

**TESTIMONY OF**

**RUSSELL SMITH, EXECUTIVE VICE PRESIDENT**

**QUANTUM ENERGY**

**BEFORE THE**

**HOUSE COMMITTEE ON SMALL BUSINESS**

**SUBCOMMITTEE ON AGRICULTURE,  
ENERGY AND TRADE**

**ON**

**“THE NEW DOMESTIC ENERGY PARADIGM:  
DOWNSTREAM CHALLENGES  
FOR SMALL ENERGY BUSINESSES”**

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**June 26, 2014**

## **INTRODUCTION**

Chairman Tipton, Ranking Member Murphy and members of the House Subcommittee on Agriculture, Energy and Trade of the House Committee on Small Business, I thank you for the opportunity to testify today to discuss the economic impact of federal policies on domestic crude oil production by small energy businesses.

My name is Russell Smith. I serve as Executive Vice President for QUANTUM ENERGY, INC., a development stage publicly traded diversified holding company with an emphasis in oil field development trading under the stock symbol “QEGY” on the OTC.PK with offices in Williston, North Dakota in the heart of the Bakken shale oil field. Quantum is currently finalizing options to purchase real estate sites for refinery construction in the Bakken region.

If there is a bottom line message in my testimony today, it is that government regulations have a very real impact on our business and our business planning for the future. Perhaps most important is that uncertainty about overall federal policy toward crude oil refining and market availability has an indisputable impact on how all investors view business opportunities in this sector.

Additionally, it is important that Congress fully examine the impacts of any action that places additional requirements or restrictions on innovations such as the type of facilities that Quantum is proposing for the Bakken region.

## **ABOUT QUANTUM ENERGY**

QUANTUM ENERGY, INC. is a development stage publicly traded diversified holding company with an emphasis in oil field development trading under the stock symbol “QEGY” on the OTC.PK with offices in Williston, North Dakota in the heart of the Bakken shale oil field. Quantum, as I mentioned above is working to develop land holdings in the Bakken as it finalizes the process of exercising options to purchase real estate sites for refinery construction.

Phase One (1) of our development plan involves the construction of five (5) 21<sup>st</sup> Century Energy Centers consisting of (one each) 20,000 barrel per day capacity Micro Refinery, 100,000 barrel per day Natural Gas Liquid (NGL) stripping facility and an as yet to be determined NGL separation capacity to provide for local / regional propane production to assist in the remedy of the very acute challenge for low and middle income families in the Northern Mountain West and Upper Midwest in meeting the high costs of home heating and other propane related costs. Additionally, as mentioned below, the regional demand for effectively priced locally / regionally produced diesel drives a significant portion of our business plan.

## **NEED FOR NEW REFINING CAPACITY IN BAKKEN**

There are other activities currently underway in North Dakota, including the new Dakota Prairie Refinery, the second refinery in the state of North Dakota, which broke ground in March 2013. The new refinery will process crude oil to produce diesel, as well as other hydrocarbons. Dakota Prairie Refinery is located two miles west of Dickinson City in Stark County, ND. It will be the first greenfield refinery project in the US since the 1970s. The refinery will be built and operated by Dakota Prairie Refining, a joint venture between Montana Dakota Utilities' ("MDU") Resources subsidiary and Calumet Specialty Products. The construction of the \$300m refinery is slated for completion in late 2014.

The refinery will process 20,000 barrels of Bakken crude oil per day. The crude for the refinery will be supplied via a nearby pipeline, as well as tanker trucks. The Dakota Prairie Refinery will operate as a topping plant. It will convert around one third of the crude oil into diesel fuel. The rest will be further processed in other Calumet refineries. The diesel output of the refinery will be marketed in the Bakken region. The refinery will produce approximately 7,000 barrels of diesel per day, which will reduce the amount of diesel imported into North Dakota.

Bismarck-based Westcon is the general contractor for constructing the Dakota Prairie refinery. Texas-based Ventech Engineering (the manufacturer of stabilizing or "gas-stripping" equipment, among other crude processing equipment) is providing the primary equipment, as well as the refinery technology for the plant.

