NATURAL RESOURCES JOURNAL

Volume 17
Issue 2 *Spring 1977*

Spring 1977

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Recommended Citation
A. P. Maynez, *Geographic Cost-Benefit Not Considered in EIS*, 17 Nat. Resources J. 333 (1977).
Available at: https://digitalrepository.unm.edu/nrj/vol17/iss2/12

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GEOGRAPHIC COST-BENEFIT NOT CONSIDERED IN EIS

ENVIRONMENTAL LAW—Environmental Impact Statements are not required to make a cost-benefit analysis; some geographic areas expected to bear costs of energy production or other industrialization while other areas reap benefits. *California ex rel. Younger v. Morton*, 404 F. Supp. 26 (1975).

The lines of a private oil company accidentally ruptured in 1969 while it was engaged in platform drilling off the coast of Santa Barbara, California. Millions of gallons of oil escaped into the water and killed countless sea organisms, fish and birds. The oil collected upon the shore in a filthy mass and caused great damage to property. As a result, aroused citizens redoubled their efforts to prevent further exploration of offshore oil deposits.

Coincidentally, an increased movement to exploit these undersea deposits began as a result of the balance of payments problem caused by OPEC price rises. The Department of the Interior (DOI) recommended to the President of the United States that leases in the Outer Continental Shelf (OCS) be increased to private drillers.[1] On April 18, 1973, President Nixon delivered his "Energy Message," a portion of which dealt with OCS leasing, and he later announced "Project Independence" which was designed to accelerate offshore leasing and exploration in order to meet America's energy needs by 1980. DOI made feasibility studies in various offshore areas, including that area off the coast of Southern California and industry was invited to make nominations of fields which were thought to have the greatest drilling potential.

It was within this context that the California Attorney General and the Coastal Zone Conservation Commission brought action against the Secretary of the Interior and others to enjoin or delay leasing of the outer continental shelf area for exploration and production of oil. The action was heard in federal court for the Central District of California.

Recognizing that the action involved a "highly volatile political question of powerful competing public policies—the need of energy

1. The Secretary of the Interior has power to negotiate such leases pursuant to Section 8 of the Submerged Lands Act, 43 U.S.C. § 1337.

versus environmental concerns," the court began its opinion by discussing Section 102 of the National Environmental Policy Act (NEPA).[2] This section requires that the Secretary of the Interior begin negotiations for the leasing of offshore tracts only after he issues an Environmental Impact Study (EIS). Such a study must demonstrate that the DOI has fully considered the impact of leasing on the environment, possible alternatives, and irreversible or irretrievable effects brought about by drilling.

Prior to the final decision of the Secretary to hold a sale, two EIS's had been filed by the DOI. These studies discussed offshore leasing in all possible coastal waters of the United States including the California coast. A discussion of alternative energy programs such as the development of onshore oil and gas resources, oil shale, geothermal energy and solar energy was included. One study examined the 1969 Santa Barbara accident and reported the measures available to lessen the danger of another such incident and the safety precautions and inspections which would condition any permission to explore.

The plaintiffs first attacked the timing of these two studies. They contended that the DOI had failed to comply with NEPA because it had failed to prepare an impact study before taking any steps leading toward the final negotiations for offshore leasing. The court rejected this interpretation of NEPA and ruled that the Act did not require such a step by step impact study. It concluded that the operation of such a requirement would unduly restrict the DOI in those initial investigative stages necessary for the proper implementation of its programs.

The plaintiffs then attacked the substance of the two EIS's. They argued that the studies were based upon inadequate data consisting of unknown factors and variables. More specifically, they contended that a study which evaluates the commercial exploitation of any national resource should consider not only the total value but also the distribution of costs and benefits. It was their contention that these costs and benefits should be shared nationally and that a plan should be designed which would not allow one region to suffer inordinate damage to its environment while other regions reaped the benefits of the captured resource. The plaintiffs' argument was based on the principle that no locality should bear more of the cost than accrues to it as a benefit.

The court said, however, that such an argument conflicted with the socio-economic pattern upon which the United States was based.

2. 42 U.S.C. § 4321 *et seq.*

This pattern was said to necessitate some areas bearing the burden and costs of farming, energy production, and industrialization while other areas reaped the benefits of these activities. Quoting the language of *Trout Unlimited et al. v. Morton,* 509 F.2d 1276, 1286 (9th Cir. 1975), the court ruled that a cost-benefit analysis is not necessary to enable an EIS to serve the purposes for which it is designed. This ruling was said to inevitably result from the present disagreement concerning the valuation of environmental amenities. Such disagreement, the court said, permitted any value so assigned to be challenged on the grounds of its subjectivity. It was said that the ultimate decision to proceed with most projects was not strictly a mathematical determination since public affairs do not lend themselves to precise quantification. As long as an EIS is sufficiently detailed to aid decision-makers in deciding whether to proceed and to provide the information the public needs in order to both challenge and support the project, the court ruled the study met the requirements of NEPA.

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