

INTERSTATE OIL COMPACT COMMISSION

HEARING
BEFORE THE
SUBCOMMITTEE ON ENERGY AND POWER
OF THE
COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES
NINETY-FIFTH CONGRESS
SECOND SESSION
ON
THE ROLE OF THE INTERSTATE COMPACT IN A CHANGED ENVIRONMENT; ITS PAST ACTIVITIES AND FUTURE PLANS; AND TO CONSIDER THE QUESTION OF WHETHER OR NOT TO RENEW THE COMPACT'S AUTHORIZATION

JULY 21, 1978

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INTERSTATE OIL COMPACT COMMISSION

FRIDAY, JULY 21, 1978

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

The subcommittee met, pursuant to notice, at 10:15 a.m., in room 2123, Rayburn House Office Building, Hon. Richard L. Ottinger presiding (Hon. John D. Dingell, chairman).

Mr. OTTINGER. The Subcommittee on Energy and Power will come to order for the commencement of hearings on the Interstate Oil Compact Commission.

The Interstate Compact to Conserve Oil and Gas was originated by six Members' States and consented to by the Congress in 1935. Since that time, its membership has now grown to include 30 oil and gas producing States and 6 associate member States. At the time the Interstate Compact was originally ratified, major oil field discoveries had created a glut of oil and gas supplies.

This, in turn, had resulted in substantial losses of oil at the surface, in wholesale flaring of gas, and in oil prices as low as 10 cents a barrel. Less than 10 percent of the oil in place was being extracted from the average reservoir due to poor conservation methods.

It was against this background that the Compact was created, with its primary purpose being "to conserve oil and gas by the prevention of physical waste thereof from any cause."

Today, 43 years later, the situation is quite different. Oil and gas prices have skyrocketed. New supplies are scarce. Wasteful production methods are being curtailed. As a Nation, we are importing nearly half of our oil requirements. We are now importing natural gas on a regular basis, and we anticipate increasing those imported supplies substantially in the future.

At this morning's hearing, we will hear testimony about the role of the Interstate Compact in this changed environment. The Constitution requires that Congress ratify any compact between or among States. The most recent congressional approval will expire on December 31, 1978. Our hearing this morning will give us an opportunity to find out the Compact's past activities and future plans and to consider the question of whether or not to renew the Compact's authorization.

Congress has been very concerned that the Compact not encourage or permit the member States to limit the production of oil or gas for the purpose of stabilizing or fixing the price of those commodities, or of creating or perpetuating a monopoly. Since 1955, we

have required regular reports from the Attorney General about the Compact's activities and their implications on the antitrust laws.

In its last report in 1976, the Department of Justice concluded "We see no occasion to recommend that Congress withhold its approval to renewal of the Compact." We will hear from the department this morning about the activities of the Compact and whether this will still be the department's conclusion.

Our first witnesses will be Richard C. Byrd, General Counsel of the Interstate Oil Compact Commission, Oklahoma City, accompanied by W. Timothy Dowd, Executive Director of the Commission.

We will include your full statement in the record, and you may proceed however you may see fit.

STATEMENTS OF RICHARD C. BYRD, GENERAL COUNSEL, INTERSTATE OIL COMPACT COMMISSION, AND W. TIMOTHY DOWD, EXECUTIVE DIRECTOR

Mr. BYRD. Thank you, Mr. Chairman. I am Richard C. Byrd. On my right is Mr. Dowd.

We will dispense with the reading of the statement. I first want to thank you for an opportunity to be here, and particularly thank the committee on behalf of Governor Bennett for an opportunity to appear later. I understand he will be here the latter part of August.

In visiting with the staff of the committee yesterday, after our arrival in Washington, they graciously gave us some of the points they thought this committee might be interested in, and, if I may, I would like to take just a few minutes to relate to you the points which we discussed with them.

I think that one of the principal functions of the Interstate Oil Compact Commission in recent years has been the interaction between the Compact and the various Federal agencies that are involved in energy matters. It is true that the Compact originally was organized mainly to assist States and State agencies. We still perform those functions. But in recent years more and more of our functions are correlated in interaction and assistance of the Federal agencies.

The State agencies, of course, receive all the publications, all the statistical information we prepare. The State regulatory commissions of the various States attend the two meetings that we have annually and, in addition, we frequently are called upon to perform studies for State agencies. The information that was forwarded at the request of the Chairman is one example of the type of studies that we have performed for the State agencies, and that is a study we performed for the State of Pennsylvania.

We also have recently performed one for the State of Michigan, where a team of experts under the supervision of Mr. Dowd and other committee members of the standing committees go into the State and make a detailed review of the State conservation statutes and the rules and regulations.

We also assist the States in answering specific problems that come up in their administration of the conservation statutes in those States.

On the question of taking of gas, we recently had a problem in Alabama. Flaring from gas in combination of reservoirs, we recent-

ly assisted the State of Wyoming. So, as I stated, our original function was to assist the States in preventing physical waste of oil and gas, and we still do that. Recently we have spent more and more time in aiding the Federal agencies in not only answering questions and obtaining information, but, just recently, in anticipation of possible legislation that is pending before Congress, we have worked with the FERC in preparing the States and in cooperation with the FERC in administering the new Natural Gas Compromise Act, if it becomes law.

This act, as you know, places upon the State conservation agencies certain responsibilities for determination of classifications of gas. We have met with Chairman Curtis and Commissioner Smith, and members of their staff. In fact, some of the staff members were in Tulsa at our mid-year meeting, and we introduced them to the various State agencies that will be making those determinations.

The staff also indicated yesterday that you would be interested in the publications and statistical data that the Compact continues to make available, not only to the States, but to the Federal agencies. We have furnished the committee documents and copies of the publications that we continue to make. Those publications are available to not only State agencies but to the Federal agencies that request them.

Mr. Dowd is in the office in Oklahoma City at all times. He has daily contact with both State and Federal agencies, and I would request that he be permitted to give some examples of recent contacts that he has had with Federal agencies seeking assistance or direction from the IOCC.

[The prepared statement of Mr. Byrd follows.]

Statement of Richard C. Byrd
 General Counsel, Interstate Oil Compact Commission
 Before the Subcommittee on Energy and Power of the
 Interstate and Foreign Commerce Committee, House of Representatives
 July 21, 1978

My name is Richard C. Byrd. I am the general counsel of the Interstate Oil Compact Commission. While the Commission's offices are in Oklahoma City, I am a resident of Ottawa, Kansas. My Compact position is part-time. I am also a former chairman of the Kansas Corporation Commission.

On July 5, 1978, Mr. Chairman, you wrote a letter to Governor Robert F. Bennett, the chairman of the Interstate Oil Compact Commission. It is my understanding that Governor Bennett has made arrangements to testify before this committee at a later time. He would like to have been here this morning but had a previous commitment. Governor Bennett asked me to convey to you his appreciation of your courtesy in giving him a later date.

In your letter to Governor Bennett you requested certain information about the activities of the IOCC. We have delivered to the Subcommittee a substantial amount of written material in response to that request. Using the numbered paragraphs of your letter to correspond to the order in which the material is presented, this includes the following:

(1) This paragraph and paragraph 3 are so broad as to require a recap of every activity of the Compact for the past 2½ years. In lieu of that we have furnished the following:

- (a) IOCC Annual Reports - 1976, 1977.
- (b) Compact Bulletins - June 1976, December 1976, July 1977, December 1977.
- (c) Committee Bulletins - June 1976, December 1976, July 1977, December 1977.
- (d) Compact Comments - July 1976, October 1976, January 1977, Spring 1977, Summer 1977, November 1977, April 1978.
- (e) An Evaluation of Oil and Gas Regulatory Control in Pennsylvania.
- (f) Program - 1978 Midyear Meeting.

(g) Legal Report of Oil and Gas Conservation Activities - 1975, 1976.

(h) Summary of Oil and Gas Regulatory Requirements in the Oil Producing States.

(2) Directories showing the names and addresses of committee members as furnished by the Governors of the Compacting States.

(3) See (1) above.

(4) Certain statistical material is submitted under this paragraph. Unless the source shows otherwise in the material, the source is the state regulatory agency or agencies involved.

(a) History of Production Statistics - through 1975, through 1976.

(b) State Summary of Low Productive Gas Wells

(c) Monthly Report of Natural Gas Production - November 1977.

(d) National Stripper Well Survey - Dec. 31, 1975, Jan. 1, 1977.

(5) Due to its limited budget, the Compact does not engage in direct research programs. However, it does, from time to time, publish materials on research efforts. Many of those are included in the Compact and Committee Bulletins. We are also enclosing a copy of our latest publication, "Determination of Residual Oil Saturation," which was a project of our Research Committee.

In addition, we have included the minutes of all meetings of the Compact for the past 2½ years. This will reflect all of the financial activities of the organization. We also enclosed copies of all resolutions adopted by the Commission for the past 10 years.

This is our attempt to comply with the requests made by you. There is a great deal more material and many other contacts. Our files are always open for examination, and are routinely examined by the Department of Justice. Naturally, Mr. Dowd and I will be happy to answer any questions you have about any of the activities of the IOCC.

Mr. OTTINGER. Mr. Dowd, you may proceed.

STATEMENT OF W. TIMOTHY DOWD

Mr. DOWD. Thank you, Mr. Chairman. Just within the last 2 weeks, with reference to ongoing programs that we have, Mr. Byrd has mentioned the relationship that we have established with Chairman Curtis and the FERC in preparing to implement the national energy plan should it be adopted. In addition, we are engaged in a study for the National Drinking Water Advisory Council, which is a statutory arm of the Environmental Protection Agency, relating to salt water encroachment into fresh water aquifers from oil and gas operations.

We have almost continuous dialogue with people in the Department of Energy. I had a call last Monday from an employee of that department to discuss production problems in the State of Nevada, and I furnished him the name of the proper person to get in touch with, and talked to him later, and he said he had made the call and found out exactly what he needed to know.

We had a contact within the last week by an investigator from another subcommittee of this committee, Representative Moss' subcommittee, looking into whether the States were prepared to implement the National Energy Plan.

That, as I say, is what we have going on at this time.

Mr. BYRD. The staff also indicated to us yesterday that they thought the committee would be interested in reasons that we had in remaining a compact rather than some other form of organization. I might say that initially, of course, the Compact was structured as a compact and not an association of regulatory agencies.

The members of the Compact are the governors of the member States. True, the conservation agencies in the various States participate actively in the functions of the Compact. And we work closely with them, but the members are actually the governors.

In visualizing what changes might happen if we were no longer a compact subject to the consent of the Congress, it seems to me that we would possibly lose some of the rapport that we have with the various Federal agencies, and we feel that at this time that rapport and cooperation between the Compact, the State agencies and the Federal agencies is probably more important than it has ever been.