North Dakota's current diesel demand per day is approximately 55,000 barrels, with half of the state's diesel fuel imported. The diesel consumption in the state rose by 51% between 2007 and 2012. Demand is expected to grow to 75,000 barrels per day within 12-18 months, if not sooner. North Dakota, however, has just one refinery currently, the Tesoro refinery in Mandan, which has a processing capacity of 58,000 barrels of crude oil per day. This refinery produces approximately 28,000 barrels per day of diesel, meeting about 1/3 of the 18 month regional demand. Much of the crude oil produced in North Dakota is sent to other markets through pipeline, rail and truck.

A refinery near Trenton in north-west North Dakota has also been planned apart from Dakota Prairie. The \$200 million Trenton refinery owned by Dakota Oil Processing is likely to break ground in 2014. The 20,000 barrel-per-day Trenton plant will mainly produce light gas oil.

Quantum Energy plans to construct initially five similar, if not exact replicas of the Dakota Prairie Refinery, which will produce another 7,000 barrels of diesel per day at each facility. This will go a long way toward satisfying the thirst for diesel in the region. Quantum plans to build their refineries as close to or on some of the existing 14 transload facilities sites. The natural gas stripping operations would be sized to meet the demand on each site.

## LEGISLATIVE HISTORY OF CRUDE OIL EXPORT BAN

Mr. Chairman, let me summarize our understanding of the legislative history (original legislation; Bureau of Industry and Security's implementing regulations; pending legislation) as well as recent news and commentary on efforts to lift the ban or to circumvent it for purposes of exporting the domestic sweet, light crude that is currently being produced in the Bakken region.

### Current Legislation

Section 7(d) of the Export Administration Act of 1979 (EAA) placed restrictions on the export of crude oil. Although the EAA expired on March 30, 1984, the export controls under the EAA were extended under presidential declaration of national emergency.<sup>1</sup> Specific limitations on crude oil exports are contained in §28(u) of the Mineral Leasing Act of 1920, as amended (MLA)<sup>2</sup> [30 U.S.C. §185(u)], and §103(b) of the Energy Policy and Conservation Act of 1975, as amended (EPCA)<sup>3</sup> [42 U.S.C. §6212(b)], both of which subject the covered exports to the restrictions of the EAA. See Appendix for the text of these limitations. Additional export restrictions on specific reserves under the Outer Continental Shelf Lands Act and the Naval Petroleum Reserves Production Act are not covered in this memorandum.

Section 7(d) applies on its face to domestically-produced crude transported by pipeline over ROW granted under § 203 of the Trans-Alaska Pipeline Authorization Act, but the subsection is made applicable to other crude oil under the MLA and EPCA. The limitations under §7(d)(1) may only be waived if the President makes specified findings concerning: lack of negative impact on U.S. oil supply, lowering of refiners' acquisition costs of imported crude, ability to terminate contracts based on threats to U.S. crude oil supplies, clear need to protect national interest, and in accordance with the EAA. In addition, the findings must be presented to Congress and approved by joint resolution within 60 days of submission.

Section 103(b) prohibits crude oil exports unless such exports are exempted by regulation. Crude oil is not a defined term under the statute.<sup>4</sup> The President is authorized to exempt from export prohibition "such crude oil or natural gas exports which he determines to be consistent with the national interest and the purposes of [chapter 77]." Exemptions may be based on "the purpose for

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<sup>1</sup> ENERGY POLICY AND CONSERVATION ACT, Public Law 94-163, as Amended

[As Amended Through P.L. 113-67, Enacted December 26, 2013], compiled by the House Office of Legislative Counsel, Jan. 14, 2014, p. 8, fn 1, <http://legcounsel.house.gov/Comps/EPCA.pdf>.

<sup>2</sup> Mineral Leasing Act of 1920, as amended, re-transcribed 8/9/07, [http://www.blm.gov/pgdata/etc/medialib/blm/ut/vernal\\_fo/lands\\_minerals.Par.6287.File.dat/MineralLeasingAct1920.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/ut/vernal_fo/lands_minerals.Par.6287.File.dat/MineralLeasingAct1920.pdf). The relevant provision is codified at 30 U.S.C. 185(u), <http://www.gpo.gov/fdsys/pkg/USCODE-2012-title30/pdf/USCODE-2012-title30-chap3A-subchap1-sec185.pdf>.

