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Record Group/Collection: George H.W. Bush Presidential Records
Collection/Office of Origin: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files

OA/ID Number: 29164
Folder ID Number: 29164-001

Folder Title:
Outer Continental Shelf (1990) [2]

Stack:	Row:	Section:	Shelf:	Position:
G	15	25	3	2

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

October 10, 1989

MEMORANDUM TO GOVERNOR SUNUNU
DIRECTOR DARMAN

FROM Robert E. Grady

Here are some background materials on 3 issues we are expected to discuss at tomorrow's 3pm meeting:

(1) The President's Task Force on OCS Exploration and Drilling.

(2) Renewal of Bureau of Reclamation Water Contracts in California.

(3) The Basel Convention Governing the Export of Hazardous Waste.

Attachments

cc: David Q. Bates

FACT SHEET ON THE OUTER CONTINENTAL SHELF (OCS) LEASING AND DEVELOPMENT TASK FORCE

Issue:

What position and strategy should the Administration adopt on three controversial OCS oil and gas lease sales originally scheduled for FY 1990?

Presidential Commitment:

The President is committed to continued OCS oil and gas development in an environmentally sound manner. In October 1989 in San Diego, the President spoke of his commitment:

> "Let me say a word about my opinion on offshore drilling. I do believe that development of our most promising oil and gas reserves is called for, because continued domestic production of oil and gas is essential to the national security of the United States.
>
> At the same time, I oppose drilling in those environmentally sensitive areas where the risk of damage is too great. I have said that I would delay any drilling under Lease Sale #91 in northern California pending resolution of these environmental concerns.
>
> And let me add today that we should take a very close look at those environmentally sensitive areas which would be available for development under Lease Sale #95 here in southern California before proceeding with that sale. ... I agree that we must subject these areas to the most careful study before allowing any drilling. I will not allow California's golden shores, its most precious treasure, to be put at risk....
>
> Perhaps Irving Berlin said it best in his magnificent song, 'God Bless America.' He pictured pristine and majestic mountains, clear air, and a clean ocean. That's the America I want God to bless, too. And that's the America I'm committed to fighting for as your President."

The President's OCS commitment is also summarized in **Leadership on the Issues:**

> "George Bush means business about cleaning up the Environment. He will ... [p]revent offshore drilling in certain tracts that are particularly environmentally sensitive."

In his February 9th budget address, the President announced the formation of a Federal task force to review three OCS oil and gas lease sales (off southern and northern California, and southern Florida) to determine if leasing should be cancelled or delayed. The task force, chaired by Interior, includes Energy, Commerce, EPA, and OMB. A report is due to the President by January 1, 1990.

Withdrawal/Redaction Sheet
(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
01. Fact Sheet	On the Outer Continental Shelf Leasing and Development Task Force ~~Paragraph redacted~~ (1 pp.)	n.d.	P/~~5~~	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
File Location: Outer Continental Shelf (1990) [2]

Open on Expiration of PRA
(Document Follows)
By ___ (NLGB) on 5/12/05

Date Closed:	12/10/2004	**OA/ID Number:**	29164-001
FOIA/SYS Case #:	1998-0004-F[1]	**Appeal Case #:**	
Re-review Case #:	2005-0426-S	**Appeal Disposition:**	
P-2/P-5 Review Case #:		**Disposition Date:**	
AR Case #:		**MR Case #:**	
AR Disposition:		**MR Disposition:**	
AR Disposition Date:		**MR Disposition Date:**	

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P-1 National Security Classified Information [(a)(1) of the PRA]
P-2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P-3 Release would violate a Federal statute [(a)(3) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Removed as a personal record misfile.

Freedom of Information Act - [5 U.S.C. 552(b)]

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Background:

The Federal OCS oil and gas program, covering an area starting 3-9 miles offshore to a distance of about 200 miles, is responsible for 12 percent of the Nation's oil production and 26 percent of gas production. Thirty-one million acres are currently under lease, generating about $2.7 billion in FY 1989 Federal receipts from both lease sales and royalties. When the President established the task force, OMB dropped from the Budget the expected FY 1990 bonus-bid revenues of $457 million from the three sales.

Schedule:

The Federal OCS task force first met in March. Since then it has held nine field workshops in the lease sale areas and two meetings with members of Congress (most of the California and Florida congressional delegations). In addition, there have been a number of Federal inter-agency meetings in Washington.

In September, task force staff started drafting issue papers on environmental concerns raised at the workshops, including oil spill risks, water quality, air quality, fisheries impacts, and socio-economic effects. In December, agency principals are scheduled to review and approve the staff report, with the final report transmitted to the President on January 1st.

The Three OCS Lease Sales Under Review:

In **Building a Better America**, the President stated:

> "There are legitimate differences of opinion concerning the environmental effects of OCS leasing in certain areas, particularly sale #91 in the frontier area off northern California, and sale #116 in the environmentally sensitive area off southern Florida near Everglades National Park. In addition, there are environmental concerns regarding sale #95 off southern California..."

Sale #91, Northern California: Sale #91 was originally scheduled for October 1989, with expected bonus-bid receipts of about $126 million. It has been included in OCS leasing moratorium language in the FY 1990 Interior appropriations bill. There are currently no active OCS leases in this area.

The sale is opposed by both California Senators and the State's coastal area representatives. Their objection is that the sale would destroy the aesthetic nature of the northern California coast and negatively affect tourism. In addition, development and the possibility of a spill could hurt the lucrative northern coastal fisheries industry. Task force staff appear inclined to recommend cancelling the sale or imposing restrictions to allow leasing only in gas-prone areas.

Withdrawal/Redaction Sheet
(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
02. Fact Sheet	On the Outer Continental Shelf Leasing and Development Task Force ~~Paragraphs redacted~~ (1 pp.)	n.d.	P/5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
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WHORM Cat.:
File Location: Outer Continental Shelf (1990) [2]

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By QP (NLGB) on 5/12/05

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Sale #116, Southern Florida: Sale #116 (part II) in southern Florida was originally scheduled for March 1990, with expected bonuses of about $10 million. It has also been included in the FY 1990 Interior appropriations bill OCS leasing moratorium. In addition to new leasing, 73 existing OCS leases in this sale area are included in appropriations bill moratorium prohibiting exploration activity.

The entire Florida congressional delegation and all State and local officials are opposed to both leasing off southern Florida and development of the existing leases. Their objection is that any development will have a strong negative effect on tourism, and that any onshore infrastructure development to support OCS activity will compete directly with this tourism. In addition, there is significant concern that any OCS development will put at risk the Everglades and surrounding environmentally sensitive areas. The southern Florida area includes the only tropical habitat and living reef area in the continental U.S. Everglades National Park has also been declared an International Biosphere Reserve and a World Heritage site.

Task force staff appear to favor recommending cancelling the sale, and may also recommend a buy-out of or severe restrictions on existing leases. Interior has authority to cancel existing leases if significant environmental concerns cannot be satisfactorily resolved. The costs of buying out the leases would be about $100 million -- by law, the leaseholders would receive the lower of their costs incurred to date or the fair market value of the resources.

Sale #95, Southern California: Sale #95 was originally scheduled for March 1990, with expected bonus-bid receipts of about $320 million. An OCS leasing moratorium on this sale has also been included in the FY 1990 Interior appropriations bill. This area is the only area outside the Gulf of Mexico currently producing oil and gas, with 139 existing leases in various stages of exploration and development. However, unlike sale area #116, there is no apparent serious consideration by opponents of OCS leasing to cancellation of the existing leases in sale area #95 (such a buy-out could cost billions of dollars).

While the California congressional delegation is somewhat split on the merits of this sale, most coastal representatives and both Senators oppose further leasing. Their principal objection centers on the air-quality degradation that could occur with more OCS development. Other concerns focus on the risks of oil spills, increased coastal development to support OCS activity, and expanded OCS development in the Santa Barbara channel increasing the hazard to shipping and oil tanker traffic.

Interior is in the process of revising its California OCS air-quality regulations and is working with EPA to significantly strengthen air-quality requirements. The new rules would be very similar to existing onshore requirements and essentially prohibit unmitigated air emissions. The revised regulations would ameliorate most, although probably not all, of the objections raised by local and State officials about air quality from OCS development.

Task Force staff appear inclined not to object to new leasing in sale area #95, as long as more stringent OCS air-quality regulations are implemented.

Process to Final Report

September . . . . Staff: Complete Analysis

October . . . . . . Working Group / Principals: Draft Findings and Recommendations

Receive NAS Report

November . . . . Working Group Meeting on NAS Report

Draft Final Report

Working Group / Principals Changes

December . . . . Principals Approve Report --Dec. 7th (tentative

Release Report to Printer -- Dec. 14th (tentativ

Withdrawal/Redaction Sheet
(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
03. List	Current Schedule of Upcoming OCS Lease Sales (1 pp.)	4/13/89	P-5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
File Location: Outer Continental Shelf (1990) [2]

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By JL (NLGB) on 5/12/05

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Re-review Case #:	2005-0426-S	**Appeal Disposition:**	
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APR 13 1989

Current Schedule of Upcoming OCS Lease Sales

	Sale No.	Name	Date	Est. Bonus Bid Receipts ($ in Mil.)	Existing Leases
Sales Scheduled for FY 1989					
	122	West Gulf of Mexico	August 1989	129	yes
	SUP	Supplemental	September 1989	10	
				139	
Sales Scheduled for FY 1990					
	123	C. Gulf of Mexico	March 1990	271	yes
	107	Navarin Basin (AL)	May 1990	30	
*	121	Mid-Atlantic	May 1990	20	yes
*	96	N. Atl. (Georges Bank)	July 1990	10	
	101	St. George Basin (AL)	August 1990	20	
	125	W. Gulf of Mexico	August 1990	123	yes
	114	Cook Inlet (AL)	September 1990	10	
	SUP	Supplemental	September 1990	10	
				494	
Sales Scheduled for FY 1991					
	124	Beaufort Sea (AL)	February 1991	74	yes
	131	C. Gulf of Mexico	March 1991	296	yes
*	**119**	**Central California**	**April 1991**	**168**	
	126	Chuckchi Sea (AL)	May 1991	95	yes
	135	W. Gulf of Mexico	August 1991	129	yes
	120	Norton Basin (AL)	September 1991	10	
	SUP	Supplemental	September 1991	10	
				782	
Sales Scheduled for FY 1992					
	137	E. Gulf Mex. (N of 26 d)	November 1991	29	yes
	129	Shumagin (AL)	January 1992	10	
*	134	N. Atl. (Georges Bank)	February 1992	10	
	139	C. Gulf of Mexico	March 1992	321	yes
	108	S. Atlantic	April 1992	10	
*	132	Washington-Oregon	April 1992	10	
	133	Hope Basin (AL)	May 1992	10	
	130	Navarin Basin (AL)	June 1992	25	
	--	W. Gulf of Mexico	August 1992	138	yes
	SUP	Supplemental	September 1992	10	
				573	
Sales on Hold for Task Force Review					
	91	Northern California		126	
	116	E. Gulf Mex. (S of 26 d)		10	yes
	95	Southern California		321	yes
				457	

* Sale is likely controversial on environmental grounds. See table on prelease activities of possibly controversial sales

Withdrawal/Redaction Sheet
(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
04. List	Activity Planned by DOI/MMS on Environmentally Controversial OCS Sales (2 pp.)	4/13/89	P-5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
File Location: Outer Continental Shelf (1990) [2]

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By GP (NLGB) on 5/12/05

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APR 13 1989

ACTIVITY PLANNED BY DOI/MMS ON ENVIRONMENTALLY CONTROVERSIAL OCS SALES

Prelease Activity Scheduled for FY 1989

121 Mid Atlantic (sale 5/90)

May 1989	Public Hearing on EIS and lease sale.
Sept. 1989	Issue Final EIS

119 Central California (sale 4/91)

May 1989	Identification of lease areas for EIS.

96 North Atlantic (sale 7/90)

Activities placed on hold by MMS. NRD reviewing with DOI.

134 North Atlantic (sale 2/92)

Sept. 1989	Request for interest in a lease sale.

Prelease Activity Scheduled for FY 1990

132 Washington-Oregon (sale 4/92)

November 1989	Request for interest in a lease sale.
March 1990	Call for information and nominations of interest in leasing blocks.
June 1990	Identification of lease area for EIS.

121 Mid Atlantic (sale 5/90)

December 1989	Proposed notice of sale.
February 1990	Governor's comments on lease sale due.
April 1990	Notice of sale.
May 1990	Sale.

134 North Atlantic (sale 4/92)

January 1990	Call for information and nominations of interest in leasing blocks.
April 1990	Identification of lease area for EIS.

119 Central California (sale 4/91)

March 1990	Draft EIS published.
July 1990	Public hearing on EIS and lease sale.
Sept. 1990	Final EIS published.

(continued on next page)

Prelease Activity Scheduled for FY 1991

119 Central California (sale 4/91)

Nov. 1990	Proposed notice of sale published.
January 1991	Governor's comments on lease sale due.
March 1991	Notice of sale published.
April 1991	Sale.

134 North Atlantic (sale 2/92)

January 1991	Draft EIS published.
February 1991	Public hearing on EIS and lease sale.
July 1991	Final EIS published.
Sept. 1991	Proposed notice of sale published.

132 Washington-Oregon (sale 4/92)

March 1991	Draft EIS published.
April 1991	Public hearing on EIS and lease sale.
Sept. 1991	Final EIS published.

Prelease Activity Scheduled for FY 1992

134 North Atlantic (sale 2/92)

Nov. 1991	Governor's comments on lease sale due.
January 1992	Final notice of sale.
February 1992	Sale.

132 Washington Oregon (sale 4/92)

Nov. 1992	Proposed notice of sale published.
January 1992	Governor's comments due on lease sale.
March 1992	Notice of sale published.
April 1992	Sale.

LA Times 4/7/89

Bush to Delay Plan for Oil Drilling and Leasing Off Calif.

By DAVID LAUTER, *Times Staff Writer*

WASHINGTON—President Bush, in a major peace offering to environmentalists, will pledge in his nationally televised speech to Congress at 6 p.m. today to "indefinitely postpone" oil drilling off the Northern California coast and to delay a major lease sale planned for Southern California, a senior Administration aide said Wednesday.

The proposal, which environmental leaders hailed as a major victory, will all but kill the Ronald Reagan Administration's long-stalled plan to greatly expand drilling in California waters. The plan, which for eight years has been fought by California officials in Congress and the courts, became a major issue during the fall presidential campaign. Democrats charged then that Bush, if elected, would allow drilling to proceed.

Bush, during the campaign, pledged to re-examine Reagan's drilling plans. Since then "the jury has been out on this issue with Bush," said Rep. Mel Levine (D-Santa Monica), a leading opponent of offshore drilling.

"I've always felt that Bush's first test on the environment would be the California coastline," Levine said. If Bush sticks to his plan to forestall the lease sales, "it would be a dramatic environmental victory," he said.

Pledge on Acid Rain

In a second environmental decision, Bush will pledge in the speech to send Congress legislation to reduce acid rain emissions as part of a new clean air proposal. The pledge backs up a promise that William K. Reilly, Bush's Environmental Protection Agency chief, made last week during his Senate confirmation hearings and could break a logjam that prevented significant modernization of clean air rules throughout Reagan's tenure.

Administration sources cautioned, however, that Bush will not offer any new specifics on how to meet his clean air goals, leaving them open to further negotiations.

Under the Reagan Administration's oil drilling plan, which was pushed by James G. Watt, Reagan's controversial first Interior secretary, the federal government proposed two major new California oil lease sales, Lease Sale 91, off the northern coast, and Lease Sale 95,

Please see OIL, Page 13

OIL: President to Delay Leasing

Continued from Page 1

covering the coast south of Santa Barbara.

Under Bush's plan, Lease Sale 91 would be "indefinitely postponed," effectively killing the proposal. Lease Sale 95 would be delayed pending a report from a special task force that Bush will charge with developing plans to balance environmental and energy needs. While the task force approach in theory would allow the Southern California sale to proceed at some future time, "the language of the speech will indicate that he's disposed against the drilling," the Administration official said.

Under the Reagan plan, the government would have begun leasing tracts to oil companies in the Lease Sale 95 area next year. The sales were budgeted to bring in some $400 million in new federal revenue in the fiscal year that begins Oct. 1. Delaying or killing the plan will cause a "revenue hit," the official said.

Would Fulfill Promise

But the money is of less importance to the new Administration than is the emotional symbolism of the decision. Bush, who spent three hours Wednesday afternoon in a relaxed review of his address to Congress, plans to use tonight's speech to demonstrate his resolve to fulfill campaign promises, one of the most prominent of which was his pledge that "I am an environmentalist."

Bush became the first President ever to pay an official visit to EPA headquarters Wednesday, attending Reilly's swearing in ceremony and telling officials there that the American people "won't accept excuses any more and they won't accept finger-pointing. They want us to get all the sides together and find a way to achieve both" environmental protection and economic growth.

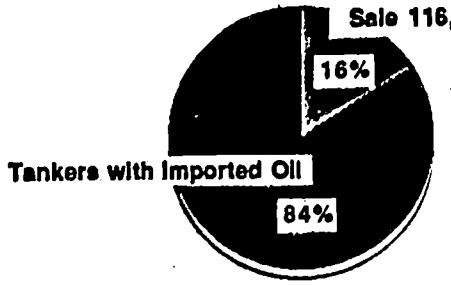
Watt and other Reagan Administration officials argued that more drilling was needed to reduce U.S. dependency on oil imports. Opponents have countered that the risks of oil spills, air pollution from drilling equipment and esthetic damage from the offshore rigs outweighed the benefits that increased oil production might bring.

Unlike many other major environmental issues, which require either substantial expenditures or extensive negotiations with Congress, the oil drilling issue can be largely resolved by executive fiat.

Congressional opponents of drilling—one of the most emotional environmental issues the federal government confronts—have fought a steady rear-guard action to delay Watt's plan to vastly increase drilling in the Pacific off California, the Atlantic off New England and the Carolinas and off Alaskan shores. And California state officials have taken the federal government to court on several occasions claiming that drilling plans, if carried out, would violate a series of environmental laws.

Cumulative Oil Spill Risk

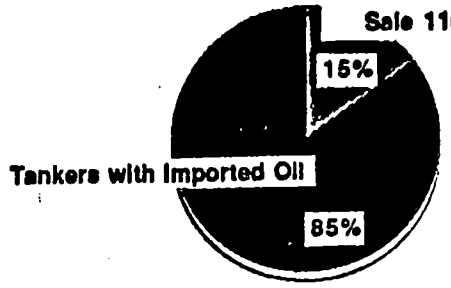
1,000 Barrels or More -- Offshore Southwest Florida



Overall Risk From All Sources: >99.5%

Cumulative Oil Spill Risk

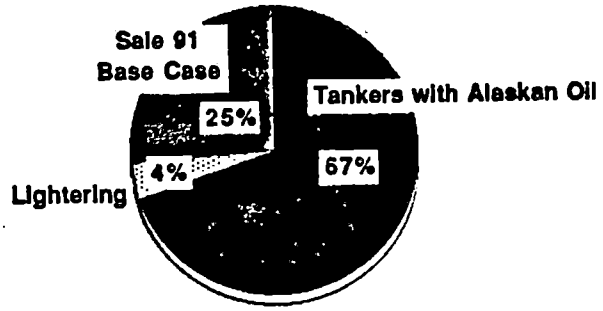
10,000 Barrels or More -- Offshore Southwest Florida



Overall Risk From All Sources: 98%

Cumulative Oil Spill Risk

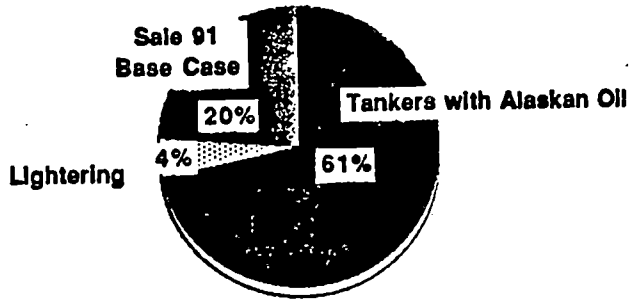
1,000 Barrels or More -- Offshore Northern California



Overall Risk From All Sources: 96%

Cumulative Oil Spill Risk

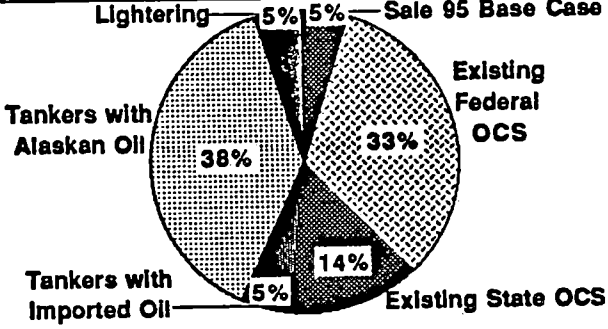
10,000 Barrels or More -- Offshore Northern California



Overall Risk From All Sources: 85%

CUMULATIVE OIL SPILL RISK

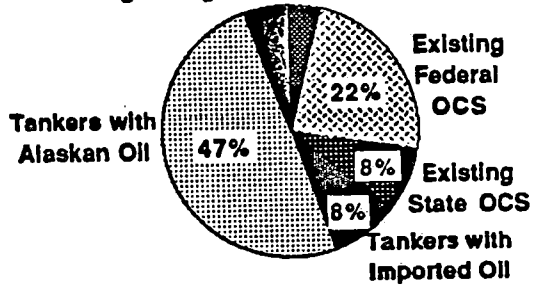
1,000 barrels or more -- offshore Southern California



Overall risk from all sources: >99.5%

CUMULATIVE OIL SPILL RISK

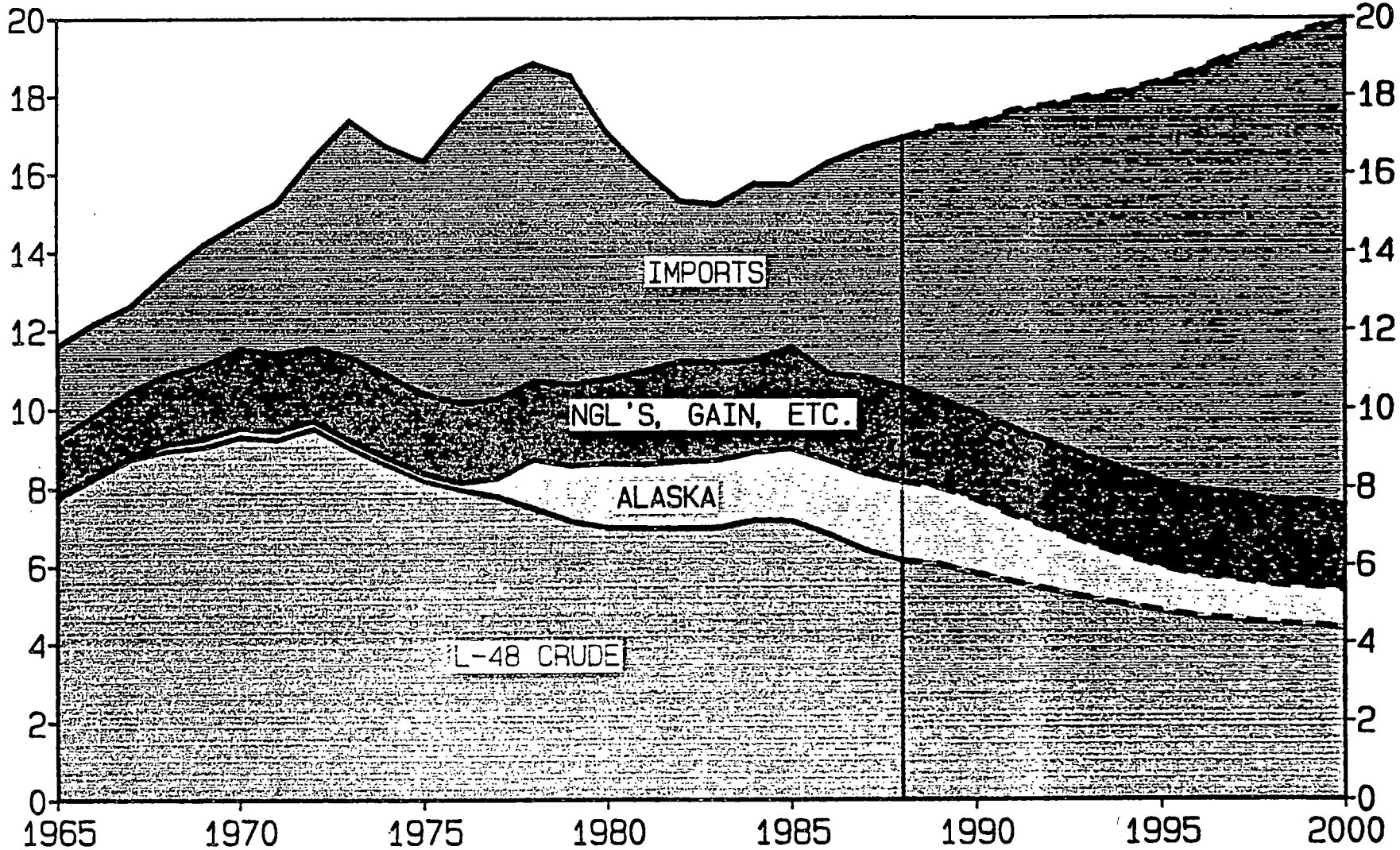
10,000 barrels or more -- offshore Southern California



Overall risk from all sources: 94%

OIL SUPPLY

MMB/D



RMNEOOSU: 05/89

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Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
05. Report	Fact sheet on the Central Valley Project, California Water Service Contract Renewals (3 pp.)	n.d.	P/5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
File Location: Outer Continental Shelf (1990) [2]

Open on Expiration of PRA
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Date Closed:	12/10/2004	**OA/ID Number:**	29164-001
FOIA/SYS Case #:	1998-0004-F[1]	**Appeal Case #:**	
Re-review Case #:	2005-0426-S	**Appeal Disposition:**	
P-2/P-5 Review Case #:		**Disposition Date:**	
AR Case #:		**MR Case #:**	
AR Disposition:		**MR Disposition:**	
AR Disposition Date:		**MR Disposition Date:**	

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Presidential Records Act - [44 U.S.C. 2204(a)]

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(b)(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
(b)(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
(b)(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
(b)(9) Release would disclose geological or geophysical information

FACT SHEET ON THE CENTRAL VALLEY PROJECT, CALIFORNIA WATER SERVICE CONTRACT RENEWALS

Issue:

Should the Department of the Interior prepare Environmental Impact Statements prior to renewal of long-term water service contracts in the Central Valley Project?

