

## *Political Landscape*

# Federal Initiatives Assault Oil And Gas

By Edward P. Cross

TOPEKA, KS.—Over the past year, the oil and gas industry has experienced a roller coaster ride with oil and gas prices. However, our industry is facing more complicated issues than price shifts alone. Our biggest challenges now are coming from the federal level.

We are straining to adjust to a host of potentially harmful issues that raise pointed questions about our industry's future. Federal tax proposals seriously threaten independent producers by attacking virtually every provision that encourages investing in American oil and gas development, and groups opposed to oil and gas are using a host of regulatory and environmental issues to establish barriers to responsible development.

With the election of President Obama and the Democratic Congress, a new chapter has opened for the nation's energy policy. The White House and Congress want to move away from oil dependence, and emerging policies emphasize conservation, alternative energy and new limits on the greenhouse gas emissions they believe contribute to climate change.

There are at least three key vehicles through which energy policy is being developed. One is "clean energy" bills in the U.S. House and Senate.

On June 26, the House of Representatives passed HR 2454, the American Clean Energy and Security Act. This landmark cap-and-trade climate change bill narrowly passed 219-212, reflecting the heated political debate over the bill's effectiveness and cost. Meanwhile, the Senate has developed its own version of climate and energy legislation, titled the American Clean Energy Leadership Act of 2009.

The ability of the 1,200-page House bill to succeed is tied to increasing the cost of energy at all stages: from discovery, to production and consumer end use. The bottom line is that HR 2454 would result in less energy for those who need it and more expensive energy for those who can't afford it. And if less American energy is produced, the result will be higher prices for consumers, increased reliance on foreign oil, and many fewer jobs for hard-working, middle-class families.

### **Tax And Energy Policies**

In May, the Obama Administration formally submitted its fiscal 2010 budget request, which targets independent oil and gas producers with higher taxes. Obama's budget would terminate eight tax policies critical to the independent oil and gas industry. It also includes a new tax on Gulf of Mexico production and fees on nonproducing Gulf of Mexico properties. Altogether, these terminations will cost oil and gas companies \$31 billion in taxes between 2010 and 2019, as well as \$1 billion in fees for nonproducing properties.

Nowhere will the impacts be more devastating than in marginal-well states such as Kansas. The U.S. Treasury justifies eliminating oil and gas tax provisions by arguing that current law "encourages over-production of oil and gas, and is detrimental to long-term energy security."

The House and Senate energy bills, and the president's 2010 budget, contain myriad energy policies that are wide in scope and far-reaching in implication. The Senate legislation proposes adjustments to the Strategic Petroleum Reserve and increases loan guarantees for a natural gas pipeline from Alaska. Policies to curb greenhouse gas emissions include a cap-

and-trade system, a carbon capture and sequestration program, and new performance standards for coal-fired power plants.

Such initiatives will have consequences for a wide range of industries, including electric utilities, paper, steel and cement. Programs to increase energy efficiency will affect homebuilders, and lighting and appliance manufacturers and retailers. A renewable electricity standard will give a substantial boost to clean energy companies, as will the availability of credit for investments in clean energy.

Finally, clean transportation programs will encourage the manufacture and sale of plug-in electric and other advanced technology vehicles. If these legislative efforts are successful, new energy policies will cause an enormous shift in the U.S. economy, with implications for virtually all economic sectors.

### **Fracture Regulation**

The third "energy policy vehicle" is legislation seeking to increase oversight of hydraulic fracturing. On June 9, U.S. Representatives Diana DeGette, D-Co., Maurice Hinchey, D-N.Y., and Jared Polis, D-Co., along with U.S. Senator Bob Casey, D-Pa., introduced the Fracturing Responsibility and Awareness of Chemicals (FRAC) Act. The legislation is based on the false premises that hydraulic fracturing is unsafe, unregulated, and that it benefits from a special exemption to federal law.

At its core, the FRAC Act seeks to rescind key provisions of federal law clarifying Congress' intent as it relates to the Safe Drinking Water Act of 1974, which is aimed at protecting public water supplies. In 1974, hydraulic fracturing already had been in commercial use for 25 years. At no time during its deliberation, nor in subsequent debates on amendments to

SDWA in 1980, 1986 and 1996, did Congress consider regulating hydraulic fracturing under SDWA.

Hydraulic fracturing was then, and now continues to be, aggressively regulated by the states, and has compiled an impressive record of safety and performance over that time. This temporary well stimulation action differs from the permanent waste disposal that the SDWA was designed to address, and it should not be treated the same way.

