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DRILLING AND DOLLARS: THE COLORADO OIL AND GAS INDUSTRY'S STREAM OF POLITICAL INFLUENCE

PART 2: DISPROPORTIONATE ECONOMIC RELIEF

In this second report of three, Colorado Common Cause continues our look at the oil and gas industry's significant political spending and influence in Colorado. This report focuses on the COVID-19 pandemic. Specifically, we highlight the industry's use of its disproportionate access and influence to seek taxpayer-funded bailouts under the guise of pandemic relief.

The pandemic devastated Colorado's state and local budgets, slowed a once-growing economy, and forced many small businesses in Colorado to shutter permanently. Few industries have avoided the impacts of the epidemic. As a result, hundreds of thousands of Coloradoans lost their jobs and regular paychecks. State and federal government efforts to soften the economic impact of COVID-19 also fell short for many small businesses and individuals—especially as Congress failed to extend relief funding for many who remain in jeopardy.

That said, the oil and gas industry—with generally self-inflicted and predictable economic woes that began long before COVID-19—is wielding its outsized power to lobby for and receive favorable terms under relief programs intended to help people and small businesses that were directly hurt by the pandemic. At the same time, this volatile industry continues to benefit from tax and other benefits secured through years of lobbying and political spending.

A Bad Investment for Taxpayers

Taxpayers foot the bill when government passes relief packages like the March 2020 CARES Act. They deserve to know that their investments are sound, or at least going to those who deserve them. Even before COVID-19 struck, any government bailout for a consistently volatile industry like oil and gas would have been a bad investment for taxpayers. That's because the industry's instability is neither new nor unknown. Its impediments to stability include:

- Debt-ridden balance sheets propped up by Wall Street investment and lending that funds costly domestic production and new technologies like fracking;[1]
- The eight largest, publicly traded producers in Colorado collectively reported more than $33 billion in long-term debt in June, 2019 (more than six months before the pandemic emerged);[2]
    - This group includes Extraction Oil & Gas, which recently filed for Chapter 11 bankruptcy despite spending $10 million on political contributions in the run-up to the bankruptcy;[3]
- Increased competition from more affordable renewable-energy production;[4] and
- Unpredictable prices caused by international competition and market manipulation from producers in Russia and the OPEC-member nations.[5]

Extraction Oil and Gas, one of Colorado's largest frackers, filed for Chapter 11 bankruptcy earlier this year with $1 billion in debt on its balance sheet. In its bankruptcy filing, the company reported spending $10 million on political contributions in recent years as debt piled up. While the recipients of many of these contributions remain unknown—because the company failed to provide that information in its filing—the know recipients are the usual suspects. They include Republican candidates and organizations who aim to protect the status quo for oil and gas interests.

Despite these known factors, legislators and regulators have tailored COVID-19 relief toward this industry. When government policy favors an unsteady industry over others, it smacks more of influenced favoritism than sound investment. That appears to be the case for many of the programs described below.

Royalty Relief and Lease Suspensions

Companies that lease federal lands to extract oil and gas compensate taxpayers (the owners of those federal lands) in the form of lease payments and royalties on the resources extracted. In Colorado, the industry leases more than 3.5 million federal acres for extraction and has paid the same royalty rate (12.5 percent) for the past 100 years.[6] Despite government reports suggesting that rate increases are both fair and necessary,[7] and despite bipartisan attempts to increase rates legislatively or through regulation,[8] this low rate has remained intact since 1920. This should come as no surprise considering the industry's annual spending on federal lobbying to maintain the status quo. Since 2010, the industry has spent nearly $1.5 billion on direct federal lobbying to secure and maintain favorable policies.[9] In 2019 alone, the industry spent more than $250 million on an army of roughly 700 lobbyists.[10] That spending continues in 2020, to the tune of over $116 million so far.[11]