<sup>3</sup> ENERGY POLICY AND CONSERVATION ACT, Public Law 94-163, as Amended

[As Amended Through P.L. 113-67, Enacted December 26, 2013], compiled by the House Office of Legislative Counsel, Jan. 14, 2014, <http://legcounsel.house.gov/Comps/EPCA.pdf>.

<sup>4</sup> The only relevant term defined under the EPCA is "petroleum product," defined as "crude oil, residual fuel oil, or any refined petroleum product (including any natural liquid and any natural gas liquid product)." 42 U.S.C. §6202(3).

export, class of seller or purchaser, country of destination, or any other reasonable classification or basis as the President determines to be appropriate and consistent with the national interest and the purposes of [chapter 77].”

Section 28(u) requires that export license only be granted for crude oil subject to the EAA under §28 if the President makes an express finding that such exports will not diminish the total U.S. quantity or quality of petroleum, are in the national interest, and are in accord with the provisions of the EAA.

### **Implementing Regulations**

Statutory restrictions on the general export of crude oil are implemented through the Short Supply Controls under the Export Administration regulations, administered by the Commerce Department’s Bureau of Industry and Security (BIS).<sup>5</sup> The regulations contain exceptions to the general ban on export licenses for crude oil, most of which would not apply to domestic LTO. However, the exception for exports to Canada for crude that is refined or used in Canada could be used for such crude, and in fact is apparently is being so used.<sup>6</sup>

Section 754.2, *Crude oil*, defines “crude oil” as follows:

... a mixture of hydrocarbons that existed in liquid phase in underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities and which has not been processed through a crude oil distillation tower. Included are reconstituted crude petroleum, and lease condensate and liquid hydrocarbons produced from tar sands, gilsonite, and oil shale. Drip gases are also included, but topped crude oil, residual oil, and other finished and unfinished oils are excluded.

The licensing policy under the regulation already contains several exceptions that were added pursuant to presidential findings. In addition, §754.2(b)(2) provides that BIS will review other applications to export crude oil on a case-by-case basis and generally will approve such applications if the agency determines the proposed export is consistent with the national interest and with the purposes of the EPCA. While under BIS license policy the agency will consider all applications for approval, the regulation specifies that under the case-by-case review procedure, the agency will generally determine that exports that are part of an overall transaction including three specified elements are in the national interest and consistent with the purposes of the EPCA.<sup>7</sup>

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<sup>5</sup> 15 CFR Part. 754—Short Supply Controls, <http://www.gpo.gov/fdsys/pkg/CFR-2012-title15-vol2/pdf/CFR-2012-title15-vol2-part754.pdf>.

<sup>6</sup> Lorne Stockman, *Should It Stay or Should It Go? The Case Against U.S. Crude Oil Exports*, OIL CHANGE INTERNATIONAL, October 2013, pp. 23-24. [http://priceofoil.org/content/uploads/2013/10/OCI\\_Stay\\_or\\_Go\\_FINAL.pdf](http://priceofoil.org/content/uploads/2013/10/OCI_Stay_or_Go_FINAL.pdf).

<sup>7</sup> In order to come within the description of transactions that “will be among those that BIS will determine to be in the national interest and consistent with the purposes of EPCA,” the export must be part of an overall transaction:

(A) That will result directly in the importation into the United States of an equal or greater quantity and an equal or better quality of crude oil or of a quantity and quality of petroleum products listed in Supplement No. 1 to this part that is not less than the quantity and quality of

Currently there is disagreement over administrative authority to allow crude oil exports, with Senator Murkowski arguing that such authority exists and should be exercised,<sup>8</sup> and Representative Markey (D-MA) and Senator Menendez (D-NJ) arguing that the Commerce Department does not have independent authority to authorize exports and that the President should not do so.<sup>9</sup> Senator Murkowski cites several examples of previous presidential findings of national interest to create exceptions to the export ban under §754.2. Rep. Markey and Senator Menendez take the position that §103 of the EPCA requires a presidential finding that a particular type of export is consistent with the national interest and purposes of the EPCA, and that approval of new crude exports would not be consistent with those purposes, as it would increase reliance on foreign oil. They also note that a finding that “for compelling economic or technological reasons that are beyond the control of the applicant, the crude oil cannot reasonably be marketed in the United States” is not in and of itself authority for BIS to approve crude exports.

