

Wyoming Environmental Compliance and Public Land News - April

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Insight — 4/1/2013

Sage-Grouse Report

- **Wyoming Draft Ranch Management CCAA Released.** On February 7, 2013, the U.S. Fish and Wildlife Service released the Draft Greater Sage-Grouse Umbrella Candidate Conservation Agreement with Assurances (CCAA) for Wyoming Ranch Management. 78 Fed. Reg. 9066 (Feb. 7, 2013). Once finalized, the CCAA will provide an opportunity for ranchers to implement sage-grouse conservation measures on their private lands in exchange for assurance that if the sage-grouse is eventually listed as threatened or endangered under the Endangered Species Act, no additional conservation measures will be imposed beyond what is already provided in the CCAA. Conservation measures that may be implemented under the CCAA include grazing management plans to maintain or enhance sagebrush communities, control and removal of invasive vegetation species, and avoidance of surface-disturbance within 0.6 miles of occupied leks. Comments on the draft CCAA were due to the Fish and Wildlife Service on March 11, 2013, with final approval of the CCAA expected later this year.
- **Lander RMP Finalized.** On February 22, 2013, BLM released the final Environmental Impact Statement and Proposed RMP for the first of 68 Resource Management Plans under revision across the west to better address sage-grouse conservation. 78 Fed. Reg. 12347 (Feb. 22, 2013). The Lander RMP, which was already in the revision process when BLM announced its intent to revise the 68 RMPs in December 2011, incorporated the final EIS consideration of the December 2011 National Technical Team (NTT) Report recommendations for sage-grouse conservation. While the NTT Report's "required design features" and best management practices were largely adopted in the final proposed RMP, many of the other more restrictive recommendations were not. BLM explained in the final EIS, "Emphasizing wildlife conservation at the expense of all other uses is appropriate for a management plan for a wildlife refuge, not the FLPMA-mandated variety of uses of the public lands." Final EIS, at 36. Instead, sage-grouse management in the final RMP is designed to be compatible with multiple uses and is consistent with the State of Wyoming's core area strategy. BLM will begin applying the Lander RMP management direction

after resolution of any protests and issuance of the final RMP.

- **Uranium Project in Sage-Grouse Core Area Moves Forward.** On March 1, 2013, the federal district court in Wyoming denied Biodiversity Conservation Alliance's request for a preliminary injunction to stop the construction and operation of the Lost Creek Uranium In-Situ Recovery Project in Sweetwater County, Wyoming. Order Denying Motion for Preliminary Injunction, *Biodiversity Conservation Alliance v. BLM*, Case No. 2:12-CV-252-SWS (D. Wyo. Mar. 1, 2013) (slip opinion). Biodiversity had argued that the project would irreparably harm sage-grouse and other sensitive species in the area. Judge Scott Skavdahl disagreed, holding that much of the surface-disturbing work in the project area had already been done and could not now be undone. Considering the public interest, Judge Skavdahl held that while BLM must consider environmental values, it must balance those interests against national energy policy and multiple uses of the public lands. Finally, looking forward to the merits of Biodiversity's claims, Judge Skavdahl was skeptical that Biodiversity would be able to prevail on its National Environmental Policy Act or Federal Land Policy and Management Act claims for failure to adequately address sage-grouse given that the Wyoming Game and Fish Department found the project to be in compliance with density and other limitations in the State's core area strategy.

Air Quality News

- **Ozone Update: On March 11, 2013, the Air Quality Division released its Upper Green River Basin Ozone Strategy.** The Ozone Strategy adopts the ten recommendations developed by the Upper Green River Basin Air Quality Citizens Task Force, a 26-member group of residents, local and state officials, and industry representatives. The recommendations are organized into several groups: (1) actions that can be accomplished by August 2013, such as promoting short-term emissions reduction measures on ozone action days, finalizing monitoring data, and updating BACT guidance; (2) projects that extend past the six-month period, such as implementing Nonattainment New Source Review permitting for new major sources and major source modifications; (3) long-term actions such as developing Leak Detection and Repair guidance for new and modified upstream sources, reconciling oil and gas guidance with NSPS Subpart OOOO for new and modified sources, and a variety of rulemaking actions; and (4) ongoing activities, such as continuing to use compliance inspections, requiring stack testing to measure source emissions, and continuing to collaborate in regional ozone planning efforts. The Ozone Strategy is available [here](#).

In April 2013, AQD anticipates it will submit its required "path forward" letter to EPA's Ozone Advance program describing the measures and programs to be implemented statewide, to avoid

nonattainment designations elsewhere in the state. Ozone Advance is a voluntary EPA program, with opportunities for stakeholder involvement, to facilitate reductions of ozone before areas are designated as nonattainment areas.

- **State Installs Two New Air Quality Monitors.** AQD has installed two new Air Quality Monitoring Stations. One is in Casper and is designed to monitor ozone and other parameters in a residential area of the city. A Mobil Monitoring Station is located in Rock Springs to assess ambient air quality for at least one year. Both stations measure ozone, nitrogen oxides, wind speed, precipitation, solar radiation, and temperature. The Rock Springs monitor will also measure for particulate matter, relative humidity, and methane and nonmethane hydrocarbons. Real time data for all state monitors is available [here](#).
- **New Wyoming Greenhouse Gas (GHG) Permitting Provisions in Place.** Effective February 14, 2013, Chapters 1, 6 and 7 of the Wyoming Air Quality Standards and Regulations (WAQSR) have been revised to incorporate GHG permitting provisions. The most significant changes include a new Section 7 in Chapter 1 to require permitting for GHG sources and exempt minor sources, and incorporation of GHGs into the permitting requirements and thresholds set out in Chapter 6. The changes mirror changes to the federal law and are no more stringent. Until the changes are approved by the Environmental Protection Agency, DEQ will continue to operate under the Federal Implementation Plan for GHGs.

