

Wyoming Environmental Compliance and Public Land News - June 2014

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Insight — 6/4/2014

Public Land News

BLM News

Senate Approves Kornze as BLM Director

On April 8, the Senate confirmed the nomination of Neil Kornze as BLM director. Prior to his confirmation, Kornze served as BLM's principal deputy director. Kornze was once an aide to Senate Majority Leader Harry Reid (D-Nev.), advising Senator Reid on public land issues. Kornze has also had a recent hand in implementing BLM's solar energy plan in the Southwest and the new hydraulic fracturing rules. Kornze is originally from Elko, Nevada.

Agencies Revise Right-of-Way Energy Corridors Across the West

The Obama administration recently started the process of reviewing nearly 6,000 miles of energy corridors, as required by a settlement agreement made with environmental groups in July 2012. The West-wide Energy Corridor, which crosses 11 western states, was originally designated in 2009 to more efficiently and effectively guide siting of energy rights-of-way.

After these routes were designated, environmental groups filed suit claiming that the agencies failed to adequately consider renewable energy and that the corridor unnecessarily traverses sensitive landscape, including sage grouse habitat in Wyoming. The lawsuit was settled by an agreement in July 2012, objectives of which include locating the corridors in favorable landscapes, facilitating renewable energy projects, and improving the long-term benefits of reliable and safe energy transmission. The agreement also identifies "corridors of concern" along the route that have "specific environmental issues." One such area crosses core habitat for greater sage grouse in Wyoming. The agencies plan to address these areas during the review.

Due to a lack of federal funding, the agencies are already falling behind the schedule established in the agreement and meaningful changes to the existing designation may take years.

BLM Slated to Propose New Regulations for Methane Releases From Underground Mines

On April 29, 2014, the BLM issued an advance notice of proposed rulemaking (ANPR) to request public comments on a potential new BLM

rulemaking effort regarding waste mine methane that is released from the underground mining of coal and other minerals.

In its ANPR, BLM specifically asked the public to provide comments on five general components of a possible new regulatory program to capture, use, sell, or dispose of waste mine methane from federal lands:

- 1) Technologies for the capture, processing, use, and transport of methane gas;
- 2) Methane destruction as an alternative to productive use or release of methane into the atmosphere;
- 3) Economics of capture, use, and destruction of methane;
- 4) Possible incentives to encourage methane destruction, capture, or use; and
- 5) Destruction of ventilation air methane.

BLM is accepting comments on the ANPR until June 30, 2014.

Special Status Species News

House Committee Advances ESA Reform Bills

Voting almost exclusively along party lines, the House Natural Resources Committee on April 30 advanced four bills Republicans say would make positive reforms to the Endangered Species Act (ESA). Democrats argue the bills would impair the federal government's efforts to protect sensitive species. The four bills are:

- HR 4315 would require the U.S. Fish and Wildlife Service (FWS) to publish data used in listing determinations online;
- HR4316 would require the FWS and the National Marine Fisheries Service (NMFS) to report the cost of ESA-related litigation;
- HR 4317 would require the FWS and NMFS to provide states with data the agencies plan to use in upcoming listing determinations;
- HR 4318 would limit reimbursement of attorneys involved in ESA lawsuits to a rate of \$125 per hour.

Obama Administration officials have taken issue with HR4317, citing its potential to place candidate species at increased risk of harm by revealing location information to those who might wish the species ill. In an attempt to garner support from Senate Democrats on the bills, fifteen senators wrote to Majority Leader Harry Reid (D-Nev.), citing their support for Sen. Dianne Feinstein's (D-Calif.) drought bill, which passed unanimously May 22.

For more information on ESA reform, please see our February and April issues.

FWS Proposes New Rules to Define "Destruction or Adverse Modification" and Make Significant Changes to Critical Habitat Rules

On May 12, the FWS and NMFS proposed two new rules: (1) one to clarify the procedures and standards used for designating critical habitat and (2) another to revise the definition for "destruction or adverse modification" of critical habitat, which was earlier invalidated by the courts. In conjunction

with the proposed rules, the agencies are soliciting comment on a draft policy on accounting for partnerships and conservation plans; tribal, military and federal lands; and economic and national security impacts when considering exclusions from critical habitat designations. Taken together, the proposed rules/policy will change how critical habitat is defined and designated, substantially expanding the agencies' discretion.

All three proposals are open for public comment until July 11.