Background:

Water contracts set the price and quantity of water that will be delivered through Federal water supply systems to the purchasers. Currently water for irrigation in the Friant Unit is sold at $3.50 per acre foot, a price that has been in effect since fixed-price contracts were signed 40 years ago. This is substantially below market value. The State Water Project, which also provides water to central valley farmers, charges $40 to $50 per acre foot.

This tremendous Federal subsidy has reduced incentives for water conservation, and the excess withdrawal and use of water significantly reduces ambient water quality. It also distorts the marketing of water by providing water for irrigation rather than the alternative uses, such as water supply to municipalities. On the other hand, Federal irrigation systems were built to guarantee water for agricultural purposes, not municipal water.

Four water contracts in the Friant Unit of the Central Valley Project (CVP) are scheduled to expire on February 28, 1990. These are the first contracts to come up for renewal since the Secretary of the Interior agreed to renew the Orange Cove Irrigation District contract for another 40 years last April. Orange Cove was viewed as an important precedent since it was the first of almost 300 water service contracts in the CVP to expire.

Renewal of Orange Cove and the remaining 27 contracts in the Friant Unit of CVP are the subject of both a policy disagreement within the Administration and a lawsuit, NRDC v. Houston, in which the United States is the defendant.

Schedule:

Notices of intent to renew the four contracts must be published in the Federal Register with a 60-day period for public comment. In order to accommodate the final negotiation of contract terms and the public comment period, a decision on the contracts must be made very soon.

With respect to the lawsuit, the U.S. District Court, Eastern District of California has yet to consider the merits of the case. The pretrial scheduling order requires completion of discovery by November 15, 1989, and filing of briefs in January 1990.

If no factual issues are in dispute, the case could be decided on the motions for summary judgment, scheduled to heard on February 23, 1990. Otherwise, the case is scheduled for trial in June 1990.

Interagency Disagreement:

EPA disagreed with the Bureau of Reclamation's proposal to renew the Orange Cove contract for 40 years at $15 per acre foot without preparing an EIS. EPA referred the issue to the Council on Environmental Quality (CEQ) for resolution under a provision of the Clean Air Act in February 1989. CEQ accepted the EPA referral in late March 1989.

However, Secretary Lujan agreed to renew the Orange Cove contract for 40 years in April 1989, shortly before scheduled CEQ public hearings on the issue. The basis of the Secretary's decision was a Department Solicitor's opinion (1) that he had limited discretion under Reclamation law on the question of long-term contract renewal and (2) that the contract renewals did not constitute a major Federal action requiring compliance with the National Environmental Policy Act (NEPA).

CEQ issued its opinion that renewal of Friant Unit water contracts constituted a major Federal action subject to the NEPA process. The opinion was rendered in late June, following public hearings in Washington, D.C. and California. Although not binding, CEQ's opinion is normally given great deference since they are the dispute resolution agency on NEPA compliance issues. Therefore, Interior is reassessing its position that Friant Unit contract renewals are not subject to NEPA in light of the CEQ recommendations.

Legal Issues:

NRDC filed a lawsuit in December 1988, to prevent renewal of the Friant Unit contracts on grounds of failure to comply with NEPA and the Endangered Species Act.

While the Court did not grant NRDC's request for a preliminary injunction, the Bureau of Reclamation was required to include a clause in the Orange Cove and future Friant Unit contracts stating that the contracts are subject to the final order in NRDC v. Houston. Thus the Court did not limit its options until it rules on the case next year, while allowing the Bureau of Reclamation to renew Friant Unit contracts.

CEQ agrees that the Secretary of the Interior has limited discretion on the issue of whether to offer long-term renewal contracts. However, CEQ and EPA disagree with Interior on the applicability of NEPA. Both believe the Secretary has sufficient discretion regarding other terms of the contracts to constitute a

major Federal action subject to NEPA. In addition, prior to renewal of the Orange Cove contract for a 40-year period, the Secretary had indicated that he believed a 10-year contract would meet the requirement for offering a long-term renewal contract.

Budget Issues:

Costs over and above the preparation of an EIS, estimated at $2-5 million, are speculative. However, the central issue is the "price of water", not the Federal treasury. If the price was set at market price then many of the environmental issues would be resolved or greatly mitigated, including impacts of implementing EIS alternatives due to (1) increased in-stream flows for fish and wildlife and recreation or fish bypass facilities, (2) measures to improve water quality in San Francisco Bay and Sacramento and San Joaquin Deltas, or (3) measures associated with alleviating irrigation drainage problems.

The budgetary impact of increasing water charges beyond the increases already put in motion are negligible. This is because the number of contracts and amounts in any given year are relatively small. Wholesale, across-the-board increases are beyond the Secretary's administrative discretion.

Washington Post 9-19-89

P/ Interior/California water

A Second Chance on Water

ONE OF the first decisions former Rep. Manuel Lujan made as secretary of the interior had to do with western water, and he made it wrong. Brushing aside an objection by Environmental Protection Agency administrator William Reilly, Mr. Lujan renewed an important long-term contract to deliver water to California irrigators without conducting a formal study of the environmental impact that Mr. Reilly said was required by law. Now, however, the issue is reappearing. Mr. Reilly has new allies within a better-organized administration, and the administration's intentions may be put to a better test.

Water is perhaps the most precious resource in the arid West. A major function of the federal government has been to capture and deliver it at cut rates as a spur to western development. Nowhere has the government done more of this than in diverting water from the San Francisco area and north to the deserts of central and Southern California. In the state's great central valley these diversions have produced an agricultural miracle, but at enormous environmental cost in such areas as the San Francisco delta, the vast, boggy plant and animal breeding ground where many of the northern rivers converge.

The federal water contracts typically run 40 years, and the first of them in the central valley are now expiring. The policy question is whether to renew them without substantial change or amend them to withhold more water for natural purposes. This is complicated by the fact that most of the subsidized federal water goes to agriculture, where part of it is wasted on giant farms in production of surplus crops that, once grown, the government ends up subsidizing again. There are fiscal and equity as well as environmental issues at stake in these renewals.

The National Environmental Policy Act requires environmental impact studies before the government undertakes any major federal action significantly affecting the environment. Environmental groups and Mr. Reilly asked for such a study here. Reagan holdovers in the Interior Department advised Mr. Lujan that, because of another law, he had no choice but to renew the contracts and no such study was required. Mr. Reilly appealed to the Council of Environmental Quality, the White House agency that is supposed to referee such issues, but before it could rule in his favor, as it did in July, Mr. Lujan ordered the first contract signed. Now, however, four more contracts are up for renewal, President Bush's own appointees are in place at CEQ and the natural resources division of the Justice Department, and the administration has a chance to redeem itself.

The choice is between obeying the basic law and not doing so, and between 40 more years of wasting a valuable resource and the start of sensible conservation. No one wants to cut the farmers off entirely, nor will that happen. But for the administration of a committed environmentalist, this one ought to be a snap.

F/Interior/Water Contract

Washington Post 10-4-89

Water Policy—No Second Chance Required

The Sept. 19 editorial "A Second Chance on Water" fails to recognize the complexity of the issues surrounding the renewal of long-term water-delivery contracts in California.

The Post bases its judgment regarding future long-term water-contract renewals on the recommendation of the former chairman of the Council on Environmental Quality that I prepare an environmental impact statement before renewing the Orange Cove Irrigation District contracts. There was only one other CEQ member at the time, and she did not sign the recommendation. Instead, she expressed doubts about the appropriateness of the council's involvement in what is essentially a legal issue.

The Post also failed to mention that this matter is in litigation in federal court and that my contract renewal contained a provision requiring that the final decision of the courts be implemented by the contract.

Also treated lightly and with some disdain was the fact that my decision was based on adherence to laws enacted by Congress governing water-contract renewals. I cannot ignore the fact that Congress made it clear some time ago that the contracts by which we deliver water to irrigation districts in the Central Valley of California are to be renewed if the districts so desire.

As a Cabinet member, I have to execute policies within the boundaries the law sets forth. In this case, renewal of the contract was not discretionary—it was required by law.

Within that legal framework, I renewed the contract while at the same time ordering that environmental studies be conducted and that opportunities for environmental enhancement be explored.

Clearly, environmental concerns must and will be addressed. I have stated that repeatedly. We must also recognize that we have legal and moral obligations to California water users, and that, in fact, the appropriate use of water resources is fundamentally a state matter. The state of California, through its water-permitting process, has the final say in the beneficial uses of its water.

These are the premises upon which my actions have been based and upon which I will continue to administer water policy. I am reviewing the CEQ recommendations on these same premises and will deal with future water-contract renewals in a way that is consistent with both the law and administration policy.

MANUEL LUJAN JR.
Secretary of the Interior
Washington

B6 SUNDAY, APRIL 16, 1989 THE WASHINGTON POST

The Washington Post

AN INDEPENDENT NEWSPAPER

F/ Interior/ Calif Water

Water Boys

THE ADMINISTRATION has just failed an early environmental test involving the most precious resource in the mostly arid western half of the country: water. Much of the water in the western states is federally produced and subsidized, mainly for agriculture. The federal dams, delivery systems and subsidies have been crucial; the West could not have been developed without them. But the historic diversions have also taken a grievous environmental toll. Nowhere have both the boon and the damage from the federal intervention been more evident than in California.

Now the first federal water delivery contracts in California are expiring. When these were signed 40 years ago, relatively little thought was given to the possible adverse consequences; the goal was to develop a desert. Now circumstances have changed. It is not just that environmental issues are in vogue; the development having occurred, its costs are increasingly in evidence. Important natural areas in Northern California—symbolized by the spongy delta east of San Francisco where mountain rivers converge in a vast plant and animal breeding ground before flowing to the sea—have been deprived of needed fresh water for the benefit of the drier south. In the south, meanwhile, the recycling of the water for irrigation—partly to let huge producers grow crops such as cotton, which are already in surplus and must therefore be further subsidized—has served to build up deadly salts in the soil and threatens to create an even greater wasteland than the natural one that existed before. There is also a rising demand for water from the cities in Southern California.

The expiration of the contracts seemed the perfect opportunity to review these issues and change the federal policies before another 40 years. A 1969 federal law requires such a review in the form of an environmental impact statement before any "major" federal action—renewal of the contracts—promising "significantly" to affect the environment. The Reagan Interior Department had bowed to the growers and declared that the 1969 law did not apply and the government had no choice but to renew the contracts. In the Bush administration a newly energized Environmental Protection Agency had appealed this tortured reading of the law and urged that federal policy be reexamined; the White House had seemed about to do so.

But last week Interior Secretary Manuel Lujan announced instead that he was signing the first of the expiring contracts without a formal study of their environmental impact. The former congressman tried in effect to wash the administration's hands of the issue, saying it was up to the states "to determine basic water rights. . . . This principle of state primacy is one which must be respected." He ordered an informal environmental study to help the state but said he would only intervene more directly if ordered to do so by a court. In other words, if the problem is to be addressed, someone else will have to do it. This is a cop-out.

The Washington Post

AN INDEPENDENT NEWSPAPER

A Question For Mr. Lujan

THE FEDERAL government began supplying low-cost water to farmers in the desert of California's Central Valley a generation ago. The water made the desert bloom, but its subsidized diversion has created fairness questions and caused serious environmental damage. Now the first of the long-term delivery contracts is up for renewal, coincidentally just as the Bush administration is taking hold. Mr. Bush in the campaign said he would be a strong environmental president. The water issue will be an early test of how he and Interior Secretary-designate Manuel Lujan intend to strike that balance.

Much of the arid West relies on government water—supplies collected behind government dams and distributed through government canals. In this as in so much else, California is the leading example. Most of the surface water in those parts of California south of San Francisco is brought by the state and federal governments from the east and north. About 85 percent of this water goes to agriculture, only 15 percent to cities and industry. Environmentalists say the rerouting of this water has done enormous harm, particularly (though not only) to the areas from which it has been taken; that the farmers—some of whom are using the subsidized water to produce unneeded crops that must in turn be stored—are wasteful and could do with less; and that one way to make the system fairer—reduce the subsidy, encourage conservation, save more water for the growing cities—would be to raise the water's price. They would also like more water reserved by fiat for natural areas and uses.

Environmental groups thus see the expiration of the first generation of federal water contracts as a crucial opportunity. As a first step they want the Interior Department to do environmental impact statements before renewing the agreements. A 1969 law requires such studies whenever "major" federal actions threaten "significantly" to affect the environment. But the Interior Department decided that such reviews were not required, in part on grounds that a 1956 law guaranteed the farmers renewal anyway.

The issue is going to the courts—unless the new management at Interior relents and agrees to the reviews. It should. To do otherwise is to lock into place for the next 40 years a policy decision already 40 years old. The state is making a decision of its own on how much water, if any, to recoup for San Francisco Bay, the extensive wetlands east of it and other affected areas. The federal government should do a similar reweighing of benefits and costs. The traditional goal of western water policy has been development of dry and empty areas. Now they are developed, and a different balance is needed.

THE SECRETARY OF THE INTERIOR

WASHINGTON

April 11, 1989

Memorandum

To: Commissioner, Bureau of Reclamation

From: Secretary

Subject: Water Service Contract with Orange Cove Irrigation District

I have approved the proposed renewal contract, identified as Rev. R.O. 2/2-1989, for water service to the Orange Cove Irrigation District. However, consideration of comments received by the Bureau of Reclamation on the contract and the contracting process, as well as recent developments in the litigation on the proposed Friant Unit contract renewals, has led me to direct two changes in the agreement.

First, in accordance with the recent court order in NRDC v. Houston, I am directing you to add the following paragraph to Article 14:

> The terms of this contract are subject to the final order in NRDC v. Houston, No. CIV-S-88-1658-LKK-EM (E.D. Cal.).

Second, I am directing you to add an additional new paragraph to Article 14, which will read:

> In the event that the State Water Resources Control Board, in accordance with state and federal law, modifies the permit granted to the United States for appropriation of water, the parties agree to negotiate amendments as necessary to incorporate these modifications. The United States and Contractor shall defend project rights to divert and use water delivered under this agreement before all courts and agencies exercising jurisdiction over said rights. Nothing herein shall permit changes to contract water quantities, except on an equitable sharing basis among all contractors utilizing the water diverted under said permit.

This new subarticle will clarify the role of the State in originally providing water rights under permit to the United States and will recognize the obligation of the United States and

the Contractor to amend their agreement in response to certain modifications of that permit by the State Water Resources Control Board. Such modifications might include those necessitated by environmental studies performed by the State or the Bureau or other factors identified in the State's processes for determining beneficial uses to which water must be put. The language also makes explicit the obligation of the United States to defend its project water rights. While these points were implicit in the proposed contract, the new subarticle will make them explicit.

With the noted changes, the Bureau may proceed with the contract.

DEPARTMENT of the INTERIOR
news release

OFFICE OF THE SECRETARY

For Release: April 11, 1989

Steve Goldstein:
Office (202) 343-6416
Home (202) 887-5248

FRIANT WATER CONTRACT OFFER MADE

Secretary of the Interior Manuel Lujan today announced he is offering a long-term, forty year renewal of a federal irrigation contract to the Orange Cove Irrigation District in California's San Joaquin Valley as required under a 1956 law. At the same time, Lujan stated his commitment to the primacy of the state authority for water use decisions and directed that an environmental assessment be made of the effects of continued water deliveries within the Friant service area of the Central Valley Project.

"Renewal of long-term water supply contracts may pose legitimate environmental concerns," Lujan said. "To address these environmental issues, I am directing the Commissioner of the Bureau of Reclamation to conduct assessment studies to determine if any environmental effects result from delivery of water under the renewed contract, and to explore opportunities for environmental recovery programs in the San Joaquin River basin. It is my intent that these studies be carried out in conjunction with the state and other interested organizations."

Secretary Lujan pointed out that renewing the Orange Cove contract will protect the taxpayers' interests and encourage increased water conservation by allowing the federal government to immediately begin charging a substantially higher price for the water delivered under the contract. He also asserted that the contract is compatible with the proceedings of the Council on Environmental Quality, and is consistent with the directions of the federal court.

-DOI-

DEPARTMENT of the INTERIOR
news release

PRESS STATEMENT BY THE
SECRETARY OF THE INTERIOR
MANUEL LUJAN, JR.

Steve Goldstein:
Office (202) 343-6416
Home (202) 887-5248

I am today offering a long-term renewal of a federal irrigation contract to the Orange Cove Irrigation District in California's San Joaquin Valley as required under 1956 law.

My decision is guided by three basic principles:

- The federal government has both a legal and moral obligation to the water users of the Friant Unit. Failure to meet that obligation would be devastating to the economy of the entire area and would represent a severe breach of faith.

- The State of California has the primary authority to determine basic water rights and entitlements on the basis of beneficial use, water quality, and other regional considerations. This principle of state primacy is one which must be respected at the federal level and is entirely consistent with this contract renewal.

- Within the framework of these long-standing obligations, it must be recognized that the renewal of long-term water supply contracts pose legitimate environmental concerns, and I will, along with the state, evaluate these issues.

To address these environmental issues, I am directing the Commissioner of the Bureau of Reclamation to conduct assessment studies to determine if any environmental effects result from deliveries of water under the renewed contract and to share this research with the state and district. Additionally, I am asking the Commissioner to explore opportunities for environmental recovery programs in the San Joaquin River Basin. It is my intent that these studies be carried out in conjunction with the state and other interested organizations, and that the findings will be considered by the state and the districts as they adopt environmentally sensitive operating procedures and water policies.

Renewal of the Friant Unit contracts and protecting the environment are not mutually exclusive -- provided that we establish an effective working partnership among the federal government, the state, water users, and concerned environmental, fish, and game interests. I am today pledging that the Department of the Interior will do its part to forge such a partnership.

By moving forward with the renewal of this contract, I will be meeting our obligation to the water users, and I will also be ensuring that the taxpayers will receive a fair price for the water provided by the Central Valley Project. Under this renewal, the beneficiaries of this water will begin to pay at a flexible, annually adjusted rate that will allow full recovery of all allocated capital, operations and maintenance costs, and applicable interest. The Orange Cove rates, for example, will increase from $3.50 to $14.84 per acre foot -- a four-fold increase.

By bringing these rates into line with actual costs, we will encourage conservation and better management of our valuable water resources.

This proposed contract is compatible with the proceedings of the Council on Environmental Quality, and will accommodate the federal court's decision which allows execution of a renewed contract with a stipulation that it remains subject to the final order in the NRDC v. Houston lawsuit.

EXPLANATORY VIEWS OF JACQUELINE E. SCHAFER

With respect to the findings:

I cannot find that the Bureau's proposal and the Secretary's subsequent decision to renew one of the pending Friant Unit water service contracts in the absence of preparing environmental analysis under section 102(2)(C) is an unreasonable interpretation of the applicability of NEPA, the agency's own implementing procedures, Federal reclamation law, including the Reclamation Project Act of 1939 and the Act of July 2, 1956, and the terms and conditions governing the United States permits from the State Water Resources Control Board. The Solicitors's conclusion that contract renewal is a ministerial act that retains the status quo is a fair reading of applicable law and falls within that agency's authority.

CEQ's role under the referral process is not to interpret all of the relevant law, but to seek resolution of significant environmental issues when a disagreement about environmental impacts arises between federal agencies. That is, CEQ's role is more like that of a mediator than a judge. Although CEQ has been accorded deference concerning interpretation of NEPA, CEQ has no special expertise concerning federal reclamation law, state water law, or the property status of water rights under the

stitution, which are also at issue legally in this matter. hen all of this law is brought to bear on the contract renewals, CEQ is hard pressed to justify substituting its legal judgment for that of the agency responsible for making the decision to proceed with the contract.

The legal issue revolves around the nature and extent of the Secretary's discretion, which is not exclusively a matter of NEPA interpretation. The legal constraints on his ability to choose from among meaningful alternatives for various terms and conditions to be applied to the contract are not imposed by NEPA. Arguments have been presented about the degree of this discretion, and its impact on the "status quo", but Interior's judgment in this matter is not unreasonably applied to these contract renewals. Thus, while the referral presents CEQ with the opportunity to offer a contrary opinion, as a matter of policy we should exercise restraint in giving it. This is especially true in this case, where CEQ's opinion will not, by itself, provide the means to resolve the disagreement, which is the purpose of the referral procedure.

With respect to the recommendations:

The documents received by CEQ in response to the referral raise a number of issues, the importance of which can scarcely be overstated, concerning the future use and allocation of water

resources in California's Central Valley, and the environmental impacts of the possible alternatives for putting those resources to other uses, including the opportunity to restore water quality, fisheries, wetlands and other wildlife habitat. In announcing his decision to offer a renewal contract to the Orange Cove Irrigation District, Secretary Lujan pledged to evaluate these issues, which can be expected to have a profound influence on the nature of future Federal-State relationships concerning water resources.

