HYDRAULIC FRACTURING AND SHALE GAS REPORT

Federal

**House passes energy-friendly regulatory bills, White House threatens veto.** The U.S. House of Representatives passed a trio of bills that would accelerate permitting times for drilling and pipeline projects and prohibit the U.S. Bureau of Land Management (“BLM”) from finalizing proposed regulations for hydraulic fracturing on federal lands. Under the first bill, H.R. 1965, the Federal Lands Jobs and Energy Security Act, would require automatic approval of drilling permit applications if BLM has not issued a decision within 60 days and prioritizes the leasing of federal lands with the greatest potential for energy development, with five auctions being required by 2016. H.R. 1900, the Natural Gas Pipeline Permitting Reform Act, would require Federal Energy Regulatory Commission (“FERC”) to issue or deny a certificate of public convenience and necessity for pre-filed pipeline projects within 12 months of receiving a completed application. Lastly, H.R. 2728, the Protecting States’ Rights to Promote Energy Security Act, would require BLM to defer to state oil and gas permitting regulations for projects on federal lands. Even if the bills passed the Senate, which seems unlikely, the White House has said the President would veto the bills.

**Group threatens suit over prairie dog listing decision.** WildEarth Guardians issued a notice of intent to sue the U.S. Fish & Wildlife Service over its decision not to list the Gunnison prairie dog as endangered or threatened under the Endangered Species Act. The group claims that oil and gas development and urbanization threaten prairie dog populations in Arizona, Colorado, New Mexico and Utah. The Fish & Wildlife decision was made as part of a legal settlement with environmental groups forcing the agency to make listing decisions for 757 candidate species. Several of those are active in areas of shale development. Decisions for the Greater sage grouse, Gunnison sage grouse, and Lesser prairie chicken could all impact shale development in the Southwest and Rocky Mountain states.

**Environmental groups threaten challenge to BLM policy on nominations.** Several environmental groups, including the Western Environmental Law Center and Citizens for a Healthy Community, are threatening a suit to overturn a new BLM policy that protects the names of companies nominating federal lands for oil and gas leasing. Although the nomination forms will be posted on a BLM website, nominating companies will not have to list identifying information. The groups argue that full disclosure is necessary for government transparency, citing a recent district court case finding that the identifying information is relevant to reviewing the environmental impacts of leasing. Industry group Western Energy Alliance, however, argues that the land a particular company chooses to nominate is a trade secret and that disclosure would chill interest in leasing federal land.
California Representative seeks moratorium on offshore hydraulic fracturing. Representative Lois Capps (D-Cal. 24th Dist.) issued letters to Environmental Protection Agency (“EPA”) Administrator Gina McCarthy and Interior Secretary Sally Jewell seeking a moratorium on hydraulic fracturing at offshore oil platforms off the coast of California. Although companies have used the process over the past 20 years, Rep. Capps asserted regulators do not know about the chemicals used or their impact on the marine environment. She also criticized the process by which the Bureau of Safety and Environmental Enforcement, and its predecessor agency, permitted the companies to use hydraulic fracturing.

DOE partially approves expansion to Freeport LNG export terminal. Freeport LNG received approval from the U.S. Department of Energy (“DOE”) to sell a higher volume of LNG to customers in countries without a free-trade agreement from its planned Quintana Island, Texas export terminal. DOE previously authorized Freeport to export 1.4 billion cubic feet of LNG per day to non-free-trade countries and the new approval increases its limit to 1.8 billion. Freeport CEO Michael Smith, however, expressed disappointment as the company sought to sell a billion cubic feet of LNG more than what DOE approved. Smith said that by only approving a portion of Freeport LNG’s request, the company will now have excess capacity and may not go ahead with future expansion plans.

FERC approves Eagle Ford gas pipeline to Mexico. Houston’s NET Mexico Pipeline Partners received FERC-issued presidential permit to construct a 2.1 billion cubic foot per day gas pipeline to Mexico. The buyer will be MGI Supply Ltd., a subsidiary of Mexico’s state-owned gas company, Pemex. Although Mexico has substantial natural gas reserves, Pemex lacks the technical expertise to develop them fast enough to meet the country’s rapidly increasing energy demands. The pipeline is expected to be completed in October 2014.

States

Colorado to regulate oil and gas methane emissions. With Governor John Hickenlooper’s support, the Colorado Department of Public Health & Environment (“CDPHE”) announced proposed regulations that would require oil and gas operators to detect and limit fugitive methane emissions throughout the lifecycle of oil and gas drilling, production, and transportation. To do this, oil and gas companies would be required to institute a leak detection and repair program for tanks, pipelines, and processing facilities using infrared cameras. CDPHE estimates compliance with the regulations would cost the industry approximately $30 million annually. The proposal resulted from negotiations among the state, the Environmental Defense Fund, and the state’s largest oil and gas producers, Anadarko Petroleum, Encana, and Noble Energy. Before being officially proposed, the rules must first be approved by the Colorado Air Quality Control Commission.

Illinois proposes hydraulic fracturing regulations. The Illinois Department of Natural Resources (“DNR”) issued proposed regulations implementing the state’s new Hydraulic Fracturing Regulatory Act. The proposed regulations would cover all aspects of shale gas development, including site preparation, well construction and operations, chemical disclosure water quality monitoring, well plugging, permit fees, bonding, and proof of insurance coverage. DNR will hold at least two public hearings and take comments on the proposal through the end of this year.