We have actively, through the years, had liaison observers from both FPC, and now FERC, and before Interior, and now with DOE. Keeping the Compact subject to the consent of Congress also would avoid the necessity of some changes in some of the enabling statutes of the various States. When the States joined the Compact, the Compact, itself, has language in it that says it is effective, and it is active upon the consent of Congress. And we have not researched that legal problem as to how many of the States would have to pass new enabling legislation, but we are certain that some of them would.

In addition, I have a very personal reason for desiring to remain a compact subject to the consent of Congress. As general counsel, it assists me in causing the restructuring or even the killing of some of the resolutions that are presented to the resolutions committee for adoption, because some of them get exceedingly wide of what I feel the purpose of the Compact is, and my best argument against

them is that it is completely outside the scope of the Compact, and we are subject to the consent of Congress, and when we are reviewed periodically by Congress, those types of resolutions can be a detriment to the continuation of this consent.

If we are a trade association, or an association of State agencies not subject to Congress' consent at all, that lever wouldn't be available to me, and I can assure you it has been a very useful tool in limiting some of the language in the resolutions that have been presented.

As this committee knows, the last time the consent was considered, we proposed a joint resolution which provided that we would have the consent of Congress until it was withdrawn. We also amended the charter to provide that we would not have to go back to each of the member States every 4 years for a signature of the governor and reenactment of the State joining of the Compact.

We did this because of the time and expense in circulating it to the governors. We had, at the time when we requested that the consent of Congress be granted and be continued until it was withdrawn, the busy schedule of Congress and this committee in mind. As the Chairman is aware, the last time we had some difficulty in getting a hearing 8 years ago, I think we also had a lapse of time between the expiration of the consent before it was granted again.

So we feel that with the increasing burdens on Congress, and particularly this committee, that continuing consents subject to withdrawal and a continuing surveillance by Justice on not only article IV of the Compact but the activities of any of the committees of the Compact would be an advantage to both the Compact and to Congress.

We certainly urge that you consider—and we will visit with the staff of this committee about the language. We have not introduced and proposed a new joint resolution containing the consent for the next period of time, and we will be glad to work with the staff on preparation of such joint resolution.

That concludes my direct statement, Mr. Chairman. If you have some questions, both Mr. Dowd and I will be glad to answer them.

Mr. DINGELL. Mr. Byrd, the committee thanks you for your very helpful testimony.

I will now recognize our colleague, Mr. Ottinger, for the purpose of asking questions.

Mr. OTTINGER. Does your commission impose any cost upon the Federal Government?

Mr. BYRD. None whatever, Mr. Ottinger. The funds that go to the operation of the Compact are all donated by the States. The amount that each State contributes is somewhat in relationship to the amount of oil and gas produced in a particular State. The State of New York, for example, I believe, gives \$1,500 a year. Some of the States give \$25,000. There are no Federal funds whatever.

Mr. OTTINGER. I wish we could contribute \$25,000 instead.

What is the size of the budget and staff?

Mr. DOWD. \$200,000 a year. We have five employees.

Mr. OTTINGER. Do you host meetings at which the various producers are represented? Is that part of your function?

Mr. DOWD. We hold two meetings a year that are basically open to anybody that shows up with a checkbook in their hand. They are attended by producers as well as State regulatory people, Federal regulatory people, governors, and other State officials.

Mr. OTTINGER. What is the purpose of the meeting?

Mr. DOWD. The various standing committees of the Compact hold meetings and present programs related to the conservation of oil and gas, prevention of physical waste. Then those proceedings are published in a publication similar to this.

Mr. OTTINGER. Who sits on the standing committees, and how many of those are there?

Mr. DOWD. Anyone designated by the governor of his State becomes a member of the standing committees. The breakdown was made several years back, and it showed that more than half of them were State officials; the other half were mostly industry people.

We also have some people like the president of the Florida Audubon Society, who has been designated by the Governor of Florida and participates in one of our committees—as does everybody.

Mr. OTTINGER. I have no further questions.

Thank you, Mr. Chairman.

Mr. DINGELL. The Chair thanks the gentleman.

I had read with interest your comments with regard to the activities of the IOCC.

Article III of the statute dealing with the functioning of your agency sets out the actions that will be taken by your agency, and they are as follows:

The operation of any oil well within an efficient gas-oil ratio.

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

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

The creation of unnecessary fire hazards.

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

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

You are abjured in these matters to accomplish the prevention of these unfortunate events.

Now, what have you done in these particulars as a commission?

Mr. BYRD. Well, probably the first thing is that the Compact is responsible historically—

Mr. DINGELL. No. I mean what have you done in the last 2 or 3 years? You mention none of those things in your report of your activities in the past 2½ years.

Mr. BYRD. First, let me point out, Mr. Chairman, that these are the things that the States agree that they will enact and adopt in order to become a member of the Compact.

Mr. DINGELL. What has the Compact organization done as regards this?

Mr. BYRD. As I mentioned, possibly before you arrived, in the very recent time we have had problems in assisting the State of

Wyoming in the prevention of flaring of gas in the State of Wyoming.

Mr. DINGELL. They were flaring it out there with some enthusiasm, as I understand it. What were your accomplishments with regard to that matter?

Mr. BYRD. In the particular instance I had reference to, they were flaring as a result of the inability of the producer to receive a certificate from the Federal Power Commission to sell his gas.

Mr. DINGELL. He could pump that gas back into the oil well and thereby to have saved pressure.

Mr. BYRD. No, Mr. Chairman, this field is an oil-gas combination reservoir. Other producers had drilled oil wells and were selling gas through a gathering of a central plant in the field, and when a particular producer drilled a well, it took him about 5½ months to get a certificate to sell the gas. He either had to flare the gas, suffer drainage or the Wyoming Commission would shut in the entire field, and through the Compact—and I came to Washington on two or three occasions to try to get the FPC to revise their rules and procedures so that if a producer had gas in such a situation and wanted to sell it at their price, that they could process that application expeditiously so the State agency wouldn't be in a position of either violating the rights of that producer and the landowner or shutting in the field or permitting the flaring of gas.

Mr. DINGELL. I have a curiosity. Isn't that a function of (a) the Wyoming Commission and (b) of the owners to see the matters are processed? I find nothing in your charter to dictate you to do that.

Mr. BYRD. We assisted the State and Federal Power Commission in recognizing that one set of rules and regulations was interfering with the State performing their function, and we tried to work out a procedure whereby—

Mr. DINGELL. Isn't the State competent in that regard?

Mr. BYRD. Well, I wouldn't say they are incompetent. Historically those are the things that the Compact has done.

Mr. DINGELL. Are they so lacking in competence that you were compelled to do this?

Mr. BYRD. They contacted the Compact to see if other States had had a similar problem and how it could be resolved, and because we do have rapport and liaison through the Compact with the FPC, they requested that we do it. Evidently they thought it was easier for us to do it than it was for them to do it individually.

Mr. DINGELL. I am curious about why that would be so.

Mr. BYRD. I can't answer why it would be so. They know that the Compact has liaison with the FPC or the FPC has liaison with IOCC. FPC doesn't have liaison with each State agency.

Mr. DINGELL. Do you have liaison with FPC?

Mr. BYRD. They have liaison with us, yes. They have historically designated one of the commissioners to be a liaison from that agency with the IOCC.

Mr. DINGELL. Is this the only thing you have done during the past year to implement the purposes of your charter?

Mr. BYRD. No.

Mr. DINGELL. Can you inform us what else you have done?

Mr. BYRD. I mentioned a problem that Alabama was having on gas production.

Mr. DINGELL. What was that problem?

Mr. BYRD. Well, their problem was one of accomplishing the purpose of the act of prevention of waste and also protecting the correlative rights of respective gas producers.

Mr. DINGELL. Is the State agency down there not capable of handling that matter?

Mr. BYRD. They get a new problem, and they like to know how other States have handled that problem, so they contact the—

Mr. DINGELL. So they contact you, or the commission, and what was the result of that contact?

Mr. BYRD. We are still working on it.

Mr. DINGELL. When did they contact you?

Mr. BYRD. Mr. Dowd made the original contact.

Mr. DOWD. Sixty to ninety days ago.

Mr. DINGELL. Sixty to ninety days ago. What was the result of that contact 60 or 90 days ago? What have you done?

Mr. BYRD. We visited with the agency.

Mr. DINGELL. Visited with them.

Mr. BYRD. We have sent them gas proration orders that other States—

Mr. DINGELL. Other States are not capable of doing that?

Mr. BYRD. Well, the regulation of gas production from a common reservoir with multiple purchasers is new to Alabama.

Mr. DINGELL. It is not new to Texas, or Louisiana, or Kansas, or Oklahoma?

Mr. BYRD. You are right.

Mr. DINGELL. Are they unaware of the telephone and address of the folks in Texas and Louisiana and Kansas and Oklahoma who have been doing this, I suspect, for a minimum of 25 years and perhaps 50 years?

Mr. BYRD. I think they feel if they come to the Compact, they will have the expertise of all those States.

Mr. DINGELL. How large a staff do you have who works on this?

Mr. BYRD. Full-time staff, Mr. Dowd, and we have a director of technical assistance, and myself. I am not full-time.

Mr. DINGELL. You are not full-time? How many does Mr. Dowd have working for him?

Mr. DOWD. We have a staff of five, including myself—not including Mr. Byrd.

Mr. DINGELL. Would you submit to us a table of organization, please, so that we can have a look at it and find out how many you have and what their jobs are, and could you also give us a statement of your budget and where the money comes from?

Mr. BYRD. We have filed that with the committee.

Mr. DOWD. I can give you a T.O. pretty quick and easy.

Mr. DINGELL. I have to go vote. Those two lights tell me it is time to vote.

Gentlemen, would you pardon me while I recess the committee and briefly run over and vote and return back here quickly, please?

The committee will stand in recess briefly.

[Brief recess.]

Mr. DINGELL. The subcommittee will come to order.

Gentlemen, the Chair apologizes to you. We will persist in our inquiries.

Sir, can you tell me what else it is that the Commission has done?

Mr. BYRD. Well, Mr. Chairman, the A, B, C, D through F that you itemized, I really feel those are, as I pointed out, the things that the States agreed to do when they became members.

But specifically what the Compact has done to aid the States in carrying out those responsibilities in recent years, practically all the activity of our committees relate to one of those.

For example, we recently published, and we have furnished copies of this to the committee—"Determination of Residual Oil Saturation." The introduction to this points out that the research committee is charged with the responsibilities of reporting to the Commission on new theories and improvements in the existing methods of the conservation of oil and gas, and this is one of the projects that the research committee has taken on.