Separate and apart from the Friant Unit contract renewals, it appears that there are other points in the course of agency decisionmaking affecting water use that would present the occasion to incorporate such environmental considerations, making the performance of environmental analysis meaningful. For example, the agency's proposal to adopt or make a change in its rate setting policy applicable to broad classes of water contracts provides an occasion to assess the environmental impacts of alternative non-quantity contract terms. Had an environmental review been performed in the recent CVP Irrigation Water Ratesetting Policy (May 1988), for instance, a more meaningful analysis of the potential impacts of this particular type of contract condition might have been available than would be likely for the Friant renewals alone.

In the future, the establishment of the Federal Government's

policy in response to the results of the (California) State Water Resources Control Board's investigation of Sacramento Delta/San Francisco Bay water quality provides another occasion to evaluate environmental impacts and avoidance or mitigation measures that could be developed in concert with the State, which has the primary authority to determine basic water rights and entitlements. Recommendations for conservation measures (e.g., metering) and demand management (e.g., pricing) policies would have more utility in this context than in that for contract renewals, where Federal agency discretion is far more highly constrained.

In the case of the Orange Cove contract renewal, for instance, it appears that all water delivered is used in accordance with state of the art water irrigation conservation technology, making the imposition of further terms and conditions with respect to such conservation practices unlikely to effect significant environmental changes. In fact, Friant Unit irrigation contractors appear to have practiced unusually effective water conservation through their "conjunctive use" of groundwater withdrawal and recharge. On the other hand, this may not be the case of "municipal and industrial" contractors which distribute water for domestic consumption without analogous incentives to conserve it.

Should California, as a result of the State Board's review,

propose significant changes in its policies to appropriate water, there will be other opportunities to bring about changes in water use than through these particular contract renewals. For example, in the future, water marketing could play a significant role in directing water to preferred uses. Other ways may prove to be possible that are not yet recognized as being available, but which could arise as a result of a cooperative Federal and State effort as pledged by the Secretary, consistent with protecting the valid property rights of water users.

Conclusion:

My own views on the matter before the Council are sufficiently different that those set forth in the above-stated Findings and Recommendations that I have determined not to sign that document and, instead, to give this explanation.

Jacqueline E. Schafer 6/29/89

Jacqueline E. Schafer,

Member

JOHN K. VAN DE KAMP
Attorney General

State of California
DEPARTMENT OF JUSTICE

3580 WILSHIRE BOULEVARD, ROOM 800
LOS ANGELES 90010
(213) 736-2304

February 21, 1989

The Honorable Manuel Lujan, Jr.
Secretary of the Interior
United States Department of the Interior
Washington, D.C. 20240

Dear Secretary Lujan:

I understand that you are today considering whether to postpone the renewal of water service contracts involving the Friant Unit of the Central Valley Project in California. A postponement would allow additional review of the Interior Solicitor's opinion that such renewals are exempt from the National Environmental Policy Act's (NEPA) environmental reporting requirements as well as the Environmental Protection Agency's (EPA) contrary conclusion. As California's Attorney General, I urge you to take whatever time is required to reconsider the Department's prior decision to renew such contracts without proper environmental review.

Consistent with my independent role as California's chief law officer, I have reviewed the Solicitor's opinion and other pertinent authorities carefully. I have concluded that the EPA is correct that environmental reporting pursuant to NEPA is mandatory prior to renewal of these contracts for another forty year term. I have therefore filed an amicus curiae brief supporting those parties seeking a court order requiring compliance with NEPA prior to renewal of these contracts. (See Natural Resources Defense Council et al v. Houston et al, E.D. California No. CIVS-88-1658-LKK-EM).

This brief, filed January 24, 1989, concludes that such renewals do not merely perpetuate the status quo but instead involve a major discretionary commitment of resources subject to NEPA. In deciding under what conditions the United States will agree to commit for decades millions of acre feet of water, you have considerable discretion to mitigate or avoid future harm to the environment in California. Moreover, requiring proper environmental review need not prevent interim water supplies nor compel any ultimate conclusion as to the appropriate conditions for renewal. Therefore, compliance with NEPA should not prejudice the underlying interests of any of the affected parties. Consistent with the purpose of the law, it should only enable you to make a more informed decision on this important matter.

I am confident that further review will persuade you and others in the new administration that the EPA's position is not only legally correct, but that it is also sound public policy. Your careful reconsideration of the Department's past position could resolve this matter without further litigation and without prejudice to any affected interest. For these reasons, I support postponement of the renewals to allow additional time for you to review this issue personally.

Very truly yours,

JOHN K. VAN DE KAMP
Attorney General

JKV:CE/vv

GEORGE DEUKMEJIAN, Governor

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
PAUL R. BONDERSON BUILDING
901 P STREET
P.O. BOX 100
SACRAMENTO, CALIFORNIA 95801

(916) 445-3993

DEC 13 1988

In Reply Refer to:GEJ:A23

Mr. John T. Murphy, Governor
Region IV
California Trout, Incorporated
P. O. Box 883
Modesto, CA 95353

Dear Mr. Murphy:

FRIANT WATER CONTRACTS

Thank you for your November 8, 1988 letter urging the State Board to take a position regarding environmental review of the U. S. Bureau of Reclamation's renewal of long-term contracts for the Friant Division of the Central Valley Project. The environmental review process provides decision-makers and the public with an enlightened review of the effects of proposed actions. However, the applicability of the federal NEPA process to the Bureau's proposed action is a federal matter that I urge you to continue to discuss with them.

The State Board will be reviewing certain aspects of the Friant project water rights in the near future. The obligation of the Friant water right permits to assist in maintaining water quality standards in the Bay/Delta Estuary is an issue that will be explored by the State Board in Phase III of its Bay/Delta hearing. The Board may modify these permits to reflect this obligation. While this may not produce the additional flows below Friant Dam that you are seeking, it will evaluate the responsibility of the Friant System to provide flows either directly or indirectly to the Bay/Delta Estuary.

Sincerely,

W. Don Maughan
Chairman

MWD
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

February 24, 1989

To: Board of Directors (Legal and Claims Committee--Information)

From: General Counsel

Subject: Analysis of the Opinion of the Department of the Interior's Solicitor regarding Renewal of the Friant Unit Contracts

Summary

In an opinion dated November 10, 1988, the Solicitor of the Department of the Interior (Solicitor) addressed the question of whether or not the Bureau of Reclamation (Bureau) was required to prepare an environmental impact statement (EIS) or an environmental assessment (EA) under the National Environmental Policy Act (NEPA) concerning renewals of water service contracts for districts within the Friant Unit of the Central Valley Project (project). The Solicitor concluded that the Bureau is not required to prepare an EIS or EA because such renewals are nondiscretionary actions and do nothing more than retain the status quo. It was his opinion that even assuming that NEPA is applicable to the renewals, they would be subject to a categorical exclusion from preparation of such environmental review documents. Therefore, he concluded, the Secretary of the Interior (Secretary) has no discretion but to renew the contracts, if requested, for the same quantity of water, and NEPA does not apply to the renewals.

A member of the Legal and Claims Committee requested that the Legal Department analyze the Solicitor's opinion and conclusion.

The Legal Department has concluded that as to contracts entered into prior to the 1956 amendment to the Reclamation Project Act of 1939 (1956 Act), the Secretary clearly has discretion at least regarding the quantity of water to be delivered pursuant to any renewals and possibly even as to whether the contracts will be renewed at all. As to contracts entered into after the passage of the 1956 Act,

the answer is less clear. The Bureau is required to renew the contracts, if requested, but it appears that the Bureau has discretion to modify the quantity of water delivered upon renewal. Of course, the equitable interests of both pre- and post-1956 contractors are substantial and could affect their renewal rights. Nevertheless, since it appears the Secretary has some discretion as to the terms upon renewal of all of these contracts, the Bureau must comply with NEPA. Further, the Solicitor's conclusion that NEPA is inapplicable because the renewals will merely continue the status quo appears to be incorrect. Finally, assuming that NEPA applies, these contract renewals most likely would qualify as exceptions to the categorical exclusion cited by the Solicitor, thereby requiring preparation of an EA. In short, contrary to the opinion of the Solicitor, NEPA applies to these contract renewals.

Note should be taken that our analysis is confined to review of the Solicitor's opinion and that it does not address other issues affecting existing contractors' renewal rights.

Recommendation

For information only.

Detailed Report

There are three major issues examined in the Solicitor's opinion. This report will summarize each of the Solicitor's arguments followed by the Legal Department's response.

1. Does the Secretary have any discretion but to renew the contracts for the same quantity of water as previously?

A. Solicitor's Opinion:

Sixteen utility-type contracts were entered into prior to the 1956 Act while seven contracts were entered into after passage of that act. The 1956 Act requires all utility-type contracts executed after its passage to include a renewal provision, if requested, and provide during the term of the contract or any renewal that the contracting party has a first right to a stated share or quantity of the project's available water supply. Congress also authorized the Secretary to negotiate amendments to pre-1956 contracts to conform with the provisions of the 1956 Act.

Therefore, since there is no indication that Congress intended to treat pre- and post-1956 contracts differently, the Secretary has no discretion but to renew both pre- and post-1956 Act contracts for the quantities of water set out in the original contracts. Thus, the 1956 Act itself precludes the application of NEPA.

B. Response:

The 1956 Act required that all contracts executed after its passage include a provision for renewal of the contract, if requested, under stated terms and conditions mutually agreeable to the parties and that the contractors would have a first right, to which the right of holders of other types of irrigation contracts would be subordinate, to a stated share or quantity of the project's available water supply. However, the basis, limit and measure of the contractors' rights to the use of project water is beneficial use. The 1956 Act merely authorized the Secretary to negotiate amendments to pre-1956 Act contracts to conform with the 1956 Act provisions.

According to the Solicitor's opinion, some pre-1956 Act contracts have been amended and some have not. However, even as to the pre-1956 contracts which have been amended, the amendments do not, in fact, conform to the provisions of the 1956 Act. The amendments contain no mandatory renewal provision nor do they contain a provision for a first right, to which irrigators receiving water under other contracts would be subordinate, to a stated share of the project's available supply. Therefore, as to these contracts, the Secretary was authorized to amend to conform to the 1956 Act but, apparently, chose not to do so. Thus, as to contracts executed prior to 1956, the Secretary clearly has discretion to change the quantity of water delivered to the contractors and possibly can even refuse to renew the contracts altogether. Of course, these contractors' equitable interests in renewal and in the amount of water delivered are substantial and could be weighed in any decision affecting renewal.

As to contracts executed after passage of the 1956 Act, the Secretary clearly must renew the contract, if requested. However, it appears that the Secretary has discretion to change the amount of water delivered to any contractor since any renewal is to be on terms and conditions mutually agreeable to the parties and is limited by beneficial

use of the water. Further, the contractors' first right to a share of the available supply is applicable only against other irrigators and not as to other beneficial uses.

Therefore, since contracts executed both before and after 1956 allow for the exercise of some discretion on the part of the Secretary to change the amount of water delivered in any renewals as well as discretion to change other terms and conditions of the contracts, it is our opinion that NEPA applies to such renewals.

2. Does NEPA apply to ongoing projects which do not change the status quo?

A. Solicitor's Opinion:

Since the Secretary has no discretion but to renew the contracts and for the same quantity as previously under contract, the federal action (i.e., the contract renewals) will not change the status quo. Therefore, the renewals are not subject to NEPA because they are not major federal actions with significant effects on the human environment.

B. Response:

NEPA requires that environmental issues be considered at every important stage in the decision-making process concerning a particular action. The Friant Unit contract renewals propose to carry out an irreversible and irretrievable commitment of a public resource for a term of 40 years. As discussed above, the Bureau possesses legal authority to modify the terms of any renewals. The Court of Appeals for the Ninth Circuit, which includes California, has ruled in a similar case involving federal relicensing of hydroelectric projects that such major relicensing decisions are not merely a continuation of the status quo and, therefore, should be accompanied by the preparation of an EIS. The court stated that simply because the resource has been committed in the past does not make relicensing a phase in a continuous activity. Rather, relicensing involves a new commitment of the resource. Therefore, similarly, major recontracting decisions, such as renewals of the Friant Unit contracts, require compliance with NEPA.

3. Assuming that the renewals are subject to NEPA, is there a categorical exclusion which is applicable?

A. Solicitor's Opinion:

A "categorical exclusion" relieves federal agencies from preparing an EIS for relatively routine activities which do not individually or cumulatively have a significant effect on the human environment. Contract renewals which implement administrative or financial changes only are categorically excluded from EIS requirements. This categorical exclusion alters the general rule that an EIS should be done for contract amendments which have not already undergone NEPA review. Therefore, even if NEPA was applicable to the renewals, they would be subject to the above categorical exclusion since the only anticipated change in the renewed contracts will be a minor rate increase.

B. Response:

The Bureau's NEPA Handbook, which contains regulations adopted by the Department of the Interior, states that the categorical exclusion cited by the Solicitor is not applicable and an EA or an EIS must be prepared when it appears that a particular activity may have any of the following effects: actions which may adversely affect recreation, wetlands or ecologically significant areas; have highly controversial environmental effects; establish a precedent for future action; or affect a species listed or proposed to be listed as an endangered or threatened species. Since the proposed renewal of the Friant contracts may involve each of the above consequences, it appears that the categorical exclusion cited by the Solicitor is not applicable to this case.

for Fred Vendig

PPC:jh
LDBOARD2-567

Withdrawal/Redaction Sheet
(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
06a. Letter	From John A. Moore to A. Alan Hill Re: Central Valley Water Projects (2 pp.)	2/2/89	P-5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
File Location: Outer Continental Shelf (1990) [2]

Open on Expiration of PRA
(Document Follows)
By JP (NLGB) on 5/12/05

Date Closed:	12/10/2004	**OA/ID Number:**	29164-001
FOIA/SYS Case #:	1998-0004-F[1]	**Appeal Case #:**	
Re-review Case #:	2005-0426-S	**Appeal Disposition:**	
P-2/P-5 Review Case #:		**Disposition Date:**	
AR Case #:		**MR Case #:**	
AR Disposition:		**MR Disposition:**	
AR Disposition Date:		**MR Disposition Date:**	

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

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P-3 Release would violate a Federal statute [(a)(3) of the PRA]
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB - 2 1989

THE ADMINISTRATOR

DB - see me pls.
H

The Honorable A. Alan Hill
Chairman
Council on Environmental Quality
722 Jackson Place
Washington, D.C. 20006

Dear Chairman Hill:

I am writing you pursuant to the responsibilities of the Administrator of the Environmental Protection Agency (EPA) under Section 309(b) of the Clean Air Act. Section 309(b) requires that the Administrator refer to the Council on Environmental Quality (CEQ) any matter pertaining to his duties and responsibilities that he determines to be "unsatisfactory from the standpoint of public health, welfare or environmental quality...." CEQ's regulations recognize EPA's distinct referral authority under section 309 (40 CFR 1504.1(b)).

I am referring the proposal by the Department of Interior's Bureau of Reclamation (BuRec) to renew long-term water contracts for the Orange Cove and other Friant Unit irrigation districts of the Central Valley Project (CVP). BuRec proposes to renew these 40-year contracts without preparation of an Environmental Impact Statement (EIS). The renewed contracts would commit to existing uses 1.5 million acre-feet of CVP water for the next 40 years, without benefit of the public review that the National Environmental Policy Act (NEPA) was intended to provide. EPA believes that renewal of these contracts constitutes a major Federal action significantly affecting the quality of the human environment and, accordingly, that BuRec's action falls under section 102(2)(C) of NEPA.

Without benefit of an EIS, I cannot make a conclusive determination that this action by BuRec would in fact prove "unsatisfactory" from the standpoint of public health, welfare or environmental quality. I believe, however, that unsatisfactory environmental results may well occur if this long-term commitment of water is made, and that assessment of environmental effects and the implementation of measures to avoid or mitigate those effects is required both by NEPA and sound public policy. EPA believes that the failure to prepare an EIS removes from EPA's -- and the public's -- review the environmental issues inherent in committing 1.5 million acre-feet of CVP water for 40 years. Accordingly, I have determined that making irretrievable long-term commitments of water use without benefit of an EIS violates the purposes and intent of NEPA. Further, in the absence of environmental analysis that would indicate

otherwise, I believe that renewal of these contracts is unsatisfactory from the standpoint of environmental quality in the San Joaquin River/Sacramento-San Joaquin Delta/San Francisco Bay area.

In preparing an EIS, I believe that BuRec must consider the effects of continuing to divert this water from other beneficial uses, such as instream flow through the San Joaquin River, Sacramento-San Joaquin Delta and San Francisco Bay. BuRec's proposed contracts will commit water for consumptive use that could help restore the salmon runs and wetlands of the San Joaquin River area and help improve water quality. The State of California's concern for Delta/San Francisco Bay water quality has resulted in a study by the State Water Resources Control Board (SWRCB) to determine, by 1990, the appropriate flows through the Delta and Bay to improve water quality and protect beneficial uses. EPA is concerned that any long-term contracts could preempt water that SWRCB may determine necessary to achieve water quality standards. Because of the interest of EPA and the State of California in protecting all beneficial uses, and the status of San Francisco Bay as a National Estuary, proceeding without benefit of an EIS leaves important environmental issues unanswered.

The enclosures to this letter include a copy of my letter to the Secretary of Interior informing him of my referral of this matter (Enclosure 1), and a discussion of the issues that the Council's regulations require at 40 CFR 1504.3(c)(2) (Enclosure 2). My letter to the Secretary requests that he take no action that will lead to entering into CVP long-term contract renewals until the Council acts upon this referral.

Finally, I would point out that, in the absence of an EIS filing to trigger the 25-day time clock for referral (described in 40 CFR 1504.3(b)), and in the absence of any time constraints in the language of section 309(b) of the Clean Air Act, the appropriate time to refer this action is now, prior to the signing of any long-term contract renewals for the Friant Unit. I urge you to accept this referral so that we may expeditiously resolve these issues within the Executive Branch.

If we can provide any additional information, please call me, Richard E. Sanderson (Director of Federal Activities, 382-5053), or Daniel W. McGovern, Region 9 Regional Administrator.

Sincerely,

John A. Moore
Acting Administrator

Enclosures

Withdrawal/Redaction Sheet
(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
06b. Statement	Predecision Referral Statement Supporting U.S. EPA's Referral to the Council on Environmental Quality of the U.S. Department of Interior's Proposed Renewal of Water Contracts for the Friant Unit of the Central Valley Project (3 pp.)	n.d.	P/5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
File Location: Outer Continental Shelf (1990) [2]

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By gp (NLGB) on 5/12/05

Date Closed:	12/10/2004	**OA/ID Number:**	29164-001
FOIA/SYS Case #:	1998-0004-F[1]	**Appeal Case #:**	
Re-review Case #:	2005-0426-S	**Appeal Disposition:**	
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RESTRICTION CODES

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PREDECISION REFERRAL STATEMENT (40 CFR 1504.3(c)(2))
SUPPORTING THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S
REFERRAL TO THE COUNCIL ON ENVIRONMENTAL QUALITY OF THE
U.S. DEPARTMENT OF THE INTERIOR'S PROPOSED RENEWAL OF
WATER CONTRACTS FOR THE FRIANT UNIT OF THE CENTRAL VALLEY PROJECT

(i) Identification of Material Facts in Controversy and Agreed-upon Facts

Material Facts in Controversy

The Department of Interior asserts that an EIS is not required for these contract renewals. Whatever legal constraints may apply to the renewal of the Orange Cove and other Friant Unit irrigation district contracts, EPA believes that an EIS is necessary under section 102(2)(C) of NEPA to evaluate the effects of various terms and conditions that could accompany contract renewals, including what effects conservation measures or demand management (e.g., pricing) could have on actual usage of the contract amounts. Further, the EIS should consider not only the effects of contract renewals on actual water usage, but Interior's separate proposed commitment of long-term contracts for 1.5 million acre-feet of "new water." EPA recommends that a programmatic EIS would be the appropriate vehicle for considering the cumulative impacts of all related CVP contract decisions, as well as the larger question of overall CVP water allocation among various beneficial uses.

EPA believes that, without environmental assessment and appropriate avoidance or mitigation of adverse effects, significant adverse impacts to water quality may result from the long-term renewal of these contracts.

Agreed-upon Facts

To our knowledge, there are no agreed-upon facts bearing on the resolution of the issue of NEPA compliance or adverse water quality impacts.

(ii) Identification of any Existing Environmental Requirements or Policies that would be Violated by the Matter

EPA believes that the NEPA and the Council's implementing regulations (40 CFR 1500-1508) would be violated by the long-term renewal of the Orange Cove and Friant Unit irrigation district contracts without preparation of an EIS.

EPA also believes that these actions may lead to exceedances of water quality standard established in accordance with section 303 of the Clean Water Act. Such a result would be contrary to the goals and objectives of that Act.

(iii) Presentation of Reasons why the Referring Agency believes the Matter is Environmentally Unsatisfactory

EPA believes that long-term renewal of Orange Cove and other Friant Unit irrigation district contracts without an EIS strikes at the purpose and utility of NEPA as a sound environmental assessment and management tool for Federal decision making. EPA also finds that BuRec's action is unsatisfactory because it fails to consider water quality impacts of long-term renewal without measures to adjust terms and conditions to control water quantity and quality to maintain and restore in-stream beneficial uses. The current plans for entering into these long-term renewals also fails to consider the results of the California SWRCB project investigating Delta/San Francisco Bay water quality.

(iv) Finding that the Issue Raised is of National Importance because of the Threat to National Environmental Resources or Policies or for some other Reason

EPA believes that BuRec's failure to prepare an EIS on irretrievable commitments of significant amounts of water, without consideration of the environmental impacts or measures to avoid or mitigate such impacts, sets an undesirable precedent for future BuRec water allocation and management issues, both for the CVP and Nation-wide.

(v) Review the Steps taken by the Referring Agency in Bringing its Concerns to the Attention of the Lead Agency at the Earliest Possible Time

EPA Region 9 has reiterated EPA's substantive and procedural concerns to BuRec in letters dated October 19, 1988, and January 3, 1989 (both enclosed). In response to EPA's questions regarding NEPA applicability, the Department of the Interior has forwarded their Solicitor's opinion asserting that an EIS is not required for Interior's planned renewal of these contracts. In addition, EPA Region 9 Regional Administrator Daniel W. McGovern met with Interior officials on February 1, 1989.

(vi) Recommendations of the Referring Agency as to what Action(s) is Necessary to Remedy the Situation

EPA recommends development of a programmatic EIS addressing the programmatic goals and cumulative impacts of alternative beneficial uses of CVP waters. At minimum, we recommend that an EIS be developed to describe the Friant Unit contract renewals. EPA recommends that Interior consider a short-term extension of the existing contracts, or interim contracts of perhaps two years, while these matters are under consideration and/or an EIS is being prepared. We believe that interim contracts would prevent an interruption of current water use without compromising national environmental policy. We suggest that the same approach would be applicable to other CVP contract negotiations upcoming before an EIS is prepared, and prior to findings or decisions of the SWRCB.