Wyoming Supreme Court hears hydraulic fracturing trade secret case. The Wyoming Supreme Court heard arguments in a case challenging a state law protecting the identity of hydraulic fracturing fluid chemicals designated as trade secrets. The Powder River Basin Council and other NGOs argued the chemicals cannot be
designated as trade secrets under Wyoming’s open records law, while the Wyoming Oil & Gas Conservation Commission (“WOGCC”) and service company Halliburton argued that using specific chemicals provide a competitive advantage over other service companies and should be afforded appropriate protections. Reports from the argument indicated that the NGOs argued WOGCC was not checking trade secret claims, noting that the agency had approved 201 of 202 trade secret approvals, including long lists of chemical names. Counsel for Halliburton countered that lax trade secret protections would discourage companies from experimenting with and implementing safer chemicals.

**Industry group challenges county hydraulic fracturing ban.** The Independent Petroleum Association of New Mexico and two landowners filed a federal lawsuit challenging Mora County, New Mexico’s ban on hydraulic fracturing, enacted by referendum earlier this month. The ordinance also prohibits the use of water withdrawn from within the county for hydraulic fracturing elsewhere, the shipment through or storage within the county of wastewater, rejects any notions of state or federal preemption of local law, and purports to strip corporations of their rights to challenge the ban. The ordinance was modeled on The Community Environmental Legal Defense Fund’s “Community Bill of Rights,” which targets both hydraulic fracturing and a 2010 U.S. Supreme Court decision, *Citizens United v. FEC*, ruling that corporations have free speech rights. The Independent Petroleum Council argues in its complaint that the ordinance is preempted by federal and local law, is contrary to *Citizens United*, violates Constitutional guarantees of free speech, due process, and the right to petition government, and enacts a regulatory taking without just compensation.

**Environmental groups pushing to block oil sand rail projects.** Several environmental groups are organizing an effort to block rail shipments of oil sands crude oil through appeals to state officials and lawsuits. The groups succeeded in persuading the Shorelines Hearings Board in Washington to block permits for two crude terminal projects, pending additional environmental study. They are now targeting Valero Energy’s planned Benicia, California crude terminal and Tesoro’s planned Vancouver, Washington crude terminal. Industry representatives note that it is difficult to identify how much oil sands crude terminals may receive. Many of the targeted terminal projects will mostly receive tight oil from the Bakken shale play. The campaign was largely undertaken in an attempt to discredit the State Department’s finding that authorizing the Keystone XL pipeline would not increase greenhouse gas emissions as oil sands would be shipped by rail in the pipeline’s absence.

**International**

**Canada passes new regulations on crude rail transportation.** Transport Canada issued an order requiring all railroads to provide advanced warning to all municipalities through which a train will travel carrying crude oil. The railroads also must issue annual reports on shipments of hazardous materials and the routes they use. The new regulations were issued in response to the explosion in Lac Mégantic, Quebec earlier this year. The U.S. Federal Railroad Administration is reviewing the regulations, although a spokesman stated that U.S. railroads already report similar information to emergency first responders.

**Polish Environment Minister fired for failure to issue shale regulations.** Poland’s Prime Minister, Donald Tusk, fired the country’s Environment Minister, Marcin Korolec, after Korolec failed to issue regulations that would allow for shale gas development. Korolec will be replaced by Deputy Finance Minister Maciej Grabowski who announced that developing the country’s shale gas resources will be his top priority. Deputy
Environment Minister Piotr Wozniak had blamed the lack of a clear regulatory framework for Exxon Mobil, Marathon, and Talisman abandoning shale development in Poland last year.

Business

**Devon buys Eagle Ford acreage for $6 billion.** Oklahoma’s Devon Energy announced that it will purchase approximately 82,000 acres in the Eagle Ford Shale play from GeoSouthern Energy for $6 billion. The assets currently produce about 53,000 barrels of oil per day with an estimated peak production of 140,000 bpd. Devon has been working to accrue more oil-producing assets, which industry analyst Canaccord Genuity estimated makes up about 12% of Devon’s assets. The deal is expected to close early next year.

Research

**Study: Researchers model gas well productivity.** Researchers from the University of Texas published an article estimating gas production over a well’s life using their model, which could prove to be an important tool for estimating technically recoverable reserves. Using data from approximately 8,300 Barnett shale wells, the article reports they predicted correctly how much the wells could produce before requiring re-completion. Prior applications of the UT model reportedly correctly estimated production from wells in the Haynesville and Fayetteville shale plays. The model has provided some insights into why some shale gas wells have seen declining production, sometimes within the first year after completion.

**USGS: Bakken development may threaten wetlands and streams.** The U.S. Geological Survey (“USGS”) began mapping wetlands and streams in North Dakota, South Dakota, and Montana in 2007. Now, it has enough data to conclude that many wetlands and streams are located within one mile of Bakken shale oil and gas wells. According to USGS, certain of these wetlands, referred to as “prairie pothole” wetlands, are waterfowl breeding grounds. The mapping project also reportedly located a 12 square mile plume of briny wastewater migrating towards an aquifer that USGS claims it has linked to a faulty injection well casing.

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