It was a followup to a project that was done in 1974 relating to the secondary and tertiary recovery processes, and this book now is available. It was published in June to all the State conservation agencies and to the industry. And the purpose of all of these studies and all these publications is to assist the States in doing the six things that you enumerated in your question, and they all relate to them.

Mr. DINGELL. You have a staff, as I note, of six people?

Mr. BYRD. Yes.

Mr. DINGELL. How many professionals and how many clerical?

Mr. DOWD. We have two full-time professionals, myself and the director of technical services. Included in the six would be Mr. Byrd, who is not full-time. He is a practicing attorney in Ottawa, Kansas, and three clerical.

Mr. DINGELL. The functions of the professionals are to do what?

Mr. DOWD. The function of the director of technical services is to coordinate those technical aspects of the organization, including the presentation of technical programs, the preparation of books, such as residual oil saturation that Mr. Byrd referred to.

My function is chief operating officer, and coordinator for all of the activities of the organization.

Mr. DINGELL. The Commission staff here in your 1976 report—is that the most recent report?

Mr. DOWD. No, sir.

Mr. DINGELL. W. Timothy Dowd, Executive Director; Charles E. Bowlin, Director of Technical Services, and Richard A. Oyler, as Director of Communications. Is that the staff, or are there more recent changes?

Mr. DOWD. No, sir. Mr. Oyler is no longer with us. You are on page 13?

Mr. DINGELL. Yes, page 13.

Mr. DOWD. That post has been eliminated. Then there are three employees in the final paragraph.

Mr. DINGELL. Those are clerical, are they not?

Mr. DOWD. Yes.

Mr. DINGELL. Lee Hull, office manager and bookkeeper; Margaret Ray performs many administrative duties for the executive director; Jean Crutchfield, a 7-year employee, is the library assistant and receptionist.

Can you tell me anything else that the Commission has done as regards its responsibilities under Article III, which is Public Law 94-493?

Mr. BYRD. We have furnished, Mr. Chairman, to the committee all of the publications that we have published since 1974. We have also furnished to the committee a list of contacts that we have had both with Federal agencies and State agencies. We did not detail—we list the subject matter—of those contacts.

Mr. DINGELL. Where is that list of contacts, and so forth?

Mr. DOWD. I think it is basically unintelligible.

Mr. DINGELL. Have you made that available to the committee?

Mr. BYRD. I thought Mr. Dowd had. I guess he prepared it for my information, and we will make it available.

Mr. DINGELL. Do you have it at this time?

Mr. BYRD. Yes, I do.

Mr. DINGELL. Could I look at it?

Mr. BYRD. Certainly.

Mr. DINGELL. I observe here an article which appeared in the Compact Comments, which I gather is published by the Interstate Oil Compact Commission, dated November 1977. It said:

In a move to rouse congressional support for establishment of a natural gas stripper well category free from price controls, the Interstate Oil Compact Commission chairman recently named a committee to head such an effort.

Oklahoma Governor David Boren, IOCC chairman, named the four-man committee following the commission's executive committee meeting in September. The IOCC determined natural gas wells producing 100,000 cubic feet (mcf) or less daily should be considered marginal gas wells and receive an exemption from the Natural Gas Act.

Were there any minutes of that meeting which were taken at which it was decided that that had been done?

Mr. BYRD. Yes.

Mr. DOWD. They have been furnished.

Mr. BYRD. The minutes have been furnished to the committee.

Mr. DINGELL. They have been furnished to the committee?

Mr. BYRD. Copies of all the minutes of our meeting have been furnished.

Mr. DINGELL. Furnished to the committee?

Mr. BYRD. Yes.

Mr. DINGELL. Then it goes on to say:

Observers say passage of a natural gas deregulation bill without the stripper gas well amendment would probably result in the continuation of price controls on most marginal wells because they have been producing for several years. Most deregulation proposals include free market pricing only for new production.

In its charter the IOCC is given the power or the duty to rouse congressional support for establishment of a natural gas stripper category free of price controls?

Mr. BYRD. I am sure there is nothing in our charter that gives us authority to rouse Congress support. But if we are aware of the fact that gas wells, because of price, are being prematurely abandoned and the gas is being lost, I think that clearly is within the prevention of physical waste.

Mr. DINGELL. Can you tell me where in the charter of IOCC you are either required or empowered to lobby?

Mr. BYRD. We do not lobby.



Mr. DINGELL. You do not? What do you do when you rouse congressional support for something? Is that a lobbying undertaking or is it not?

Mr. BYRD. We inform the Congress by resolution or policy statement of positions that the compact has taken.

Mr. DINGELL. This was not a lobbying effort then?

Mr. BYRD. Well, if you mean do we have a registered lobbyist or an office—

Mr. DINGELL. No, no, no, no. You understand what lobbying is. Lobbying is communicating with the Congress trying to procure particular legislative responses from the Congress, is it not?

Mr. BYRD. Yes.

Mr. DINGELL. Or do you have a different definition?

Mr. BYRD. No, I would agree.

Mr. DINGELL. Sir?

Mr. BYRD. I would agree with that definition.

Mr. DINGELL. You agree.

I observe that your publication, I guess Compact Comments, is a publication, it says you are going to try, in a move, to rouse congressional support for establishment of natural gas stripper well category. The chairman named a committee to head such an effort, it says.

Who is on the committee?

Mr. BYRD. Joe Ramey, Director, New Mexico Oil and Gas Conservation Commission, was chairman; Mr. Rex Privett, chairman of the Oklahoma Corporation Commission was named a member; Jerry McHugh, Governor's representative from Colorado; Mr. Richard McConnell, Governor Rhodes' representative from Ohio.

Mr. DINGELL. What have they done?

Mr. BYRD. Well, they have gathered information.

First we argued for several weeks about a definition of a stripper gas well. Once we arrived at the definition how to define it, we started gathering information as to how many of those wells existed, whether or not there were premature abandonments resulting at that level of production from the present pricing regulations and reported back to the executive committee in the business section of the compact.

Mr. DINGELL. Now you mentioned Mr. Ramey.

Mr. BYRD. Ramey, yes.

Mr. DINGELL. David H. Raney. Who does he work for?

Mr. BYRD. Joe Ramey, sir.

Mr. DINGELL. It is not David Raney?

Mr. BYRD. No, Ramey, R-a-m-e-y. He is the Director of the Conservation Commission in New Mexico; he works for the State of New Mexico.

Mr. DINGELL. What has this group done in terms of making its views available to the Congress or to the administration or to other Federal regulatory bodies?

Mr. DOWD. To my knowledge, virtually nothing.

Mr. DINGELL. Virtually nothing?

Mr. DOWD. Yes.

Mr. DINGELL. That is a curious lobbying undertaking if I ever heard it.

Mr. DOWD. I agree.

As Mr. Byrd said, we did a survey of those wells—we did a census of wells in various categories, producing 60 mcf., 100, 120. That census has been furnished to the committee. And I believe the chairman of the committee, Mr. Ramey, communicated that census to Senator Jackson and perhaps to the chairman of this subcommittee and that is it, to my knowledge; that is all it has done.

Mr. DINGELL. You have here in your annual report of 1976 at page 16 the following statement; it is in the second column on page 16, second last paragraph. It says:

Resolved that the IOCC supports those amendments to HB 12169 which would remove stripper wells and new enhanced recovery projects from price controls and exempt those classifications from the national weighted average pricing procedures and thereby avoid physical waste of oil which will otherwise result from the premature abandonment of stripper wells and from the failure to initiate costly enhanced recovery projects necessary to recover known oil reserves that will otherwise be lost.

Where in your charter is there authorization to do that?

Mr. BYRD. Prevention of waste.

Mr. DINGELL. Sir?

Mr. BYRD. Prevention of waste, physical waste.

Mr. DINGELL. The chairman is directed to communicate the statement immediately to the House and Senate conferees. Was that done?

Mr. BYRD. I am sure it was.

Mr. DOWD. Yes, sir.

Mr. DINGELL. Sir?

Mr. BYRD. I am sure it was.

Mr. DINGELL. Where is the authorization for that in your charter?

Mr. BYRD. Well, the charter says we will use our efforts to prevent physical waste of oil and gas.

Mr. DINGELL. Now on the following page, page 17, appears this, in the first column. It says:

Now, therefore, be it resolved by the Interstate Oil Compact Commission, at its meeting in Wichita, Kansas, on June 30, 1976, that the chairman of the compact be directed to appoint a special committee to study both the legal and technological aspects of development of geothermal energy resources and to make recommendations to the member States with regard to appropriate regulation of such activities.

Where is your authorization and your authority to do that?

Mr. BYRD. That resulted from a speech that was given at the compact meeting by a professor from Texas, who in his speech stated there could be thousands or trillions of cubic feet of methane contained in geothermal brine under Texas, New Mexico, Louisiana, Mississippi, Louisiana, and Florida. We felt anything we could do to recover that methane, which is natural gas, out of the geothermal brine would certainly be consistent with the exact charter. Since then the Federal Government has approved the grant to assist in doing that.

Mr. DINGELL. Well, now I read here that your meeting in San Antonio, it says:

The regulation of natural gas prices by the Federal Power Commission has historically resulted in maintaining prices at such low levels as to encourage wasteful utilization of this precious resource and to economically prevent expanded exploration and development of the nation's cleanest and most efficient energy source. While the Federal Power Commission has recently indicated a recognition of this price disparity in its recent rulings, the administrative and judicial processes

applicable to the ruling make it obvious that several years of delay may occur before the nation can benefit from additional gas supplies resulting from the higher price levels proposed by the commission.

The nation cannot afford this delay, and the Congress is therefore urgently requested to consider legislation that will deregulate new natural gas prices and those of existing contracts as they expire, thereby permitting immediate expanded exploration for and development of natural gas reserves which must otherwise await legal acceptance of the commission's current orders.

Where is your authority on those points in your charter?

Mr. BYRD. Mr. Chairman, I think even this Congress has recognized the relationship between price and conservation.

Mr. DINGELL. Beloved friend, I asked where is your authority in your charter to develop those contacts?

Mr. BYRD. Yes. If increasing price or permitting free market price encourages development and continued production from marginal wells, then that prevents the waste of that oil.

Mr. DINGELL. Then you say:

A realistic environmental protection policy must be established to protect the integrity of the environment while permitting the flexible regulatory approach necessary to the acceleration of exploration for and development of our energy resources.

Where is your authority in the charter for that?

Mr. BYRD. I certainly agree with you that probably the charter does not encompass protection of environmental or prevention of pollution.

Mr. DINGELL. There is another resolution as regards the Safe Drinking Water Act.

Mr. BYRD. What was that, I did not hear it.

Mr. DINGELL. On the same page there is a resolution with regard to the Safe Drinking Water Act.