Withdrawal/Redaction Sheet
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Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
07. Memo	From Robert Grady to John Sununu Re: Basel Convention (3 pp.)	10/10/89	P/5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
File Location: Outer Continental Shelf (1990) [2]

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By QP (NLGB) on 5/12/05

Date Closed:	12/10/2004	**OA/ID Number:**	29164-001
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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCTOBER 10, 1989

MEMORANDUM FOR: GOVERNOR SUNUNU/
DIRECTOR DARMAN

FROM: ROBERT E. GRADY

SUBJECT: Basel Convention

With strong support from EPA, the State Department is requesting approval to sign the Basel Convention, which sets guidelines and restrictions concerning the export of hazardous and municipal wastes. The Convention is open for signature until March 22, 1990, but State and EPA agree that since the British have signed, the U.S. must sign now to show its leadership and avoid political and diplomatic embarassment. Moreover, the Convention is likely to take effect sometime next Spring when it is anticipated that 60 countries will have signed it.

There are three issues which are raised by the substance of the Convention language.

1. **Definition of "Environmnetally Sound"**

The Convention, among other things, bans the export of hazardous wastes unless an agreement is signed with the receiving nation providing for the disposal of wastes in an "environmentally sound" manner. However, the term "environmentally sound" is not defined and would be left to subsequent negotiation. The definition of this term is critical. If, for example, environmentally sound disposal is defined as in accordance with hazardous waste laws governing the exporting country, the effect would be to require extraterritorial application of the Resource Conservation and Recovery Act (RCRA) in recipient countries. On the other hand, should the U.S. argue for less stringent disposal practices in other countries, it would be subject to criticism for trying to create waste disposal havens. EPA made just this case last year in arguing strongly against the export of a pesticide (EDB) that had been banned in the U.S. but is still used actively by many other countries.

The State Department and EPA believe that the only sure way to ensure that the ultimate definition is appropriate from the U.S. perspective is to become a signatory participant. This line of argument nevertheless suggests that we would want to know what we would be willing to accept as "environmentally sound" before we sign.

2. What Constitutes "Hazardous"?

The list of wastes defined as hazardous by, and therefore subject to the convention includes wastes not listed as hazardous by the U.S. under current law. Among these are household wastes and large volume wastes such as mining wastes and fly ash. The inevitable response from the environmental community will be to seek to amend our domestic laws and regulations to comport with the convention (i.e., to declare these wastes to be hazardous and subject those industries to RCRA and the attendant enormous increases in the cost of disposal). RCRA, EPA's basic authorizing legislation governing the disposal of these wastes, is up for reauthorization next year and already there is likely to be significant disagreement on the Hill and within the Administration on how to proceed.

3. Implementing Legislation

EPA has recently proposed that the Administration submit legislation that would go well beyond that needed to implement the Convention. It proposes to mandate a unilateral U.S. ban on all exports of hazardous wastes except to be recycled or in the event of an existing bilateral agreement. The U.S. currently has only one such agreement with Canada.

EPA is proposing this concept as a U.S. "leadership" initiative, and as a less onerous alternative to legislation currently under consideration by Congress. Nevertheless, the legislation would eliminate yet another of the few disposal options left to this country. We have already virtually eliminated incineration on land and at sea and the siting of new hazardous wastes facilitates has become virtually impossible due to citizen resistance.

Options

In light of these concerns, four possible options for further action on the Basel Convention should be considered:

1. Sign the Convention now and await subsequent receipt of EPA's implementing legislation.

2. Refrain from signing the Convention until the EPA submits legislation to implement the Convention and such legislation is cleared. EPA would receive guidance to restrict the legislation in such a way as to adhere to the terms and conditions of the Convention.

3. Do not sign the Convention; pursue U.S. legislation consistent with DPC-approved policy guidance from March.

4. Refer the issue of signing the Basel Convention and the development of implementing legislation to the Domestic Policy Council for Cabinet-level consideration and possible consideration by the President.

I recommend Option 2 or Option 4.

Decision

/___/ Option 1.

/___/ Option 2.

/___/ Option 3.

/___/ Option 4.

Attachment

Withdrawal/Redaction Sheet
(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
08. Memo	From Frederick M. Bernthal to The Secretary Re: Circular 175: Request for Authority to Sign A Global Convention on the Control of Transboundary Movements of Hazardous Wastes and Other Wastes (13 pp.)	9/13/89	P/5	

Collection:

Record Group: Bush Presidential Records
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Series: Sununu, John, Files
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Freedom of Information Act - [5 U.S.C. 552(b)]

(b)(1) National security classified information [(b)(1) of the FOIA]
(b)(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
(b)(3) Release would violate a Federal statute [(b)(3) of the FOIA]
(b)(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
(b)(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
(b)(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
(b)(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
(b)(9) Release would disclose geological or geophysical information

UNCLASSIFIED

TO: The Secretary

FROM: OES - Frederick M. Bernthal

SUBJECT: Circular 175: Request For Authority To Sign A Global Convention On The Control Of Transboundary Movements of Hazardous Wastes And Other Wastes

ISSUE FOR DECISION

Whether to authorize and issue a full power (Tab 1) for signature by the United States of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Tab 2), which opened for signature on March 22, 1989.

BACKGROUND

The U.S. has strongly supported efforts to establish an international regulatory regime for transboundary movements of hazardous wastes. In January 1988, authority was granted to participate in UNEP-sponsored negotiations of a global convention on this subject. In addition, the U.S. has actively participated in the negotiation of an OECD agreement on hazardous wastes movements.

The United States was one of the first countries to implement controls on hazardous waste exports and since 1986 has required notice to and the consent of receiving countries before exports proceed pursuant to the Resource Conservation and Recovery Act ("RCRA"). The final text of the Basel Convention incorporates notice and consent requirements as fundamental elements of its regulatory regime.

In addition, the Convention recognizes that transboundary movements of hazardous wastes and other wastes can pose significant threats to health and the environment if receiving countries do not possess the capacity to manage or dispose of the wastes in an environmentally sound manner. Parties must

thus require that hazardous and other wastes that are to be exported are managed in an environmentally sound manner in the state of import. The Convention also prohibits exports, despite an importing party's consent, if there is reason to believe environmentally sound management will not occur. The agreement bans exports to non-parties unless there is an agreement providing for the environmentally sound management of hazardous and other wastes.

President Bush announced in March of this year that the United States would take similar measures to control wastes defined as hazardous under U.S. law and would seek the necessary authority to ban exports of such wastes except where the U.S. has an agreement with the receiving country providing for the environmentally sound and safe handling of the wastes. The U.S. currently has bilateral hazardous waste export agreements with Canada and with Mexico, countries which receive the bulk of U.S. hazardous wastes exports.

Thirty-four countries, including Mexico and Canada, and the Commission of the European Communities signed the Convention in Basel. (The United Kingdom, the FRG and Japan have indicated informally that they will sign in the near future.) We needed additional time to consider the final text. This review has now been completed and the two agencies principally involved, the Department and the Environmental Protection Agency, conclude that it would be in the best interest of the United States to sign the Convention, with a view to submitting it to the Senate for advice and consent to ratification.

The Basel Convention could serve as an international agreement for purposes of the President's decision with respect to Basel Convention parties, although additional legislative authority would be necessary to implement obligations which go beyond the President's announced policy such as controls over wastes not currently defined as hazardous under U.S. law. In the alternative, the U.S. could sign and ratify the Convention and ban exports absent a separate bilateral or regional agreement with the receiving country or countries. The latter option is preferable since direct negotiations with a receiving country and information obtained through that process regarding its disposal capabilities is a more effective and efficient means of controlling hazardous waste exports and providing for their environmentally sound disposal.

Implementation of the President's policy through either option would require additional legislative authority, in particular, in order to implement the Convention's controls on

exports of household wastes, residues arising from their incinceration and other wastes not currently defined as hazardous under U.S. law (e.g. oil and gas wastes), the ban on imports from non-parties and direct state obligations in cases of illegal shipments. Both EPA and OES believe that the additional legislation required to implement the Convention would strengthen U.S. hazardous waste export policy.

I. Principal Features of the Convention

The Convention includes as key elements:

-- application of controls to wastes not currently defined as hazardous under U.S. law, including household wastes, residues arising from their incineration and infectious wastes (Annexes I-III);

-- a prohibition on waste exports to parties unless the wastes are destined for recycling or recovery industries or the state of export does not have the capacity, facilities or disposal sites to dispose of the wastes in an environmentally sound and efficient manner (Article 4(9));

-- a requirement of notice to and the written consent of importing parties (Article 6);

-- a requirement of notice to transit states and the written consent of transit parties prior to export, unless transit parties agree to a tacit consent procedure (Article 6(4));

-- uniform information requirements for notification of proposed exports (Article 6(1), Annex VA);

-- a prohibition on exports to and imports from non-parties unless there is an agreement providing for environmentally sound management of wastes (Article 4(5), Article 11);

-- an obligation to prohibit the export or import of wastes if there is reason to believe that they will not be managed in an environmentally sound manner in the importing country (Article 4(2)(e) and (2)(g));

-- an obligation to require that wastes to be exported are managed in an environmentally sound manner in the importing state (Article 4(8));

-- a prohibition on exports of hazardous wastes and other wastes to Antarctica (Article 4(6));

-- an obligation upon the party of export to assume responsiblity for disposal of wastes illegally shipped if the exporter has committed the illegality and is unable to assume responsiblity for the wastes (Article 9(2));

-- a similar obligation upon the party of import where the illegality was committed by the importer or disposer (Article 9(3).

-- uniform procedures for identifying wastes and tracking their tranboundary movement by use of a "movement" document (Annexes V, Article 4(7)(c)).

II. Issues Relating To U.S. Implementation Of The Convention

The current export provisions in the Resource Conservation and Recovery Act ("RCRA") require notice to and the consent of receiving countries for hazardous wastes. In addition, RCRA acknowledges that the U.S. may enter into an international agreement with the receiving country "establishing notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous wastes". 42 U.S.C. §6938(a)(2) and (f). A significant part of the Basel Convention with respect to wastes defined as hazardous under U.S. law may be implemented by regulation pursuant to this provision, which precludes exports which do not conform with the terms of a U.S. agreement with the receiving country.

RCRA does not provide the necessary authority to implement the President's decision to ban exports absent an international agreement. Under RCRA, if the U.S. does not have an agreement with the receiving country, the export can proceed with the consent of that country. Moreover, additional statutory authority would be necessary to implement the Convention's ban on imports from non-parties absent an agreement providing for environmentally sound management and to extend export controls to wastes not currently defined as hazardous under U.S. law.

A. Convention's Standard For Subsequent and Prior Agreements

Article 11 sets forth the standard for subsequent and prior agreements entered into by parties and is of particular importance in light of potential U.S. implementation through separate bilateral or regional agreements. Article 11(1) permits Parties to enter into subsequent agreements with both parties and non-parties provided that the effect of the control

regime provided by the agreement is as environmentally sound, taking into account the particular circumstances of developing countries. Article 11(1) does not require that particular provisions of the Convention be incorporated into the subsequent agreement and recognizes that equally environmentally sound management of wastes may be achieved by different means, depending upon the circumstances of the importing country. OES and EPA have concluded that the standard set forth in Article 11(1) provides sufficient flexibility for the U.S. in negotiating subsequent hazardous waste agreements.

Article 11(2) allows an agreement concluded prior to the Convention's entry into force to operate as the exclusive regulatory regime for transboundary movements which take place pursuant to such an agreement, provided that it is compatible with environmentally sound management of wastes subject to the Convention. For wastes which do not proceed pursuant to such an agreement, the controls of the Convention operate. While the U.S. Canadian and Mexican bilateral agreements are compatible with environmentally sound management, those agreements do not regulate certain wastes controlled by the Convention, notably infectious wastes, household wastes or residues arising from their incineration. Under Article 11(2), the Convention's regulatory regime would apply to these wastes. If the U.S. were to ban waste exports absent a bilateral agreement, the ban would apply to these additional wastes unless the U.S. Canadian and Mexican agreements are modified to include them within their coverage.

B. Wastes Regulated By The Convention

The regulatory regime established by the Convention applies to any waste belonging to a category listed in Annex I which exhibits a characteristic listed in Annex III, and to "other wastes", defined in Annex II as household wastes and residues arising from their incineration. In addition, these wastes must be destined for one of the disposal operations described in Annex IV to be covered by the Convention. The current U.S. export regime applies only to those wastes defined as hazardous under Subtitle C of RCRA and does not extend to household wastes and residues arising from their incineration. Several statutory and regulatory changes will also be required to extend RCRA's export provisions to wastes which are controlled under the Convention, notably infectious wastes, that are not defined as hazardous under U.S. law.

EPA and State concur that these additional wastes should be subject to export control. While management of these

"non-hazardous" wastes is regulated in the U.S. to a lesser degree than hazardous wastes, there does not appear to be any reason to exempt these wastes from such export requirements as notice and consent. Moreover, any waste may present hazards to the human health and the environment if a minimal standard for treatment and disposal is not met. The Convention would not dictate that such wastes be subject to the same management requirements as hazardous wastes but would require that their export be prohibited if there is reason to believe environmentally sound management will not occur. There are also foreign policy concerns related to exports of these "non-hazardous" wastes. Highly publicized incidents in the recent past, the Islip garbage barge and the Khian Sea Philadelphia ash shipment, have involved "non-hazardous" wastes not currently regulated for export purposes under RCRA.

Our current bilateral agreements with Mexico and Canada do not control shipments of household wastes or residues arising from their incineration. EPA has determined that there are currently no shipments of these wastes to either Canada or Mexico. Future exports of these wastes, however, may be affected regardless of U.S. signature of the Convention if Canada or Mexico become party to the Convention. (Both have already signed the agreement.) If the U.S. does not become a party to the Convention, these countries would be required to ban exports to and imports from the U.S. of these wastes unless our current agreements were modified to include them within their regulatory scope. In practice, the regulation of these additional wastes is likely only to impact upon future trade with Canada since Mexico will only accept wastes for recycling or recovery industries; household wastes, and to a large extent, municipal ash, are not typically recycled.

C. Prohibition on Waste Exports to Antarctica

The Convention prohibits the export of wastes for disposal within Antarctica. (Article 4(6)) As a policy matter, both OES and EPA agree that exports of hazardous and other wastes to Antarctica should not be permitted. The U.S. has always considered that Antarctica's pristine environment warranted special protection and has encouraged international efforts to preserve its unique character.

RCRA currently would not authorize a ban on exports of wastes to Antarctica. While the National Science Foundation could promulgate the regulations necessary to implement this obligation, EPA has indicated that it would be administratively easier for it to implement the ban and is thus considering seeking appropriate authority under RCRA.

D. Illegal Shipments

Article 9 requires that the exporting state assume responsiblity for wastes illegally shipped if the illegality was committed by an exporter who is unable to assume responsiblity for the wastes. A similar obligation exists for importing parties where the illegality was committed by the importer or disposer. Where responsiblity for the illegal shipment cannot be determined, the parties are required to cooperate to ensure the environmentally sound disposal of the wastes. As is more fully discussed in the attached legal memorandum, obligations relating to illegal shipments do not extend to the clean-up of wastes illegally shipped.

The U.S. does not have current statutory authority to take responsibility for wastes illegally shipped. As a matter of policy, OES and EPA believe that such authority is warranted and that this is a logical extension of a policy premised on the principal that wastes should be disposed of in an environmentally sound manner. In addition, the potential foreign policy ramifications of illegal shipments from the U.S. would be reduced if the U.S. had ready authority to take responsiblity for wastes illegally shipped by its exporters.

E. Restrictions On Exports

The Convention provides in Article 4(9) that exports of hazardous wastes and other wastes may only proceed under specified circumstances. Exports may not proceed unless destined for recycling or recovery industries or the "state of export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound and efficient manner". The relative costs of disposal in the importing and exporting country may be considered to the extent such costs relate to the factors identified (i.e. technical capacity, necessary facilities, capacity etc.). Exports may proceed where disposal is less costly, (i.e. the importing country has more efficient facilities or capacity) even if the efficiency accrues as a result of standards relating to sites, facilities or capacity in the importing country that are less stringent than RCRA so long as the disposal contemplated is consistent with the environmentally sound management of wastes.

If the U.S. were to implement the Convention through subsequent agreements with receiving countries, those agreement could only allow exports under the conditions noted above.

III. Other Issues

A. Recycling and Recovery Operations

Materials destined for recycling operations are only covered by the Convention if a party to the transboundary movement considers such materials hazardous wastes under its domestic legislation. A chapeau to this effect was included in Annex IV, Section B, which sets forth recycling and recovery operations. If the exporting party does not consider materials destined for these operations as hazardous wastes under its domestic legislation then it is not required to implement the Convention with respect to those materials. Thus, the United States is not required to implement the controls of the Convention with respect to wastes destined for recycling which are not legally defined as hazardous wastes under U.S. law. However, if another party to the transboundary movement does define such material as a hazardous waste, that party is responsible for implementing certain obligations of the Convention with respect to them.

B. Application of Notice and Consent Requirements For Passage Through The Territorial Sea and Exclusive Economic Zone

The application of the Convention's notice and consent requirements to passage of ships carrying hazardous wastes through the territorial sea and exclusive economic zone (EEZ) of a coastal state was extensively debated throughout the negotiations. The U.S. and others strongly resisted such requirements, maintaining that they would be unwarranted restrictions on the exercise of the right of innocent passage and freedom of navigation through the EEZ, rights well-established under customary international law as reflected in the U.N. Convention on the Law of the Sea.

The Convention includes in Article 4, ¶11 a saving clause which states that none of its provisions shall affect the navigational rights and freedoms of ships. The U.S. and other like minded states made clear in conjunction with adoption of the Convention that, for them, the Convention does not require notice or consent for transit of vessels exercising navigational freedoms and rights under customary international law. In light of the importance of this issue to U.S. maritime rights, the U.S. will make a similar statement, in accordance with the guidance set forth in the attached legal memorandum, at the time we deposit our instrument of ratification.

C. Marine Disposal of Wastes

The Basel Convention applies to disposal of wastes at sea, including sea bed insertion and sea incineration in the territorial sea and exclusive economic zone of another state. Article 11 would allow the London Dumping Convention ("LDC") to operate as the exclusive regulatory regime for movements between parties to the LDC. It is likely, however, that the LDC will be reviewed in light of the Basel Convention. Such a review was specifically called for in two resolutions adopted at the Diplomatic Conference.

The requirements of the Basel Convention would operate with respect to non-parties to the LDC. The Basel requirements are substantially similar to those contained in the LDC and the U.S., as a policy matter, would support application of them to states which are not participating in the LDC regime. If a state is not a party to either the Basel Convention or the London Dumping Convention, the parties are required to ban exports to them (unless a separate agreement is concluded pursuant to Article 11 which regulates such activities). OES and EPA believe that this is an appropriate incentive for states to participate in a regime controlling marine disposal of wastes; the U.S. supported a similar resolution in the LDC context. (LDC Resolution 29.10)

D. Transit Countries

The Convention requires parties to notify all transit states of a proposed transboundary movement of wastes and to obtain the written consent of transit parties unless they agree to a tacit consent procedure. The U.S. currently provides notice to transit states but does not require their consent prior to export. This additional requirement would not be unduly burdensome particularly since the vast majority of U.S. waste exports are shipped to Canada and Mexico or by sea directly to the U.K., with no transit country involved.

IV. Form of the Agreement

As is discussed in the attached legal memorandum, the Convention will be concluded as a treaty pursuant to Article II, section 2 of the Constitution and will be submitted to the Senate for its advice and consent to ratification.

V. Domestic Regulatory Activities

The attached legal memorandum describes the additional legislative authority and regulatory changes necessary for the

U.S. to implement the Convention. EPA and OES are currently drafting appropriate implementing legislation. The U.S. will not deposit its instrument of ratification of the Convention until the additional statutory authority has been enacted and the necessary regulatory changes have been made.

VI. Environmental Impact Statement

The requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, et seq., and Executive Order 12114 of January 4, 1979, Environmental Effects Abroad of Major Federal Actions are being considered to determine whether an environmental impact statement (EIS) or other environmental documentation should be prepared. A final determination need not be made at this time since signature of the agreement would not constitute the "major federal action" in this case. It is at the time of ratification that the U.S. would be legally obligated to implement the Convention's provisions. (A final determination regarding NEPA considerations may be made in conjunction with obtaining the necessary legislation to implement the Convention.) Some preliminary considerations, however, should be noted.

With respect to NEPA, there should be no significant environmental impacts in the United States from imports of hazardous wastes from parties since under current law imports must comply with domestic environmental safeguards. The Convention would not alter these requirements. In addition, both the RCRA export provisions and the domestic requirements applicable to imports have undergone procedures constituting the functional equivalent of NEPA procedures. Thus, to the extent the agreement can be implemented within existing laws and regulations, the functional equivalency doctrine may apply. This doctrine renders the procedural requirements of NEPA inapplicable where federal regulatory action is circumscribed by extensive procedures, including public participation, for evaluating environmental issues and is taken by an agency with recognized environmental expertise.

Executive Order 12114, which outlines procedures for reviewing the environmental effects abroad of major federal actions, exempts from its requirements export approvals. The primary activity provided for under the Convention with effects outside the United States appears to fall within this exemption.

In addition, the Executive Order is inapplicable where the foreign country is participating with the United States or is otherwise involved in the action. The parties to the Convention agree to the procedures established for exports to

their territories of hazardous and other wastes. The Convention's effects on areas outside the jurisdiction of any nation seem prima facie environmentally beneficial since waste exports to Antarctica are prohibited under the Convention and the agreement sets forth requirements similar to those of the LDC for dumping in marine areas.

VII. Funding

The Convention itself does not include mandatory financial obligations. Pursuant to Article 15(3), the Parties at their first meeting are to decide financial rules by consensus. In signing and ratifying the Convention, however, the United States would be making a commitment in principle to pay its fair share of the expenses of a secretariat and meetings of the parties.

Secretariat services will be provided, at least initially, by the UNEP Secretariat. (During the negotiations, the U.S. made clear that it would not support a separate Secretariat for this agreement.) The UNEP Secretariat has estimated that the annual expense to the United States for services relating to the Convention rendered by the Secretariat would be approximately $50,000.

Article 14 of the Convention, Financial Aspects, provides that regional centers should be established to assist parties in wastes management and minimization. Article 14 provides that such centers, if established, would be funded through voluntary contributions only. In addition, Article 14 provides that the Parties shall consider the establishment of a revolving fund to assist, on an interim basis, in emergencies arising during the transboundary movement of wastes or their disposal. The U.S. by signing or becoming a party the agreement incurs no legal commitment to contribute to either the emergency fund or the establishment of regional centers.

As a party to the Convention, the U.S. would be obligated to undertake, either bilaterally or multilaterally, cooperative efforts to improve monitoring of the effects of hazardous wastes on health and the environment, the development of technical guidelines and information exchanges. EPA will seek funding as appropriate within its own priorities to participate in any cooperative programs resulting from the Convention. In addition, the Convention's provisions relating to illegal shipments under Article 9 may require expenditure of government funds.

VIII. Public and Congressional Consultations

There have been extensive consultations with concerned agencies and departments, members of Congress and their staffs, environmental groups and the waste management and chemical industries throughout the negotiation of the Convention. There is general support for effective international control of exports of hazardous wastes by concerned industry groups, including the Chemical Manufacturers Association and the waste management industry. There have been no objections raised by these groups to controlling household wastes and residues arising from their incineration.

We have recently briefed congressional staffs of the House and Senate. A concurrent resolution is pending in the House of Representatives urging the President to sign and submit the Convention to the Senate for ratification. Environmental groups participated as observers in the negotiations and support the Convention although Greenpeace does not believe the agreement goes far enough since it does not prohibit all exports of wastes.

RECOMMENDATIONS:

1. That you authorize signature by the United States of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.

Approve _____ Disapprove _____

2. That you sign the attached full power (Tab 1) authorizing Ambassador Pickering or Ambassador Okun, in his absence, to sign the Basel Convention on behalf of the United States at the UN Headquarters in New York.