In addition, it has been suggested that a change in the classification of field condensate could allow it to be exported.<sup>10</sup>

### **Pending Legislation**

On March 24, 2014, Representative Bridenstine (R-OK) introduced H.R. 4286, the American Energy Renaissance Act of 2014, which would, *inter alia*, repeal the above statutory restrictions, declare without force or effect the EAA and implementing regulation concerning the crude oil export ban, and direct BIS to grant licenses to export crude oil except in certain circumstances. As of June 18, 2014, the bill had 13 cosponsors (not counting a cosponsor who had withdrawn)<sup>11</sup> and had been referred to the Committees on Natural Resources, Transportation and

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commodities that would be derived from the refining of the crude oil for which an export license is sought;

(B) That will take place only under contracts that may be terminated if the petroleum supplies of the United States are interrupted or seriously

threatened; **and** (emphasis added)

(C) In which the applicant can demonstrate that, for compelling economic or technological reasons that are beyond the control of the applicant, the crude oil cannot reasonably be marketed in the United States.

<sup>8</sup> Jennifer A. Dlouhy, *Senator calls for end to ‘antiquated’ ban on exporting US crude*, FuelFix/CH2MHill Oil and Gas, Jan. 7, 2014, <http://fuelfix.com/blog/2014/01/07/senator-launches-dc-debate-over-exporting-us-crude-live/>; Past is Precedent: Executive Power to Authorize Crude Oil Exports, Mar. 3, 2014, [http://www.energy.senate.gov/public/index.cfm/files/serve?File\\_id=c78fdaf5-04ae-4586-b4d1-6562bb9cdae0](http://www.energy.senate.gov/public/index.cfm/files/serve?File_id=c78fdaf5-04ae-4586-b4d1-6562bb9cdae0)

<sup>9</sup> Markey, Menendez Lay Out Legal Case against Crude Oil Exports to President Obama, Jan. 30, 2014, <http://www.markey.senate.gov/news/press-releases/markey-menendez-lay-out-legal-case-against-crude-oil-exports-to-president-obama>. The letter is available at [http://www.markey.senate.gov/imo/media/doc/2014-1-30\\_Obama\\_oil\\_exports.pdf](http://www.markey.senate.gov/imo/media/doc/2014-1-30_Obama_oil_exports.pdf).

<sup>10</sup> Jennifer A. Dlouhy, *Oil glut stirs debate over US crude exports*, FuelFix/CH2MHill Oil and Gas, Jan. 5, 2014, <http://fuelfix.com/blog/2014/01/05/us-oil-glut-stirs-up-political-dilemma/?cmpid=eefl>.

<sup>11</sup> Rep. Paul Cook (R-CA), Rep. Ted Yoho (R-FL), Rep. Culberson (R-TX), Rep. Rice (R-SC), Rep. Jordan (R-OH), Rep. Stockman (R-TX), Rep. Huelskamp (R-KS), Rep. Gohmert (R-TX), Rep. Roe (R-TN), Rep. Farenthold (R-TX), Rep. Broun (R-GA), Rep. Duncan (R-SC), and Rep. Aderholt (R-AL). Rep. Cramer (R-ND) withdrew his sponsorship.

Infrastructure, Energy and Commerce, Agriculture, Judiciary, and Foreign Affairs, and from those on to relevant subcommittees.

On March 27, 2014, Senator Cruz (R-TX) introduced, S. 2170, the companion bill to H.R. 4286. As of June 18, 2014, S. 2170 has one co-sponsor, Senator Lee (R-UT) and had been referred to the Committee on Energy and Natural Resources.

On April 1, 2014, Rep. McCaul (R-TX) introduced H.R. 4349, the Crude Oil Export Act, which would repeal the above statutory restrictions and declare without force or effect the EAA and implementing regulation concerning the crude oil export ban. H.R. 4349 is identical to §1003 of H.R. 4286, with the addition of a provision authorizing the President to impose an export ban of not more than 90 days during a period of national emergency, subject to the Congressional Review Act. As of June 18, 2014, the bill had 6 cosponsors<sup>12</sup> and had been referred to the Committees on Foreign Affairs, Natural Resources, and Energy and Commerce, and from those on to relevant subcommittees.