Mr. BYRD. Well, that certainly has a tremendous effect upon the States' abilities to perform their responsibilities in oil and gas conservation, and I think that Mr. Dowd and the committee that have been working on it have almost succeeded in convincing that agency that there is no need for regulations which would prevent the reinjection of water for oil recovery under their rules and regulations. We are making real progress on that, but if they prohibit the reinjection of salt water into the oil and gas formations, you have eliminated secondary and tertiary recovery in the process.

Mr. DINGELL. The Chair recognizes counsel for questions.

Mr. BARRETT. Gentlemen, you have an environmental committee?

Mr. DOWD. Yes.

Mr. BARRETT. I believe the attorney general had some comments about the environmental committee in his last report, 1976, with respect to the fact that it probably exceeded the charter.

What action has the committee taken, has the compact taken with respect to bringing itself in line with the recommendations of the Justice Department?

Mr. BYRD. We have discussed it, Mr. Barrett. Amending the charter is not easy.

Mr. DINGELL. Have you taken any action, though?

Mr. BYRD. Oh, yes, we have discussed—no formal action.

Mr. DINGELL. Any specific actions you have taken to comply with his suggestions on this matter?

Mr. BYRD. No. No formal action, no.

Mr. DINGELL. No formal action. Am I to assume that no formal action is no action?

Mr. DOWD. Yes.

We have a difference of opinion with the Department of Justice. The governors of the compacting States disagree with the Department of Justice.

Mr. DINGELL. Go ahead.

Mr. BARRETT. Can private individuals, not governmental employees, belong to the Compact Commission or participate in its activities?

Mr. DOWD. The commission is made up of those persons whom the governor of the respective States designate, whether they be in the petroleum industry, or State employees or environmentalists, and we have all within the commission.

Mr. BARRETT. They can be anyone?

Mr. DOWD. Anyone.

Mr. BARRETT. Are there any controls over the activities of the individuals on the committee? Are there other limitations?

Mr. DOWD. I do not understand your question.

Mr. BARRETT. A number of the committees are headed up by individuals who are associated with, say, Exxon or Gulf?

Mr. DOWD. None of the committees are headed by anyone other than State employees.

Mr. BARRETT. If you look at particular committees and you look at the State representatives from those committees you will find more members on the committee, say, from Texas who are associated with oil companies than with the Texas Railroad Commission.

My question is, are there any limitations on the membership of the committees?

Mr. DOWD. The limitation, if you can call it that, is that they must be named by the governor of the compacting State, of their State of residence.

Mr. DINGELL. Are there rules as regards conflict of interest by these persons named by the governors that are carried out by the commission?

Mr. DOWD. There are no restrictions on the governors as to whom they can name.

Mr. DINGELL. No restrictions. I observe, for example, in the case of Kansas, the Energy Resources Committee, the following:

P. T. Amstutz, Jr., Fourth National Bank Building, Wichita;
Ray Anderson, Jr., Benson Mineral Group, 601 Professional Building, Independence;

George H. Bruce, Aladdin Petroleum Corp., 809 Petroleum Building;

James R. Daniels, Murfin Drilling Co.;

Ben Foster, State Representative, 920 O. W. Garvey Building;

Robert W. Frensley, 1537 Vickers K.S.B. & T. Building;

John H. Knightley, Dr. R. Lauck Oil Company;

Richard L. Matheson, Panhandle Eastern Pipe Line Co., Box

1348, Kansas City, Mo., 64141;

Donald P. Schnacke, KIOGA;

Claude Shenkel, Geology Department, Kansas State University;
Frank W. Strait, 301 South Star, El Dorado.

This is your Energy Resources Committee we are referring to.
In the case of Louisiana the membership is as follows:

Arthur Barry, Superior Oil Co.;

R. L. Ferris, Shell Oil Co., Box 60193, New Orleans;

John Franks, Franks Petroleum Co., Box 7665, Shreveport;

Gale Galloway, Louisiana Intrastate Gas Corp., Box 1352, Alexandria;

James H. Gibbens, Texaco Inc., Box 60252, New Orleans;

Joseph W. Hecker, Office of Conservation, Box 44275, Baton Rouge;

James M. Hutchison, Department of Natural Resources, Box 44396, Baton Rouge;

Donald W. Keller, Quintana Petroleum Corp., Box 3331, Houston;

O. B. Mobley, Jr., Shreveport;

Peter R. Monrose, Exchange Oil and Gas Corp., 1010 Common Street, New Orleans;

Ray T. Sutton, Office of Conservation, Baton Rouge;

R. S. Tremaine, Amoco Product Co.

Now in the case of Texas, you have:

Arthur H. Barbeck, 4205 Deepwoods Drive, Austin;

Jeff T. Boucher, Jr., Capital National Bank, Box 3347, Houston;

Robert L. Cargill, Box 1166, Longview;

Roy T. Durst, 6416 Hilldale Road, Fort Worth;

R. B. Gilmore, DeGolyer and MacNaughton, 400 One Energy Square, Dallas;

Joe C. Hanna, State Representative, Box 2910, Austin;

Howard D. Henderson, Box 27553, Houston;

Harold Herndon, Milam Building, San Antonio;

Kenneth R. Huddleston, Pennzoil Co., Box 2967, Houston;

James E. Laney, State Representative, 304 Skaggs Building, Plainview;

Herman Loeb, Pennzoil Co., Box 2967, Houston;

W. J. Murray, Jr., 1906 Scenic Drive, Austin;

Jon P. Newton, Railroad Commission, Box 12967, Austin;

William B. Osborn, Jr., Box 17968, San Antonio;

William B. Phillips, Pogo Product Co., Box 2504, Houston;

C. Ronald Platt, 205 West Ninth, Suite 509, Austin 78701;

Max F. Powell, 303 West 12th, Austin;

Phillip R. Russell, Railroad Commission, Box 12967, Austin;

Charles J. Stamos, Tenneco, Inc.

Now, I am curious. Those do not appear to be overwhelmingly government representatives. Am I correct?

Mr. BYRD. Out of those you named from Texas, 6 of them are.

Mr. DINGELL. 6. I named I think 12 or 13.

Mr. BYRD. Out of Kansas, I believe 3 of them are. Of those you named from Kansas, 3 of them are.

Mr. DINGELL. In each instance though, the government representatives are in the minority.

Mr. BYRD. Well, in those instances, yes.

Louisiana, 3 of the ones you named——

Mr. DINGELL. I have a curiosity. Are there any of those folks, not governmental representatives, representatives of the consuming public.

Mr. BYRD. All of them that are—I hope all of them are State employees.

Mr. DINGELL. It is obvious to me they are not all State employees.

Mr. BYRD. Of those that are not State employees, you say, are any of them representing the consuming public?

Mr. DINGELL. Is there anyone there identifiable as a consumer group or consumers of any kind?

Mr. BYRD. I do not know how you define consumer groups.

Mr. DINGELL. I will leave the definition to you.

Mr. BYRD. I have not reviewed the governor's appointments in that light.

Mr. DINGELL. Are you aware of anybody who serves in any of your committees who is not a representative of the State agency or somebody in the oil or gas business or some related industry?

Mr. DOWD. Yes, sir.

Mr. DINGELL. Who?

Mr. DOWD. Well, there is Mr. Hal Scott, president of the Florida Audubon Society; there was a gentleman—

Mr. DINGELL. Where is he from; Florida?

Mr. DOWD. Florida, Maitland, Florida.

There is now or was—he may have passed away—a Methodist minister from the State of West Virginia named Dr. Reese Burns.

Mr. DINGELL. Now is your gentleman from the Florida Audubon Society there because he is a representative of the Audubon Society or is he also in the oil and gas business?

Mr. DOWD. No, he is an employee. His title is president, but he is in effect the executive director of the Florida Audubon Society. He is a full-time paid employee of the Audubon Society.

Mr. DINGELL. Of the office—

Mr. DOWD. Of the Florida Audubon Society.

Mr. DINGELL. Full time. So you have named one and you have indicated there might be another who may have passed on?

Mr. DOWD. Yes.

Mr. DINGELL. Are you aware of any others?

Mr. DOWD. I cannot recall any others at this time.

Mr. DINGELL. Would I be fair in assuming if there were any more you probably would be aware of them?

Mr. DOWD. Not necessarily.

You would certainly be fair in assuming that there are probably no more than four.

Mr. DINGELL. Probably no more than four?

Mr. DOWD. Yes.

Mr. DINGELL. That you would know, is that k-n-o-w or that there are no more than four, spelled n-o, more than four?

Mr. DOWD. There are not more than four that are not related to either State government or the industry, in my opinion.

Mr. DINGELL. Not more than four. You have named one. You have indicated the possibility of another who may or may not be alive. You have indicated that there may be two or possibly three others, if the one passed away.

Are you able to tell me who those other persons are?

Mr. DOWD. No, sir.

Mr. DINGELL. So their existence then is speculative?

Mr. DOWD. All right, yes, sir.

Mr. DINGELL. Well—

Mr. DOWD. The problem is I am not able to answer your question from either direction.

Mr. DINGELL. I note in the Senate report, "consenting to extension of interstate compact to conserve oil and gas," a report submitted by Mr. Johnston of Louisiana, for whom I have the greatest affection and respect.

In further explanation of its course, the committee stated, and I am quoting here directly again, in fact this is a quote within a quote:

These views * * * are not designed in any way to prevent State officials, members of the oil and gas industry or other individuals from expressing their views on the aforementioned subjects. The committee feels, however, that concerted action under the aegis of the compact with regard to various aspects of this nation's energy policies on the part of State officials, industry members, and other individuals are not in the national interest. Such concerted action is likely to put special producer interests against special consumer interests, thus making more difficult rather than facilitating the formulation by the Congress of urgently-needed, long-range energy policies.

Does that not militate against the kind of activities which we have seen here by the Interstate Compact Commission in your annual report of 1976?

Mr. BYRD. Well, I do not believe, Mr. Chairman, that the States can disregard the responsibilities of preventing waste of oil and gas merely because consumer groups might not agree with their actions.

Mr. DINGELL. Dear friend, I am simply asking how your actions conform with the adjuration of the Senate committee.

Mr. BYRD. The only answer I can give you is, I think that the States have done, continue to do what they think is necessary in order to carry out their responsibilities, which is the prevention of physical waste of oil and gas.

Mr. DINGELL. This appears to be at some variance then with the action of the Senate in consenting to the extension of the Interstate Compact to Conserve Oil and Gas.

Mr. BYRD. I think our basic disagreement is that the activities which they will refer to are not related to the prevention of waste.

Mr. DINGELL. Have you read the April 1976 report of the Senate committee on this point?

Mr. BYRD. Yes, sir.

Mr. DINGELL. You have?

Mr. BYRD. Yes.

Mr. DINGELL. Sir?

Mr. BYRD. Yes, I have.

Mr. DINGELL. Were you aware of the language I read?