Drafted:L/OES:CCorken
Wang 38530

Clearances: OES/E:ASens(Acting)
L:ADSofaer
L:AKreczko
L/OES:DSmall
L/T:GTaft
EPA/OIA:SHajost
EPA/OSW:SLawrence
EPA/OSW:MStrauss
EPA/OGC:GYamada
EPA/OGC:LFreidman
EPA/OGC:TKeenen
EPA/OGC:PSavage
OES/OSP:TScully
DOC:JRSpradley
DOT:CTucker
DOJ:DCarr
DOD/OASD/ISA/PNR:DHardy
CG:FPresley
OMB:RFairweather
DOI:IGoklany
DOE:TWilliams
CEQ:DBear

THE WHITE HOUSE

WASHINGTON

April 1990

President Bush's environmental record in brief

Since his inaugural, President Bush has advanced numerous environmental initiatives (listed below).

In approaching these initiatives, the President has sought to balance the need for increased environmental protection with the need for continued economic growth.

LEGISLATIVE

* Proposed the first amendments to the Clean Air Act in over a decade to reduce emissions that cause acid rain, smog and air pollution. A compromise was passed by the Senate and awaits decision by the House.

* Increased research on global climate change by 43% in 1990 and proposed an additional 57% increase to $1 billion for 1991. Is hosting an international White House Conference on global change this month.

* Proposed elevating the Environmental Protection Agency to Cabinet-level status.

* Presented a budget which expands the EPA's operating programs by 12% and adds three quarters of a billion dollars to an aggressive effort to clean up wastes at federal facilities around the country.

* Expanded our parks, forests, refuges and other public lands by proposing $450 million in spending for land acquisition.

* Increased funding for Clean Coal technology.

REGULATORY

* Banned most uses of asbestos.

* Stopped the importation of all African ivory into this country, a move already beginning to show evidence of beneficial effect.

* Proposed the cancellation of the pesticide "alar", as well as some 40 uses of EDBC's, a family of pesticides commonly applied to food crops and suspected of being harmful to health.

* Began developing a proposal to assure that hazardous wastes are not indiscriminately exported to foreign countries, and endorsed the U.S. entry into a U.N. convention to require environmentally sound management of exports of hazardous, infectious and household wastes and municipal incinerator trash.

OTHER ACTIONS

* Launched a program that would promote the planting of a billion new trees a year in America as part of the "America the Beautiful" initiative.

* Committed to a full phase-out of CFC's, with appropriate attention given to safe substitutes, in order to protect the stratospheric ozone layer and offered to host the first negotiating session aimed at developing an international treaty on climate change.

* Began developing the country's first goal of no-net-loss of wetlands policy, and recently approved an agreement between the Army Corps of Engineers and EPA that significantly strengthens procedures in effect a year ago.

* Encouraged international cooperation and commitment through the Presidents' emphasis on environmental issues at the economic summit and bilateral meetings with allies and other world leaders over the past year.

* Offered technical assistance to Eastern Bloc countries now trying to save national environments after years of Communist rule.

* Began training Peace Corps volunteers in pollution prevention and reforestation techniques.

* Started a pilot tracking program to prevent the type of medical waste wash-ups that plagued beaches around the country only two years ago.

* Re-directed the Superfund programs toward "enforcement first," with emphasis on more permanent remedies for abandoned hazardous waste sites.

THE WHITE HOUSE

WASHINGTON

April 1990

President Bush's environmental record in brief

Since his inaugural, President Bush has acted on the following environmental concerns:

* Banned most uses of asbestos.

* Stopped the importation of all ivory into this country, a move already beginning to show evidence of beneficial effect on Africa's dwindling elephant herds.

* Proposed a billion dollar a year research program on global climate change and is hosting an international White House Conference on global change this month.

* Started a pilot tracking program to prevent the type of medical waste wash-ups that plagued beaches around the country only two years ago.

* Presented a budget which expands the EPA's operating programs by twelve percent, and adds three quarters of a billion dollars to an aggressive effort to clean up wastes at federal facilities around the country.

* Canceled alar, as well as proposed to cancel some 40 uses of EDBCs, a family of pesticides commonly applied to food crops and suspected of being harmful to health.

* Expanded our parks and wildlife refuges by proposing $450 million in spending for land acquisition.

* Begun developing a proposal to assure that hazardous wastes are not indiscriminately exported to foreign countries, and endorsed the U.S. entry into a U.N. convention to help achieve this goal.

* Re-directed the Superfund programs toward "enforcement first," with emphasis on more permanent remedies for abandoned hazardous waste sites.

* Proposed that cars be designed to give off less evaporative emissions of gasoline and reversed a previous loosening of national fuel efficiency standards.

* Began a procedure to evaluate the Two Forks dam project in colorado with regard to environmental objections. (Additionally, the Big River project in Rhode Island was rejected to save wetlands and other environmental resources.)

* Launched a program that would promote the planting of a billion new trees a year in America.

* Began developing the country's first no-net-loss of wetlands policy, and recently approved an agreement between the Army Corps of Engineers and EPA that significantly strengthens procedures in effect a year ago.

* Committed to a full phase-out of CFC's, with appropriate attention given to safe substitutes, in order to protect the stratospheric ozone layer and offered to host the first negotiating session aimed at developing an international treaty on climate change.

* Offered technical assistance to all Eastern Bloc countries now trying to save national environments unbelievably ravaged after years of Communist rule.

THE WHITE HOUSE

WASHINGTON

April 23, 1990

MEMORANDUM TO THE PRESIDENT

FROM: DAVID DEMAREST

SUBJECT: EARTH DAY EVENTS

The following is a compilation of environmental events and actions surrounding Earth Day in which you participated. When you would like to discuss our plans for the 21st anniversary of Earth Day please let me know.

SPECIFIC EARTH DAY EVENTS

1) Signing of Earth Day Proclamation on January 3.

2) EPA Journal article on Earth Day for April edition.

3) Washington Times guest editorial on Earth Day.

4) Earth Day video message for the United States Information Agency's WorldNet television network. The message was broadcast worldwide to embassies, consulates and America Houses on April 22.

5) Written message for the National Celebration of the Outdoors Earth Day mobilization event in Rock Creek Park on April 1.

6) Rose Garden reception held on April 18 in honor of Earth Day.

7) Phone call on April 22 with Jim Whittaker and the Earth Day 20 International Peace Climb.

8) Phone call on April 22 to Ed Furia and the Earth Day 20 rally at the Columbia River Gorge.

OTHER ENVIRONMENTAL EVENTS INDIRECTLY RELATED TO EARTH DAY/WEEK

1) Naming of environmental "Points of Light," April 16 through April 22.

2) Message for the winners of the Goldman Environmental Prize.

3) Message for the National "March for Parks," March 23.

4) Speeches to the Conference on Climate Change.

5) Handing out saplings at the Easter Egg Roll, April 16.

6) Signing of the "National Recycling Month" proclamation with the Birmingham Southern Conservancy, Birmingham, Alabama, April 20.

7) Announcement of "Area to be Avoided" with Reef Relief in Islamorada, Florida, April 22.

THE WHITE HOUSE
WASHINGTON

Date: 3-16-90

Call Craig

FOR: Gov. Sununu

FROM: ANDY CARD Andy

re. OCS

☐ Action

☐ Your Comment

☐ Let's Talk

☒ FYI – as requested

The only people who have this are David Bates, his staffer Barry McBee, Bob Grady and the two of us.

March 16, 1990

SUMMARY

The final report of the Outer Continental Shelf (OCS) Leasing and Development Task Force was delivered to the White House on January 5. The report is the work of the Cabinet-level Task Force, comprised of Secretaries Lujan (who served as chairman) and Watkins, Administrators Reilly and Knauss and Director Darman, announced by you in your budget message to Congress in February 1989. In that budget message you charged the Task Force to study and resolve environmental concerns regarding the potential adverse effects of three OCS lease sales scheduled for FY 1990 that were delayed: Sale 116 off the southwestern coast of Florida; Sale 95 off southern California; and Sale 91 off northern California.

In developing options for your consideration, the Task Force examined the issues of air quality, the risks of oil spills, changes in onshore infrastructure and land use due to these lease sales, and the impacts of these sales on protected lands and species and other wildlife, commercial fishing, water quality, and tourism and recreation. The Task Force commissioned an analysis of the adequacy of scientific and technical information available for making leasing decisions in the three areas from the National Academy of Sciences (NAS). The NAS report concluded that there was a lack of some oceanographic, ecological or socioeconomic data for each area, although the study is subject to some criticism for calling for an unreasonable level of data.

In its eight-month process the Task Force solicited extensive input from the public and members of Congress. The public and most elected officials in the two states are generally opposed to the sales. The Task Force also uncovered wide dissatisfaction with the OCS program, as local residents who are most affected by OCS activities often do not receive commensurate financial benefits and feel they have little opportunity for participation in decision-making.

The Task Force presented specific options for decisions on each sale (four options for the Florida sale and three for each California sale). The Task Force made no recommendations among the various options. Additional options have been developed by White House staff and members of the Task Force independently. The Task Force also presented, and staff has developed, general options to be addressed in connection with these three sales and the overall OCS program.

Set forth below are summaries of the options developed by the Task Force and the White House staff. A full presentation of those options, and supporting discussion of the respective pros and cons, is found in the accompanying decision memorandum. The decision memorandum also provides more extensive information regarding the Task Force deliberations.

Withdrawal/Redaction Sheet
(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
09. Report	Summary of OCS Leasing and Development Task Force Report ~~Options section redacted~~ (2 pp.)	3/16/90	~~P-5~~	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
File Location: Outer Continental Shelf (1990) [2]

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FOIA/SYS Case #:	1998-0004-F[1]	**Appeal Case #:**	
Re-review Case #:	2005-0426-S	**Appeal Disposition:**	
P-2/P-5 Review Case #:		**Disposition Date:**	
AR Case #:		**MR Case #:**	
AR Disposition:		**MR Disposition:**	
AR Disposition Date:		**MR Disposition Date:**	

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Task Force Options for Sales

Option A

Florida -- Cancel sale and defer leasing decision until additional oceanographic, ecological and socioeconomic data identified by NAS have been collected.

As for existing leases in same area, proceed with exploration and development decisions under normal procedures.

California

A-1 -- Proceed with preparations for lease sales but defer leasing decisions until the additional oceanographic (southern California) and socioeconomic (southern and northern California) data identified by NAS have been collected.

A-2 -- Cancel sales and defer subsequent leasing decisions until additional oceanographic (southern California) and socioeconomic data (southern and northern California) identified by NAS have been collected.

Option B

Florida -- Cancel sale and exclude area from consideration for the 1992-1997 OCS five-year leasing program.

As for existing leases, begin discussions with Florida and existing lessees to facilitate state purchase of leases.

California -- Defer leasing decisions on both sales until 1992-1997 five-year program and, if sales go forward, offer tracts only in limited geographic areas (Santa Maria and Outer San Diego Basins off southern California and Eel River Basin off northern California).

Option C

Florida -- Cancel sale and exclude area from consideration for both 1992-1997 and 1997-2002 five-year programs.

As for existing leases, begin discussions with Florida regarding its purchase of leases and initiate procedures that could lead to cancellation of existing leases under OCS Lands Act.

California -- Cancel sales and exclude areas from consideration for 1992-1997 five-year program.

Options Not Identified by Task Force

A. Proceed with sales in Florida and California under existing OCS Lands Act process.

B. Cancel sales in Florida and California and exclude from consideration for 1992-1997 program at this time; if additional studies to obtain data identified by NAS show leasing possible in environmentally sensitive manner, add tracts to 1992-1997 program.

C. Delay decisions until final National Energy Strategy submitted in December.

D. Cancel sales and impose permanent ban on lease sales in three areas.

Other Actions Recommended by Task Force to Address Environmental Concerns in Areas of Sales and Deficiencies in OCS Program

A. Air Quality. In southern and northern California, establish air quality controls for OCS activities that are substantially equivalent to those applied onshore. The Minerals Management Service already has efforts underway to develop a new proposed rulemaking to achieve this objective.

B. Commercial Fishing. In northern California, evaluate the effects of OCS activities on commercial fisheries and institute measures to reduce conflicts.

C. Oil Spill Contingency Planning and Response Capabilities. Develop improved means of assessing risks of oil spills; revise requirements for OCS oil spill contingency response plans to improve their effectiveness and prepare special plans for protected lands; and, where feasible, require transportation of oil by pipeline.

D. Tanker Traffic. Institute a Coast Guard study of the feasibility of moving tanker routes away from sensitive areas.

E. Protected Lands and Species. Defer sensitive protected lands from development or take steps to minimize and mitigate impacts; and focus greater attention on protected species.

F. Water Quality. Study the long-term effects of OCS activities on water quality and institute special mitigation programs in sensitive areas.

G. Adverse Socioeconomic Effects. Have the MMS take greater note of local concerns that could lead to conflicts over land use and in other areas and play a larger mediative role in resolving conflicts between industry and local governments.

H. Restructuring of OCS Program. Direct the Secretary of the Interior to study restructuring of revenue-sharing and decision-making provisions of OCS Lands Act and OCS program.

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10. Paper	Options presented by the OCS Leasing and Development Task Force (18 pp.)	3/16/90	P-5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
File Location: Outer Continental Shelf (1990) [2]

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Date Closed:	12/10/2004	**OA/ID Number:**	29164-001
FOIA/SYS Case #:	1998-0004-F[1]	**Appeal Case #:**	
Re-review Case #:	2005-0426-S	**Appeal Disposition:**	
P-2/P-5 Review Case #:		**Disposition Date:**	
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March 16, 1990

I. ISSUE

A decision on the options presented by the Outer Continental Shelf (OCS) Leasing and Development Task Force is needed.

II. BACKGROUND

In your February 9, 1989 budget message to Congress, honoring a pledge made during the campaign, you imposed a moratorium on three controversial OCS lease sales scheduled for fiscal year 1990 -- Sale 116 in the Gulf of Mexico off the southwestern coast of Florida, Sale 95 off the coast of southern California, and Sale 91 off the coast of northern California -- pending a review of the environmental effects of the sales by a Cabinet-level task force. The California sales had been subject to Congressionally-imposed moratoria in 1987, 1988 and 1989 and the Florida sale became subject to a Congressionally-imposed moratorium last year. The Secretary of the Interior, the Secretary of Energy, the Director of the Office of Management and Budget, the Administrator of the Environmental Protection Agency and the Administrator of the National Oceanographic and Atmospheric Administration (NOAA) were named as members of the Task Force and charged with making recommendations on the future of the lease sales within one year.

In fulfilling its charge, the Task Force conducted briefings and public workshops in Florida and California, hearing from over 1,000 witnesses, met with Members of Congress from those two states and other parts of the country, and received over 11,000 written comments. It also commissioned and received a study from the National Academy of Sciences (NAS) addressing the adequacy of the scientific and technical data available on which decisions on the three lease sales could be made.

The Task Force delivered its report to the White House on January 5.

III. DISCUSSION

A. POLICY GOALS

The OCS leasing program is governed by the Outer Continental Shelf Lands Act and overseen by the Minerals Management Service (MMS) within the Interior Department. (A description of the program is found at Appendix A.) The program has been the focus of controversy in recent years over the environmental effects of offshore oil and

gas exploration and development. The controversy has resulted in yearly Congressional moratoria on certain lease sales and even on some pre-lease planning activities. The policy goal of the decisions on these three lease sales, which will inevitably affect the entire OCS program, must be to reconcile the need for adequate domestic energy supplies through robust exploration and development on the OCS and the need for long-term protection of sensitive environments and ecosystems. An additional goal must be to regain Executive branch control of the OCS program by addressing Congressional and local concerns and removing their stranglehold on the program.

B. RESOURCE POTENTIAL

The decisions with respect to these three lease sales must take into account their relationship to the total oil and gas resources of the U.S. The MMS has developed mean estimates for the undiscovered economically recoverable (using existing technology) oil and gas resources derivable from (1) the U.S. as a whole, including the OCS, (2) the entire OCS, (3) the Alaska National Wildlife Refuge (ANWR), (4) the existing leases in the three planning areas in which these sales are located and (5) the leases involved in the sales. Appendix B is a table setting forth the relative oil and gas resources available from all of these areas. As you can see, the three sales represent about 1.6 percent of all U.S. oil resources and about 0.4 percent of all U.S. gas resources, equivalent to about one-sixth of the resources available from ANWR.

It should be noted that the Office of Management and Budget has already eliminated any projected revenues from these three sales from its budget projections. The decisions on the sales therefore have no impact on, and should not be considered as an issue relevant to, the budget.

C. RELATIONSHIP OF STATE AND LOCAL GOVERNMENTS TO OCS PROGRAM

The relationship of state and local governments and their constituents to the OCS program is also a relevant issue. The federal government's perspective on the OCS program is premised on its role in the nation's overall energy strategy, with its national security and economic implications. In administering the OCS program the federal government also exercises its national stewardship functions to manage and protect scarce and valuable environmental resources on public lands.

State and local governments, on the other hand, represent more parochial interests of the people who will experience the direct impact of OCS development. Most of the financial benefit of OCS leasing and development accrues to the federal government (states receive 100 percent of revenues from OCS leases within the first three miles of shore, 27 percent of revenues from OCS leases three to twelve miles from shore, and nothing from leases further than twelve miles offshore). Further, the residents of the localities most directly affected by OCS activity may or may not benefit proportionately from the revenues received by the state if those revenues are spent elsewhere. Despite the opportunities granted for participation in the OCS process, persons affected by federal OCS decisions often feel that their interests have not been represented; this likely accounts for the contentious nature of many recent OCS decisions. Although not a subject directly addressed by the Task Force, the concept of restructuring the OCS program to give states a greater share of the revenues arose during your meeting with the Task Force. Many members of the Administration feel, however, that this type of local revenue-sharing will not be enough to engender support by these coastal states and localities for the OCS program.

D. NATIONAL ACADEMY OF SCIENCES (NAS) STUDY

The Task Force asked the NAS to study the adequacy of the scientific and technical data available on which decisions for the three lease sales could be made. The NAS report concluded that generally there are not adequate oceanographic, ecological and socioeconomic data on which to base a lease/no lease decision, but that the adequacy varies by lease sale. The NAS conclusions are as follows:

Sale	Oceanographic	Ecological	Socioeconomic
Florida	marginal	inadequate	inadequate
N. Cal.	adequate	adequate	inadequate
S. Cal.	inadequate	adequate	doubtful

The NAS recommended that no decision be made on proceeding with the lease sales until further studies are conducted, although it did not specifically identify those studies which must be conducted in order to have a complete data base. There is no clear consensus as to the length of time needed to conduct adequate studies. Staff of the Task Force estimates that it could take as long as five to six years in Florida and as little as two to three years in northern California.

Questions regarding the value of the NAS study and the weight it should be accorded have been raised. Some allege that the strictest academic "peer review" standard was used to assess the available data, which would be far greater than the standard generally used in making governmental decisions. Such a standard could be seen as unreasonable in a real world context, imposing a burden that could rarely if ever be sustained, particularly when weighed against the costs necessary to meet such a standard and the benefits of the OCS program.

The NAS was also requested to study the adequacy of resource estimate methodology used by the MMS. The NAS report concluded that the MMS methodology for developing resource estimates is adequate and sound.

E. LOCAL CONSIDERATIONS

As noted in Section II above, in preparing the report the Task Force conducted local meetings in Florida and California. These were designed to give the Task Force the opportunity to discuss the proposed sales with state and local officials, scientists, business leaders and other interested groups and with members of the general public. Demonstrations in opposition to leasing were held at each of the nine public workshops. In addition, the vast majority of persons who spoke at the meetings were adamant in their opposition to new leasing. Local opposition to leasing does not appear to have lessened, and in fact may have strengthened. An August California Poll found that 75 percent of those surveyed opposed more drilling off the coast, the highest level of opposition yet expressed in a statewide poll.

State and local officials are also generally unanimously opposed to the sales. In Florida, the entire Congressional delegation, Governor Martinez and all local elected officials oppose new leasing, and in fact also oppose exploration on existing leases off southeastern Florida. Both California Senators oppose new leasing, as do virtually all local elected officials. The California Congressional delegation is split on the issue, although all affected coastal representatives oppose new leasing. Governor Deukmajian is generally supportive of further offshore development.

F. ANALYSIS OF ENVIRONMENTAL CONCERNS

In analyzing the three lease sales, the Task Force identified and addressed six specific environmental concerns: (1) air quality; (2) the risks of oil spills; (3) the impact of OCS activity on commercial fishing; (4)

the effects of OCS activity on protected lands and species; (5) water quality; and (6) socioeconomic impacts. The general findings of the Task Force with respect to these six areas are found at Appendix C.

IV. RECOMMENDATIONS

A. Decisions on Lease Sales

The Task Force presented eleven separate options for the lease sales, three for the Florida sale and four for each California sale. White House staff and the individual departments represented on the Task Force have also identified other options, including those at the extreme ends of the spectrum. All of the options for the lease sales are set forth below (Task Force options first, followed by options developed by staff) and accompanied by supporting discussion of their pros and cons. It should be noted that the members of the Task Force agreed only to include within their final report options that all members could agree would be acceptable, so some of the new options that have been developed may have been considered by the Task Force and may be supported by individual members.

Task Force Options for Sales

Option A

Sale 116 (Florida)

Cancel the sale and defer subsequent decision until the additional oceanographic, ecological and socioeconomic data identified by the NAS have been collected.

As for existing leases, proceed with exploration and development decisions under normal procedures.

Sales 95 (Southern California) and 91 (Northern California)

A-1 -- Proceed with preparations for the lease sales but defer final decisions until the additional oceanographic (southern California) and socioeconomic (southern and northern California) data identified by the NAS have been collected.

A-2 -- Cancel the sales and defer subsequent decisions until the additional oceanographic (southern California) and socioeconomic data (southern and northern California) identified by the NAS have been collected.

Discussion -- Under these options, leasing in both Florida and California could occur as part of the 1992-1997 five-year plan, which may be proposed by Secretary Lujan as early as this month. These are pro-petroleum industry options that signal the Administration's continued commitment to OCS development and affirm to the greatest extent the Interior Secretary's discretion over OCS decisions, consistent with current law. They recognize that the OCS is a national resource the development of which will not be unduly subject to local citizens' views. They will likely meet with strong criticism, however, particularly on the ground that a decision to cancel the sales of the leases, followed almost immediately by the inclusion of the same leases in the next five-year program, smacks of hypocrisy. This criticism can be partially rebutted by responding to the environmental concerns identified by the NAS and imposing additional environmental restrictions on new leases.

Allowing exploration and development to proceed on the Florida leases using normal procedures avoids any interference with current lessees and any "takings" problems that could arise.

Option B

Sale 116 (Florida)

Cancel the sale and exclude the area from consideration for the 1992-1997 five-year program.

As for existing leases, proceed with exploration and development decisions under normal procedures but begin discussions with the state and existing lessees regarding the state's purchase of the leases.

Sales 95 (Southern California) and 91 (Northern California)

Defer decisions on the sales until the 1992-1997 five-year program, conducting additional oceanographic (southern California) and socioeconomic (southern and northern California) studies; if the sales go forward, offer tracts only in limited geographic areas (the Santa Maria and San Diego Outer Basins off southern California and the Eel River Basin off northern California).

Discussion -- These are the middle-ground, compromise options. Leasing could occur off California after 1992 (which, given current Congressional moratoria and the time required to complete the studies arising from the NAS report, may be as soon as leasing could occur in any

event), but would be restricted to areas where development would be less intrusive and to smaller areas so that environmentally-sensitive features such as the Channel Islands National Park and Marine Sanctuary could be protected. Leasing off Florida would be delayed for at least seven years until 1997. The petroleum industry should find this an acceptable option, as it does not preclude development. There is less certainty that the environmental community will accept it as a reasonable compromise. The delays should, however, allow the Interior Department to complete the studies identified by the NAS, and this can be used to rebut environmental concerns.