In addition to the legislation that has been introduced this year, Senator Murkowski has expressed support for updating the export law, and Senator Landrieu has indicated openness to changing the law “if the scientific data shows we should,” adding that she thinks it has. The Secretary of Energy has also stated that the export ban should be revisited.<sup>13</sup>

## LIFTING THE BAN

A number of stakeholders and commentators have expressed support for lifting the ban, or at least revisiting it.<sup>14</sup> The arguments for lifting the ban<sup>15</sup> are that: it may not be economical to refine LTO<sup>16</sup> because of the lack of domestic refineries able to handle that type of crude; allowing exports will lower gas prices in the U.S.;<sup>17</sup> the ban has not achieved the goals of the 1975 legislation;<sup>18</sup> and lifting the ban will not necessarily increase reliance on imported oil.<sup>19</sup>

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<sup>12</sup> Rep. Culberson (R-TX), Rep. Westmoreland (R-GA), Rep. Farenthold (R-TX), Rep. Cotton (R-AR), Rep. Duncan (R-SC), and Rep. Stewart (R-UT).

<sup>13</sup> Valerie Volcovici, *Key senator urges end to ban on U.S. crude oil exports*, REUTERS, Jan. 7, 2014, <http://www.reuters.com/article/2014/01/07/us-usa-energy-exports-idUSBREA060PC20140107>.

<sup>14</sup> Valerie Volcovici, *Key senator urges end to ban on U.S. crude oil exports*, REUTERS, Jan. 7, 2014, <http://www.reuters.com/article/2014/01/07/us-usa-energy-exports-idUSBREA060PC20140107>.

<sup>15</sup> See generally, *US Crude Oil Export Decision: Assessing the impact of the export ban and free trade on the US economy*, IHS Energy / IHS Economics Report, 2014. Download available at <http://www.ihs.com/info/0514/crude-oil.aspx> (Contact information must be submitted to HIS).

<sup>16</sup> Valerie Volcovici, *Key senator urges end to ban on U.S. crude oil exports*, REUTERS, Jan. 7, 2014, <http://www.reuters.com/article/2014/01/07/us-usa-energy-exports-idUSBREA060PC20140107>.

<sup>17</sup> Neil Hume, *Bringing shale benefits to the US driver*, FINANCIAL TIMES, Dec. 11, 2013, <http://www.ft.com/intl/cms/s/0/6506397a-61b3-11e3-aa02-00144feabdc0.html?siteedition=uk#axzz34wIbtcbp>; Stephen P.A. Brown, Charles Mason, Alan Krupnick, and Jan Mares, *Crude Behavior: How Lifting the Export Ban Reduces Gasoline Prices in the United States*, Resources for the Future, Issue Brief 14-03-REV, February 2014; Revised March 2014, <http://www.rff.org/RFF/Documents/RFF-IB-14-03-REV.pdf>.

<sup>18</sup> Blake Clayton, *The Case for Allowing U.S. Crude Oil Exports*, Council on Foreign Relations, July 2013, <http://www.cfr.org/oil/case-allowing-us-crude-oil-exports/p31005>;

The American Petroleum Institute sponsored a report that claims wide-ranging benefits from lifting the ban.<sup>20</sup> Lifting the restrictions would benefit production of Bakken shale oil.<sup>21</sup> Opponents to lifting the ban argue (variously) that: doing so could raise prices;<sup>22</sup> the crude is needed domestically for energy security purposes; increasing fossil fuel production would be harmful;<sup>23</sup> and U.S. refineries can in fact handle the new production of light crude.<sup>24</sup> Some refiners—notably Valero—oppose lifting the ban,<sup>25</sup> presumably because it is more profitable for them to have it in place. It appears that lifting the ban would not have a uniform impact on gasoline prices in the U.S. because different regions are dependent on different sources of crude that would be affected differently by lifting the ban.<sup>26</sup>

## CONDENSATE SPLITTERS

According to the Congressional Research Service, condensates are likely to be considered crude oil for export purposes.<sup>27</sup> However, it appears that even lightly processed condensate is not considered to be crude oil subject to the export ban.<sup>28</sup> A number of companies, regardless of their position on the export ban, are taking advantage of this distinction. Kinder Morgan is building a

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<sup>19</sup> Deborah Gordon, *The Complexities of U.S. Oil Exports*, THE NATIONAL INTEREST, Mar. 20, 2014, <http://nationalinterest.org/commentary/the-complexities-us-oil-exports-10081>.