More than 60 years after its first commercial use, not a single case of hydraulic fracturing-related contamination has been documented by federal or state government analyses. In fact, a landmark 2004 study conducted by the Environmental Protection Agency found that hydraulic fracturing posed “no threat” to underground drinking water supplies.

### Industry Responses

When the Obama administration proposed massive revisions to federal oil and natural gas taxation in its FY 2010 budget request, several oil and gas associations and producers documented the adverse economic consequences that would result. That material was shared with members of Congress, including key House and Senate Democrats.

Several oil and gas associations initiated grass-roots responses to the proposals that generated letters and statements from producers across the nation, challenging the Obama administration’s proposals because of the consequences to independent producers, national energy security, and national and state economies.

Congresswoman DeGette’s attempt to replace the state-and-federal regulatory partnership on hydraulic fracturing is being countered with studies that show doing so could have serious consequences for America’s energy and economic future. The studies, collectively known as Project BRIEF (Bringing Real Information on Energy Forward) found these and other new federal regulations could result in:

- The forced closure of more than half of America’s oil wells and a third of its gas wells;
- \$4 billion in lost revenue to the federal government, while state treasuries would lose \$785 million; and
- Domestic oil production slashed by 183,000 barrels a day, and natural gas by 245 billion cubic feet a year.

Beyond the national numbers, Project BRIEF’s economic impact study offers a comprehensive, state-by-state breakdown of local impacts of new federal regulation, including segmented data related to the number of wells likely to be closed in each state, and the amount of revenue and royalties expected to be foregone.

Project BRIEF is one of the largest industrywide undertakings to provide honest information on the industry’s environmental practices to federal, state and local legislators as well as the news media. Project BRIEF’s scope includes studies on the economic and supply impacts of new regulations, a historical study of key environmental statutes, and a review of state regulations and their effectiveness in mitigating environmental risk.

Project BRIEF is an invaluable tool for disproving the fallacies of anti-energy-development groups. Its findings and other information can be found on the coalition’s Web site at [www.energyindepth.com](http://www.energyindepth.com).

### Progress

In July, the Kansas Independent Oil & Gas Association joined the Oklahoma Independent Petroleum Association, Texas Alliance of Energy Producers, Domestic Energy Producers Alliance, Independent Petroleum Association of Mountain States, and more than 20 Mid-Continent oil and gas producers to visit with key Democratic senators whom we felt would listen to the concerns of the independent oil and gas segment. The events provided us the opportunity to express our concerns about important tax and environmental issues, and to begin building relationships.

The group was able to visit for one and a half to two hours each with Senators Mary Landrieu, D-La., Mark Pryor, D-Ar., Ben Nelson, D-Ne., Tim Johnson, D-S.D., and Kent Conrad, D-N.D. The group also met with Senator Byron Dorgan, D-N.D., in August.

Our basic message was that if President Obama and Congress were serious about a responsible approach to energy policy, they must recognize that the nation’s infrastructure is built on oil and natural gas, and these resources must be incorporated in policy decisions. We also discussed the impacts of climate and hydraulic fracturing legislation.

The meetings were productive and the information provided to the senators was welcomed, especially the information about the impact on small independent producers, whose perspective, according to the senators, often is not heard in Washington.

In addition, a coalition of associations and producers launched an aggressive campaign in June, responding to the anti-energy-development attacks on state regulation of exploration and production activities, and specifically hydraulic fracturing. The proactive public information efforts are making tremendous progress. News accounts that otherwise might have characterized hydraulic fracturing as untested, unregulated, toxic, or exotic,

now are include facts and less fiction.

Reporters who fail to note the technique’s extraordinary record of safety and performance are apprised of that information immediately. And reporters, editors and journalists trained to describe energy bill provisions as “give-aways,” “loopholes” or “exemptions” are being educated about those inaccurate responses. We also are seeing more third party organizations, lawmakers and congressional staffers using industry talking points, fact sheets, and analyses in their communications.

### What Next?

The real showdown over energy and environmental legislation probably will occur in October or November. While the June vote to pass the House cap-and-trade bill was very close, it always has been clear that the main battle would be fought in the Senate.

For some time, there was reasonable speculation that a unified Senate bill containing cap-and-trade as well as Energy and Natural Resources Committee measures could emerge before the August recess. However, in light of the large amount of important legislation before Congress, Senate Environment and Public Works Chairwoman Barbara Boxer, D-Ca., postponed markup of energy legislation until mid-September.

