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ARCTIC:

Appeals court backs Shell's exploration plans for Alaska waters

By Phil Taylor E&E reporter

A federal appeals court late last week upheld an oil company's plan to drill a handful of new wells this summer in the Arctic Ocean, clearing the way for a project that could unlock the nation's largest untapped oil deposit.

The ruling Friday by the 9th U.S. Circuit Court of Appeals affirms the Interior Department's decisions last year to issue exploration plans allowing Royal Dutch Shell PLC to drill five wells beginning in July in the Beaufort and Chukchi seas.

The three-judge panel rejected claims by more than a dozen native Alaskan and environmental groups that Shell's exploration plan lacked critical information on how it would cap and contain oil in the case of a blowout and that approval was granted before issuance of an oil spill response plan, among other claims.

In a 27-page opinion, the court said Interior's approval of a revised oil spill response plan in March rendered much of the groups' argument moot.

In a separate vein, the court said it trusts the expertise of agency scientists to reconcile Shell's evolving plans to deploy a capping stack and drill a relief well in the case of a spill.

"Whether well-capping technology is now feasible in the Arctic is a technical issue that lies squarely within the agency's scientific expertise and, therefore, is accorded great deference by a reviewing court," the court wrote.

Lastly, the court ruled that the Bureau of Ocean Energy Management had broken no laws when it issued an exploration plan on the condition that Shell provide additional information, arguing that the agency had properly determined the plan would not "'probably cause serious harm or damage' to life, property or the human, marine, or coastal environment."

The ruling is a major victory in the company's \$4 billion quest to explore a region believed to hold about 27 billion barrels of oil. Although roughly three dozen exploration wells have been drilled in Arctic waters since 1982, Shell's project would be the first in more than 20 years.

The court noted it was the third time the government has had to defend its approval of a Shell exploration plan against challenges by environmental groups.

Last week's ruling marks the second time the 9th Circuit has upheld the Obama administration's approval of Shell drilling in the Arctic. The last decision in May 2010, however, quickly became moot after the government shut down all exploratory drilling in the wake of the Deepwater Horizon disaster in the Gulf of Mexico.

Alaska Sen. Mark Begich (D), who last week toured Shell's Kulluk drilling rig in Seattle, today praised the court's decision.

"We have worked with the administration tirelessly to clear hurdles and secure permits for oil and gas exploration in the Arctic and with the

2012 season here, I'm glad to see the courts keep the process moving forward," Begich said in an emailed statement.

Alaska Sen. Lisa Murkowski (R) said the court's decision is further evidence that Shell's drilling program has been held to the highest standards yet for offshore drilling.

"It confirms that the government was right to issue the leases to begin with," Murkowski spokesman Robert Dillon said. "This has been through a very painstaking, long, drawn-out process -- certainly a process we think was unnecessarily long, but one that should be above reproach."

Emilie Surrusco, a spokeswoman for the Alaska Wilderness League, which joined the Center for Biological Diversity, Natural Resources Defense Council, Audubon Society and others in filing the lawsuit, said that the group was disappointed in the decision but that lawyers were still reviewing the document.

Numerous hurdles remain before Shell can begin drilling this summer, including a separate lawsuit in the same appeals court challenging the company's air permits (Greenwire, May 17).

The company must also obtain permits from the Fish and Wildlife Service to allow incidental disturbance of polar bears and walruses as well as drilling permits from the Bureau of Safety and Environmental Enforcement for each individual well.

In addition, Shell officials this month said unusually heavy ice cover could delay drilling operations by up to two weeks, threatening the feasibility of an already short drilling season, the Los Angeles Times reported.

The company agreed to wrap up drilling in the Beaufort Sea by the end of October but will also suspend operations beginning Aug. 26 until the villages of Kaktovik and Nuiqsut have completed their fall whale hunts. In the Chukchi, operations will cease in September to allow adequate cleanup time before the onset of ice.

In a separate action, Shell has filed a pair of pre-emptive legal volleys in defense of its oil spill response plans and permits to disturb whales and seals (E&ENews PM, May 4).