<sup>20</sup> ICF International, EnSys Energy, *The Impacts of U.S. Crude Oil Exports on Domestic Crude Production, GDP, Employment, Trade, and Consumer Costs*, March 31, 2014, p. 5, <http://www.api.org/news-and-media/news/newsitems/2014/mar-2014/~~/media/Files/Policy/LNG-Exports/LNG-primer/API-Crude-Exports-Study-by-ICF-3-31-2014.pdf>.

<sup>21</sup> Emily Aasand, *Lifting export restrictions on US crude benefits Bakken*, THE BAKKEN MAGAZINE, June 3, 2014, <http://www.thebakken.com/articles/665/lifting-export-restrictions-on-us-crude-benefits-bakken>.

<sup>22</sup> Brad Plumer, *U.S. oil exports have been banned for 40 years. Is it time for that to change?*, THE WASHINGTON POST, Jan. 8, 2014, <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/01/08/u-s-oil-exports-have-been-banned-for-40-years-is-it-time-for-that-to-change/>

<sup>23</sup> E.g., Lorne Stockman, *Should It Stay or Should It Go? The Case Against U.S. Crude Oil Exports*, OIL CHANGE INTERNATIONAL, October 2013, [http://priceofoil.org/content/uploads/2013/10/OCI\\_Stay\\_or\\_Go\\_FINAL.pdf](http://priceofoil.org/content/uploads/2013/10/OCI_Stay_or_Go_FINAL.pdf).

<sup>24</sup> Lorne Stockman, *Should It Stay or Should It Go? The Case Against U.S. Crude Oil Exports*, OIL CHANGE INTERNATIONAL, October 2013, p. 29. [http://priceofoil.org/content/uploads/2013/10/OCI\\_Stay\\_or\\_Go\\_FINAL.pdf](http://priceofoil.org/content/uploads/2013/10/OCI_Stay_or_Go_FINAL.pdf).

<sup>25</sup> Valerie Volcovici, *Key senator urges end to ban on U.S. crude oil exports*, REUTERS, Jan. 7, 2014, <http://www.reuters.com/article/2014/01/07/us-usa-energy-exports-idUSBREA060PC20140107>. Marathon oil and ConocoPhillips may also support keeping the export ban. See Lorne Stockman, *Should It Stay or Should It Go? The Case Against U.S. Crude Oil Exports*, Oil Change International, October 2013, pp. 29, 31-33. [http://priceofoil.org/content/uploads/2013/10/OCI\\_Stay\\_or\\_Go\\_FINAL.pdf](http://priceofoil.org/content/uploads/2013/10/OCI_Stay_or_Go_FINAL.pdf).

<sup>26</sup> Brad Plumer, *U.S. oil exports have been banned for 40 years. Is it time for that to change?*, THE WASHINGTON POST, Jan. 8, 2014, <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/01/08/u-s-oil-exports-have-been-banned-for-40-years-is-it-time-for-that-to-change/>

<sup>27</sup> Adam Vann, *Applicability of Federal Export Requirements to Natural Gas Liquids and Condensate*, Congressional Research Service, Jan. 6, 2014, [http://www.energy.senate.gov/public/index.cfm/files/serve?File\\_id=3e18847c-cf43-48f6-ad3a-f8f896a5cc5c](http://www.energy.senate.gov/public/index.cfm/files/serve?File_id=3e18847c-cf43-48f6-ad3a-f8f896a5cc5c).

<sup>28</sup> Bradley Olson and Mike Lee, *Crude Export Ban No Match for Lightest U.S. Shale Oil*, BLOOMBERG, Feb. 26, 2013, <http://www.bloomberg.com/news/2013-02-26/crude-export-ban-no-match-for-lightest-u-s-shale-oil-energy.html>; Kristen Hays and Terry Wade, *Magellan sees heavy demand for U.S. Gulf condensate splitters*, Nov. 21, 2013, <http://www.reuters.com/article/2013/11/21/us-magellan-ceo-idUSBRE9AK1I120131121>.