Time is not on the side of those who support this energy policy. The main problem for proponents is that the legislation represents a great deal of additional government spending and economic hardship. While the Democratic leadership claims the costs will be borne by corporations or will be compensated for by new job growth, that sentiment is not reflected in opinion polls.

According to Rasmussen reports, in June, 53 percent of Americans said more government spending would hurt the economy. Also, only 42 percent of U.S. voters believe human activity is the cause of global warming. What this means is that a sizeable number of Americans are not receptive to the present legislative prescription. In fact, 42 percent of Americans believe the House climate bill would harm the economy.

The point is that incoming presidents and congressional majorities are never as popular as they are immediately after they are elected. At that time they have fresh political capital and the electorate’s benefit of the doubt. Over time, that begins to diminish, especially if positive results aren’t forthcoming.

In light of our nation’s persisting economic problems, optimism for energy policy in its current form is waning. For these reasons, it is becoming more likely

that energy bill(s) will not survive in their current forms. However, as is characteristic of Congress, it is very likely that some compromise or face-saving measure will produce new energy legislation this year.

### Moving Forward

The oil and gas industry continues to face numerous challenges that, if passed into law, would have damaging effects on independent producers. Complicating matters, we do not and cannot control the agenda in this new landscape. Promoting our goals and protecting our interests has become more challenging.

We are faced with the task of focusing the harsh light of reality onto the fantasy world in which too many of our policymakers have found refuge. Many policymakers speak with sincerity about an economy and society that can thrive without oil and natural gas. And, we must operate in a political environment in which our industry is under assault and vilified.

Given these realities and recognizing the knowledge gap on the crucial role U.S. producers play in delivering secure and affordable energy to American consumers, we must continue our efforts to set the record straight. The oil and gas industry must build on the success of several very good public information efforts to focus on bringing a wealth of new information on energy to the forefront, and must deploy an aggressive communication strategy designed to separate fact from fiction, reality from myth, and proven practices from hyperbole. We must advocate for sensible policies that will help encourage more American oil and natural gas production.

We need to continue to work with our congressional members and industry partners to acquire more intelligence on Democratic energy and tax strategies. We also must continue to work hard to present our messages to more Democratic members of Congress across the nation. We also need to continue to work with Republicans, to keep them current on all facts.

### Early Preparedness

Many of the oil and gas industry's past public information initiatives were largely reactive and defensive. We need to anticipate the scope of threats before they materialize, and craft comprehensive information and education efforts to preempt them. By working together, we can develop salient messages and thorough, well-prepared materials to counter attacks on the independent oil and gas industry.

We can then leverage our early preparedness to create opportunities with lawmakers, opinion-leaders, media, and third-party groups. These efforts already are being done through Project BRIEF and by individual associations working together. We need to continue to grow those efforts and stay unified.

We need to keep providing Congress information and facts about the impacts of proposed tax and environmental legislation on the economy and energy security. Industry needs to be vigilant in keeping oil and gas tax proposals out of other, more encompassing bills. If a floor vote should occur with oil and gas taxes wrapped into a much larger debate where the factors driving votes go well beyond the oil and gas provisions, it could be very difficult to keep the oil and gas tax provisions out.

For example, the sizeable fiscal note that likely will accompany any healthcare reform could very well have Congress searching under every rock for revenue. If it steps outside of the health-related parts of the tax code, no one knows where it may go. Oil and gas tax provisions could get caught in a wide net.

We must continue to confront and correct our opposition on every plane and platform on which it operates. We need to continue to advance messages and materials that redefine the terms of the debate, and to inspire outside groups and everyday Americans to act on our behalf.

The oil and gas industry has a monumental task ahead of it, but we are right on course. We must educate key Senate and House Democrats on the importance

of retaining the oil and gas provisions the president has targeted for elimination, the consequences of passing cap-and-trade legislation, and the consequences of passing hydraulic fracturing legislation.

Most importantly, it is imperative that the oil and gas industry—and fossil fuels industry in general—stay focused and unified in its approach. Our opponents are light on facts, but heavy on emotion, and are well funded and organized. We cannot afford to become divided.

True leadership is seeing the need, envisioning a plan, and empowering stakeholders for action. We have begun that process, and by working together, the collective focus of our industry can be unleashed. □



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