Mr. BYRD. I am. Yes, I was.

Mr. DINGELL. Sir?

Mr. BYRD. Yes.

Mr. DINGELL. Can you tell me how you have conformed your action particularly in the light of your annual report of 1976 to the suggestions of the Senate committee on this point?

Mr. BYRD. Well, I think as a result of that language we have been more aware of prefacing our policy statements and resolutions and activities in relationship to the prevention of waste.

Mr. DINGELL. It strikes me that your 1976 annual report does not seem to reflect an undue amount of attention to the language I just read. Does it?

Mr. BYRD. If you study the language of the policy statements, you will see that they all are related or tied to the prevention of physical waste.

Mr. DINGELL. How does the membership of the commission relate to the Senate's adjuration on the point of the concerted action under the aegis of the compact with regard to various aspects of the nation's energy policy, where you have largely constituted yourself through the action of the appointing agencies, the governors or other events, as State agencies largely, I think, directed at the regulation of and promotion of the oil industry with members of the oil industry, with possibly as many as four consumer organization members sprinkled amongst your number?

Mr. BYRD. I will have to say that I have never discussed with the individual Governors how they arrive at the appointments they make to these committees. If you look at some of the States all of the members of the committees are State employees or professors.

Mr. DINGELL. That is correct, in some States they are. In some States there are agency employees and industry representatives.

Mr. BYRD. Yes. The thought processes that the Governors use in determining who they are going to appoint, I have never explored that with them.

Mr. DINGELL. I read this here:

One group whose work definitely falls outside our prescribed criteria is the Environmental Protection Committee. No matter how beneficial its developing program may otherwise be considered or how laudable its objectives, it clearly is concerned with effects upon air, water, wildlife, and other elements of the environment rather than physical waste of oil and gas.

I note in your membership that you persist in your Environmental Protection Committee. Would you want to tell me what the functions of the Environmental Protection Committee are?

Mr. DOWD. Mr. Chairman, I want to respond to that, but I would like to go back and amend the answer that I gave, that there were not more than four. As I thumb through this directory I find that there are, in the first place, several more than four, and in the second place, any number that I cannot tell by looking at this directory who they represent.

Mr. DINGELL. Would you want to tell me—I assume you folks there at the commission must know who your members are—

Mr. DOWD. No, sir.

Mr. DINGELL [continuing]. And what they do. You do not?

Mr. DOWD. No, sir, not all of them.

Mr. DINGELL. Do you mean to say that the commission does not know who is on the commission and who is on the committee?

Mr. DOWD. We know their names and addresses. In many cases—

Mr. DINGELL. Can you tell me what they do?

Mr. DOWD. Beg pardon?

Mr. DINGELL. Can you tell me what these folks do?

Mr. DOWD. No, sir, not in every case.

Mr. DINGELL. Sir?

Mr. DOWD. No, sir, not in every case.

Mr. DINGELL. What do they do; anything?

Mr. DOWD. Some of them do not.

Mr. DINGELL. How many of them do anything and how many of them do not.

Mr. BYRD. Do you mean do anything with the commission?

Mr. DINGELL. Yes. I assume they do something somewhere. But to do something with the commission is the matter at inquiry here.

Mr. BYRD. Yes, you would have to check, we would have to check the list of members against the registration at our midyear and annual meetings. If you did that, I think you would find a great number of them never show.

Mr. DINGELL. And do nothing?

Mr. DOWD. Yes.

Mr. BYRD. Do nothing as far as the Compact Commission is concerned.

Mr. DINGELL. I am curious why they are there.

Mr. BYRD. Because the Governor named them, sir.

Mr. DINGELL. I suppose that is a good reason. I must confess it is probably unimpressive to me.

Can you tell me what your Public Lands Committee does?

Mr. DOWD. Yes, sir.

Mr. BYRD. Go ahead.

Mr. DOWD. It is concerned with oil and gas production on the public lands, primarily in the Rocky Mountain States.

Mr. DINGELL. When you say public lands, are you talking about Federal lands?

Mr. DOWD. And State.

Mr. DINGELL. And State lands. What does it do in this concern?

Mr. DOWD. It presents programs, semiannually, on various aspects of dealing with that.

Mr. DINGELL. Dealing with what, what various aspects? Your charter deals with conservation?

Mr. DOWD. Yes, sir.

Mr. DINGELL. Does it deal with conservation or other aspects of production on public lands?

Mr. DOWD. Presently they are very concerned with the wilderness areas in controversy, because if those wilderness areas are created, those lands will be removed, including many State lands, will be removed from oil and gas exploration.

Mr. DINGELL. Where does that fall in the charter of your agency?

Mr. DOWD. Well, if you do not explore it, you waste it.

Mr. DINGELL. You do? Do you mean to say while it is sitting in the ground, it is wasted?

Mr. DOWD. It is wasted from the standpoint of being utilized.

Mr. DINGELL. I understand—so then are you telling me that your agency is constituted to encourage, and encourages opening up of lands? Is that your definition of conservation, opening them up to production?

Mr. DOWD. Encourage production by the orderly development of the resources.

Mr. DINGELL. Where is that in the charter?

Mr. BYRD. I do not—that is included in the definition.

Mr. DINGELL. I read article 3, which sets out the things which you are supposed to do.

Mr. DOWD. Article 3.

Mr. DINGELL. Where is that in article 3?

Mr. DOWD. Article 3 sets out the things that the States who are signatory to the compact are supposed to do.

Mr. DINGELL. Are there other authorities or responsibilities that you have which you or I are unaware of at this time or are not spread on the record at this time?

Mr. DOWD. Our purpose is set out in article 2.

Mr. DINGELL. Sir?

Mr. DOWD. Our purpose is set out in article 2.

Mr. DINGELL. Article 2?

Mr. DOWD. Yes.

Mr. DINGELL. It says "conserve oil and gas by the prevention of physical waste thereof from any cause." How is leaving oil and gas in the ground waste?

Mr. BYRD. I suppose if you never—if it is there and never recovered, it may not be wasted, but it certainly will not be utilized.

Mr. DINGELL. Well, that article 2 does not say, does not deal with utilization, it deals with physical waste.

Mr. BYRD. Well, I think we have a different definition of waste, Mr. Chairman.

Mr. DINGELL. I am prepared to listen to yours. What is your definition of waste?

Mr. BYRD. If something is made unavailable forever, and it is useful and needed, I would consider that a waste of the resource.

Mr. DINGELL. I read here in the Senate report here the following:

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

Do you agree with that statement?

Mr. BYRD. No, sir.

Mr. DINGELL. You do not? Let me read further from the Senate report. It says:

We need not consider the exact degree to which these activities relate to the prevention of physical waste of oil or gas from any cause, or whether, in the words of the House committee report, they "fall outside or at best have a very tenuous connection with" that compact purpose. We are asked simply to report whether the activities of the commission and the States have been limited to activities related directly to the immediate purpose of the compact, the prevention of physical waste. As so qualified and considering our review of the meaning of physical waste, we conclude that some compact activities have been so limited and some have not.

Can you tell me whether you agree with those statements?

Mr. BYRD. I would agree that under their definitions, yes, I would agree to that.

Mr. DINGELL. Without undertaking an item-by-item inspection, it is clear that on a fair appraisal most of the work of the Compact Commission's technical committees can be considered as directly related to physical waste prevention.

Now, can you tell me what your Finance and Publications Committee does?

Mr. DOWD. Yes, sir, that is our administration committee, our housekeeping committee. They perform one certain function, they set my salary. They have other duties, but their—

Mr. DINGELL. If you please, who funds these committees?

Mr. DOWD. The States.

Mr. DINGELL. The States fund them?

Mr. DOWD. Yes.

Mr. DINGELL. Do you receive any funds from industry?

Mr. DOWD. None.

Mr. DINGELL. None?

Mr. BYRD. Or the Federal Government.

Mr. DINGELL. Can you submit to us, please, a copy of your budget?

Mr. BYRD. Yes.

Mr. DINGELL. Together with the budgets of the sundry committees?

Mr. BYRD. They have no budget.

Mr. DOWD. They have no budgets.

Mr. DINGELL. They have no budget? None?

Mr. DOWD. None.

Mr. DINGELL. What is your Regulatory Practices Committee? What does it do?

Mr. BYRD. Well, they meet twice a year and always have a program. The principal function of the Regulatory Practices Committee is to keep each of the State commissions current on trends in both production, development, technology, rules and regulations.

Mr. DINGELL. Do these agencies—Did your committees issue resolutions, and that sort of thing?

Mr. BYRD. All the resolutions—The different committees propose resolutions. They go through the Resolutions Committee.

Mr. DINGELL. Have you submitted to us copies of the resolutions—

Mr. BYRD. Yes.

Mr. DINGELL [continuing]. That your committees have brought forward?

Mr. BYRD. We have submitted to you copies of all resolutions that have been approved.

Mr. DINGELL. How about those that have been brought forward by the committees? Could you make those available?

Mr. BYRD. I do not even know that there are copies. They come in, they are rewritten, changed, retyped, rewritten. The only records we have are the final approved copies.

Mr. DINGELL. Only the final document?

Mr. BYRD. Yes.

Mr. DOWD. Sometimes they come in on the backs of envelopes.

Mr. DINGELL. Gentlemen, I read here about your Regulatory Practices Committee, it says:

The Regulatory Practices Committee met on December 5, 1977, in the Coronado Room of the LaFonda Hotel. There was an overflow crowd in attendance. Mr. Edwin Mampe, director of the Price Regulatory Division of the Economic Regulatory Commission, Washington, D.C., gave a presentation on recent Federal regulatory developments in crude-oil pricing. He revealed newly adopted regulations this week that had not been released prior to this meeting. I am sure that all of us benefited from his remarks.

Then the Public Lands Committee met December 6, 1977, in the same room. It says:

The Federal Government owns approximately 800 million acres, excluding the Outer Continental Shelf. Most of this public-domain land is located in the 11 Western States and Alaska. Last year a Department of the Interior Task Force on the Availability of Federally Owned Mineral Lands study revealed that 62 percent of the Federal land is either closed to any form of development or restricted in one form or another. The impact on exploration and production is very obvious. It is important that the Federal Government pursue a policy allowing for a timely and orderly development of our energy resources; however, unfortunately, the contrary is true. With so much of the public land closed to petroleum exploration it is almost impossible to even inventory the lands that are potentially valuable for production of oil or natural gas.

Further on:

At the present time there are several bills in Congress which would withdraw large amounts of land both in Alaska and in the lower 48 States. There must be improved access to Federally controlled acreage in order to explore for and develop the oil, natural gas, coal and uranium energy sources in order to reduce our dependence on foreign imports.

Can you tell me where that last sentence falls within your charter organization?