It is also unsurprising that, in the wake of COVID-19, the industry applied its influence to get even lower royalty rates. That influence included a White House meeting between President Trump and industry members in April,[12] lobbying of the Interior Secretary by United States Senators,[13] as well as direct lobbying from Occidental Petroleum (Colorado's largest producer) and the Independent Petroleum Association of America.[14]

Shortly after the industry meeting with President Trump, the Bureau of Land Management (BLM) issued new guidance, without formal review or public comment, that established a specific COVID-19-related program to allow for expedited approvals of royalty reductions.[15] A recent report on the program from the Government Accountability Office concluded that the BLM failed to follow its own directives manual, inconsistently granted relief, and made no attempt to even determine whether the benefits of the program outweighed the cost of lost government revenue.[16]

Although the program was short-lived, lasting from April until August, producers in five western states, including Colorado, received rate reductions on 467 leases—with many rates cut to almost zero (.5 percent).[17] In Colorado, the largest beneficiary of the reduction program was Caerus Piceance LLC, which operates within the Western Slope's Piceance Basin. On some of its leases, Caerus received reductions of more than 50% of the standard rate.[18]

In addition to royalty reductions, the BLM offered COVID-19-related lease suspensions during the same period.[19] A lease suspension allows the producer to fully suspend rent and royalty payments on a federal lease while extending the length of the lease term during the suspension. During the program, leases comprising more than 370,000 acres were suspended in western states, including leases on 31,335 acres in Colorado.[20]

Although the COVID-19-specific programs have ceased, and the BLM curiously removed all documentation related to the programs from its website, royalty rate reductions and lease suspensions remain available to producers under existing BLM regulations.[21] Under those regulations, a producer need only claim that a lease "cannot be successfully operated under the terms provided therein" to apply for a reduction.[22] So the bar remains low.

When government fails to collect fair market value for resources extracted from taxpayer-owned lands, it directly and negatively impacts Colorado's municipalities and counties most disrupted by oil and gas development because they receive a considerable portion of the royalty payments.[23] It is particularly irresponsible to slash rates during a pandemic that will cause Colorado municipalities to lose $1.7 billion in revenue in 2020 alone.[24] These communities should not bear the industry's burden in regular times, much less now, when they're struggling to maintain basic government services.

CARES Act Bailouts

The CARES Act's $2 trillion in funding and tax breaks included plenty of favorable provisions for the oil and gas industry—and the industry lobbied to ensure it. The two largest trade organizations, the American Petroleum Institute and the Independent Petroleum Association of America, both lobbied for favorable provisions.[25] As did large Colorado producers like QEP Resources and Noble Energy, among others.[26] The following CARES Act programs are already helping to prop up the industry.

Favorable Tax Policies

As Colorado shored up its $3 billion budget shortfall this year by slashing millions in funding for K-12 education, higher education, transportation, and health care, the oil and gas industry was benefiting from new tax breaks.

The CARES Act provided several large tax breaks favorable to the oil and gas industry, including:

- The ability to defer payroll taxes that would have been due this year;
- Expanded write-offs for payments on existing debt; and
- A significant expansion of the net-operating-loss deduction, which allows companies to "carry back" current losses and apply them to tax burdens from prior years.[27]

These tax breaks are already bearing fruit for Colorado oil and gas companies, who have reported significant tax savings in recent SEC filings, including:

- Occidental petroleum ($195 million);
- QEP Resources ($165 million); and
- Antero Midstream ($55 million).[28]

As Colorado's oil and gas companies reap the benefits of new federal tax breaks, it's worth noting that the industry's state tax burden is already among the very lowest. Looking at the industry's tax burden as a whole, and some significant breaks built into the taxing structure, oil and gas companies pay an effective tax rate of only five percent in Colorado. This is the third lowest among all western states with a significant industry presence.[29]

Main Street Loans

In addition to obtaining a tax windfall, the oil and gas industry has flexed its muscles to ensure that it can also take advantage of the Federal Reserve Main Street lending program, which is a high-risk program that allows banks to issue loans to small and medium-sized businesses with favorable terms and with assurance from the Fed that it will buy up to 95 percent of the loans, while the banks hold the remainder.