Beginning discussions with Florida regarding its purchase of the existing leases imposes some burden on it to protect its tourist industry and natural resources, which is reasonable given that the state has also allowed development in this area. This could open the door to moves by the environmental community to cancel the leases, however.

Option C

Sale 116 (Florida)

Cancel the sale and exclude the area from consideration for both the 1992-1997 and 1997-2002 five-year programs.

As for existing leases, begin discussions with the state and existing lessees regarding the state's purchase of the leases and have Interior initiate procedures that could lead to cancellation of the existing leases (which would suspend further exploration or development).

Sales 95 (Southern California) and 91 (Northern California)

Cancel the sales (and the next scheduled sales in both areas) and exclude the areas from consideration for the 1992-1997 five-year program.

Discussion -- These are the most restrictive, pro-environmental options, precluding lease sales off Florida until at least 2002 and off California until at least 1997. They do not constitute the permanent ban on leasing in the three areas which some environmentalists seek, however. These options could alleviate pressures in Congress for the creation of ocean sanctuaries or permanent bans on leasing.

The move to cancel the existing leases off Florida would be particularly welcomed by environmentalists and would respond to one of the criticisms of the NAS, namely that leasing always leads to future development without any subsequent analysis of environmental impacts. There are questions about the ability of the Interior Department to cancel the leases under current law, however, which requires a finding of existing environmental harm.

These options are also the ones on which the FY 1991 budget is based, [including provision in the budget for repurchase of the existing leases off Florida, valued at the lesser of the amount of lease bonuses paid (approximately $107.5 million) or the lease bonus amount plus investment to date], so no adverse impact would result if this course were chosen.

Options Not Identified by Task Force

A. Proceed with lease sales under existing OCS Lands Act process. Pre-lease activities would be reactivated at the point at which they were stopped by the Presidential moratorium.

Discussion -- This is one of the two extreme options. It would essentially reject both the NAS study and the report of the Task Force and proceed with "business as usual." It could be perceived as a complete sell-out to the petroleum industry and would likely be severely criticized by the environmental community and probably by the general public, particularly in the two affected states.

B. Cancel the sales, excluding them at this time from the 1992-1997 five-year program, and directing that future decisions on lease sales in these areas will be made only after the data identified as deficient by the NAS have been identified and collected; if the studies subsequently show that leasing can be done in an environmentally acceptable manner, add the tracts to the 1992-1997 five-year program.

Discussion -- This is a new option proposed by the Energy Department. It allows decisive action on the sales and the OCS program as a whole; it also acknowledges that a more objective and scientific basis is needed for decision-making. It avoids an arbitrary decision to defer leasing or delete tracts from consideration for leasing by holding the door open for later inclusion of the leases in the 1992-1997 five-year program; as such, it could thwart the efforts of those who would use a cancellation decision as the precedent

for seeking further arbitrary bans on OCS activities elsewhere.

C. Delay any decision on the sales until the NES is finalized and submitted in December; concurrently with the announcement of that course of action, make the OCS Task Force report public.

Discussion -- This option alleviates the difficulties posed by making these decisions in the vacuum created without knowing how they and the future of the OCS program relate to the NES. It also sends a signal that the President intends to balance environmental concerns with energy security and economic requirements. The delay would likely be greeted favorably by the environmental community; the petroleum industry may be disconcerted by the perceived signal that further development is being significantly slowed, although the strong link to the NES should offset industry uneasiness. Delaying the sales also adversely affects the time before which these resources can be tapped (assuming that some development goes forward). The release of the report will remove some of the mystery surrounding the decisions, allow the public to engage in the dialogue and focus attention on the necessity for further scientific (by collection of the data identified by the NAS) and economic (by the NES) analysis of the decisions and the overall domestic energy situation.

D. Cancel the sales and impose a permanent ban on lease sales in the three areas.

Discussion -- This option recognizes the political reality that no drilling is likely to occur on these leases in the foreseeable future, given the clear disposition of the Congress on this matter. OMB has already eliminated any projections of revenue from these sales from its budget receipt projections. Implementing this option could remove the sizeable California and Florida Congressional delegations from the nationwide coalition that threatens to jeopardize the entire OCS program or at least block some future activities. It could, however, also be used as "evidence" by those seeking permanent bans on all offshore drilling activities, even on existing leases, that no OCS activities are environmentally prudent.

B. Decisions on Other Actions Recommended to Address Environmental Concerns in Areas of Sales and Deficiencies in OCS Program.

The Task Force also developed recommended options for addressing various environmental concerns that arise in the three sale areas (and to a lesser extent throughout the entire OCS). These options relate to (1) air quality standards offshore California, (2) conflicts with commercial fishing, particularly in northern California, (3) oil spill contingency planning and response capabilities, (4) tanker traffic, (5) safeguards for protected lands and species, (6) protection of water quality, and (7) steps to alleviate adverse socioeconomic effects of OCS activities. In addition, your staff developed an option for study of state and local participation in the OCS program. All of these options are set forth in Appendix D.

APPENDIX A

DESCRIPTION OF OCS PROGRAM

The OCS leasing program is governed by the Outer Continental Shelf Lands Act and overseen by the Minerals Management Service (MMS) within the Interior Department. The sale and development of leases under the Act is accomplished in five-year programs, which begin with thorough analyses to assess the potential reserves derivable from leases and any problems that would accompany their development. That process starts more than two years before the beginning date of a five-year program. The MMS undertakes twelve separate steps as part of this evaluative process, preparing two drafts of the program and an environmental impact statement (EIS). The public is given opportunity to comment at three points in the process and Congress is also formally notified before a program is finally approved.

Following final approval of a five-year program, typically another 24 to 26 months are required before any lease sale can take place. During this period another EIS is prepared and additional opportunities for public comment are provided, along with an opportunity for comment by the governor of the state offshore which the sale is to occur. Once a sale occurs, exploration of the leases can take anywhere from 1 to 10 years and development and production can occur over several decades.

These three lease sales are all part of the 1987-1992 five-year program. The sales were at different stages when the moratorium was imposed, and could have been held within five to sixteen months. The initial steps for the 1992-1997 five-year program are tentatively scheduled to commence this month with Secretary Lujan's release of a proposal for comment. The program development process is expected to take until the summer of 1992, with the first sale tentatively scheduled for September 1992. That schedule is not mandated by statute or administrative rule or regulation, however, and could be delayed. A delay of up to six months would not significantly affect the timing of the program and the early sales, as only one to two months would be lost.

APPENDIX B

RESOURCE POTENTIAL

	Oil (billion barrels)	% of Total	Gas trillion cubic ft)	% of Total
Total U.S. Resources	34.80		263.00	
Entire OCS	8.20	23.6	74.00	28.1
ANWR	3.20	9.2	6.90(1)	2.6
Existing Fla. Leases	.14	.4	.30	.1
Existing S. Cal. Leases(2)	.34	1.0	.80	.3
Sale 116	.11	.3	---	---
Sale 95	.23	.7	.46	.2
Sale 91	.20	.6	.41	.2

(1) Although ANWR is estimated to contain 6.9 trillion cubic feet of gas, the production of natural gas from ANWR is considered by some to be uneconomical.

(2) None of the area off northern California has yet been leased.

APPENDIX C

FINDINGS ON ENVIRONMENTAL CONCERNS

Air Quality. Offshore oil and gas drilling activities produce the same types of emissions as onshore activities, with the notable addition of emissions from support vessels and helicopters. Meteorological conditions may also exist which consistently drive offshore emissions toward land. Despite this, the Task Force found that emissions controls currently imposed by the MMS on offshore drilling are less stringent than those imposed on similar activities onshore. The effects of offshore emissions are of greatest concern in southern California due to the generally already poor air quality; there are more limited concerns with respect to northern California also.

Oil Spill Risks. The Task Force found that the risks posed to coastal and marine resources by oil spills are significant and that the environmental impact of a major OCS spill would be severe. It concluded, however, that the increased chances of a major oil spill caused by OCS drilling activities in the three areas are small (in the case of Florida and southern California, only a 1 percent greater risk, and in the case of northern California an 8 percent greater risk) compared to the risk of a spill caused by existing activity, such as non-OCS tanker and barge traffic. The Task Force found that coastal and marine resources warrant greater protection from possible oil spills, whatever their source, than is currently provided.

Commercial Fishing. Commercial fishing is a vital economic activity in all three areas, especially off southern and northern California. OCS activities pose a variety of conflicts between the petroleum and fishing industries, including competition for available space at sea and for port space onshore. There are also concerns about the loss or destruction of habitat due to the effects of OCS activities and the significant risks posed by oil spills. The Task Force concluded that many of these conflicts can be resolved or largely mitigated through the recommended use of joint committees comprised of representatives of the petroleum and fishing industries in areas where OCS activities are planned.

Protected Lands. Each of these three areas has unique protected lands, most notably the mangrove-coral reef system in the Everglades and Florida Keys. The Task Force found that these sensitive and highly valuable areas now receive only the same level of protection as that in ordinary areas but that they warrant additional consideration and heightened management.

Protected Species. Each of these three areas is inhabited by species that have been placed under the protection of federal statutes, most notably the manatees off Florida. The Task Force concluded that existing protections are sufficient to protect these species so that a delay in leasing cannot be justified on this basis alone.

Water Quality. OCS activities can have various impacts on the water quality near rigs and platforms. Such activity is currently regulated by EPA under the Clean Water Act through the National Pollutant Discharge Elimination System. The Task Force found that this regulation is adequate in the three areas. It noted, however (as did the NAS), that information on the long-term effects of chronic discharges is lacking.

Socioeconomic Impacts. OCS activities, though offshore, have significant socioeconomic impacts onshore. The Task Force found that these include the possibility of increased conflicts over land use and greater demands on infrastructure that could force changes in the character of an area. Tourism and recreation can also be adversely affected, although the Task Force found that this does not appear to be a sufficient basis for delaying the lease sales. The Task Force concluded that in these three areas such conflicts can be substantially reduced through better consultative relationships among the petroleum industry, government (especially state and local governments) and other affected parties in planning and coordinating the onshore activities of OCS lessees.

APPENDIX D

OPTIONS FOR OTHER ACTIONS TO ADDRESS ENVIRONMENTAL CONCERNS AND DEFICIENCY IN OCS PROGRAM

A. Air Quality. Establish air quality controls for the OCS areas offshore California that are substantially equivalent to those applied onshore.

Discussion -- Although the real impact of any emissions from offshore drilling or production platforms and the vessels and helicopters that serve them may be negligible, it is perceived as a substantial problem. The perception is exacerbated by the fact that air pollution is the single most dramatic environmental problem in southern California and that the standards for offshore activities are not subject to EPA control but to MMS oversight and have not always been consistent. The MMS has efforts underway to develop a new proposed rulemaking to achieve this objective.

B. Commercial Fishing. In Northern California, reevaluate the effects of OCS activities on the commercial fishing industry and institute measures to reduce conflicts between the petroleum and fishing industries.

Discussion -- The potential conflicts posed to the commercial fishing industry in northern California were repeatedly cited. This is a particular problem in that region because of the heavy reliance of local economies on fishing, the limited existing infrastructure for which the commercial fishing and petroleum industries would compete, and the relatively small population base which could be severely impacted by employment dislocations resulting from changes in commercial activity.

C. Oil Spill Contingency Planning and Response Capabilities. Steps should be taken to protect coastal and marine resources more adequately through the following:

1. Develop improved means of assessing the risks of oil spills;

2. Revise requirements for OCS oil spill contingency response plans to improve effectiveness (particularly for the Everglades and Keys ecosystems), including requiring more analysis of response effectiveness as part of the pre-lease evaluative process and setting mandatory response times and minimum standards for equipment and technology to respond to spills;

3. Prepare special oil spill contingency response plans for protected lands, ensuring full coordination among the MMS, the Coast Guard, the petroleum industry, and state and local governments;

4. Revise regional guidelines for oil spill responses and increase the frequency of oil spill response drills, involving both government and industry; and

5. Where feasible and environmentally preferable, require that oil produced on the OCS be transported by pipeline rather than ship.

Discussion -- The unique aspects of the Everglades and the Florida Keys, including the only tropical coral reef in the continental U.S., justify revisions in planning and response capabilities for that area. Additional attention should also be given to northern California due to its extremely narrow continental shelf and normal high-sea conditions, which would make oil spills difficult to contain with currently available technology and likely to reach environmentally-sensitive areas to the south, such as Redwoods National Park or Point Reyes.

D. Tanker Traffic. Direct Coast Guard to study feasibility of moving tanker routes away from sensitive areas.

Discussion -- The recent California oil spill shows the need to study tanker routes to see if travel further offshore and away from sensitive areas is feasible.

E. Protected Lands and Species. Defer particularly sensitive protected lands from development or establish requirements to ensure the maximum practicable protection and mitigation of impacts. In addition, provide greater management attention to avoiding conflicts between OCS activities and protected species.

Discussion -- Given that certain lands have already been considered so unique as to warrant protection by the federal government, consideration of setting aside those lands from development is not a radical additional step. At the very least, special requirements to preserve those lands or mitigate any possible impacts from OCS activities is consistent with the assessment of their protected character. Similarly, preserving rare or endangered species through special attention from the managers of the OCS program appears reasonable and not unduly burdensome.

F. Water Quality. The MMS should initiate research into the long-term effects of OCS activity on the marine environment and water quality, particularly such practices as the chronic discharge of drilling fluids.

In sensitive environments, special mitigation programs to reduce potential adverse effects should be considered.

Discussion -- Given the scarcity of data on the long-term effects of OCS activities, further study is justified. Because the potential effects of such practices as chronic discharges of drilling fluids are currently unknown, special protection of those marine environments that are identifiable as sensitive through mitigation measures is reasonable until better data become available.

G. Adverse Socioeconomic Effects. The MMS should note local concerns and ordinances relating to the siting of onshore facilities stemming from OCS activities in stipulating the conditions for lease development, such as considering a requirement for the consolidation of onshore facilities. In addition, the MMS and the National Oceanic and Atmospheric Administration should play a greater mediative role between industry and local governments to mitigate the adverse effects of this increased onshore development.

Discussion -- The significant impact of OCS activities on onshore development and the economic and social lives of local residents should not be underestimated. This is exacerbated by the general feeling of local residents that they have little voice in the decision-making process. Greater sensitivity to local concerns and existing priorities for development and its control could be accomplished at very little cost to the federal government through increased attention to such matters by the MMS. Such actions as requiring consolidated onshore facilities could have positive effects on land use conflicts and infrastructure demands. At the very least, federal agencies should play the role of "broker" to mediate between the competing interests of industry and local communities.

H. Restructuring of OCS Program. Direct the Secretary of the Interior to begin a study that would lead to proposals for amendments to the OCS Lands Act in order to restructure the revenue-sharing and decision-making provisions of the legislation so that state and local governments will have a greater voice in the OCS program.

Discussion -- The lack of financial benefits to the people most affected by OCS activities and the limited participatory role in the actual decision-making process for OCS development have been noted as at least partial sources of the controversies currently surrounding these sales and the entire program. Tasking Secretary Lujan to study these issues with a goal of amending the underlying

legislation could have a positive impact on these sales, lessening some of the furor. It would more conceivably be a method to address concerns expressed by Congressmen and others from areas in which OCS development is favorably viewed on the whole but where additional incentives may be needed to avoid repetitions of current problems. It also is the logical and fair approach to balancing more equitably federal and local interests. The nature and extent of authority given to state and local governments will need to be carefully considered, however, with the goal being to maintain the OCS program as a federal authority.

April 30, 1990

SUMMARY OF INTERIOR DEPARTMENT OCS PROPOSAL

The Interior Department has developed a comprehensive proposal for the President's upcoming decisions on the Outer Continental Shelf (OCS) program. The proposal encompasses not only recommendations regarding the three delayed lease sales, but also recommendations on other pending sales, an Administration initiative to identify and protect unique marine environments, general principles to govern the OCS program in the future, a review of the statutory and regulatory foundation of the OCS program, and additional studies to be conducted by the Interior Department.

California and Florida Lease Sales

California -- All sales currently scheduled offshore California would be cancelled and 99 percent of the tracts off southern and northern California would be excluded from consideration for the 1992-1997 five-year program. Only one limited sale of tracts having high resource potential, where drilling can be done in an environmentally sound manner, would be pursued in the next program. No sales would occur off central California until after 1997.

Florida -- Sale 116 off southwestern Florida would be cancelled and the area excluded from future sales until 2000 or later. The Interior Secretary would work with parties that currently own leases off Florida to encourage them to agree voluntarily not to pursue exploratory drilling for at least three years.

Other Pending Sales

Monterey Bay Marine Sanctuary -- The marine sanctuary proposed by the National Oceanic and Atmospheric Administration, which encompasses much of the area to be covered by proposed Sale 119, would be approved, including prohibitions on oil and gas drilling within the sanctuary.

Washington and Oregon -- The recommendations of the Pacific Northwest Task Force to defer a proposed lease sale off those two states until additional environmental studies can be conducted would be accepted. These studies are anticipated to take seven to eight years, effectively precluding any sale until the 1997-2002 five-year program at the earliest.

North Atlantic -- Sale 96 off the North Atlantic coast would be cancelled and additional studies, including studies designed to determine the area's resource potential, would be conducted.

Ocean Preserves Register

Recognizing the unique nature of certain marine resources, Interior would institute an Ocean Preserves Register delineating offshore areas that would not be leased in the 1992-1997 five-year program. Five areas off California would initially be designated for this register: the areas offshore Crescent City and Mendocino in northern California, the Big Sur coast offshore central California, and the areas offshore La Jolla and Begg Rock Island in southern California. Three areas off the southwestern and southeastern coasts of Florida would be so designated: the Florida Bay and coral reefs, Cape Sable and the Dry Tortugas. The boundaries of these areas would be determined within one year by the Interior Secretary; the preserves would be designated for the next five-year program only, although as a practical matter it would be extremely difficult to delete an area from the register once it has been designated. The Interior Secretary would confer with coastal governors regarding the inclusion of additional areas in the register for the 1997-2002 five-year program.

Principles for OCS Program

The President's decision on the California and Florida sales would be placed in the context of guiding principles for the OCS program as it goes forward. Those principles would acknowledge the importance of domestic energy production for the nation's economy and national security; require that future OCS decisions be made on the basis of the best possible information on resource potential and environmental consequences; and urge that due consideration of all parties' views be given in carefully making future OCS decisions.

Restructuring of OCS Program

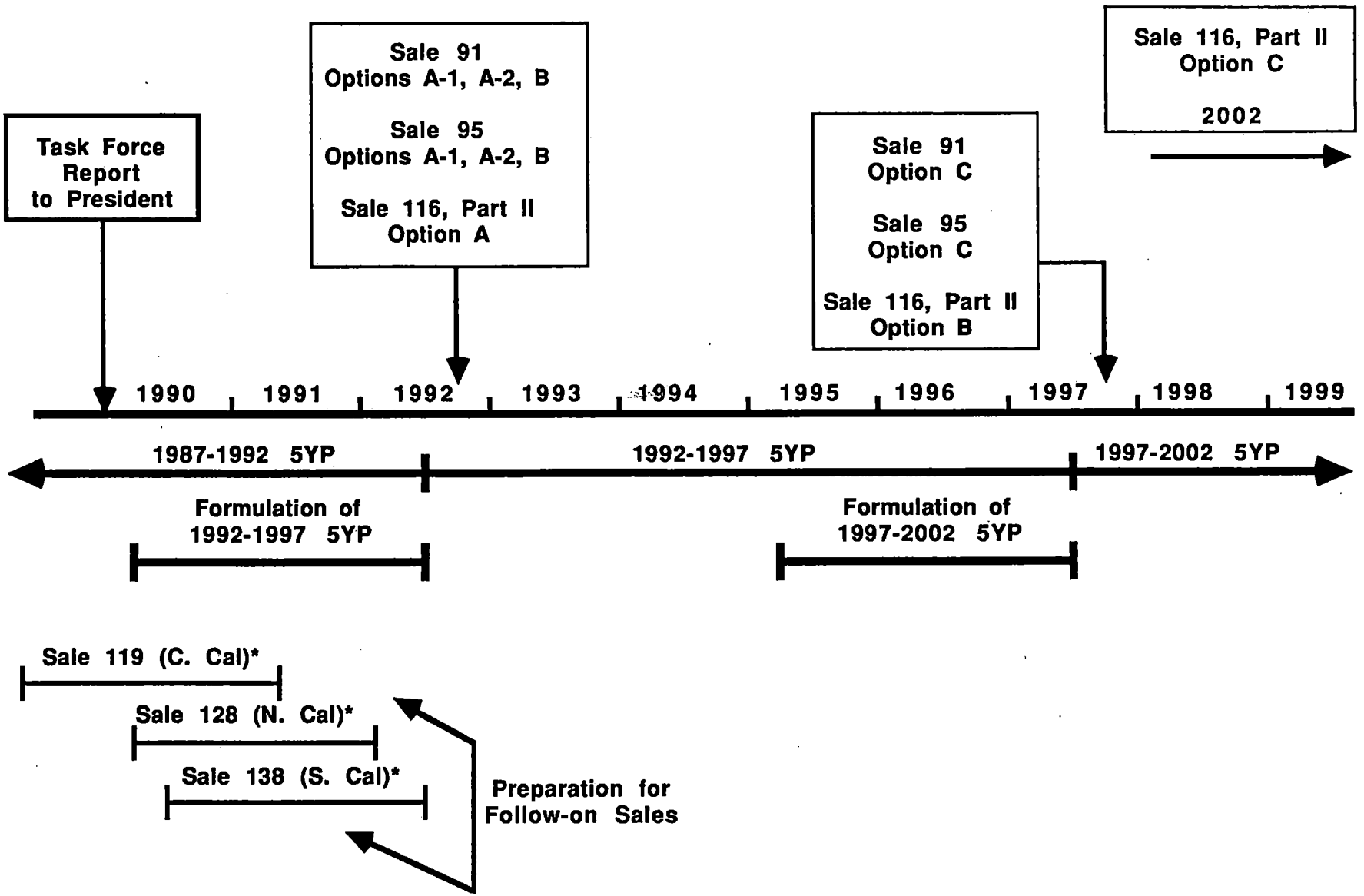
The Interior Secretary would be charged with reviewing the Outer Continental Shelf Lands Act and its implementing regulations to suggest improvements in the program. One area of specific study would be an initiative to share directly with impacted coastal areas the financial benefits of new OCS development.

Additional Studies

To ensure that the best possible information is available for making future OCS decisions, an additional $250 to $300 million would be requested to fund a five-year program of studies on the environmental consequences of offshore drilling, resource potential of the OCS, oil spill clean-up technology and oil and gas production technology.

OCS TASK FORCE

Timing of Sales Options and 5-Year Program Development



* Sale Date According to Pre-Congressional Moratoria Schedule

Andy Card

THE WHITE HOUSE

WASHINGTON

April 30, 1990

MEMORANDUM FOR GOVERNOR SUNUNU

FROM: DAVID BATES

SUBJECT: Meeting on Outer Continental Shelf Decisions

A meeting will be held Tuesday morning, May 1, at 11:00 a.m. in your office to discuss the decisions that must be made by the President with respect to the report of his Outer Continental Shelf Task Force and a new proposal that has been forwarded to the President by Secretary Lujan. A paper outlining the options developed by the Task Force and other options developed by White House staff and the Department of Energy, which includes a four-page executive summary, is attached at Tab A. A summary of the Interior Department proposal is attached at Tab B.

