

Bryan Cave Energy Update

January 8, 2010

White House

Obama May Order NEPA Expansion

President Obama may issue an executive order that adds climate change to the list of factors that federal agencies must consider when evaluating projects or policies for National Environmental Policy Act compliance (NEPA). Currently, NEPA requires agencies to consider land use, biodiversity and air quality. Environmentalists have lobbied to expand the scope to include climate change. Business interests, however, are opposed to such a change and contend that such a requirement will slow the federal approval process and harm the economy. In a letter to the White House Council on Environmental Quality, Sen. James Inhofe (R-OK) and Sen. John Barrasso (R-WY) wrote, "Requiring analysis of climate change impacts during the NEPA process ... will slow our economic recovery while providing no meaningful environmental benefits. Projects across the nation are already experiencing delays or being canceled due to inappropriate and inefficient implementation and litigation from existing environmental regulations."

Interior Department Expands Reviews of Oil and Gas Leasing

The Department of the Interior recently announced it will require more detailed environmental reviews of federal oil and gas leases. Under the new policy, the Bureau of Land Management (BLM) will develop master leasing and development plans with input from

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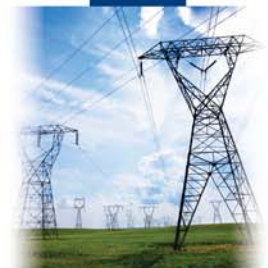
the public where intensive development is expected. In addition, each potential lease sale will undergo a parcel review process that will require increased internal and external coordination, interdisciplinary review of available information and site visits to supplement or validate existing data.

BLM also issued interim draft guidance on a provision to streamline oil and gas drilling applications on public land. Under Section 390 of the 2005 Energy Policy Act BLM is authorized to approve certain oil and gas projects without new environmental analyses as required by NEPA. The draft guidance will create a process for considering "extraordinary circumstances" when a Section 390 exclusion would be permitted.

Congress

Senate Democrats Press White House to Drop Cap-and-Trade Effort

Moderate Senate Democrats are urging their leadership and the White House to drop efforts to



enact cap and trade legislation. Democratic aides report that at a recent meeting on health care, moderates urged leadership to table climate change legislation in favor of focusing on a jobs package. Sen. Evan Bayh (D-IN) said that passage of cap-and-trade legislation is “unlikely” and that addressing global warming is “very difficult in the kind of economic circumstances we have right now.” The moderates also have suggested moving forward with an energy bill that does not include cap-and-trade. Supporters, however, maintain that any energy legislation must include cap-and-trade. In addition, dropping cap-and-trade would disappoint environmentalists and many utility companies that have advocated for such a system.

Copenhagen Agreement May Expand Senate ‘Verification’ Proposals

The non-binding Copenhagen agreement could prompt Congress to reconsider the “verification” provisions of its climate change legislation. The Copenhagen agreement calls on “national communications” from developing countries on their emissions. Senators have just started reviewing the agreement, but a senate aide said the Copenhagen document is a step to encouraging China and other countries to be transparent about their carbon emissions. As a result, the aide said the Senate may expand provisions in its climate change legislation designed to verify that other countries are acting to reduce emissions.

Industry

Alaskan Pipeline Showing Signs of Deterioration

Wax buildup is slowing the flow of oil through the 800-mile-long trans-Alaskan pipeline and may require extensive repairs. Alyeska Pipeline Service Co., which manages the pipeline, had scraped wax buildup on the interior of the pipe every several weeks but now must do so every four to seven days to prevent an increased risk for corrosion and spills due to the slower oil flow and colder temperatures. The company is conducting a study of the problem that it hopes will determine what it will cost to make major upgrades to the pipeline. Possibilities to correct the

problem include heating the oil as it flows through the pipeline, removing the water suspended in the oil before it enters the pipeline or using chemicals to prevent the water in the oil from freezing. Damage to the pipeline would be problematic for Alaska, as the pipeline is responsible for the majority of the state’s tax revenue and is related to thousands of jobs. In addition, the pipeline is responsible for 10 percent of the America’s oil production.

Oil production on Alaska’s North Slope has declined. This, combined with the maintenance requirements, is raising concerns among state and federal officials that oil companies will determine it is no longer profitable to run the pipeline. Department of Energy officials estimate there is enough oil on the North Slope to require a refurbished or new pipeline to operate beyond 2050. Much of that oil lies under the coastal plain of the Arctic National Wildlife Refuge (ANWR).

Cape Wind Nantucket Sound Wind Farm Site Eligible for Historic Listing

The National Park Service (NPS) has determined the proposed site on Nantucket Sound for the Cape Wind offshore wind farm is eligible for a traditional cultural property designation. While NPS has found the site is eligible for listing in the National Register of Historic Places because it is vital to the cultural and religious practices of two

American Indian tribes, Interior Secretary Ken Salazar is working on a compromise that will allow the site to move forward. He said he intends to meet next week with the involved parties to discuss “how we might find a common-sense agreement on actions that could be taken to minimize and mitigate Cape Wind’s potential impacts on historic and cultural resources.” Possible changes to the proposed site include relocating the wind turbines or lowering their height.

Fuel Subsidies Targeted by Environmentalists for International Climate Aid

Environmentalists are viewing subsidies for fossil fuel as a potential funding stream for the \$100 billion in aid promised to developing countries during the recent U.N. climate summit in Copenhagen. The International Energy Agency estimates that developing countries spend about \$310 billion annually to subsidize fossil fuel use. It is unclear how much developed countries spend to subsidize fossil fuel production, but environmentalists contend that eliminating such subsidies could reduce greenhouse gas emissions. Heather Allen, international advocate for the Natural Resources Defense Council said, “In practicality it’s complicated, but in principle it makes a lot of sense. The money could be tremendous.”

The American Petroleum Institute, however, expressed opposition to the idea. “What they’re really talking about is modifying taxes so oil and gas is dealt with more harshly. To single out the oil and gas industry for worse treatment than other sectors get .. really doesn’t seem like a very smart energy policy,” Kyle Isakower, an API spokesperson said.

2010 Elections

California GOP Gubernatorial Candidate Would Suspend Climate Law

Meg Whitman, former eBay CEO and leading Republican candidate to replace California Gov. Arnold Schwarzenegger, said she would suspend the state’s global warming law for one year if elected. The law goes into effect in 2012 and would cut greenhouse gas emissions to 1990 levels by 2020. A campaign spokesperson said she does not favor

repealing the law but that it should be delayed until the economic implications of its implementation are better understood. The spokesperson said the law has “admirable goals” but that the state is “facing a staggering unemployment rate.” Whiteman is currently leading in polls headed into the June 8 Republican primary. A Republican in the State Assembly is pushing to put the law on the November ballot to allow voters to halt implementation until unemployment in California falls to 5.5 percent. Currently, the unemployment rate in California is about 12 percent.