2013 Wyoming Legislative Report

The 2013 Wyoming legislative session resulted in the following new laws relating to environmental issues and public lands:

LAND USE PLANNING – HB 42.

Makes changes to county land use planning requirements. Repeals county planning commissions.

WYOMING POLLUTION DISCHARGE ELIMINATION SYSTEM – HB 56.

Makes changes to the fee schedule for water pollution control permits.

STATE PRIMACY ON GREENHOUSE GAS REGULATION: HB 63.

Gives Wyoming DEQ the authority to issue permits for greenhouse gas emissions.

SELECT FEDERAL NATURAL RESOURCE MANAGEMENT COMMITTEE – HB 116.

Creates legislative committee for oversight of existing or proposed federal policies affecting natural resources in Wyoming.

ADMINISTRATIVE RULES – TAKINGS ASSESSMENT – HB 117.

Requires state agencies to analyze whether rules create a potential taking of private property and to make a statement in that regard.

TRANSFER OF FEDERAL LANDS – STUDY – HB 228.

Establishes a legislative task force to examine the possible transfer of federal lands to state management.

OIL AND GAS CONSERVATION COMMISSION – FILINGS – SF 2.

Eliminates the requirement that WOGCC filings be made by a registered professional engineer, but still requires testimony before the Commission to come from one.

STATE OIL AND GAS SUPERVISOR – QUALIFICATIONS – SF 3.

Attempts to make it easier to hire a WOGCC supervisor by eliminating the requirement that they be a petroleum engineer or geologist, but they must have ten years experience.

ENERGY AND NATURAL RESOURCE EDUCATION INITIATIVE – SF 55.

Encourages education in energy and natural resources by involving the Governor's office in the development of materials and opportunities for education.

EMINENT DOMAIN – 2 – SF 118.

Changes the eminent domain law in several ways. The condemnor must prove entitlement to use the condemnation process or the complaint is dismissed. Changes when a condemnor may have to pay attorneys fees incurred by the land owner.

SEISMIC EXPLORATION – SF 136

Sets up more specific requirements at the WOGCC for companies who are conducting seismic work. Allows for bonding.

For additional information on any of this legislation, please go to the Wyoming Legislative Service Office website.

Wyoming DEQ's Proposed Guidance for Determining Surface Water Quality Conditions and TMDLs

On February 25, 2013, the Wyoming DEQ Water Quality Division released a draft of Wyoming's Methods for Determining Surface Water Quality Conditions and TMDL Prioritization, which can be found [here](#). The draft would substantially revise WQD's guidance for evaluating water quality and identifying designated uses in Wyoming's water bodies for compliance with Clean Water Act Sections 305(b) and 303(d). Sections 305(b) and 303(d) require the state to report the condition of state water bodies to support designated uses such as fishing, recreation, and wildlife or livestock use, identify impaired water bodies, and develop strategies to improve the condition of impaired water bodies, including identification of TMDLs for pollutants contributing to impairment. Public comments were due on March 26, 2013.

BLM Issues New IM on BMPs for Wildlife Protection

In December 2012, BLM issued a new instruction memorandum that addresses Best Management Practices (BMPs) for reducing the risk of direct wildlife mortality from fluid mineral practices, including open pits and tanks, exhaust stacks, and wire enclosures. BLM IM No. 2013-033 can be found [here](#). The BMPs include protective measures such as use of closed tank or closed loop water and waste systems, construction of escape ramps from open pits, screening of exhaust stacks, and appropriate fence marking. BLM will consider the BMPs in permitting new activities on public lands.

Other Wyoming DEQ News

- **Pending Rulemakings.**

The Wyoming Environmental Quality Council met on March 14, 2013 in Casper to consider changes to Chapters 1, 2, and 7 of the rules and regulations governing solid waste. For information on the proposed changes, [click here](#).

The Land Quality Advisory Board met March 25, 2013, in Casper to discuss proposed revisions to Chapters 9 & 10 of the Noncoal Rules and Regulations. Further information regarding the meeting and proposed rules may be viewed [here](#).

The Wyoming Water and Waste Advisory Board met on March 21, 2013 in Casper to discuss proposed changes to Water Quality Rules and Regulations Chapter 1, Wyoming Surface Water Quality Standards. For more information on the proposed revisions, refer to details on the Triennial review [here](#)

- **Upcoming Meetings.**

The Water Quality Division's Restoration Advisory Board for the former nuclear missile site on Belvoir Ranch will be meeting on April 25, 2013 at 5:30 p.m. in Cheyenne to discuss the current status of the site. More information can be found [here](#).

The WQD will hold a public meeting for the Shoshone River Pathogen TMDL project on Thursday, April 25, 2013, from 6-8 p.m., in Lovell. More information can be found [here](#)

- **Personnel Changes.**

Todd Parfitt, the Deputy Director at DEQ and head of the DEQ's Industrial Siting Commission was appointed in October 2012 as the new Director of DEQ. **Luke Esch**, formerly a Senior Assistant Attorney General in the Water and Natural Resources Division, was appointed in February 2013 as the head of the Industrial Siting Commission, taking Todd Parfitt's former position. **John Corra**,

former Director of WDEQ, has also been appointed by Governor Mead to the Industrial Siting Council. **Nancy Nuttbrock**, the current Land Quality Division Administrator, was appointed in March 2013 as the new Deputy Director for DEQ. She will also continue in her role as Land Quality Division Administrator. Finally, on March 27, 2013, **Kevin Frederick** was appointed as the new Water Quality Division Administrator, effective April 2.

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