Mr. DOWD. Well, Mr. Chairman—

Mr. DINGELL. Do you deal with uranium? Do you deal with coal?

Mr. DOWD. I think—

Mr. DINGELL. Do you deal with the question of foreign imports? Is that in your charter anywhere?

Mr. DOWD. No. The development and recovery of oil and gas is.

Mr. DINGELL. Do you deal with coal and uranium, or imports?

Mr. DOWD. No, sir.

Mr. DINGELL. Sir?

Mr. DOWD. No, we do not. We are concerned about them.

Mr. DINGELL. It is interesting that that committee should make a submission of that kind.

Mr. DOWD. Well, evidently—

Mr. DINGELL. Are they unaware of your charter?

Mr. DOWD. No, they are not unaware of it. But that is a committee report. It is not a resolution. They discuss current problems, whether they are directly related to the prevention of physical waste or not. All of our programs are not so constrained to deal with the specific issue of physical waste of oil and gas.

Mr. DINGELL. None of those comments deal with that point. Now, I read here that you say—I notice there is a vote, so we will have to be brief.

Mr. BYRD. At our past meeting we had a Regulatory Practices Committee meeting that dealt with the implementation of the new law. We had Mr. Barry L. Haase, FERC, one of his staff members there, which probably does not relate directly to the prevention of physical waste, but they have concluded that the compact is the

vehicle through which they can better coordinate their responsibilities with the States than going to 30 separate States.

Mr. DINGELL. You mean they go to an agency that has no responsibility in these areas to coordinate matters that do not fall under the responsibility of the agency, as opposed to the several States which do have agencies under their own aegis that can do the same work? That is rather an anomalous situation, is it not?

Mr. BYRD. The various States have the agencies to do the work, yes.

Mr. DINGELL. Gentlemen, we thank you for your assistance to the committee. I note that there is a rollcall on the floor, and I have to go vote. We will be in recess for about 10 minutes. I will come back as quick as I can to hear the comments of our witnesses from the Department of Justice.

[Brief recess.]

Mr. DINGELL. The subcommittee will come to order. Gentlemen, the Chair regrets the inconvenience to you. Mr. Flexner, if you will identify yourself for the purposes of the record, and your associate, we will recognize you for your statement.

STATEMENT OF DONALD F. FLEXNER, CHIEF, ANTITRUST DIVISION, ENERGY SECTION, DEPARTMENT OF JUSTICE, ACCOMPANIED BY JOSEPH A. MULLIN, COUNSEL, ENERGY SECTION

Mr. FLEXNER. My name is Donald Flexner, from the Department of Justice. With me today is Mr. Joseph Mullin, who is an attorney in the Energy Section of the Antitrust Division.

If it please the Chairman, I would submit my testimony for the record and attempt to briefly summarize my statement [see p. 27].

Mr. DINGELL. Without objection, your full statement will appear in the record, and we will recognize you for the purpose of a summary.

Mr. FLEXNER. Mr. Chairman, our position is basically that we believe that an extension of the Interstate Oil Compact is unnecessary to the accomplishment of purposes that presently are intended to be served by the Commission. As Mr. Byrd indicated in his testimony, the original purpose of the Commission was to conserve oil and gas by the prevention of physical waste.

This purpose arose at a time and under conditions that were both unique, and, I think, one would concede, are presently extinct.

In 1935, there was a serious excess of supply over demand. The common law rule of capture permitted anyone who produced oil to obtain title to that oil and thus promoted a race for the development of reserves, and prices were depressed.

At the present time, there is obviously a shortage of domestic supply in comparison to demand. Since 1972, State regulatory commissions have set production allowables at 100 percent, and there is compulsory unitization in at least 28 States, which means that the effects of the common law rule of capture have been eradicated.

In addition, unlike the 1930's, the Federal Government is now a pervasive factor in the regulation of oil and gas production, sale and marketing.

Now, conservation means reduced consumption. On the supply side, the national and the State interests share a common purpose,

enhanced production. In keeping with these changes in market conditions our observations have convinced us that the IOCC purpose has also shifted. Its basic objective, we think at the moment, is to serve as a liaison between the States and the Federal Government.

Our position is basically that a compact is unnecessary to serve this purpose, although I think for the record we should clearly state that we have no objection to such activities being carried out on behalf of the States.

Mr. DINGELL. When you say you have no objection, to what activities?

Mr. FLEXNER. We have no objection to States making their views known to the Federal Government on various legislation being considered by the Congress or by the Administration.

Mr. DINGELL. I think that is eminently proper, but is it eminently proper to be done through the commission or by the States?

Mr. FLEXNER. As we indicate in our testimony, we think it is unnecessary to that end that there be a compact. That kind of activity can be carried out and is carried out by a National Association of Regulatory Utility Commissioners, for example, or a Conference of State Governors.

Mr. Chairman, I would simply conclude briefly by stating that our perspective and our advice to this committee is based not on a concern about the competitive ramifications of the IOCC but rather is in response to the question posed to the Department of Justice by the Chairman, namely, whether or not the activities of the Commission remain in complete conformity with the original purposes of that charter. We think in light of current conditions that extension of the Compact is unnecessary.

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

[Testimony resumes on p. 37.]

[Mr. Flexner's prepared statement follows:]



Department of Justice

DONALD L. FLEXNER
CHIEF
ENERGY SECTION
ANTITRUST DIVISION

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to appear before you today to present the views of the Department of Justice as to whether Congress should consent to further extension of the Interstate Compact to Conserve Oil and Gas. The Compact was originally executed in 1935, and at that time became effective for a two-year period upon the consent of the 74th Congress. The Compact has since been successively renewed on thirteen different occasions for varying terms. Most recently, Public Law 94-493 (S.J. Res. 126, Oct. 14, 1976) extended Congressional consent to the Compact to December 31, 1978.

Signatories to the Compact include thirty oil and gas producing states and six associate nonproducing states. Associate member states may participate in all activities of the Interstate Oil Compact Commission ("IOCC"), but cannot vote or hold office. The Compact binds each signatory state to enact laws to prevent the physical waste of oil and gas. Since most oil and gas producing states had already enacted some waste prevention statutes prior to entering the Compact, the principal effect of the Compact was the establishment of an Interstate Oil Compact Commission consisting of one member from each signatory state. The states under the Compact function through the Commission, whose duty is to ascertain the methods, practices, and conditions to bring about conservation and the prevention of physical waste of oil and gas, and to report its findings and recommendations to the states.

In 1955, the Attorney General was first required to make reports to Congress as to whether or not the activities of the states under the Compact had been consistent with the

purposes as set out in Article V of the Compact. That Article states that it is not the purpose of the Compact to authorize the compacting states to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof, or to create or perpetuate monopoly or promote regimentation. Instead, it goes on, the purpose is limited to conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations.

This report requirement has been included in each of the successive Congressional extensions of the Compact since then. In addition, the Compact extension in 1972 expanded the scope of the Attorney General's report to include appraisal of whether activities under the Compact were related directly to the Compact's immediate purpose of prevention of physical waste, as set out in Article II. The current extension dropped this requirement, but added another new provision calling for the Attorney General to review the activities of any advisory committees to the Commission and the States, and to report to Congress as to whether the activities of any such advisory committees could tend to create or maintain situations inconsistent with the antitrust laws.

A total of eleven reports have thus far been submitted to Congress, and preparation of reports under the present Congressional extension of the Compact is currently under way. These reports, reviewing in detail the work of the States, of the Interstate Oil Compact Commission and of its standing committees, have been based upon extensive investigation and surveillance of the IOCC. I might add, as an example, that our investigation under the current legislative requirement has included close personal surveillance by Antitrust Division personnel of every IOCC Midyear Meeting, Annual Meeting and Executive Committee Meeting since July 1974; study of all Compact Commission publications in that period; inspection of the files of the Commission at its Headquarters Office; interview by questionnaire of selected Compact Commission officials and committee members on their private business affiliations; and a rough survey of selected

State regulatory agencies on various matters relating to the Compact and conservation.

After investigations of this type, our reports have consistently concluded that the Compact and the IOCC play only a peripheral role with respect to the industry's competitive problems. They have uniformly found that the Compact gives no power to do anything beyond studying and making recommendations, and that the IOCC and the states under the Compact did not act in the fashion proscribed by Article V. However, our last report, dated as of June 30, 1974, also found that while much of the work of the IOCC was related directly to the immediate purpose of the Compact, i.e., the prevention of physical waste, some of its activities seemed to bear only an extremely attenuated connection with that immediate purpose.

For this hearing, however, you have not sought our views on the narrow antitrust-related questions posed under our statutory report requirement. Instead, you have asked us to address a range of issues bearing on the substantive work of the IOCC, including the need for such a Compact and the Commission's role in relation to Federal Departments and agencies. We have approached this task from the background of expertise developed in a series of recent appraisals of the need for regulatory agency reform. From such a perspective and based on the drastic changes in the conditions which brought the Compact into being, the Department of Justice sees no need at this time for any further extension by the Congress.

In order to explain the basis for this conclusion, it is useful to review the purposes of the Compact. Since the language of the Compact itself has remained essentially unchanged since its original adoption in 1935, those purposes can best be understood in light of the circumstances which led to its adoption by the member states and subsequent ratification by Congress over 40 years ago.

At the time of its initial adoption, and before, much of the perceived need for the Compact could be directly

attributed the very nature of oil and gas. Crude oil in place is highly fluid; under intense pressure, it will drain quickly from beneath one surface property to another if a well drilled on the adjacent property, by active production, releases the formation pressure. Under the judicial "rule of capture," which rewarded with title the producer who first "captured" the oil by production, each new strike led to a mad scramble by adjoining property owners to tap the underground reservoir before the oil was drained away or underground pressures completely dissipated.

These conditions created numerous problems of water and ground pollution. They also led to the loss of oil both above ground and below -- the latter due to early abandonment of underground resources on account of the premature dissipation of reservoir pressures. As a result, oil producing states, led by Oklahoma and Texas, began to attempt to bring this situation under control. These efforts included measures to protect health and safety, to curb physical waste, to protect the correlative rights of property owners against unwarranted underground drainage, to foster exploration incentives, and to ensure that producers could profitably market their oil. As knowledge of reservoir engineering increased, controls broadened to ensure proper use of underground pressures. Furthermore, some leading states began to restrict production to estimates of market demand, allocating production quotas to individual wells. While this practice was first undertaken on an individual pool basis, in response to "rule of capture" races, it eventually spread statewide. ^{1/}

^{1/} See Report of the Attorney General pursuant to section 2 of the Joint Resolution of December 11, 1967, Consenting to an Interstate Compact to Conserve Oil and Gas (April 1969), at 4-5 (hereinafter Report of the Attorney General). The development of conservation legislation in oil producing states is traced in Mineral Law Section, American Bar Association, Legal History of Conservation of Oil and Gas, A Symposium (1938) and Mineral Law Section, American Bar Association, Conservation of Oil and Gas, A Legal History, p. 19 et seq. (Murphy ed. 1948).

