

## Regulatory Impacts on the Oil and Natural Gas Industry

- Offshore

a) The oil and natural gas industry continues to seek clarification and certainty regarding proposed regulations and Notice To Lessee (NTL) requirements established by BOEMRE following the Gulf of Mexico oil spill. The attached document outlines concerns which remain as a result of the current BOEMRE regulatory environment.

b) A National Ocean Policy currently under development within the Administration could seriously impact the energy sector by excluding or restricting operations through implementation of regulatory proposals such as coastal and marine spatial planning (CMSP), an ocean zoning tool based on the notion of an inherent conflict and incompatibility among ocean uses. This policy adds a redundant layer of bureaucracy, creates confusion and unnecessary conflict with existing statutes, and could delay or restrict oil and gas exploration and development, potentially significantly reducing job-related capital expenditures and decreasing our domestic energy supply.

- Onshore

a) The dominant issue that affects operators on public lands in the Intermountain West is the series of efforts under this Administration to close off or to scale back oil and gas leasing. In other words, the impacts on development of publicly owned domestic energy resources on public lands start with administrative decisions not to make them available.

b) The next most significant issue concerns the NEPA process. The length of time that is increasingly required for NEPA reviews at all levels, and the steady efforts to restrict use of less restrictive reviews for oil and gas projects add cost and delay to energy projects, and serve to de-incentivize exploration on public lands and/or in the West. "Energy Leasing Reform" changes that BLM introduced through an instructional memorandum in May, while not yet fully implemented (this is expected second quarter, 2011) are expected to add delay and complexity to the BLM decision processes by which BLM-managed acreage is made available for lease. The restriction on use of categorical exclusions is likely to add costs and review periods for many exploration projects that would hitherto have been approved by categorical exclusion.

c) Emerging potential of use of climate change arguments to limit acreage offered for lease. This issue has yet to take the shape of specific regulations, but the action by the Council on Environmental Quality to affirm inclusion of climate change analysis in the NEPA process points the way toward this possibility.

d) Use of the Endangered Species Act to restrict public lands acreage available for lease or to restrict oil and natural gas operations on those leases. For example, the listing earlier this year of the Greater sage-grouse as "warranted, but precluded" for protection under the Endangered Species Act, because of the large overlap between the sage grouse range and BLM-administered public lands with natural gas potential east of the Great Basin. There remain strong industry concerns that the case has not been made that sage-grouse populations are in the state of peril that one would expect for a species given the

“warranted, but precluded” treatment (for example, the species may still be legally hunted in all but one of the states). This is due to concerns that the principal method relied upon to assess sage-grouse populations has methodological flaws. The core issue here is the reliability and objectivity of the science that is offered to support ESA decisions in general (and in the case of the sage grouse in particular), as well as the balance (or its lack) in the consideration of risk factors that may influence sage-grouse populations.

- Upstream Environmental--Exploration and Production Waste

On September 8, NRDC filed a “Petition for Rulemaking” with EPA, challenging the assumptions in EPA’s 1988 Regulatory Determination, which concluded that regulating produced wastes from exploration and production operations was not necessary or appropriate. In its recent petition, NRDC requests that EPA reconsider and regulate E&P wastes under Subtitle C of RCRA. Under the 1980 Bentsen Amendment to RCRA, EPA was prohibited from regulating wastes from exploration and production operations until it completed a report to Congress on the status of the wastes’ current management and the risk they presented. Then, if EPA were to determine that regulation was appropriate, any such regulation would be required to be approved by Congress before it could become effective.

API is developing a response letter (in coordination with other oil and gas trades) to send to EPA, which should be available by the end of February 2011. API is also undertaking some economic modeling to get a better understanding of the cost impacts of such a regulatory approach in today’s dollars. It is possible that much of that work will be concluded by late January.

- Pipeline

The Department of State is currently reviewing the Draft Environmental Impact Statement for the Keystone XL Pipeline that will carry Canadian crude from Alberta to the Gulf Coast of the U.S. Approval of the statement is prelude to DoS’s approval of a Presidential Border Crossing Permit for the pipeline. If not approved, the U.S. will not realize the roughly \$20 billion dollars of economic stimulus from the project, including more than 15,000 high-wage manufacturing and construction jobs in 2011-2012.

- Oil Sands

US Energy Independence and Security Act (EISA) §526 limits domestic refiners processing of Canadian oil sands by prohibiting the federal government from purchasing fuels derived from unconventional petroleum sources if it has a GHG lifecycle emission greater than emissions from the fuel from the conventional source. It decreases US refiners’ competitive position in the global marketplace and regulations posing constraints on oil sands processing in the US limits the potential creation of 342,000 new jobs in the US between 2011 and 2015.