SUMMARY

The final report of the Outer Continental Shelf (OCS) Leasing and Development Task Force was delivered to the White House on January 5. The report is the work of the Cabinet-level Task Force, comprised of Secretaries Lujan (who served as chairman) and Watkins, Administrators Reilly and Knauss and Director Darman, announced by you in your budget message to Congress in February 1989. In that budget message you charged the Task Force to study and resolve environmental concerns regarding the potential adverse effects of three OCS lease sales scheduled for FY 1990 that were delayed: Sale 116 off the southwestern coast of Florida; Sale 95 off southern California; and Sale 91 off northern California.

In developing options for your consideration, the Task Force examined the issues of air quality, the risks of oil spills, changes in onshore infrastructure and land use due to these lease sales, and the impacts of these sales on protected lands and species and other wildlife, commercial fishing, water quality, and tourism and recreation. The Task Force commissioned an analysis of the adequacy of scientific and technical information available for making leasing decisions in the three areas from the National Academy of Sciences (NAS). The NAS report concluded that there was a lack of some oceanographic, ecological or socioeconomic data for each area, although the study is subject to some criticism for calling for an unreasonable level of data.

In its eight-month process the Task Force solicited extensive input from the public and members of Congress. The public and most elected officials in the two states are generally opposed to the sales. The Task Force also uncovered wide dissatisfaction with the OCS program, as local residents who are most affected by OCS activities often do not receive commensurate financial benefits and feel they have little opportunity for participation in decision-making.

The Task Force presented specific options for decisions on each sale (four options for the Florida sale and three for each California sale). The Task Force made no recommendations among the various options. Additional options have been developed by White House staff and members of the Task Force independently. The Task Force also presented, and staff has developed, general options to be addressed in connection with these three sales and the overall OCS program.

Decisions are also currently pending on Sale 119 in the San Francisco-Monterey area of central California and the creation of a national marine sanctuary in Monterey Bay, which as proposed by the National Oceanic and Atmospheric Administration (NOAA) would cover the most valuable part of the Sale 119 area; NOAA's

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11a. Paper	By OCS Leasing and Development Task Force Options Section redacted (1 pp.)	4/30/90	~~P-5~~	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
File Location: Outer Continental Shelf (1990) [2]

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FOIA/SYS Case #:	1998-0004-F[1]	**Appeal Case #:**	
Re-review Case #:	2005-0426-S	**Appeal Disposition:**	
P-2/P-5 Review Case #:		**Disposition Date:**	
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proposal would also ban all oil and gas activities within the sanctuary. Given the proximity of these areas to the two delayed California sales and the commonality of the issues, it is appropriate to make these decisions at the same time as decisions on the lease sales are made. Four options have been developed by White House staff calling for combined actions on Sale 119 and the Monterey Bay sanctuary.

Set forth below are summaries of the options developed by the Task Force and the White House staff. A full presentation of those options, and supporting discussion of the respective pros and cons, is found in the accompanying decision memorandum. The decision memorandum also provides more extensive information regarding the Task Force deliberations.

Task Force Options for Sales

Option A

Florida -- Cancel sale and defer leasing decision until additional oceanographic, ecological and socioeconomic data identified by NAS have been collected.

As for existing leases in same area, proceed with exploration and development decisions under normal procedures.

California

A-1 -- Proceed with preparations for lease sales but defer leasing decisions until the additional oceanographic (southern California) and socioeconomic (southern and northern California) data identified by NAS have been collected.

A-2 -- Cancel sales and defer subsequent leasing decisions until additional oceanographic (southern California) and socioeconomic data (southern and northern California) identified by NAS have been collected.

Option B

Florida -- Cancel sale and exclude area from consideration for the 1992-1997 OCS five-year leasing program.

As for existing leases, begin discussions with Florida and existing lessees to facilitate state purchase of leases.

California -- Defer leasing decisions on both sales until 1992-1997 five-year program and, if sales go forward, offer tracts only in limited geographic areas (Santa Maria and Outer San Diego Basins off southern California and Eel River Basin off northern California).

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11b. Paper	By OCS Leasing and Development Task Force Options Section redacted (2 pp.)	4/30/90	P-5	

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Option C

Florida -- Cancel sale and exclude area from consideration for both 1992-1997 and 1997-2002 five-year programs.

As for existing leases, begin discussions with Florida regarding its purchase of leases and initiate procedures that could lead to cancellation of existing leases under OCS Lands Act.

California -- Cancel sales and exclude areas from consideration for 1992-1997 five-year program.

Options for Sales Not Identified by Task Force

A. Proceed with sales in Florida and California under existing OCS Lands Act process.

B. Cancel sales in Florida and California and exclude from consideration for 1992-1997 program at this time; if additional studies to obtain data identified by NAS show leasing possible in environmentally sensitive manner, add tracts to 1992-1997 program.

C. Delay decisions until final National Energy Strategy submitted in December.

D. Cancel sales and impose permanent ban on lease sales in three areas.

Other Actions Recommended by Task Force (to Address Environmental Concerns in Areas of Sales)

A. In southern and northern California, establish air quality controls for OCS activities that are substantially equivalent to those applied onshore. The Minerals Management Service already has efforts underway to develop a new proposed rulemaking to achieve this objective.

B. In northern California, evaluate the effects of OCS activities on commercial fisheries and institute measures to reduce conflicts.

C. In both Florida and California, revise requirements for OCS oil spill contingency plans to improve their effectiveness and develop improved means of assessing the risk of damage from oil spills

D. Institute a Coast Guard study of the feasibility of moving tanker routes away from sensitive areas.

E. Direct the Secretary of the Interior to study restructuring of revenue-sharing and decision-making provisions of OCS Lands Act and OCS program.

Options for Sale 119 and Monterey Bay Marine Sanctuary

A. Cancel Sale 119 and adopt NOAA proposal for sanctuary, including prohibition on oil and gas activities.

B. Adopt NOAA proposal for sanctuary and proceed with Sale 119 only in areas outside sanctuary.

C. Limit sanctuary to smaller size, prohibiting oil and gas activities within it, and proceed with Sale 119.

D. Adopt NOAA proposal for size of sanctuary, but allow oil and gas activities within it subject to regulation, and proceed with Sale 119.

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12. Paper	Options presented by the OCS Leasing and Development Task Force (13 pp.)	4/30/90	P-5	

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April 30, 1990

I. ISSUE

A decision on the options presented by the Outer Continental Shelf (OCS) Leasing and Development Task Force is needed.

II. BACKGROUND

In your February 9, 1989 budget message to Congress, honoring a pledge made during the campaign, you imposed a moratorium on three controversial OCS lease sales scheduled for fiscal year 1990 -- Sale 116 in the Gulf of Mexico off the southwestern coast of Florida, Sale 95 off the coast of southern California, and Sale 91 off the coast of northern California -- pending a review of the environmental effects of the sales by a Cabinet-level task force. The California sales had been subject to Congressionally-imposed moratoria in 1987, 1988 and 1989 and the Florida sale became subject to a Congressionally-imposed moratorium last year. The Secretary of the Interior, the Secretary of Energy, the Director of the Office of Management and Budget, the Administrator of the Environmental Protection Agency and the Administrator of the National Oceanographic and Atmospheric Administration (NOAA) were named as members of the Task Force and charged with making recommendations on the future of the lease sales within one year.

In fulfilling its charge, the Task Force conducted briefings and public workshops in Florida and California, hearing from over 1,000 witnesses, met with Members of Congress from those two states and other parts of the country, and received over 11,000 written comments. It also commissioned and received a study from the National Academy of Sciences (NAS) addressing the adequacy of the scientific and technical data available on which decisions on the three lease sales could be made.

The Task Force delivered its report to the White House on January 5.

III. DISCUSSION

A. POLICY GOALS

The OCS leasing program is governed by the Outer Continental Shelf Lands Act and overseen by the Minerals Management Service (MMS) within the Interior Department. (A description of the program is found at Appendix A.) The program has been the focus of controversy in recent years over the environmental effects of offshore oil and

gas exploration and development. The controversy has resulted in yearly Congressional moratoria on certain lease sales, pre-lease planning activities, and even some post-lease exploration. The policy goal of the decisions on these three lease sales, which will inevitably affect the entire OCS program, must be to reconcile the need for adequate domestic energy supplies through robust exploration and development on the OCS and the need for long-term protection of sensitive environments and ecosystems. An additional goal must be to regain Executive branch control of the OCS program by addressing Congressional and local concerns and removing their stranglehold on the program.

B. RESOURCE POTENTIAL

The decisions with respect to these three lease sales must take into account their relationship to the total oil and gas resources of the U.S. The MMS has developed mean estimates for the undiscovered economically recoverable (using existing technology) oil and gas resources derivable from (1) the U.S. as a whole, including the OCS, (2) the entire OCS, (3) the Arctic National Wildlife Refuge in Alaska (ANWR), (4) the existing leases in the three planning areas in which these sales are located and (5) the leases involved in the sales. Appendix B is a table setting forth the relative oil and gas resources available from all of these areas. As you can see, the three sales represent about 1.6 percent of all U.S. oil resources and about 0.4 percent of all U.S. gas resources, equivalent to about one-sixth of the resources available from ANWR.

It should be noted that the Office of Management and Budget (OMB) has already eliminated any projected revenues from these three sales from its budget projections. The decisions on the sales therefore have no immediate impact on, and should not be considered as an issue relevant to, the budget.

C. RELATIONSHIP OF STATE AND LOCAL GOVERNMENTS TO OCS PROGRAM

The relationship of state and local governments and their constituents to the OCS program is also a relevant issue. The federal government's perspective on the OCS program is premised on its role in the nation's overall energy strategy, with its national security and economic implications. In administering the OCS program the federal government also exercises its national stewardship functions to manage and protect scarce and valuable environmental resources on public lands.

State and local governments, on the other hand, represent more parochial interests of the people who will experience the direct impact of OCS development. Most of the financial benefit of OCS leasing and development accrues to the federal government (states receive 100 percent of revenues from OCS leases within the first three miles of shore, 27 percent of revenues from OCS leases three to twelve miles from shore, and nothing from leases further than twelve miles offshore). Further, the residents of the localities most directly affected by OCS activity may or may not benefit proportionately from the revenues received by the state if those revenues are spent elsewhere. Despite the opportunities granted for participation in the OCS process, persons affected by federal OCS decisions often feel that their interests have not been represented; this likely accounts for the contentious nature of many recent OCS decisions. Although not a subject directly addressed by the Task Force, the concept of restructuring the OCS program to give states a greater share of the revenues arose during your January meeting with the members of the Task Force. Many members of the Administration believe, however, that this type of local revenue-sharing will not be enough to engender support by Atlantic and Pacific coastal states and localities for the OCS program.

D. NATIONAL ACADEMY OF SCIENCES (NAS) STUDY

The Task Force asked the NAS to study the adequacy of the scientific and technical data available on which decisions for the three lease sales could be made. The NAS report concluded that generally there are not adequate oceanographic, ecological and socioeconomic data on which to base a lease/no lease decision, but that the adequacy varies by lease sale. The NAS conclusions are as follows:

Sale	Oceanographic	Ecological	Socioeconomic
Florida	marginal	inadequate	inadequate
N. Cal.	adequate	adequate	inadequate
S. Cal.	inadequate	adequate	doubtful

The NAS recommended that no decision be made on proceeding with the lease sales until further studies are conducted, although it did not specifically identify those studies that must be conducted in order to have a complete data base. There is no clear consensus as to the length of time needed to conduct adequate studies. Staff of the Task Force estimates that it could take as long as five to six years in Florida and as little as two to three years in northern California.

Questions regarding the value of the NAS study and the weight it should be accorded have been raised. Some allege that the strictest academic "peer review" standard was used to assess the available data, which would be far greater than the standard generally used in making governmental decisions. Such a standard could be seen as unreasonable in a real world context, imposing a burden that could rarely if ever be sustained, particularly when weighed against the costs necessary to meet such a standard and the benefits of the OCS program.

The NAS was also requested to study the adequacy of resource estimate methodology used by the MMS. The NAS report concluded that the MMS methodology for developing resource estimates is adequate and sound.

E. LOCAL CONSIDERATIONS

As noted in Section II above, in preparing the report the Task Force conducted local meetings in Florida and California. These were designed to give the Task Force the opportunity to discuss the proposed sales with state and local officials, scientists, business leaders and other interested groups and with members of the general public. Demonstrations in opposition to leasing were held at each of the nine public workshops. In addition, the vast majority of persons who spoke at the meetings were adamant in their opposition to new leasing. Local opposition to leasing does not appear to have lessened, and in fact may have strengthened. An August California Poll found that 75 percent of those surveyed opposed more drilling off the coast, the highest level of opposition yet expressed in a statewide poll.

State and local officials are also generally unanimously opposed to the sales. In Florida, the entire Congressional delegation, Governor Martinez and all local elected officials oppose new leasing, and in fact also oppose exploration on existing leases off southwestern Florida. Both California Senators oppose new leasing, as do virtually all local elected officials. The California Congressional delegation is split on the issue, although almost all affected coastal representatives oppose new leasing. Governor Deukmajian is generally supportive of further offshore development.

F. ANALYSIS OF ENVIRONMENTAL CONCERNS

In analyzing the three lease sales, the Task Force identified and addressed six specific environmental concerns: (1) air quality; (2) the risks of oil spills; (3) the impact of OCS activity on commercial fishing;

(4) the effects of OCS activity on protected lands and species; (5) water quality; and (6) socioeconomic impacts. The general findings of the Task Force with respect to these six areas and the cumulative effects are found at Appendix C.

G. RELATIONSHIP OF DECISIONS ON SALES TO SALE 119 IN CENTRAL CALIFORNIA AND CREATION OF MONTEREY BAY SANCTUARY

Closely related to your decision on these three lease sales are decisions on the future of Sale 119 off central California and the creation of a national marine sanctuary in the area around Monterey Bay.

The area to be covered by Sale 119, which is still in its pre-leasing stages, stretches from San Francisco southward to the northern tip of Monterey Bay. This incorporates sensitive areas off the coast of Big Sur, Carmel and Monterey, resulting in public opposition to this sale that is at least as strong as that to Sales 95 and 91 and perhaps even stronger. The sale was originally scheduled for March 1991, but due to the imposition of a moratorium by Congress and delays in the pre-sale process, a sale probably could not occur until the middle of the 1992 fiscal year at the earliest. In addition, pre-sale analysis would likely reduce the area to be covered by the sale. OMB has already eliminated projected revenues from this sale from its FY 1991 budget projections and has also eliminated revenues from a FY 1994 lease sale in central California. Appendix B shows the oil and gas resources available from Sale 119. As you can see, such oil and gas resources are less than those available from Sales 95 and 91 and slightly more than those available from Sale 116.

The creation of a national marine sanctuary in the Monterey Bay area was mandated by Congress in 1988. Fulfilling its responsibility under the legislation, NOAA has proposed designating an area for the sanctuary covering approximately 2,200 square miles, about a third of which is within the area to be covered by Sale 119, including more than two-thirds of the most promising tracts. NOAA has also proposed regulations that prohibit all oil, gas and mineral exploration and development activities within the proposed sanctuary. Other activities are limited but not proscribed. A ban on oil and gas activities is not mandatory within a marine sanctuary; in fact, sanctuaries in other parts of the country are not subject to this prohibition, although because of the sensitivity of the issue in California other sanctuaries off its shores do bear such bans

(including one ban that was Congressionally imposed in 1989).

IV. OPTIONS

A. Decisions on Lease Sales

The Task Force presented eleven separate options for the lease sales, three for the Florida sale and four for each California sale. White House staff and the individual departments represented on the Task Force have also identified other options, including those at the extreme ends of the spectrum. All of the options for the lease sales are set forth below (Task Force options first, followed by options developed by staff) and accompanied by supporting discussion of their pros and cons. It should be noted that the members of the Task Force agreed only to include within their final report options that all members could agree would be acceptable, so some of the new options that have been developed may have been considered by the Task Force and may be supported by individual members.

Task Force Options for Sales

Option A

Sale 116 (Florida)

Cancel the sale and defer subsequent decision until the additional oceanographic, ecological and socioeconomic data identified by the NAS have been collected.

As for existing leases, proceed with exploration and development decisions under normal procedures.

Sales 95 (Southern California) and 91 (Northern California)

The same language is included for Option A for both California sales. A separate decision is needed for each sale, however.

A-1 -- Proceed with preparations for the lease sales but defer final decisions until the additional oceanographic (southern California) and socioeconomic (southern and northern California) data identified by the NAS have been collected.

A-2 -- Cancel the sales and defer subsequent decisions until the additional oceanographic (southern California)

and socioeconomic data (southern and northern California) identified by the NAS have been collected.

Discussion -- Under these options, leasing in both Florida and California could occur as part of the 1992-1997 five-year plan, which was to be proposed by Secretary Lujan in March but which is being delayed pending your decision on these sales. These are pro-petroleum industry options that signal the Administration's continued commitment to OCS development and affirm to the greatest extent the Interior Secretary's discretion over OCS decisions, consistent with current law. They recognize that the OCS is a national resource the development of which will not be unduly subject to local citizens' views. They will likely meet with strong criticism, however, particularly on the ground that a decision to cancel the sales of the leases, followed almost immediately by the inclusion of the same leases in the next five-year program, smacks of hypocrisy. This criticism can be partially rebutted by responding to the environmental concerns identified by the NAS and imposing additional environmental restrictions on new leases.

Allowing exploration and development to proceed on the Florida leases using normal procedures avoids any interference with current lessees and any "takings" problems that could arise.

Option B

Sale 116 (Florida)

Cancel the sale and exclude the area from consideration for the 1992-1997 five-year program.

As for existing leases, proceed with exploration and development decisions under normal procedures but begin discussions with the state and existing lessees regarding the state's purchase of the leases.

Sales 95 (Southern California) and 91 (Northern California)

In southern California (Sale 95), defer a decision on the sale until the 1992-1997 five-year program, conducting additional oceanographic and socioeconomic studies; if the sale goes forward, offer tracts only in the Santa Maria and San Diego Outer Basins.

In northern California, also defer a decision until the 1992-97 five-year program, conducting additional

socioeconomic studies; if the sale goes forward, offer tracts only in the Eel River Basin.

Discussion -- These are compromise options. Leasing could occur off California after 1992 (which, given current Congressional moratoria and the time required to complete the studies arising from the NAS report, may be as soon as leasing could occur in any event), but would be restricted to areas where development would be less intrusive and to smaller areas so that environmentally-sensitive features such as the Channel Islands National Park and Marine Sanctuary could be protected. Leasing off Florida would be delayed for at least seven years until 1997. The petroleum industry should find this an acceptable option, as it does not preclude development. There is less certainty that the environmental community will accept it as a reasonable compromise. The delays should, however, allow the Interior Department to complete the studies identified by the NAS, and this can be used to rebut environmental concerns.

Beginning discussions with Florida regarding its purchase of the existing leases imposes some burden on it to protect its tourist industry and natural resources, which is reasonable given that the state has also allowed development in this area. This could open the door to moves by the environmental community to cancel the leases, however.

Option C

Sale 116 (Florida)

Cancel the sale and exclude the area from consideration for both the 1992-1997 and 1997-2002 five-year programs.

As for existing leases, begin discussions with the state and existing lessees regarding the state's purchase of the leases and have Interior initiate procedures that could lead to cancellation of the existing leases (which would suspend further exploration or development).

Sales 95 (Southern California) and 91 (Northern California)

Similar language is included for Option C for both California sales. A separate decision is needed for each sale, however.

Cancel the sales (and the next scheduled sales in both areas) and exclude the areas from consideration for the 1992-1997 five-year program.

Discussion -- These are the most pro-environmental options identified by the Task Force, precluding lease sales off Florida until at least 2002 and off California until at least 1997. They do not constitute the permanent ban on leasing in the three areas that environmentalists and most local residents seek, however. These options could alleviate pressures in Congress for the creation of ocean sanctuaries or permanent bans on leasing.

The move to cancel the existing leases off Florida would be particularly welcomed by environmentalists and would respond to one of the criticisms of the NAS, namely that leasing always leads to future development without any subsequent analysis of environmental impacts. There are questions about the ability of the Interior Department to cancel the leases under current law, however, which requires a finding of existing environmental harm.

These options are also the ones on which the FY 1991 budget is based, including provision in the budget for repurchase in FY 1995 of the existing leases off Florida, valued at the lesser of the fair market value of the leases or the amount of lease bonuses paid plus investment to date (approximately $200 million), so no adverse budgetary impact would result if this course were chosen.

Options Not Identified by Task Force

A. Proceed with lease sales under existing OCS Lands Act process. Pre-lease activities would be reactivated at the point at which they were stopped by the Presidential moratorium.

Discussion -- This is one of the two extreme options. It would essentially reject both the NAS study and the report of the Task Force and proceed with "business as usual." It could be perceived as a complete sell-out to the petroleum industry and would likely be severely criticized by the environmental community and probably by the general public, particularly in the two affected states.

B. Cancel the sales, excluding them at this time from the 1992-1997 five-year program, and directing that future decisions on lease sales in these areas will be made only after the data identified as deficient by the NAS have been identified and collected; if the studies subsequently show that leasing can be done in an environmentally acceptable manner, add the tracts to the 1992-1997 five-year program.

Discussion -- This is a new option proposed by the Energy Department. It allows decisive action on the sales and the OCS program as a whole; it also acknowledges that a more objective and scientific basis is needed for decision-making. It avoids an arbitrary decision to defer leasing or delete tracts from consideration for leasing by holding the door open for later inclusion of the leases in the 1992-1997 five-year program; as such, it could thwart the efforts of those who would use a cancellation decision as the precedent for seeking further arbitrary bans on OCS activities elsewhere. It would require an amendment to the 1992-97 five-year program at some point, which could focus Congressional and environmental opposition to leasing.

C. Delay any decision on the sales until the National Energy Strategy (NES) is finalized and submitted in December 1990; concurrently with the announcement of that course of action, make the OCS Task Force report public.

Discussion -- This option alleviates the difficulties posed by making these decisions in the vacuum created without knowing how they and the future of the OCS program relate to the NES. It also sends a signal that the President intends to balance environmental concerns with energy security and economic requirements. The petroleum industry may be disconcerted by the perceived signal that further development is being significantly slowed, although the strong link to the NES should offset industry uneasiness. Delaying the sales also adversely affects the time before which these resources can be tapped (assuming that some development goes forward). This option also delays any guidance to the Interior Department and the MMS for their development of the next five-year plan and other pending decisions regarding the OCS. The release of the report will remove some of the mystery surrounding the decisions, allow the public to engage in the dialogue and focus attention on the necessity for further scientific (by collection of the data identified by the NAS) and economic (by the NES) analysis of the decisions and the overall domestic energy situation. The delay in the decision and release of the report would likely be opposed by the California and Florida Congressional delegations (especially Senator Wilson), who want a decision to be made soon.

D. Cancel the sales and impose a permanent ban on lease sales in the three areas.

Discussion -- This option recognizes the political reality that no drilling is likely to occur on these leases in the foreseeable future, given the clear

disposition of the Congress on this matter. OMB has already eliminated any projections of revenue from these sales from its budget receipt projections. Implementing this option could remove the sizeable California and Florida Congressional delegations from the nationwide coalition that threatens to jeopardize the entire OCS program or at least block some future activities. It could, however, also be used as "evidence" by those seeking permanent bans on all offshore drilling activities, even on existing leases, that no OCS activities are environmentally prudent.

B. Decisions on Other Actions Recommended to Address Environmental Concerns in Areas of Sales and Deficiencies in OCS Program.

