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Romney Plan Puts States At Helm Of Oil, Gas Development

By **Derek Hawkins**

Law360, New York (August 23, 2012, 8:04 PM ET) -- Republican presidential candidate Mitt Romney released an energy plan Thursday calling for states to play a greater role in oil and natural gas development, a proposal experts say would give states more power in an area where the Obama administration has expanded the federal government's reach.

Romney's plan would turn over control of onshore energy development almost entirely to states, allowing them to oversee environmental reviews, permitting and production on public lands inside their borders and shifting responsibility away from federal agencies.

One of several major provisions in the Romney plan, the proposal would reverse steps the Obama administration has taken to increase federal oversight of energy development as energy companies have sought greater access to shale gas and other resources.

"The transfer of permitting authority from the federal government to the states is the big one," said Larry Nettles, the energy industry group leader at Vinson & Elkins LLP. "This goes in exactly the opposite direction of what the Obama administration has done — those two are 180 degrees opposite each other."

Since taking office, the Obama administration has opened new land for oil and gas exploration and drilling, as well as renewable energy development, while also issuing new restrictions.

The U.S. Interior Department, for example, proposed a rule in the spring to regulate hydraulic fracturing on public lands and force companies to disclose the chemicals they use in the process. The U.S. Environmental Protection Agency has also moved toward regulating fracking, proposing limits on emissions from wells and imposing other performance standards on the industry.

Many Republicans — including Romney and his running mate Rep. Paul Ryan, R-Wis. — argue those and other measures, combined with what they call a sluggish permitting process, have impeded development. They note that oil and gas production on federal land, while up over Bush administration levels, has dropped in the past year.

Romney's energy plan would address the issue by having federal agencies authorize states to set up regulatory processes and permitting for "all forms of energy development" on public lands within their borders. It would also allow state environmental reviews to fulfill federal requirements.

"States have crafted highly efficient and effective permitting and regulatory programs that address state-specific needs," Romney said in the plan. "From oil and gas and coal to wind

and solar and biofuels, states are far better able to develop, adopt and enforce regulations based on their unique resources, geology and local concerns.”

Romney’s plan, while short on specifics, would force federal agencies to certify state processes using “sufficiently broad” criteria, and calls for the formation of a panel through which states would share information with independent groups like the State Review of Oil & Natural Gas Environmental Regulations.

According to Jeff Porter, head of Mintz Levin Cohn Ferris Glovsky & Popeo PC’s environmental section, the plan would likely involve delegating federal authority under certain statutes to states, in roughly the same way the EPA delegates authority over surface water pollution discharges to most states.

But the move could come fraught with complications, Porter said.

“Congress would need to pass legislation to amend each and every statute under which Romney would want to delegate new authority to the states,” including the Clean Air Act, the National Environmental Policy Act and others, he said.

“What Romney seems to have in mind is causing the states to accept this authority,” Porter added. “What he doesn’t say is that the states could choose to apply for the delegation or choose not to. If state doesn’t apply for the delegation, the federal government is left holding the bag.”

A representative from the Romney campaign didn’t immediately respond to a request for comment Thursday.

In addition to empowering states on energy development, Romney’s plan envisions a loosening of environmental regulations — including new rules curbing coal power plant emissions — and support for the U.S. ethanol fuel quota.

The plan also calls for a new five-year offshore leasing plan that opens land off the coasts of Virginia and the Carolinas, as well as approval of the Keystone XL oil sands pipeline from Canada and other cross-border pipelines.

Many of the plan’s proposals are near and dear to GOP leaders and won praise from lawmakers like Rep. Doc Hastings, R-Wash., who called the plan a “comprehensive vision for the future of American energy production” that would undo regulations he says have sapped industry and destroyed jobs.

But Democratic leaders, including House Natural Resources Committee ranking member Ed Markey, D-Mass., wasted no time blasting the plan as a handout to the oil industry and a blow to renewable energy.

“This isn’t a serious energy plan, it’s a serious threat to our coastal economies and to America’s competitive role in the world’s energy future,” he said.

--Editing by Elizabeth Bowen.

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