new splitter refinery in Houston that will process LTO just enough for the resulting product to not be covered by the export ban. BP has contracted for at least 80% of the capacity of the plant over a 10-year period. Bloomberg reports that other companies are planning to build similar facilities.<sup>29</sup> For example, Phillips 66 plans to build a condensate splitter at an existing refinery in Texas, allowing it to process condensate into exportable petroleum products.<sup>30</sup> Valero Energy, despite its opposition to lifting the export ban, is also building such facilities. As of May, at least 8 companies had announced plans to build such facilities. The FT report notes, however, that the profitability of the splitter facilities depends on the export ban remaining in place.<sup>31</sup>

## CONCLUSION

Mr. Chairman, in conclusion, let me summarize two key points of my testimony before this committee:

In the absence of lifting the export ban, we would very much support the clarification of definitions surrounding NGL stripped Crudes as meeting the definition of refined Crudes for the purposes of lawful Crude Oil Exports.

If the Congress wishes to further explore the impacts of the export ban for crude oil, we would be very interested to participate in that discussion and welcome the opportunity to express in detail the significant cost implications associated with this issue.

Mr. Chairman, thank you again for the opportunity to appear here today on behalf of Quantum Energy. I would be pleased to answer questions now or in the future.

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<sup>29</sup> Alex Nussbaum and Bradley Olson, *BP Splitter Refinery Seen Skirting U.S. Oil Export Ban*, BLOOMBERG, Mar. 6, 2014, <http://www.bloomberg.com/news/2014-03-06/bp-splitter-refinery-seen-skirting-u-s-oil-export-ban.html>.

<sup>30</sup> *Phillips 66 says exporting U.S. oil to Canada*, REUTERS, Apr. 11, 2014, <http://www.reuters.com/article/2014/04/11/usa-exports-oil-idUSL2N0N30UM20140411>

<sup>31</sup> Gregory Meyer and Ed Crooks, *US oil industry finds way around export ban*, FINANCIAL TIMES, June 9, 2014, <http://www.ft.com/intl/cms/s/0/04079398-e9a4-11e3-99ed-00144feabdc0.html#axzz356LLzcPX>.

## **Appendix A—Statutory Limitations on Crude Oil Exports**

The Export Administration Act of 1979 imposed controls on the export of crude oil, which controls were maintained pursuant to the International Emergency Economic Powers Act (50 U.S.C. §1701 et seq.). Two statutes subject relevant crude oil exports to those controls: The Mineral Leasing Act of 1920, as amended by the Trans-Alaska Pipeline Authorization Act, Public Law 93-153, Nov. 16, 1973; and the Energy Policy and Conservation Act of 1975, as amended. The text of the relevant provisions is set forth below.

### **Section 7 of the Export Administration Act of 1979 (50 U.S.C. App. 2406)**

(d) Domestically Produced Crude Oil.—(1) Notwithstanding any other provision of this Act and notwithstanding subsection (u) of section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), no domestically produced crude oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) (except any such crude oil which (A) is exported to an adjacent foreign country to be refined and consumed therein in exchange for the same quantity of crude oil being exported from that country to the United States; such exchange must result through convenience or increased efficiency of transportation in lower prices for consumers of petroleum products in the United States as described in paragraph (2)(A)(ii) of this subsection, (B) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and reenters the United States, or (C) is transported to Canada, to be consumed therein, in amounts not to exceed an annual average of 50,000 barrels per day, in addition to exports under subparagraphs (A) and (B), except that any ocean transportation of such oil shall be by vessels documented under section 12106 of title 46, United States Code) may be exported from the United States, or any of its territories and possessions, subject to paragraph (2) of this subsection.

(2) Crude oil subject to the prohibition contained in paragraph (1) may be exported only if—

(A) the President so recommends to the Congress after making and publishing express findings that exports of such crude oil, including exchanges—

- (i) will not diminish the total quantity or quality of petroleum refined within, stored within, or legally committed to be transported to and sold within the United States;
- (ii) will, within 3 months following the initiation of such exports or exchanges, result in (I) acquisition costs to the refiners which purchase the imported crude oil being lower than the acquisition costs such refiners would have to pay for the domestically produced oil in the absence of such an export or exchange, and (II) not less than 75 percent of such savings in costs being reflected in wholesale and retail prices of products refined from such imported crude oil;
- (iii) will be made only pursuant to contracts which may be terminated if the crude oil suppliers of the United States are interrupted, threatened, or diminished;
- (iv) are clearly necessary to protect the national interest; and
- (v) are in accordance with the provisions of this Act; and

(B) the President includes such findings in his recommendation to the Congress and the Congress, within 60 days after receiving that recommendation, agrees to a joint resolution which approves such exports on the basis of those findings, and which is thereafter enacted into law.

