1100 15th Street NW, Suite 600
Washington, D.C. 20005
Tel: (202) 496-1180
Fax: (202) 496-1190

Email: info@oxfamamerica.org
www.oxfamamerica.org

February 6, 2012

Ms. Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Subject: **Proposed Rules for Disclosure of Payments by Resource Extraction Issues, File S7-42-10 – Concerns Regarding Industry Project "Geologic Basin" Definition**

Dear Secretary Murphy:

Following Oxfam America's submission to the SEC on the above referenced proposed rule almost one year ago, I am pleased to provide additional comments from Oxfam America to the Securities and Exchange Commission on the proposed rules for disclosure of payments by resource extraction issuers. [1]

We are writing to voice our strong concerns regarding proposals by some industry commenters on the definition of "project" with regard to pending final rulemaking to implement Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

A project payment definition that relies on "geologic basin" would violate the clear statutory language and intent of Section 1504; add to, rather than reduce compliance costs; and obscure company and project-level payment information that is of benefit to investors, governments and citizens.

As we have argued in our previous submission to the SEC, project should be defined as a lease, license or other concession-level contractual arrangement that assigns rights and fiscal obligations. Royalties, license fees, production entitlements and bonuses – payments which together represent a large share of the financial benefits that accrue to governments from extractive activities – are in every case we have seen levied according to the terms of specific leases and licenses. It follows, therefore, that payment disclosures should be made at this level. As noted in the Oxfam America comment as well as the Publish What You Pay US comments dated February 25, 2011, and December 20, 2011, in cases where certain payments are levied at an entity level rather than at the lease/license level (e.g. corporate income tax calculated on the basis of all profits on all projects within a jurisdiction), a limited reporting allowance may be appropriate for those specific payments only. This is consistent with the proposal of Calvert Investments.

It is worth noting that this definition is already at a significant level of aggregation in that it could cover multiple fields, wells or mines located in one concession or license area.

We are especially concerned that industry cost estimates appear to be significantly inflated based on the assumption that a final rule would require allocation of income taxes levied at the country level

[1] Oxfam America submission to SEC on Section 1504, February 21, 2011. http://www.sec.gov/comments/s7-45-10/s74210-76.pdf

payments to individual projects.[2] We have not proposed, nor are we aware of any other interested group proposing in comments to the SEC, that such income tax payments be somehow assigned to individual projects.

Numerous petroleum company commenters, as well as the American Petroleum Institute, have argued for a project definition that relates to a "geologic basin" or "province".[3] The purpose of this letter is to express strong concern with this proposed approach as this definition would also go against the statutory language and Congressional intent. (Oxfam and other commenters have argued previously that certain project definitions – such as "project" as a "country" – are foreclosed by the statutory language and Congressional intent.)[4]

While industry commenters have not defined "geologic basin", Kosmos Energy, in its Form S-1 Registration Statement filed in 2011 under the Securities Act of 1933, defined **"basin"** as "a depression in the crust of the Earth, caused by plate tectonic activity and subsidence, in which sediments accumulate. If hydrocarbon rich source rocks occur in combination with appropriate depth and duration of burial, then a petroleum system can develop within the basin." It went on to define a **"license"** as "a legal instrument executed by the host government or agency thereof granting the right to explore, drill, develop and produce oil and natural gas. An oil and natural gas license embodies the legal rights, privileges and duties pertaining to the licensor and licensee" and a **"field"** as "a geographical area under which an oil or natural gas reservoir exists in commercial quantities."[5]

Geologic basin payment reporting would violate the company-by-company requirement of Section 1504

It is very common for more than one company to conduct activities in a particular geologic basin. See, for example, the "Lower Congo" and Kwanza basins offshore Angola / Republic of Congo in which at least 10 separate companies have licenses to explore for and/or produce oil and gas[6] or the Tano basin in offshore Ghana where at least five companies have licenses for exploration/production.[7]

Section 13(q)(2) requires disclosure by "*each* resource extraction issuer"—a basic statutory element that is inconsistent with the aggregation of payments by multiple companies. *Where multiple companies are*

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[2] Exxon's reporting cost estimate "over $50 million" but relies on such assumptions. See Exxon letter to SEC, Jan. 31, 2011: "We note also that the total amount of income taxes reported for a jurisdiction should be net of any tax credits or other tax deductions included under the commercial arrangements agreed with the host government. These tax credits and deductions may result from one set of projects and be utilized against the earnings from other projects within the same fiscal regime, making reporting and interpretation of income tax payments by individual project very difficult. As a result, reporting of taxes at the project level will require issuers to develop new methods, processes, and allocations of certain costs between projects in order to determine and report the income tax payment information."

