to be the scope of physical waste prevention under its charter seems at odds with the plain language of the Compact and the intent of its framers. This is not to say there is no relation between a multiplicity of external factors, including a variety of State, Federal and foreign governmental policies, which bear on the economic climate of the petroleum industry, influence its rate of investment in production of known reserves and exploration for undiscovered resources, and thus in the long run affect the maximum ultimate recovery of domestic oil and gas in place. Usually there is a relation, and it can be easily—if in some cases lengthily—traced.

Fortunately, however, the mandate for our report does not require us to undertake such a complex tracing process for each of the Compact Commission's activities. We need not consider the exact degree to which these activities relate to the prevention of physical waste of oil or gas from any cause, or whether, in the words of the House Committee report, they "fall outside, or at best have a very tenuous connection with" that Compact purpose. We are asked simply to report whether the activities of the Commission and the States have been limited to activities related directly to the immediate purpose of the Compact, the prevention of physical waste. As so qualified, and considering our review of the meaning of physical waste, we conclude that some Compact activities have been so limited and some have not.

Without undertaking an item-by-item inspection it is clear that on a fair appraisal most of the work of the Compact Commission's technical committees can be considered as directly related to physical waste prevention. This would seem to apply unqualifiedly to such groups as the Engineering Committee, the Research Committee and the Secondary Recovery and Pressure Maintenance Committee. The Legal Committee and the Regulatory Practices Committee deal with a body of conservation laws and regulations which partly concern the protection of correlative rights of leaseholders and other subjects in addition to physical waste prevention. But this whole body of State regulatory effort is so interrelated that it would be merely quibbling to object to activities by these committees which on occasion may overlap waste prevention to focus on another regulatory concern. The work of other committees, including the statistical updatings sponsored by the Energy Resources Committee, together with the work of the headquarters office, is housekeeping in nature or otherwise supportive of the substantive work of the Commission. It may thus be considered as within the prescribed relationship to physical waste prevention.

The Public Lands Committee stands somewhat apart in its work at monitoring legislative and regulatory developments affecting public lands. This stems from a concern to ensure that petroleum operations on public lands are subject to the same regulations as those on adjacent private lands. The physical waste rationale is that if reservoirs along the borders which underlie both public and private lands should be put to uncoordinated development under differing regulatory practices, this could unduly dissipate their underground pressures and thus subject them to losses in maximum ultimate recovery. It is obvious that the connection with physical waste prevention is direct only for the portion of public lands along their borders. It fails

when applied to reservoirs wholly underlying public lands. Moreover, the work of this Committee over many years has been concerned at least as much with efforts to open to oil and gas development those public lands presently reserved for other uses. This activity obviously bears no relationship to physical waste prevention.

One group whose work definitely falls outside our prescribed criteria is the Environmental Protection Committee. No matter how beneficial its developing program may otherwise be considered or how laudable its objectives, it clearly is concerned with effects upon air, water, wildlife and other elements of the environment rather than physical waste of oil and gas. Indeed, during the 1969 House hearings the Compact Commission's General Counsel himself explicitly conceded that the scope of the Compact's purpose under the present charter might be inadequate to cover the work of this newly-organized committee.⁵⁵

Next, we conclude it is premature to consider at this time the future activities of the Compact pursuant to the recommendations adopted at the 1974 Midyear Meeting. Some of these are unobjectionable in any event, merely intensification of existing activities clearly within the legislative criteria. Others may be partly within or without the criteria depending on how far and in what way they may be implemented. Still others which may clearly present problems under the criteria, such as recommendation Seven to monitor "the impact of pricing and market regulatory anomalies," may never to implemented at all in any meaningful way.

Finally, we must consider the action by the Commission in issuing resolutions and statements of policy for the guidance of member State Governors and the Federal Government. As we have already indicated, this activity also involves, successively, the work of a subcommittee of the Energy Resources Committee and most of the work of the Resolutions Committee. In recent years these resolutions have turned to focus increasingly on generalized energy problems, concentrating on the developing energy shortage in particular. Some of the specific recommendations to alleviate these problems relate directly to physical waste prevention. Recommendations for research and development efforts to improve secondary and tertiary recovery in production and for effective unitization laws in all the producing States bear directly on improvements in control of underground pressures in a reservoir and thus on maximizing ultimate recovery of the known oil in place. Ironically, a novel series of recent recommendations on a subject never before seriously considered by the Compact Commission would seem to come squarely within the terms of its charter—the promotion of specific measures designed to minimize or avoid physical waste by consumers of oil and gas, as distinct from producers.

The same cannot be said, however, for other frequently reiterated pronouncements on various subjects. This would include recommendations dealing with oil import controls, including incentives to expand domestic refinery capacity; increasing price incentive for natural gas production; moderating environmental restraints in such diverse areas as environmental discharge requirements, emission standards, and oil and gas developments in Alaska and the outer continental shelf; opening public lands to development and revising leasing policies applica-

⁵⁵ Hearings, op. cit., p. 53.

ble to coal, oil shale and tar sands; research and development to develop other energy sources; and granting priority to the oil and gas drilling industry in Federal allocation of scarce drilling equipment, fuel and tubular goods. As for these, the connecting link with prevention of physical waste of oil and gas is either invisible or long and extremely attenuated. Where there exists any connection at all, it cannot be fairly concluded that the subject is *directly* related to the *immediate* purpose of the Compact as set out in Article II.