The Task Force also developed recommended options for addressing various environmental concerns that arise in the three sale areas (and to a lesser extent throughout the entire OCS). These options relate to (1) air quality standards offshore California, (2) conflicts with commercial fishing, particularly in northern California, (3) oil spill contingency planning and response capabilities, (4) tanker traffic, (5) safeguards for protected lands and species, (6) protection of water quality, and (7) steps to alleviate adverse socioeconomic effects of OCS activities. In addition, your staff developed an option for study of increased state and local participation in the OCS program. This concept, including the notion of increased sharing of revenues from the OCS with local communities impacted by OCS activities, has been discussed publicly by Secretary Lujan and other Interior officials publicly in recent days. All of these options are set forth in Appendix D.

C. Decisions on Sale 119 and Monterey Bay Sanctuary

Because of the reasonable proximity of the Sale 119 area, including the Monterey Bay area, to the Sale 95 and 91 areas, and because of the common issues surrounding oil and gas activities in all three areas, decisions on the future of Sale 119 and the size and scope of activities within the new Monterey Bay Sanctuary should also be made at this time.

A. Cancel Sale 119 and proceed with the pending NOAA proposal establishing the size of, and the prohibitions on oil and gas activities within, the sanctuary.

Discussion -- NOAA asserts that the entire proposed sanctuary area is nationally significant and environmentally sensitive. For example, excluding any of

the proposed lease sale area would exclude the largest breeding ground for marine mammals in the lower 48 states, a biologically irreplaceable resource. Cancelling the sale would also acknowledge the strength of the public opposition to oil and gas activities off this portion of central California. NOAA further argues that, if prohibitions on oil and gas activities are not imposed through regulations, a more restrictive legislative ban will likely be enacted, as occurred last spring with the Cordell Bank National Marine Sanctuary off San Francisco. The impact of such a decision where there has not been the extensive analysis of available scientific data that accompanied the Task Force report must be assessed, however, as must the possibility that this could bolster arguments for a permanent ban on oil and gas activities off California and even Washington and Oregon.

B. Proceed with the NOAA proposal for the sanctuary, including the prohibitions on oil and gas activities, and proceed with Sale 119 only in areas outside the sanctuary.

Discussion -- The proposed sanctuary boundaries were drawn to provide a buffer to protect the area's sensitive resources. Therefore, oil and gas activities could proceed outside the sanctuary without causing, from NOAA's viewpoint, any undue risk. This option acknowledges that selected coastal areas are unique and therefore require that special measures be implemented to proetect them. At the same time it recognizes that oil and gas activities can proceed in an environmentally safe manner near sensitive areas.

C. Limit the sanctuary to a smaller size recommended by the Department of the Interior, prohibiting oil and gas activity in this reduced area, and proceed with Sale 119.

Discussion -- The Interior Department proposal for the sanctuary is approximately 60 percent smaller than the NOAA proposal and preserves the tracts with the greatest resource potential. Interior argues that it adequately protects valuable marine resources without unduly hindering development, but recognizes that certain areas are so unique that no oil and gas activity within them is appropriate. NOAA argues that it would exclude some of the most biologically significant areas and expose the Administration to charges that the sanctuary boundaries were gerrymandered to permit oil and gas activities.

D. Proceed with Sale 119 and the NOAA proposal for the size of the sanctuary; do not prohibit oil and gas

activity within the sanctuary but only subject it to regulation like other activities.

Discussion -- This position provides protections to the entire area NOAA has identified as sensitive, but emphasizes the view that oil and gas activity can occur coincident with sound environmental protection. It is likely to result, however, in a legislative ban on oil and gas activities. If not, the current debate on oil and gas drilling would be taken up again during NOAA's rulemaking process to implement allowable oil and gas activities in the sanctuary.

APPENDIX A

DESCRIPTION OF OCS PROGRAM

The OCS leasing program is governed by the Outer Continental Shelf Lands Act and overseen by the Minerals Management Service (MMS) within the Interior Department. The sale and development of leases under the Act is accomplished in five-year programs, which begin with thorough analyses to assess the potential reserves derivable from leases and any problems that would accompany their development. That process starts more than two years before the beginning date of a five-year program. The MMS undertakes twelve separate steps as part of this evaluative process, preparing two drafts of the program and an environmental impact statement (EIS). The public is given opportunity to comment at three points in the process and Congress is also formally notified before a program is finally approved.

Following final approval of a five-year program, typically another 24 to 26 months are required before any lease sale can take place. During this period another EIS specific to the lease sale area is prepared and additional opportunities for public comment are provided, along with an opportunity for comment by the governor of the state offshore which the sale is to occur. Once a sale occurs, exploration of the leases can take anywhere from 1 to 10 years and development and production can occur over several decades.

The three lease sales studied by the Task Force are all part of the 1987-1992 five-year program. The sales were at different stages when the moratoria were imposed, and could have been held within five to sixteen months. The initial steps for the 1992-1997 five-year program were scheduled to commence in March with Secretary Lujan's release of a proposal for comment, but that has been delayed pending decisions on these three lease sales. The program development process is expected to take until the summer of 1992, with the first sale tentatively scheduled for September 1992. That schedule is not mandated by statute or administrative rule or regulation, however, and could be delayed. A delay of up to six months would not significantly affect the timing of the program and the early sales, as only one to two months would be lost.

APPENDIX B

RESOURCE POTENTIAL

	Oil (billion barrels)	% of Total	Gas trillion cubic ft)	% of Total
Total U.S. Resources	34.80		263.00	
Entire OCS	8.20	23.6	74.00	28.1
ANWR	3.20	9.2	6.90(1)	2.6
Existing Fla. Leases	.14	.4	.30	.1
Existing S. Cal. Leases(2)	.34	1.0	.80	.3
Sale 116	.11	.3	---	---
Sale 95	.23	.7	.46	.2
Sale 91	.20	.6	.41	.2
Sale 116	.16	.5	.26	.1

(1) Although ANWR is estimated to contain 6.9 trillion cubic feet of gas, the production of natural gas from ANWR is considered by some to be uneconomical.

(2) None of the area off northern California has yet been leased.

Withdrawal/Redaction Sheet
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13. Paper	Appendix C: Findings on Environmental Concerns (6 pp.)	4/30/90	P5	

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Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
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(b)(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
(b)(9) Release would disclose geological or geophysical information

APPENDIX C

FINDINGS ON ENVIRONMENTAL CONCERNS

Air Quality. Offshore oil and gas drilling activities produce the same types of emissions as onshore activities, with the notable addition of emissions from support vessels and helicopters. Meteorological conditions may also exist that consistently drive offshore emissions toward land, particularly off California. Despite this, the Task Force found that emissions controls currently imposed by the MMS on offshore drilling are less stringent than those imposed on similar activities onshore. The effects of offshore emissions are of greatest concern in southern California due to the generally already poor air quality; there are more limited concerns with respect to northern California also. All of the Task Force options for California include strengthening emissions standards. The Senate version of the Clean Air Act amendments currently contains Administration-supported language requiring such stricter OCS emissions standards.

Oil Spill Risks. The Task Force found that the risks posed to coastal and marine resources by oil spills are significant and that the environmental impact of a major OCS spill would be severe. It concluded, however, that the increased chances of a major oil spill caused by OCS drilling activities in the three areas are small (in the case of Florida and southern California, only a 1 percent greater risk, and in the case of northern California an 8 percent greater risk) compared to the risk of a spill caused by existing activity, such as non-OCS tanker and barge traffic. The Task Force found that coastal and marine resources warrant greater protection from possible oil spills, whatever their source, than is currently provided.

Commercial Fishing. Commercial fishing is a vital economic activity in all three areas, especially off southern and northern California. OCS activities pose a variety of conflicts between the petroleum and fishing industries, including competition for available space at sea and for port space onshore. There are also concerns about the loss or destruction of habitat due to the effects of OCS activities and the significant risks posed by oil spills. The Task Force concluded that many of these conflicts can be resolved or largely mitigated through the recommended use of joint committees comprised of representatives of the petroleum and fishing industries in areas where OCS activities are planned.

Protected Lands. Each of these three areas has unique protected lands, most notably the mangrove-coral reef system in the Everglades and Florida Keys. The Task Force found that these sensitive and highly valuable areas now receive only the same level of protection as that in ordinary areas but that

they warrant additional consideration and heightened management.

Protected Species. Each of these three areas is inhabited by species that have been placed under the protection of federal statutes, most notably the endangered manatees off Florida. The Task Force concluded that existing protections are sufficient to protect these species so that a delay in leasing cannot be justified on this basis alone.

Water Quality. OCS activities can have various impacts on the water quality near rigs and platforms. Such activity is currently regulated by EPA under the Clean Water Act through the National Pollutant Discharge Elimination System. The Task Force found that this regulation is adequate in the three areas. It noted, however (as did the NAS), that information on the long-term effects of chronic discharges is lacking.

Socioeconomic Impacts. OCS activities, though offshore, have significant socioeconomic impacts onshore. The Task Force found that these include the possibility of increased conflicts over land use and greater demands on infrastructure that could force changes in the character of an area. Tourism and recreation can also be adversely affected, although the Task Force found that this does not appear to be a sufficient basis for delaying the lease sales. The Task Force concluded that in these three areas such conflicts can be substantially reduced through better consultative relationships among the petroleum industry, government (especially state and local governments) and other affected parties in planning and coordinating the onshore activities of OCS lessees.

Cumulative Effects. The Task Force concluded that, although many of the environmental effects of OCS oil and gas activities, taken individually, are acceptable, collectively they could result in unacceptable changes to the local environments in or near the three sale areas unless new measures are taken to control or mitigate such effects.

The Task Force recognized the substantial conflict that often exists between the goals protecting the coastal and marine environments and maintaining the quality of life in coastal areas, on the one hand, and the goals of promoting energy security and economic growth on the other. The Task Force found no easy way to resolve this conflict. Based on its review of available information, the Task Force concluded that additional time and effort are needed before environmental concerns can be resolved in a manner that provides an acceptable balance between these conflicting goals.

APPENDIX D

OPTIONS FOR OTHER ACTIONS TO ADDRESS ENVIRONMENTAL CONCERNS AND DEFICIENCY IN OCS PROGRAM

A. Air Quality. Establish air quality controls for the OCS areas offshore California that are substantially equivalent to those applied onshore.

Discussion -- Although the real impact of any emissions from offshore drilling or production platforms and the vessels and helicopters that serve them may be negligible, it is perceived as a substantial problem. The perception is exacerbated by the fact that air pollution is the single most dramatic environmental problem in southern California and that the standards for offshore activities are not subject to EPA control but to MMS oversight and have not always been consistent. The MMS has efforts underway to develop a new proposed rulemaking to achieve this objective.

B. Commercial Fishing. In Northern California, reevaluate the effects of OCS activities on the commercial fishing industry and institute measures to reduce conflicts between the petroleum and fishing industries.

Discussion -- The potential conflicts posed to the commercial fishing industry in northern California were repeatedly cited. This is a particular problem in that region because of the heavy reliance of local economies on fishing, the limited existing infrastructure for which the commercial fishing and petroleum industries would compete, and the relatively small population base that could be severely affected by employment dislocations resulting from changes in commercial activity.

C. Oil Spill Contingency Planning and Response Capabilities. Steps should be taken to protect coastal and marine resources more adequately through the following:

1. Develop improved means of assessing the risks of oil spills;

2. Revise requirements for OCS oil spill contingency response plans to improve effectiveness (particularly for the Everglades and Keys ecosystems), including requiring more analysis of response effectiveness as part of the pre-lease evaluative process and setting mandatory response times and minimum standards for equipment and technology to respond to spills;

3. Prepare special oil spill contingency response plans for protected lands, ensuring full coordination among the MMS, the Coast Guard, the petroleum industry, and state and local governments;

4. Revise regional guidelines for oil spill responses and increase the frequency of oil spill response drills, involving both government and industry; and

5. Where feasible and environmentally preferable, require that oil produced on the OCS be transported by pipeline rather than ship.

Discussion -- The unique aspects of the Everglades and the Florida Keys, including the only tropical coral reef in the continental U.S., justify revisions in planning and response capabilities for that area. Additional attention should also be given to northern California due to its extremely narrow continental shelf and normal high-sea conditions, which would make oil spills difficult to contain with currently available technology and likely to reach environmentally-sensitive areas to the south, such as Redwoods National Park or Point Reyes.

D. Tanker Traffic. Direct Coast Guard to study feasibility of moving tanker routes away from sensitive areas.

Discussion -- The recent California oil spill shows the need to study tanker routes to see if travel further offshore and away from sensitive areas is feasible. The Coast Guard has been at work on a proposal that would provide for International Maritime Organization action to move tanker and other major vessel traffic further away from the coral reefs off Florida.

E. Protected Lands and Species. Defer particularly sensitive protected lands from development or establish requirements to ensure the maximum practicable protection and mitigation of impacts. In addition, provide greater management attention to avoiding conflicts between OCS activities and protected species.

Discussion -- Given that certain lands have already been considered so unique as to warrant protection by the federal government (including national parks and marine sanctuaries), consideration of setting aside those lands from development is not a radical additional step. At the very least, special requirements to preserve those lands or mitigate any possible impacts from OCS activities is consistent with the assessment of their protected character. Similarly, preserving rare or endangered species through special attention from the managers of the OCS program appears reasonable and not unduly burdensome.

F. Water Quality. The MMS should initiate research into the long-term effects of OCS activity on the marine environment and water quality, particularly such practices as the chronic discharge of drilling fluids. In sensitive environments, special mitigation programs to reduce potential adverse effects should be considered.

Discussion -- Given the scarcity of data on the long-term effects of OCS activities, further study is justified. Because the potential effects of such practices as chronic discharges of drilling fluids are currently unknown, special protection of those marine environments that are identifiable as sensitive through mitigation measures is reasonable until better data become available.

G. Adverse Socioeconomic Effects. The MMS should note local concerns and ordinances relating to the siting of onshore facilities stemming from OCS activities in stipulating the conditions for lease development, such as considering a requirement for the consolidation of onshore facilities. In addition, the MMS and NOAA should play a greater mediative role between industry and local governments to mitigate the adverse effects of this increased onshore development.

Discussion -- The significant impact of OCS activities on onshore development and the economic and social lives of local residents should not be underestimated. This is exacerbated by the general feeling of local residents that they have little voice in the decision-making process. Greater sensitivity to local concerns and existing priorities for development and its control could be accomplished at very little cost to the federal government through increased attention to such matters by the MMS. Such actions as requiring consolidated onshore facilities could have positive effects on land use conflicts and infrastructure demands. At the very least, federal agencies should play the role of "broker" to mediate between the competing interests of industry and local communities.

H. Restructuring of OCS Program. Direct the Secretary of the Interior to begin a study that would lead to proposals for amendments to the OCS Lands Act in order to restructure the revenue-sharing and decision-making provisions of the legislation so that state and local governments will have a greater voice in the OCS program.

Discussion -- The lack of financial benefits to the people most affected by OCS activities and the limited participatory role in the actual decision-making process for OCS development have been noted as at least partial

sources of the controversies currently surrounding these sales and the entire program. Tasking Secretary Lujan to study these issues with a goal of amending the underlying legislation could have a positive impact on these sales, lessening some of the furor. It would more conceivably be a method to address concerns expressed by Congressmen and others from areas in which OCS development is favorably viewed on the whole but where additional incentives may be needed to avoid repetitions of current problems. It also is the logical and fair approach to balancing more equitably federal and local interests. The nature and extent of authority given to state and local governments will need to be carefully considered, however, with the goal being to maintain the OCS program as a federal authority. Interior Department officials, including Secretary Lujan, have alluded to increased federal revenue-sharing with local communities in recent public remarks. The responses to such overtures have not been particularly positive, with reaction from some quarters that such action will not be sufficient to overcome opposition to OCS activities on other grounds. The result might be a reduction in federal revenues without a significant reduction in opposition.

April 30, 1990

SUMMARY OF INTERIOR DEPARTMENT OCS PROPOSAL

The Interior Department has developed a comprehensive proposal for the President's upcoming decisions on the Outer Continental Shelf (OCS) program. The proposal encompasses not only recommendations regarding the three delayed lease sales, but also recommendations on other pending sales, an Administration initiative to identify and protect unique marine environments, general principles to govern the OCS program in the future, a review of the statutory and regulatory foundation of the OCS program, and additional studies to be conducted by the Interior Department.

California and Florida Lease Sales

California -- All sales currently scheduled offshore California would be cancelled and 99 percent of the tracts off southern and northern California would be excluded from consideration for the 1992-1997 five-year program. Only one limited sale of tracts having high resource potential, where drilling can be done in an environmentally sound manner, would be pursued in the next program. No sales would occur off central California until after 1997.

Florida -- Sale 116 off southwestern Florida would be cancelled and the area excluded from future sales until 2000 or later. The Interior Secretary would work with parties that currently own leases off Florida to encourage them to agree voluntarily not to pursue exploratory drilling for at least three years.

Other Pending Sales

Monterey Bay Marine Sanctuary -- The marine sanctuary proposed by the National Oceanic and Atmospheric Administration, which encompasses much of the area to be covered by proposed Sale 119, would be approved, including prohibitions on oil and gas drilling within the sanctuary.

Washington and Oregon -- The recommendations of the Pacific Northwest Task Force to defer a proposed lease sale off those two states until additional environmental studies can be conducted would be accepted. These studies are anticipated to take seven to eight years, effectively precluding any sale until the 1997-2002 five-year program at the earliest.

North Atlantic -- Sale 96 off the North Atlantic coast would be cancelled and additional studies, including studies designed to determine the area's resource potential, would be conducted.

Ocean Preserves Register

Recognizing the unique nature of certain marine resources, Interior would institute an Ocean Preserves Register delineating offshore areas that would not be leased in the 1992-1997 five-year program. Five areas off California would initially be designated for this register: the areas offshore Crescent City and Mendocino in northern California, the Big Sur coast offshore central California, and the areas offshore La Jolla and Begg Rock Island in southern California. Three areas off the southwestern and southeastern coasts of Florida would be so designated: the Florida Bay and coral reefs, Cape Sable and the Dry Tortugas. The boundaries of these areas would be determined within one year by the Interior Secretary; the preserves would be designated for the next five-year program only, although as a practical matter it would be extremely difficult to delete an area from the register once it has been designated. The Interior Secretary would confer with coastal governors regarding the inclusion of additional areas in the register for the 1997-2002 five-year program.

Principles for OCS Program

The President's decision on the California and Florida sales would be placed in the context of guiding principles for the OCS program as it goes forward. Those principles would acknowledge the importance of domestic energy production for the nation's economy and national security; require that future OCS decisions be made on the basis of the best possible information on resource potential and environmental consequences; and urge that due consideration of all parties' views be given in carefully making future OCS decisions.

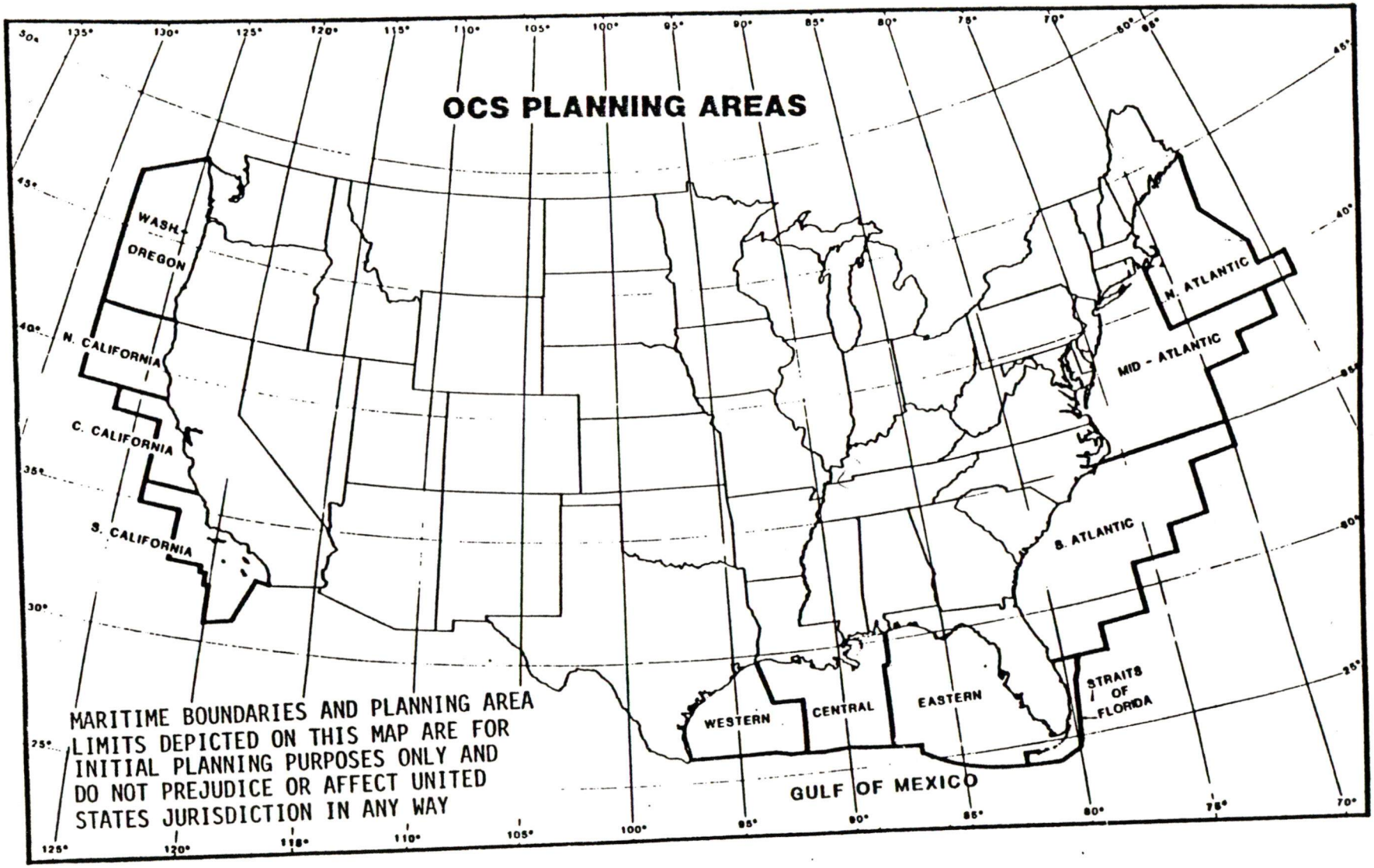
Restructuring of OCS Program

The Interior Secretary would be charged with reviewing the Outer Continental Shelf Lands Act and its implementing regulations to suggest improvements in the program. One area of specific study would be an initiative to share directly with impacted coastal areas the financial benefits of new OCS development.

Additional Studies

To ensure that the best possible information is available for making future OCS decisions, an additional $250 to $300 million would be requested to fund a five-year program of studies on the environmental consequences of offshore drilling, resource potential of the OCS, oil spill clean-up technology and oil and gas production technology.

Map 1


OCS PLANNING AREAS
WASH.
OREGON
N. CALIFORNIA
C. CALIFORNIA
S. CALIFORNIA
N. ATLANTIC
MID - ATLANTIC
S. ATLANTIC
STRAITS OF FLORIDA
WESTERN
CENTRAL
EASTERN
GULF OF MEXICO
MARITIME BOUNDARIES AND PLANNING AREA LIMITS DEPICTED ON THIS MAP ARE FOR INITIAL PLANNING PURPOSES ONLY AND DO NOT PREJUDICE OR AFFECT UNITED STATES JURISDICTION IN ANY WAY