[3] Based on API's submission, we assume these terms are presumed to be interchangeable and have the same basic meaning. See API's letter of January 28, 2011, to the SEC states: "We believe the most reasonable and workable way to define "project" for resource extraction issuers is by reference to a particular geologic resource. Specifically, we propose the following: "Project" means technical and commercial activities carried out within a particular geologic basin or province to explore for, develop and produce oil, natural gas or minerals."

[4] Oxfam America comment to the SEC on proposed rule for Section 1504, February 22, 2011. http://www.sec.gov/comments/s7-45-10/s74210-76.pdf

[5] Kosmos Energy Limited, Form S-1, Filed with the SEC on April 25, 2011. http://www.sec.gov/Archives/edgar/data/1509991/000104746911004005/a2203496zs-1a.htm

[6] See Slide 2 and 3, Total Investor Relations Field Trip Pau Angola, November 7-10, 2010, "Exploration Potential in Angola" http://www.total.com/MEDIAS/MEDIAS_INFOS/3655/FR/Total-2010-exploration-in-angola.pdf?PHPSESSID=978a5dff3d6af90591bb009c83113456

[7] http://www.gnpcghana.com/activities/details.asp?expID=10

making payments for activities in a geologic basin, the statutory language of Section 1504 provides no basis for allowing a project to be defined as an aggregation of all activities within a geologic basin.

Geologic basin payment reporting may violate the country-by-country requirement of Section 1504

Geologic basins may span more than one country. In such cases, reporting at a geologic basin level would violate the clear country-by-country requirements of Section 1504. Where basins span countries, such as offshore Nigeria/Cameroon, Angola/Republic of Congo and Ghana/Cote d'Ivoire, to name only a few examples, geologic basin based reporting would fail to result in even country-level, let alone the company-by-company level, reporting as is clearly required by the plain statutory language of Section 1504.

Geologic basin reporting would add to, not reduce, reporting costs

While not providing concrete data or evidence, many companies have expressed concern about the report costs associated with disclosures required by Section 1504. Companies must calculate payments at the contract, lease or license level as this is where the financial liabilities attach. While our proposed project definition rests on project payments that any well-run company should already be tracking at the license level, *a project definition based on geologic basins would require companies to set up new systems to aggregate payment information from the licenses level, thereby conflicting with their desire to reduce reporting costs.*

For example, ExxonMobil in its January 31, 2011, submission stated that "Defining 'project' as proposed in our response to Question 40 (i.e. at the geologic basin or province level or on some other reasonable and higher basis) or as proposed in Question 45 (i.e., at the 'reporting unit' level) *will greatly reduce the burden of these efforts* and calculations for issuers and result in more consistent reporting." It is unclear to us how an additional level of aggregation – *an additional internal compliance step* – would somehow "reduce the burdens" of compliance.

Chevron, in a comment to the SEC, stated that "an appropriately broad definition that **allows issuers to aggregate data from multiple contracts** relating to the same underlying resource could do much to alleviate company concerns about disclosure of competitively sensitive data."[8] (Emphasis added) Chevron's comment highlights the fact that data is already being collected at the contract (license) level; that companies would have to expend resources to "aggregate" this data; and that the concern is not at all about direct costs but about shielding "competitively sensitive data".

Chevron does not describe what "competitively sensitive data" they are concerned about disclosing. The payment information required to be disclosed by Congress through Section 1504 cannot be considered "competitively sensitive".[9]

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[8] http://www.sec.gov/comments/s7-42-10/s74210-12.pdf

[9] Oxfam America has previously argued that concerns that companies will be forced to disclose highly sensitive information are greatly exaggerated. "Many of the industry commenters refer to the "competitive harm" that would arise if companies are required to disclose "sensitive commercial information." *See, e.g.*, API Letter 2 at 2; Exxon Letter at 4. They do not, however, clearly articulate either the harms that they envision or how the required disclosures under Section 13(q) involve "sensitive" information. These commenters contend that "commercially sensitive contract terms" will be disclosed, Exxon Letter at 4, but neither Section 13(q) nor the Proposed Rule require the disclosure of specific contract "terms" between a resource extraction issuer and a host government. They require no more than the disclosure of payments made to governments in connection with projects. Section 13(q) does not force companies to disclose sensitive or confidential information such as existing, pending, or expected contracts with governments. Nor does Section 13(q) require issuers to reveal any contract terms aside from the payment amount to a government in connection with a particular project." Oxfam America comment to the SEC on proposed rule for Section 1504, February 22, 2011.