B. Activities in relation to article V

Our second question for consideration is easier to answer. In ten prior reports since 1955 the Attorney General has been presented with the question whether the activities of the States under the Compact have been consistent with the purposes set out in Article V of the Compact, namely its proscriptions against authorizing the States to limit production "for the purpose of stabilizing or fixing the price [of oil or gas], or create or perpetuate monopoly, or to promote regimentation."

Under the present extension of the Compact the question has been enlarged to include the activities of the Interstate Oil Compact Commission as well as those of the States. We do not consider this a substantial change. Earlier reports have consistently taken the view that any continuing activity of the States under the Compact has basically been undertaken through their participation in the work of the Commission established by the Compact. Thus, the activities of the Interstate Oil Compact Commission have always been given appropriate consideration in our prior appraisals.

In ten prior reports since 1955 the Attorney General has consistently answered this question in the affirmative. Activities under the Compact have been found to be consistent with the purposes of Article V. They have not been found to be involved in the proscribed conduct set forth therein. From our continuing and detailed surveillance of Compact activities during the period under review, we reiterate that conclusion in this report.

It must be understood at the outset that the views expressed earlier in Section III of this report do not imply that certain Compact Commission activities, found to be not directly related to physical waste prevention, are thereby within the ambit of conduct proscribed by Section V of the Compact. In testimony during House hearings on the 1972 extension of the Compact, Donald I. Baker, now Deputy Assistant Attorney General, Antitrust Division, expressed the prevailing view of the Department of Justice concerning Compact activities, with particular reference to the promulgation of resolutions which Congressmen were questioning. He indicated three kinds of situations: the first, involving activities directly in accord with the heart of the Compact's purpose; the second, dealing with activities directly prohibited, such as controlling prices and other proscribed practices; and the third, concerning activities which came within neither category but fell somewhere in the broad area or between them. In the latter he included resolution-making efforts "trying to influence the Congress with respect to the decisions of the Congress by offering the views of the State regulators . . ." ⁵⁴ We continue to adhere to that view.

⁵⁴ *Id.* at pp. 79-80.

We consider that these resolutions can be equated with any organization's right to petition the Government for action in accord with the views of the petitioner. Moreover, the Compact Commission could well consider that the Congress had agreed that expression of these views were its right and not proscribed under the terms of its charter. Certainly, similar resolutions commenting on Federal policies and recommending Federal actions had been promulgated by the Commission all during the 1940's, the 1950's and the 1960's. Since 1955, successive reports of the Attorney General have taken appropriate note of these Compact Commission actions. Despite all this, the Congress has continued its periodic consent to extension of the Compact without ever, before 1971, raising any serious question about the propriety of these pronouncements.

As for other aspects of Compact work, prior reports by the Attorney General have repeatedly pointed out that the Interstate Oil Compact Commission has no power to authorize or to exercise price-fixing authority. It is not so constituted as to be able to engage in the other actions proscribed under Section V of its charter. Its only function is to undertake studies or research on matters associated with waste prevention, to discuss these matters, and to make recommendations thereon to its member States. Even here, acceptance of these recommendations by the States is entirely voluntary. The States are free to ignore them, even as the Federal Government has similarly ignored many Compact Commission resolutions on Federal policies over the years.

Apart from questions of conformity to the strict mandates of the Compact charter, the IOCC has served a generally useful purpose not elsewhere duplicated. Its technical committees have been of value to State regulatory agencies, and perhaps to the industry, in their collection, collation and dissemination of information and data in their several fields of study. Compact meetings have provided a convenient forum for exchange of ideas by State regulatory officials in dealing with mutual conservation problems. As indicated in this report, the Compact Commission has begun to provide individualized assistance to member states in appraising and updating their regulatory effort. And finally, the Compact Commission serves as a convenient focal point for the Federal Government to obtain needed information and statistics on petroleum industry operations from State regulatory agency files or from State regulatory agency inquiries specifically requested by Federal officials.

There is, of course, room for argument as to exactly how valuable the work of the Compact Commission is under present conditions. It may be claimed that its period of greatest usefulness is now past, that it is unsuited to present-day concern with the whole spectrum of energy development, and that its functions could as well be performed in other forums and by various other agencies. On the other hand, it can be argued that even under changed circumstances it still has a unique role to perform, which cannot be duplicated by any other single agency or undertaken piecemeal by several other agencies without long delays and losses in efficiency and expertise. All of these may perhaps be legitimate considerations for the Congress in making a determination on extending the Compact. From our individual perspective, however, and based on our close surveillance of Compact activities in terms

