ARCTIC REFUGE REVENUE GIVE-AWAY LANGUAGE

On June 6, the House Appropriations Committee approved the fiscal year 2019 Interior and Environment Appropriations bill, which included a 'poison pill' for the Arctic National Wildlife Refuge. This provision, introduced as an amendment by Rep. Cole (R-OK4) during Committee mark-up, would give away a percentage of the revenue from oil and gas resource development on the Refuge's federal public lands to private Alaska Native regional corporations.

Talking Points:

- The Arctic National Wildlife Refuge is a national treasure, and the Coastal Plain is its biological heart. Oil and gas development is wholly inappropriate and at odds with the wildlife, subsistence, wilderness and recreation purposes of the Arctic Refuge.
- This amendment seeks to incentivize oil and gas development within the Arctic Refuge on public lands.
- This effort to give away oil and gas development revenues to private corporations is being rushed without any public hearings or congressional debate. Instead of incentivizing development, Congress should undo the Arctic Refuge drilling provision in the 2018 Tax Act, which was done without free and fair debate.
- No amount of revenue to any source is worth despoiling our nation's greatest wilderness or risking the Gwich'in Nation's "Sacred Place Where Life Begins."
- Rather giving away treasured public land and oil and gas revenue to private corporations, Congress should protect our public lands and focus on promoting and enhancing the development of new and cleaner sources of energy.

Background: The Cole amendment would change the State of Alaska's share of revenue from oil and gas development on the Federal lands in the Coastal Plain of the Arctic Refuge from 50% to 47%, and allocate the 3% to a fund to be divided among private Alaska Native regional corporations. During the mark-up, Representative Cole stated that the amendment "is in keeping with the spirit" of the Alaska Native Claims Settlement Act (ANCSA) "that there's to be resource sharing amongst the Alaska Natives" from resource development in the Arctic National Wildlife Refuge. However, in neither spirit nor text does ANCSA support Representative Cole's amendment. In reality, ANCSA prohibited regional Native corporations from selecting land underlying refuges that pre-dated ANCSA, like the Arctic Refuge.

To understand the implications of this amendment, it is important to understand the revenue sharing rules for development of federal land as between Alaska and the United States. Under the Mineral Leasing Act and the Alaska Statehood Act, Alaska would receive 90 percent of the revenue generated by oil and gas leases and royalties on federal lands within the boundaries of the State. Section 20001(b)(5)(A) of the Tax Act changed that. It reduced the State's share to 50% with the other 50% going to the federal Treasury. Senator Lisa Murkowski (R. AK) stated that she agreed to this reduction for the State in order to get Arctic Refuge oil and gas development into the Tax bill. See Margaret Kriz Hobson, Road Map for ANWR Drilling Gets Clearer, EnergyWire, E&E News (Mar. 12, 2018). The Cole amendment would further reduce the State's share of receipts from Federal public lands, giving a portion instead to private, for-profit corporations.

Relatedly, ANCSA provides in section 7(i) that 70% of the revenue from mineral development (which includes oil) on Alaska Native regional corporation lands is to be shared among the 12 regional corporations that own land (there is a 13th regional corporation that does not own land that is not eligible for this "7i" revenue sharing). This provision is intended to more evenly distribute the economic returns from mineral development among those regional corporations. However, ANCSA prohibited the 12 regional Native corporations from selecting subsurface lands in refuges that pre-dated ANCSA.

In 1983, during the Secretary Watt-era at the Department of Interior, Interior and the Arctic Slope Regional Corporation (ASRC) executed a legally-questionable land trade that resulted in ASRC receiving qualified title to subsurface land within the Arctic Refuge. Development of resources from those lands was only to be allowed if Congress were to authorize oil and gas development on the federal lands of the Arctic Refuge. Among the many problematic aspects of the exchange, this land trade did not abide by the ANCSA prohibition on regional corporations selecting land in pre-ANCSA refuges. Furthermore, the exchange involved little to no public input or discussion, and it was structured to exempt ASRC from being required to share revenues from their newly gained private lands in the Arctic Refuge under the ANCSA Section 7(i). For these and other reasons the General Accounting Office investigated the land trade and concluded that it was not in the public interest. See https://www.gao.gov/products/140067; see also https://fas.org/sgp/crs/misc/RL33872.pdf. Some of ASRC's sister regional corporations have objected to the 7(i) aspect of the land trade because they would receive no revenue sharing from development on ASRC lands in the Arctic Refuge. See https://www.adn.com/business-economy/energy/2017/03/14/as-hopes-for-drilling-in-anwr-rise-native-corporations-argue-over-potential-riches/.

Instead of addressing the fact that ASRC never should have been allowed to obtain lands in the Arctic Refuge, much less retain for itself all the revenues from such development in the first place, the Cole amendment attempts to "fix" the problem by giving private Alaska Native corporations a substantial portion of the revenues from oil and gas development on federal public land.

Congress should not be rewriting history to find ways to incentivize development in the pristine Arctic Refuge, but instead should focus on passing legislation to overturn the devastating provision from the tax bill that allowed for Arctic Refuge oil and gas development without full and fair debate.

For more information, contact Kristen Miller, Alaska Wilderness League, kristen@alaskawild.org.