It would seem, then, that companies may be willing to absorb extra reporting costs in cases where it allows them to aggregate and obscure payment information from investors and the general public.

There is not common agreement on the boundaries of geologic basin

If a geologic basin were to be adopted in the final rule, the SEC would be placed in a position of making judgments regarding the geographical contours of geologic basins in order to monitor compliance with a reporting requirement. The limits of the basins are generally unknown because of incomplete geological data.

In contrast, each license or contract issued for oil, gas or mining activities sets very specific geographical boundaries. For example, the petroleum contract filed with the SEC in 2011 by Kosmos Energy as part of its registration with the SEC provides a very precise geographical definition. [10]

Countries provide the rights to exploration or production at the license, lease or concession level, not by "basins"

Countries seeking investments in their oil, gas or mineral sectors provide companies with the opportunity to seek licenses for exploration and production at a level below a 'geologic basin'. It would be nonsensical for a country to issue a license for an entire basin. Rather, countries divide basins into "blocks" or license areas (see Exhibit A below). A basin may have different geologic characteristics in one area (e.g. reservoir pressure, ocean depth, etc.) and it would make sense that these different basin areas would be developed separately, using separate licenses and separate fiscal arrangements between the company and the host government.

Companies already disclose project information on a "block" or "concession" level

Oil and gas companies routinely report information on holdings by block / license area, not basins, to investors through their routine reports – such as 10Ks. For example, Chevron's 10K for 2010 gives an overview of exploration and production activity around the world and consistently describes activities within specific blocks (license areas) or fields, but not basins. For example, Chevron describes its activities in Angola on a *block-by-block level including average production levels by block*.[11]

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[10] Petroleum Agreement between Kosmos Energy and Government of Ghana, March 10, 2006. http://www.sec.gov/Archives/edgar/data/1509991/000104746911001716/a2201620zex-10_3.htm "The Contract Area is bounded to the North, starting at point 'A' along the Ghana Ivory Coast boarder at Latitude 4° 47' 34.874" N and Longitude 3° 10' 35.296" W; thence proceed Southeast to point 'B' at Latitude 4° 40' 00.000" N and Longitude 2° 55' 00.00" W; thence proceed South to point 'C' at Latitude 4° 25' 54.00" N and Longitude 2° 55' 00.00" W; thence proceed West to point 'D' at Latitude 4° 25' 54.00" N and Longitude 3° 14' 53.00" W; thence proceed North along the Ghana-Ivory Coast border to the beginning of point 'A' resulting in an area comprising of approximately one thousand and one hundred and eight (1,108) square kilometers."

[11] "Chevron holds company-operated working interests in offshore Blocks 0 and 14 and nonoperated working interests in offshore Block 2 and the onshore Fina Sonangol Texaco (FST) area. Net production from these operations in 2010 averaged 161,000 barrels of oil-equivalent per day. The company operates the 39.2 percent-owned Block 0, which averaged 116,000 barrels per day of net liquids production in 2010. The Block 0 concession extends through 2030. Development of the Mafumeira Field in Block 0 continued in 2010. A development drilling program was completed in the northern section and achieved maximum total crude oil and condensate production of 57,000 barrels per day in fourth quarter 2010. FEED started in January 2010 on Mafumeira Sul, a project to develop the southern portion of the Mafumeira Field. A final investment decision is expected in fourth quarter 2011. Maximum total production from Mafumeira Sul is expected to be 110,000 barrels of crude oil and 10,000 barrels of LPG per day. At year-end 2010, no proved reserves had been recognized for the Mafumeira Sul project." Chevron Form 10-K filed with the SEC on Feb. 24, 2011. http://investor.chevron.com/phoenix.zhtml?c=130102&p=irol-

ConocoPhillips told investors in its 10K for 2010 similarly detailed information.[12] This shows that Chevron and ConocoPhillips, as other oil and gas companies, organize their work around specific blocks and that they view specific blocks as the fundamental unit of interest for shareholders. Basin-level information does not often feature in investor communications from what we have seen.

No mining industry commenters have suggested a geologic basin definition

Oxfam America has reviewed all industry comments regarding a proposed project definition and has not found a single mining company proposing such a definition. That said, we believe the same legal and practical issues raised above would apply equally to the mining industry. The mining industry describes "trends" or "belts" as roughly analogous to petroleum basins, with deposits and licensed concession areas within these. There will often be multiple companies operating in the same trend or belt and these geologic features may cross political borders. (See Exhibit B for an example from the gold mining industry in Nevada and Exhibit C for a cross-border example from Peru/Ecuador.)