(3) Notwithstanding any other provision of this section or any other provision of law, including subsection (u) of section 28 of the Mineral Leasing Act of 1920, the President may export oil to any country pursuant to a bilateral international oil supply agreement entered into by the United

States with such nation before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

**Mineral Leasing Act of 1920: 30 U.S.C. §185(u), Limitations on export**

Any domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to this section, except such crude oil which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, **shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1979 (50 U.S.C. App. 2401 and following)** and, in addition, **before any crude oil subject to this section may be exported under the limitations and licensing requirements and penalty and enforcement provisions of the Export Administration Act of 1979 the President must make and publish an express finding that such exports will not diminish the total quantity or quality of petroleum available to the United States, and are in the national interest and are in accord with the provisions of the Export Administration Act of 1979:** Provided, That the President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within this time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to the aforementioned Presidential findings shall cease.

(emphasis added)

**Energy Policy and Conservation Act: 42 U.S.C. §6212, Domestic use of energy supplies and related materials and equipment**

(a) Export restrictions. The President may, by rule, under such terms and conditions as he determines to be appropriate and necessary to carry out the purposes of this chapter, restrict exports of—

(1) coal, petroleum products, natural gas, or petrochemical feedstocks, and

(2) supplies of materials or equipment which he determines to be necessary (A) to maintain or further exploration, production, refining, or transportation of energy supplies, or (B) for the construction or maintenance of energy facilities within the United States.

(b) Exemptions.

(1) The President shall exercise the authority provided for in subsection (a) of this section to promulgate a rule prohibiting the export of crude oil and natural gas produced in the United States, except that the President may, pursuant to paragraph (2), exempt from such prohibition such crude oil or natural gas exports which he determines to be consistent with the national interest and the purposes of this chapter.

(2) Exemptions from any rule prohibiting crude oil or natural gas exports shall be included in such rule or provided for in an amendment thereto and may be based on the purpose for export, class of seller or purchaser, country of destination, or any other reasonable classification or basis as the President determines to be appropriate and consistent with the national interest and the purposes of this chapter.

(c) Implementing restrictions. **In order to implement any rule promulgated under subsection (a) of this section, the President may request and, if so, the Secretary of Commerce shall, pursuant to the procedures established by the Export Administration Act of 1979 [50 U.S.C. App. 2401 et seq.] (but without regard to the phrase “and to reduce the serious inflationary impact of foreign demand” in section 3(2)(C) of such Act [50 U.S.C. App. 2402(2)(C)]), impose such restrictions as specified in any rule under subsection (a) of this section on exports of coal, petroleum products, natural gas, or petrochemical feedstocks, and such supplies of materials and equipment.**

(d) Restrictions and national interest. Any finding by the President pursuant to subsection (a) or (b) of this section and any action taken by the Secretary of Commerce pursuant thereto shall take into account the national interest as related to the need to leave uninterrupted or unimpaired—

(1) exchanges in similar quantity for convenience or increased efficiency of transportation with persons or the government of a foreign state,

(2) temporary exports for convenience or increased efficiency of transportation across parts of an adjacent foreign state which exports reenter the United States, and

(3) the historical trading relations of the United States with Canada and Mexico.

(e) Waiver of notice and comment period.

(1) The provisions of subchapter II of chapter 5 of title 5 shall apply with respect to the promulgation of any rule pursuant to this section, except that the President may waive the requirement pertaining to the notice of proposed rulemaking or period for comment only if he finds that compliance with such requirements may seriously impair his ability to impose effective and timely prohibitions on exports.

(2) In the event such notice and comment period are waived with respect to a rule promulgated under this section, the President shall afford interested persons an opportunity to comment on any such rule at the earliest practicable date thereafter.

(3) If the President determines to request the Secretary of Commerce to impose specified restrictions as provided for in subsection (c) of this section, the enforcement and penalty provisions of the Export Administration Act of 1969 shall apply, in lieu of this chapter, to any violation of such restrictions.