These measures, developed and refined over the years by states to regulate development of their own resources, came to be known as conservation laws and regulations. It should be noted that unlike the general course of the conservation movement as to natural resources, which has stressed preservation, conservation of oil has emphasized orderly use. When questions ultimately arose as to whether such state regulation unduly burdened interstate commerce, Congressional enactment of the Connally Hot Oil Act in 1935 ^{2/} provided both Federal acquiescence in and a complement to enforcement of state regulation.

The Compact itself came into being as the result of the glut of oil in the early 1930's. As a result of a number of new discoveries, including the huge East Texas Field of 1931, the production race had reached new heights and market prices new lows. In these market conditions, attempts at control met with little success in either of the leading producing states -- Texas and Oklahoma. Indeed, in late 1931, the governor of Texas found it necessary to declare martial law to curb the flow of "hot oil" produced in violation of state efforts at control. At the same time, governors and Congressional representatives of these and other states stepped up their efforts to limit imports of oil and oil products into the United States.

The NRA provided a temporary form of federal relief to the situation, but the Supreme Court's declaration of its unconstitutionality early in 1935 ^{3/} brought to an end the initial Federal administrative machinery which had sought to coordinate joint efforts toward conservation and orderly marketing. Meanwhile, however, efforts among oil producing states to cooperate in the interest of conservation were well underway. Representatives of various oil producing states met in late 1934 and early 1935 to discuss the formation of an interstate Compact relating to conservation. Disparate views as to what a Compact should embody crystallized around the conflicting opinions of the governors of

^{2/} 15 U.S.C. §715-715m.

^{3/} Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935).

Oklahoma and Texas. Oklahoma favored a more powerful organization -- joint Federal-State coordination to study supply and demand factors, recommend totals of allowable production for the United States and their proper allocation among the states, and make recommendations toward uniformity of state conservation statutes. ^{4/} Texas, on the other hand, was opposed to any Federal control or regulation of domestic production (with the exception of "hot oil" legislation), or indeed to any of the other states interfering with Texas affairs. However, the real crux of this dispute centered on the nature of conservation that the Compact would promote. At the time, Texas law specifically excluded the concept of "economic waste" as a basis for production limitation. ^{5/} Rather, regulation by the Texas Railroad Commission was limited to the prevention of physical waste, and it was Texas' view that the purpose of any Interstate Compact should be similarly limited. Oklahoma, meanwhile, urged that the Compact embrace a broader concept of conservation -- one which would address economic waste as well and which would, for example, encourage the limitation of supply to demand.

Ultimately, the Compact as adopted clearly reflected the Texas viewpoint. Article II states simply that the purpose of the Compact "is to conserve oil and gas by the prevention of the physical waste thereof from any cause." While individual states could define "physical waste" in any way they chose (and some have since broadened that definition to include economic waste), the fact remains that the explicitly stated common purpose upon which signatories to the Compact could and did agree focused on physical waste. On the other main point, power over conservation remained within each state and the Compact was left merely as an

^{4/} See Report of the Attorney General, September 1, 1956, at 49.

^{5/} See Amazon Petroleum Corp. v. Railroad Commission of Texas, 5 F. Supp. 613 (E.D. Texas, 1934). Ironically, Texas completely reversed its policy shortly after adoption of the Compact and became an ardent proponent of limiting production to market demand.

instrument for conservation studies and recommendation to the states.

Subsequently, after its submission to Congress for approval, as required under the Constitution, a subcommittee of the House Committee on Interstate and Foreign Commerce reviewed the Compact and in its place reported to the full House a new bill which, while consenting to the Compact, would have established considerable Federal involvement in the oil industry, including the Federal prescription of quotas for the movement of crude oil into interstate commerce. 6/ Since this legislation was given little likelihood of passage during the remainder of that session of Congress, the Committee finally agreed to the original Joint Resolution, which merely gave Congressional consent to the Compact. Debate in the House clearly indicated that the approval of this resolution was at the time intended merely as a temporary step pending the passage of more comprehensive legislation, and the consent was therefore of limited duration. 7/

The fundamental point to be made from this review is that this goal of promoting common action on the part of states to prevent physical waste emerged from a period when oil was in plentiful supply -- far in excess of demand -- and prices were, as a result, extremely depressed. To point out that the economic climate for the oil and gas industry is today vastly different than it was in 1935 is both obvious and critical to this inquiry. With the possible exception of occasional short-term periods of surplus in limited geographical regions, there is no significant danger that demand for oil and gas in the United States will at any point in the foreseeable future be outstripped by domestic supply. Indeed, the United States in recent years has had to rely increasingly on imports. That dependence now amounts to almost half of its petroleum needs. In short, the factual context from which the Compact emerged, as

6/ See Report of the Attorney General, September 1, 1956, at p.48.

7/ 79 Cong. Rec. 14583 et seq.

reflected by the "legislative history," bears no resemblance to current conditions in the industry.

Correspondingly, the Compact was created to address problems which have since largely been solved. The basic regulatory measures to ensure against physical waste in connection with such production have long since been developed and adopted by the individual oil-producing states. While conservation remains an important aspect of national energy policy, it is now conservation in the form of reduced consumption that is of principal concern. With respect to domestic supply, enhanced production is plainly in the national interest -- both to alleviate shortages and to reduce dependence on foreign sources of supply.

It should be noted in this regard that virtually all of the major producing states which regulate production in terms of market demand have, in recent years, established allowable production at 100 percent of market demand. In Texas, for example, one of the five leading market demand states which, in 1977, accounted for 67 percent of domestic crude production and 81.2 percent of production in PAD 1-4, the market demand factor has been (but for minor variations) at 100 percent since April 1972.

Further evidence of the vast change in the producing industry since 1935 can be found in the spread of unitization -- the operation of an entire oil reservoir by the various property owners as a single unit. This has resolved many of the problems once associated with the "rule of capture."

The almost complete reversal of domestic supply conditions since adoption of the Compact has also induced efforts by the IOCC to adjust to changing times. In 1969-70, it undertook to define new long-range goals for its activities. Again, in 1973-74, it conducted an intensive effort to study how the Compact Commission could be made more effective to deal with the present area of energy scarcity, either within its present charter or by necessary amendment. Meanwhile, the IOCC's old Engineering Committee,


formed to study petroleum reservoir engineering, has been disbanded and the Commission has established new standing committees to deal with environmental protection and geothermal resources, subjects which bear no discernible relation to prevention of waste in production of oil and gas.

Even as these new efforts began, the traditional conservation work of the IOCC has dwindled. It still collects and publishes annual reviews of stripper well statistics and conservation activities in the individual states, as well as occasional studies on technical subjects. We are not competent, however, to appraise the value of this output or its degree of usefulness to anyone. Nevertheless, study projects and resulting publications by the Commission's technical committees have become infrequent and most standing committee meetings have simply become forums for guest speakers. In this regard, the Commission's semiannual meetings are now mainly an occasion -- one among many -- for members of several technical disciplines to mingle and perhaps obtain some new information in their fields, as well as a convenient opportunity for state regulatory officials to discuss mutual problems.

Over the years the Compact Commission has sought to become a focal point for liaison between the oil producing states and the Federal Government. From time to time its aid was sought in solicitation of state regulatory agency views or the collection of needed statistics for one or another Federal agency. Most of these Federal agency responsibilities have now been absorbed into the Department of Energy, and it is still too early to say whether DOE will use the IOCC in any significant manner or deal directly with individual states. In this regard our impression is that, in any case, many of the states have in the past tended to deal directly with Federal agencies on matters of mutual concern.

With this shift in functions and dwindling of technical studies on waste prevention, it has become all too clear

that a large part of the actual work that the IOCC performs at its meetings is now devoted to the generation of pronouncements in the form of resolutions or statements of policy, followed by the active promotion of these policy positions before Congress and Federal agencies. These pronouncements extend well beyond the concept of physical waste to a broad concept of economic waste -- in essence, to virtually all aspects of national energy policy. The use of the IOCC as a platform for largely "political" activity appears to go well beyond the original purpose of the Compact.




This is not to say, of course, that no forum should exist for the voicing of broad energy policy statements by state officials. On the contrary, such a forum already exists in the Department of Energy. Indeed, one of the purposes enumerated in the Department of Energy Organization Act (along with creating and implementing a comprehensive energy conservation strategy) is

to provide for the cooperation of Federal, State, and local governments in the development and implementation of national energy policies and programs . . . §/

I should emphasize that the Department of Justice in no way wishes to impair or impede the ability of state representatives to discuss energy policy. However, the IOCC was never intended to operate other than as a vehicle to encourage states to prevent physical waste. While that goal was entirely understandable in 1935, circumstances have changed drastically since then, and in response to the changes, the IOCC has ventured into areas far beyond its stated purposes.

Under the circumstances outlined above, there no longer seems to be a need to continue this organization as an interstate compact. If so much of its activity should continue to be taken up with what is essentially lobbying work, it would seem inappropriate for it to have the special cachet of Congressional approval.



§/ 42 U.S.C. §7112(11).

This does not mean that the organization need terminate its activities. It has always regarded itself implicitly as an organization of state oil and gas regulatory agencies. It is always open for it to reconstitute itself explicitly as such an organization, to retaylor its charter to suit the current times, and to continue its conservation work as a group somewhere along the lines of the National Association of Regulatory Utility Commissioners (NARUC).

This concludes my prepared statement of the Department's views on the extension of Congressional consent to the Interstate Compact to Conserve Oil and Gas. I would be happy to answer any questions the Committee may have, or to elaborate on any specific point I have discussed today.

Mr. DINGELL. The Compact provides by its terms that it remains in effect until Congress withdraws its consent, and I quote directly, "provide that upon giving of congressional consent thereto in its amended form the Compact shall remain in effect until Congress withdraws such consent."

Your statement indicates that the last congressional consent was given on October 14, 1976 through December 31 of 1978. Is that right?

Mr. FLEXNER. That is correct.

Mr. DINGELL. Now, when the Congress' consent ceases, if we do not renew this, what is the practical effect of that on the Compact, even though its language says "until Congress withdraws"?

Mr. FLEXNER. I think as of December 31, 1978, without congressional consent, the Compact, as a constitutional legal entity, would probably cease to exist.

Mr. DINGELL. I happen to agree with you on that. I just was curious as regards that fact.

Now, to carry the matter a bit further, what could the Compact do without the extension of congressional consent?

Mr. FLEXNER. In my view, the States that are party to the Compact would probably have to reconstitute themselves in some other form of organization, whether it be a trade association referred to by Mr. Byrd, whether it be a national association of State regulatory agencies, or whether it would be an association of state governors that would convene from time to time to consider matters of common interest.