Conclusion

In conclusion, we believe that a project payment definition that relies on "geologic basin" would violate the statutory language and intent of Section 1504; add to, rather than reduce compliance costs; and obscure company and project-level payment information that will be of benefit to investors, governments and citizens.

We believe that interpreting the project reporting requirement of Section 1504 as "geologic basin" is not one upon which the SEC should be entitled to deference from the courts. The SEC's final rule must be consistent with the statutory text. As explained below, royalties and other payments as required to be disclosed under Section 1504 are *not paid* on a geologic basin basis.

In additional, such a definition would be unlikely to meet a "reasonableness" standard in front of the courts. As argued above, "project" has a more narrow meaning in the industry and in common sense than "geologic basin" or "province"; the boundaries of a "basin" may not be agreed upon; and activities are described at a more specific level than geological basin when companies are informing investors about their activities in 10-Ks and other filings with the SEC.

In enacting Section 13(q), Congress decided that the United States would set the global standard for payment transparency in extractive industries. The Commission should issue a long overdue Final Rule that achieves Congress's twin goals of reducing corruption and instability in resource-rich countries and facilitates markets' more efficient evaluation of the risks facing extractive industry issuers.

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[12] In Peru, ConocoPhillips said "During 2010, we executed two farm-downs that reduced our interests in Blocks 123, 124 and 129, which are awaiting final government approval. We are currently completing the initial 2D seismic program for Blocks 123 and 129 and plan to analyze the results in 2011. We also own a 35 percent working interest in Block 39." http://investing.businessweek.com/research/stocks/financials/drawFiling.asp?docKey=136-000095012311016957-32GTE6LFRF68AGMLG1MIC580O7&docFormat=HTM&formType=10-K

Oxfam America thanks the Commission for the opportunity to provide additional comments on the Proposed Rule and for its thoughtful consideration of this submission. Oxfam America looks forward to continued engagement with the Commission on these issues.