The initial terms of the taxpayer-funded Federal Reserve lending program already allowed businesses with high-debt balance sheets to apply. But those terms would not have allowed some highly leveraged oil and gas companies to access the loans. After lobbying by the industry[30] and specific pressure from members of congress—including Colorado's Scott Tipton[31]—the Fed adjusted its requirements, which will now favor more oil and gas industry lending.

In addition to now allowing larger companies to apply, the Fed altered its rules to accommodate businesses with significantly higher existing debt.[32] While Main Street loans are not just available to oil and gas companies, these new favorable terms will undoubtedly benefit members of the industry, including Occidental Petroleum—Colorado's largest producer—which was ineligible under the initial terms of the program.

The Main Street loan program is quite new, having just started in June, so the number of approved loans remains low according to existing data. But under the new favorable terms, the oil and gas industry will have yet another avenue to government-backed low-interest money.

Payroll Protection Program

Under the CARES Act, the Small Business Administration (SBA) created the Payroll Protection Program (PPP). The PPP is a low-interest lending program designed to allow small businesses with fewer than 500 employees meet payroll during the pandemic.[33] Thousands of Colorado businesses have used the program, including hundreds in the oil and gas sector.[34]

PPP loan-level data provided by the SBA has so far been often vague and incomplete, making analysis of the industry's share difficult. But the existing data is telling, particularly with respect to larger loans. According to data released at the end of July, the industry's share of large PPP loans in Colorado is significant.

- Ten oil and gas companies were approved for the largest loans available ($5 - $10 million), which appears to rank first among industries receiving loans of this size, tied with full-service restaurants;[35]
- 31 oil and gas companies were approved for loans between $2 - $5 million, which also appears to rank first, just ahead of medical offices; and
- With 55 loans between $1 - $2 million, the industry ranks a close second, behind car dealers.[36]

Some of these larger loans have been scrutinized as contrary to the program's mission to protect small-business employees.[37] In Colorado for example, DMC Global, a publicly traded oil and gas service company with $34 million in profits last year,[38] whose top executives received nearly $6 million in compensation in 2019,[39] applied for and received $6.7 million in PPP funds.[40] However, after reporting about this and similar loans to larger, publicly traded companies, the SBA amended its guidance to discourage applications by public companies and DMC Global returned the money.[41]

As the industry accepts PPP loans designed to protect its employees, it is also lobbying Congress for liability protection against those same employees. The American Petroleum Institute, along with some of the largest industry members, has directly lobbied for protection against liability suits from employees affected by COVID-19 stemming from their employment in the oil and gas industry.[42] This liability shield is, unsurprisingly, a current component of the Senate's version of Congress's next relief package.

Conclusion

Colorado's taxpayers, small businesses, and governments are struggling to make ends meet under the weight of the COVID-19 pandemic, and there isn't enough relief to go around. Nevertheless, the oil and gas industry has exerted its political power to gain every available dollar, despite the fact that the industry's financial troubles began long before the pandemic. It is imperative that policymakers, and those who hold the purse strings, understand that a bailout for oil and gas was a bad investment for Coloradoans even in good times—and it is simply irresponsible during a pandemic.

If you are a researcher or journalist and would like full access to the data used in this report, please contact Colorado Common Cause. All data was derived from publicly accessibly sources, although sources are often hidden in plain sight given its complexity and difficulty in accessing.

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11 Id.

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15 Bureau of Land Management, COVID-19 Guidance for Royalty Rate Reduction (June 12, 2020).

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18 Id.

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34 SBA loan-level data for PPP loans: https://home.treasury.gov/policy-issues/cares-act/assistance-for-small-businesses/sba-paycheck-protection-program-loan-level-data

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36 Id.

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