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

Joint Resolution

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

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is hereby given to an extension and renewal from September 1, 1974, to December 31, 1978, of the interstate compact to conserve oil and gas, as amended, which was signed in its initial form in the city of Dallas, Texas, the 16th day of February 1935, by the representatives of Oklahoma, Texas, California, and New Mexico, and at the same time and place was signed by the representatives, as a recommendation for approval to the Governors and legislatures of the States of Arkansas, Colorado, Illinois, Kansas, and Michigan, and which, prior to August 27, 1935, was presented to and approved by the legislatures and Governors of the States of New Mexico, Kansas, Oklahoma, Illinois, Colorado, and Texas, and which so approved by the six States last above named was deposited in the Department of State of the United States, and thereafter was consented to by the Congress in Public Resolution Numbered 64, Seventy-fourth Congress, approved August 27, 1935, for a period of two years, and thereafter was extended by the representatives of the compacting States and consented to by the Congress for successive periods, without interruption, the last extension being for the period from September 1, 1971, to September 1, 1974, consented to by Congress by Public Law Numbered 92-322, **Ninety-second Congress**, approved June 30, 1972. The agreement to amend, extend, and renew said compact effective September 1, 1971, duly executed by representatives of the States of 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 has been deposited in the Department of State of the United States, and reads as follows:

**"AN AGREEMENT TO AMEND, EXTEND AND RENEW THE
INTERSTATE COMPACT TO CONSERVE OIL AND GAS**

"WHEREAS, on the 16th day of February, 1935, in the City of Dallas, Texas, there was executed 'An Interstate Compact to Conserve Oil and Gas' which was thereafter formally ratified and approved by the States of Oklahoma, Texas, New Mexico, Illinois, Colorado and Kansas, the original of which is now on deposit with the Department of State of the United States;

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

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

S. J. Res. 126—2

“AN INTERSTATE COMPACT TO CONSERVE OIL AND GAS**“ARTICLE I**

“This agreement may become effective within any compacting state at any time as prescribed by that state, and shall become effective within those states ratifying it whenever any three of the States of Texas, Oklahoma, California, Kansas and New Mexico have ratified and Congress has given its consent. Any oil-producing state may become a party hereto as hereinafter provided.

“ARTICLE II

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

“ARTICLE III

“Each state bound hereby agrees that within a reasonable time it will enact laws, or if the laws have been enacted, then it agrees to continue the same in force, to accomplish within reasonable limits the prevention of:

“(a) The operation of any oil well with an inefficient gas-oil ratio.

“The drowning with water of any stratum capable of producing oil or gas, or both oil and gas, in paying quantities.

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

“(d) The creation of unnecessary fire hazards.

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

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

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

“ARTICLE IV

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

“ARTICLE V

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

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“ARTICLE VI

“Each state joining herein shall appoint one representative to a commission hereby constituted and designated as THE INTERSTATE OIL COMPACT COMMISSION, the duty of which said Commission shall be 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 at such intervals as said Commission deems beneficial it shall report its findings and recommendations to the several states for adoption or rejection.

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

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

“ARTICLE VII

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

“ARTICLE VIII

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

“This compact shall become effective when ratified and approved as provided in Article I. Any oil-producing state may become a party hereto by affixing its signature to a counterpart to be similarly deposited, certified, and ratified.

“Done in the City, of Dallas, Texas, this sixteenth day of February, 1935.”

“WHEREAS, the said ‘Interstate Compact to Conserve Oil and Gas’ in its initial form has heretofore been duly renewed and extended with the consent of the Congress to September 1, 1971; and

“WHEREAS, it is desired to amend said ‘Interstate Compact to Conserve Oil and Gas’ effective September 1, 1971, and to renew and extend said compact as so amended:

“NOW, THEREFORE, THIS WRITING WITNESSETH:

“It is hereby agreed that effective September 1, 1971, the Compact entitled ‘An Interstate Compact to Conserve Oil and Gas’ executed within the City of Dallas, Tex, on the 16th day of February, 1935,

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and now on deposit with the Department of State of the United States, be and the same is hereby amended by amending the first paragraph of Article VIII thereof 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.”
and that said compact as so amended be, and the same is hereby renewed and extended. This agreement shall become effective when executed, ratified, and approved as provided in Article I of said compact as so amended.

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

“Executed by the several undersigned states, at their several state capitols, through their proper officials on the dates as shown, as duly authorized by statutes and resolutions, subject to the limitations and qualifications of the acts 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)

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"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)

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“THE STATE OF NEVADA

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 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)

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"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)

SEC. 2. (a) The Attorney General of the United States shall make a biennial report to Congress, for the duration of the Interstate Compact to Conserve Oil and Gas as to whether or not the activities of the Interstate Oil Compact Commission and of the States under the provisions of such compact have been consistent with the purposes as set out in Article V of such compact.

(b) The Attorney General shall also review the activities of any advisory committees to the Commission and the States, and not later than June 30, 1978, report to Congress as to whether the activities of any such advisory committees could tend to create or maintain situations inconsistent with the antitrust laws of the United States.

SEC. 3. The right to alter, amend, or repeal the provisions of the first section of this joint resolution is hereby expressly reserved.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*