Respectfully,

Ian Gary
Senior Policy Manager – Extractive Industries

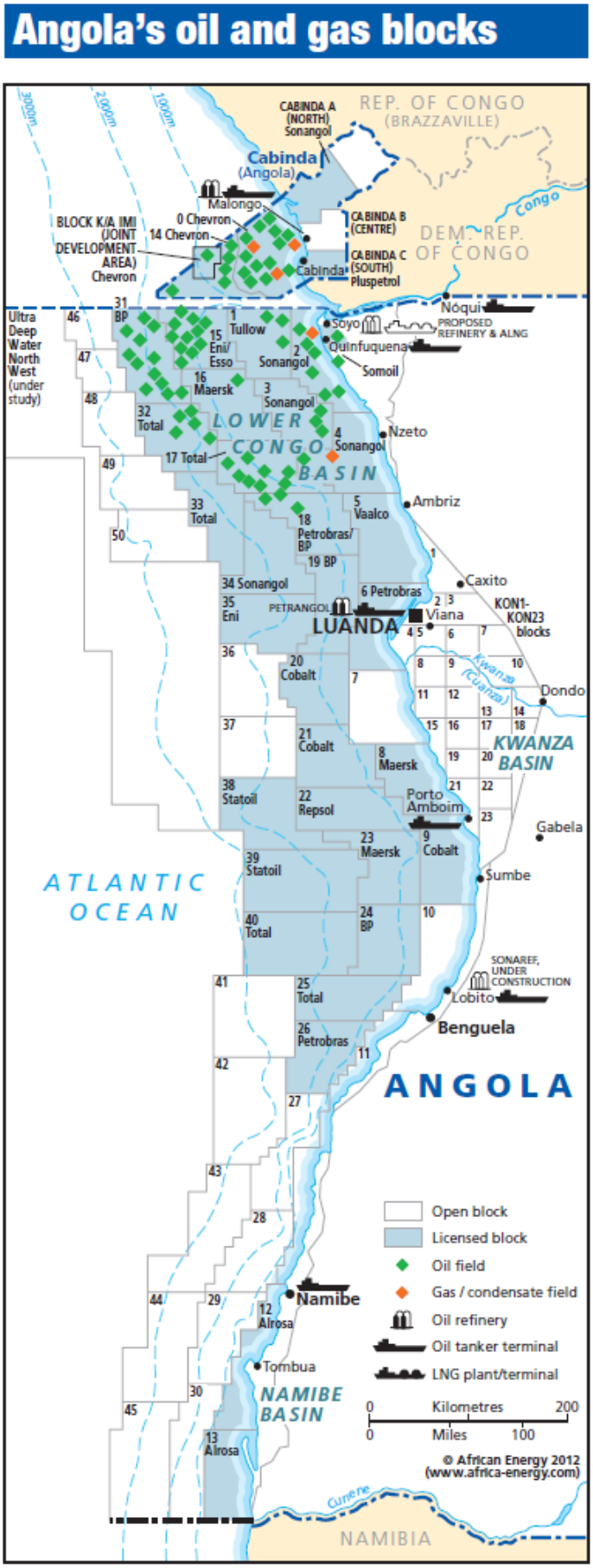
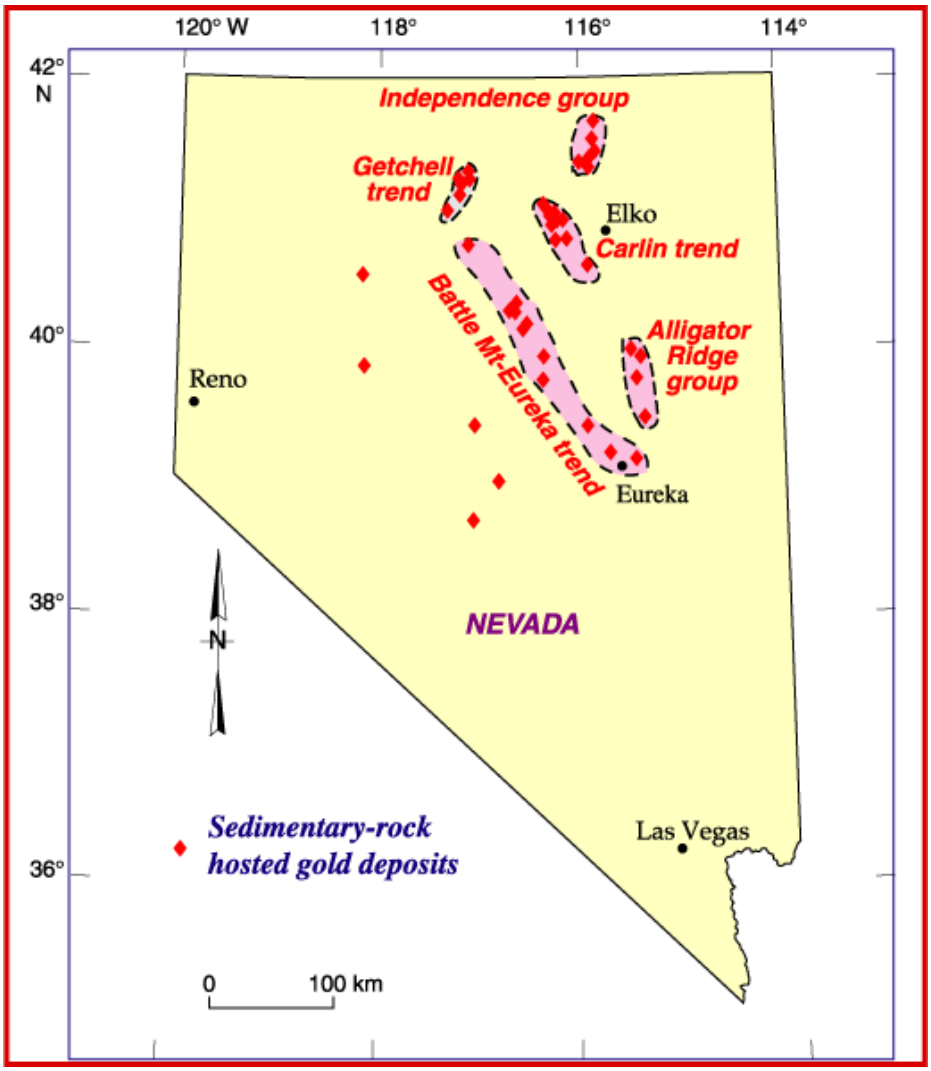


EXHIBIT A – Oil blocks and basins in Angola

Source: African Energy, Issue 223, 19 January 2012

EXHIBIT B – Sedimentary-rock hosted gold deposits in Nevada

Source: United States Geological Survey



http://minerals.usgs.gov/west/projects/nngd.htm

Exhibit C – Northern Peru-Ecuador Copper-Gold Belt

Source: Dorato Resources, Inc.

http://www.doratoresources.com/s/NewsReleases.asp?ReportID=481966