Mr. DINGELL. Could that kind of body include, under the anti-trust laws, representation and membership from oil companies and producers?

Mr. FLEXNER. I think in theory it could, Mr. Chairman. Of course, what was discussed and what was agreed to would obviously be the critical question.

Mr. DINGELL. Could limiting production be addressed in the meeting?

Mr. FLEXNER. I think it would be most unwise for that subject to be raised in a meeting involving members of industry.

Mr. DINGELL. Could joint action by sundry companies be included in that kind of discussion?

Mr. FLEXNER. I think not, Mr. Chairman.

Mr. DINGELL. Could pricing be discussed?

Mr. FLEXNER. I think not, Mr. Chairman.

Mr. DINGELL. Could anything related to marketing or market areas be discussed?

Mr. FLEXNER. I think not, Mr. Chairman. Not without exposing the participants to possible felony violations of the Sherman Act.

Mr. DINGELL. Could that extend to the private members, members of industry, and that sort of thing?

Mr. FLEXNER. Yes, and I might add that those same limitations would apply whether or not you are talking about a compact. There is no antitrust immunity that flows from the fact of a compact. If those matters were discussed by members of industry now and agreements were reached now, even though in the context of the Compact, there clearly would be antitrust violations.

Mr. DINGELL. Would the liabilities extend to governors and State officials if they were to participate in discussions and the agreements arrived at?

I recognize this is a novel question.

Mr. FLEXNER. I would have to reflect on that, Mr. Chairman. It is difficult for me to answer off the top of my head.

Mr. DINGELL. Is there any clear prohibition in the antitrust laws from including a State official who participates in some kind of informal industry State government organization from achieving a civil or criminal liability for violation of the antitrust laws where he participates in meetings leading to certain actions?

Mr. FLEXNER. Two things need to be said. One, the fact that a government official participated in such a meeting would not immunize the participant from the antitrust laws.

Mr. DINGELL. Would not immunize all (a) the private individuals, and (b) the governmental officials.

Mr. FLEXNER. That is correct.

Mr. DINGELL. Would the governors be immunized or the representatives of State governments be immunized by reason of their holding office as elected officials or appointed officials by the government?

Mr. FLEXNER. I think not.

Mr. DINGELL. Can you tell us what happens to IOCC if the Congress does not approve the extension in the light of the questions earlier asked by the Chair?

Mr. FLEXNER. My view is that the constitutional sanction that is provided for a compact could be removed. The States that are parties to the Compact would choose to continue their activities nominally as a compact or not; whether they would do so I could not answer, but I think the fact would remain that the constitutional sanction would cease.

Mr. DINGELL. Is there anything in the Constitution that permits an organization to say that unless the Congress expressly withdraws its consent that the organization, which would in this instance be a compact, would persist in its existence?

Mr. FLEXNER. I think the critical question, Mr. Chairman, would be whether or not Congress had simply delayed in acting upon the extension of the Compact or whether it had refused to extend the Compact.

If it was clear that the Congress had refused to enter into a joint resolution to extend the Compact, I think the constitutional sanction would be removed.

Mr. DINGELL. You mean when you say sanction, the blessing or imprimatur of—

Mr. FLEXNER. Correct.

Mr. DINGELL. That is the other meaning of the word sanction.

Mr. FLEXNER. Correct.

Mr. DINGELL. I assume if Congress failed to act by the end of the year on this, the congressional sanction or approval for this would have been removed. Am I correct in that interpretation?

Mr. FLEXNER. I think that is correct, but I think, as a practical matter, Congress could, subsequent to that, if it so chose, enter into a joint resolution, and the fact of the delay would be of no material significance.

Mr. DINGELL. But if it did not, during the forthcoming session of Congress, reinstitute its approval, the probabilities would be there would be sufficient clarity on the action of the Congress that it would be quite plain that there was no extension?

Mr. FLEXNER. I think that is probably right.

Mr. DINGELL. You heard Mr. Byrd's definition of waste. Are you in accord with that definition of waste?

Mr. FLEXNER. Well, I think the activities that were carried out pursuant to that definition could not be fairly called a violation of the charter.

Mr. DINGELL. It could not?

Mr. FLEXNER. Could not.

Mr. DINGELL. Could they be clearly held to be within the definition of the charter?

Mr. FLEXNER. No, I don't think they could be called that, either. Two important facts to remember in deciding what was really meant by waste when the Compact was originally formed, are: first, it is clear that the notion of economic waste, that is, taking action or promoting action which would have an effect on price, for example, which, in turn, would affect the development of resources, was rejected by the Congress at the time of its first consideration of the Compact in 1935. The House had proposed a bill that originally accompanied the resolution—

Mr. DINGELL. The Connally Hot Oil Act?

Mr. FLEXNER. No, that is quite a different matter. The bill that I am referring to was proposed by the House at the time of its consideration of the Compact. That bill would have followed essentially what was Oklahoma's view at the time and would have permitted the Federal Government to participate in what I would call a national prorationing or production limitation scheme. That was not acted upon and the definition of waste that that kind of program would have covered was essentially rejected.

In addition, in Article V there is a clear prohibition of limiting production for the purpose of stabilizing or fixing price.

So I think that, read together, that piece of legislative history and the specific terms of Article V of the Compact indicate that economic waste, as opposed to physical waste, are distinguishable, and that the positive effects of Federal pricing decisions, for example, on the incentives of producers to increase production of oil or natural gas was not what was originally intended to be included in the notion of physical waste as it is set forth in Article II.

Mr. DINGELL. The basic purposes, as I understand, of the formation of the Compact was to deal with the situation which existed at the time that it was approved by the Congress. Is that right?

Mr. FLEXNER. I think that is correct.

Mr. DINGELL. The situation at that time was there was monstrous wastage, overpumping, disregard of sound engineering and conservation practices with regard to reservoirs, uncontrolled pumping, all manner of imprudent production actions which wasted oil and which left oil in the ground, and all of this against the background of the situation where oil prices were viewed by the industry, and I suspect by the Congress, as calamitously low, creating incentives towards unwise production methods and overproduction. Am I correct?

Mr. FLEXNER. I think we agree with that view.

Mr. DINGELL. Is there anything else that was going on at that time that could be used in the construction of the Compact?

Mr. FLEXNER. I think that is a fair characterization of the context in which the Compact was entered.

Mr. DINGELL. So the Compact has been viewed as correcting the evils which the framers of the Compact found and to which Congress gave its consent; is that right?

Mr. FLEXNER. That is our view.

Mr. DINGELL. And to try now to deal with increasing prices or changing Federal practices as regards pricing and controls of that sort, is not within the purposes of the Compact. Is that right?

Mr. FLEXNER. I think it is not within the original purpose of the Compact.

Mr. DINGELL. And unless the Compact is changed by the participants thereto and that change ratified by the consent of Congress, the original purpose continues to bind the persons who are parties to the Compact; is that not so?

Mr. FLEXNER. That is correct.

Mr. DINGELL. Is there anywhere in the Compact that congressional approval is afforded to lobbying or communicating with the Federal Government as regards to legislation pending or supporting or opposing particular congressional or senatorial actions by the members of the Compact?

Mr. FLEXNER. No. It is not specified in the Compact. Obviously the Compact speaks in terms that are quite general. Such activity, I think, is not prohibited by the Compact.

On the other hand, since, in our view, it has become the principal concern of the IOCC, it, really—to be carried out adequately—does not require a compact to accomplish.

Mr. DINGELL. In other words, the States could do this through the governors association and other State agencies?

Mr. FLEXNER. That is correct. Indeed, it is the law under the Department of Energy Organization Act that the Federal Govern-

ment encourage the cooperation of the States in the formulation of a national energy policy and establish a liaison with the States to carry out that purpose.

Mr. DINGELL. What are your evaluations of the functions of the private individuals found in such abundance in IOCC committee activities?

Mr. FLEXNER. Our evaluation is that they perform two functions: One, they bring to the committees facts and experience from industry, and, two, they provide advice based on those facts and experience. It is very difficult for us to evaluate the extent to which their views are overwhelmingly persuasive in terms of the final outcome of resolutions or decisions.

Mr. DINGELL. Do you have observers at the meetings of the different panels?

Mr. FLEXNER. We do.

Mr. DINGELL. You do?

Mr. FLEXNER. We do have observers. Mr. Mullin, who accompanies me, is one who has attended meetings of the IOCC.

Mr. DINGELL. Is it your view that the members of the committee, public or private, achieve for themselves any exemption from the purposes of the antitrust laws by reason of their participation in the structure of the Interstate Oil Compact Commission's affairs?

Mr. FLEXNER. They have no antitrust immunity.

Mr. DINGELL. Can you tell me whether the geothermal resources committee is within the purposes of the Commission?

Mr. FLEXNER. We see it as having a very tangential, if any, relationship to the purposes of the Compact. Similarly, the environmental committee.

Mr. DINGELL. If the Congress does extend the consent to the Commission, does this sanction any private activity by the Congress or any activities by the committees which are composed in large part of private individuals?

Mr. FLEXNER. I am not sure I understand the question, Mr. Chairman.

Mr. DINGELL. You have committees of the Commission which are composed very largely of private individuals. If we extend the Compact, does that extend any approval by the Congress to activities by these private citizens of these committees which might in any fashion contravene the antitrust laws or any other statutes?

Mr. FLEXNER. There would be no antitrust immunity that would flow from your extending the Compact.

Mr. DINGELL. The Chair is going to recognize counsel at this time.

Mr. BARRETT. I think what the Chairman was driving at is whether it would sanction the lobbying activities, the past resolutions that have been adopted, and so on.

Mr. FLEXNER. If the Compact were continued?

Mr. BARRETT. That is right.

Mr. FLEXNER. It would not specifically sanction those activities, but, as I have indicated to the Chairman, I do not think those activities are specifically prohibited under the Compact. So they would likely continue.

Mr. BARRETT. The department is required to get either one or two reports up to the committee. Could we anticipate having those reports in the next 30 days?

Mr. FLEXNER. You certainly will have the one that is overdue at the moment, for which I apologize, relating to the effects, if any, that the advisory committees have had on competition.

The other report, which is the traditional report that we do on whether or not the prohibitions of Article V have been offended, I think is due in October, and I expect that you will have that in a timely fashion.

Mr. BARRETT. I have no other questions, Mr. Chairman.

Mr. DINGELL. Gentlemen, the committee thanks you for your assistance to the committee, for your helpful testimony, and also for your patience.

The committee will stand adjourned, pending the call of the Chair.

The Chair thanks all of the witnesses.

[Whereupon, at 12:44 p.m., the subcommittee adjourned.]