Sage Grouse News

- **New Bill Seeks Ten-Year Delay in Grouse Listings Under the ESA**

U.S. Representative Cory Gardner (R) of Colorado introduced a bill on May 23 to delay Department of the Interior listing decisions for two western sage grouse species for ten years and give states the lead in habitat conservation efforts. The bill represents the latest effort by Western Republicans to forestall ESA protections for the greater sage grouse and Gunnison sage grouse, two gallinaceous bird species that inhabit millions of acres of western rangelands. Under current court orders, the FWS must make listing decisions for the greater sage grouse by September 2015, and for the Gunnison grouse by this fall.

Gardner's bill would give states two years to submit a ten-year sage grouse conservation plan to the FWS, after which the agency would have to halt any listing decisions or critical habitat designations for ten years. In addition, BLM and the Forest Service would have to stop land-use planning efforts designed to protect or enhance grouse habitat, and instead ensure compliance of agency management actions with the state conservation plans. The Interior secretary would then have four months to decide whether the state conservation plans successfully eliminate the need for ESA critical habitat and species protections. The secretary could approve, endorse, or comment on the plans, though rejection does not appear to be an option.

While ranchers and energy and other developers fear that a listing of either grouse would hamper land access for cattle and development uses, the FWS and conservationists warn that the sagebrush steppe habitat essential to both species is threatened by habitat fragmentation, wildfire, and invasive species.

The FWS is currently seeking a special rule under the ESA for the Gunnison grouse that would allow those who participate in approved conservation plans to be exempt from the law's most stringent restrictions. The agency is expected to pursue the same kind of so-called 4(d) rule for the greater sage grouse.

- **BLM Budget Prioritizes Sage Grouse Initiative**

President Obama's \$1.1-billion BLM budget request for fiscal year 2015 maintains funding for the agency's Sage Grouse Initiative, designed to promote long-term conservation of the western sagebrush ecosystems critical to sage grouse and other species. In fiscal year 2015, BLM will complete a west-wide planning effort focused on sage grouse that has

been undertaken in close partnership with western states, FWS, the Forest Service, and the Natural Resources Conservation Service.

- \$77 Million Spent to Date on Private-Land Sage Grouse Conservation Efforts

For conserving more than one million acres to protect sage grouse over the past three years, Wyoming landowners received nearly \$77 million in federal funding under the Natural Resource Conservation Service's (NRCS) Sage Grouse Initiative. Under the initiative, the NRCS distributes funds to landowners in exchange for conservation easements or implementation of environmentally responsible land management practices on their properties.

While western policymakers say the statistics demonstrate the effectiveness of protecting the species via a combination of state and private efforts, conservationists contend that the measures failed to adequately address population declines and more habitat protection is necessary. Lawmakers in western states such as Wyoming fear that an ESA-listing for the grouse will severely limit domestic energy production by rendering large areas of land off limits to oil and gas drilling and other forms of mineral extraction.

Read more:

http://billingsgazette.com/news/state-and-regional/wyoming/feds-spent-million-to-protect-sage-grouse-in-wyoming-since/article_e6c8fa67-10bf-5787-9679-da3603f2a2c3.html#ixzz32vaqpk9a

EPA News

[EPA and Corps of Engineers Release New Definition of "Waters of the United States"](#)

The U.S. Environmental Protection Agency and U.S. Army Corps of Engineers recently released a new proposed rule defining "waters of the United States" under the Clean Water Act. The proposed rule was published in the Federal Register on Monday April 21, 2014. The public comment period closes July 21, 2014.

The agencies claim that the rule is meant to clarify Clean Water Act jurisdiction over wetlands and smaller water bodies following the Supreme Court's decisions in *Rapanos v. United States* and *SWANCC v. Army Corps of Engineers*. The rule applies to all programs under the Clean Water Act, including NPDES permits, Section 404 dredge and fill permits, and Section 401 state certifications.

Of note, the new rule aims to eliminate case-by-case determinations regarding whether smaller water bodies have a "significant nexus" to jurisdictional waters by expanding federal jurisdiction and defining all tributaries to traditional navigable waters and interstate waters, as well as all adjacent water bodies (defined in the rule as including adjacent wetlands), as categorically jurisdictional. While EPA asserts that the rule does not protect any new waters that were not historically covered by the Clean Water Act, the rule expands the scope of jurisdictional waters

beyond what EPA and the Corpshave regulated in recent years. There has been significant opposition to the rulemaking from industry groups.

EPA Considering Rules Requiring Fracking

On May 9, in response to a petition filed by Fluid Disclosure environmental groups, the EPA announced that it may issue federal regulations requiring the disclosure of chemicals used in hydraulic fracturing. The agency now seeks public input on the kind of information that should be reported or disclosed and the best way to obtain this information, suggesting it might be regulatory, voluntary, or both.

The EPA says its proposed regulation would complement another similar rule that BLM is currently preparing for public lands. Industry groups and some western Republicans oppose BLM's action, arguing that the information is confidential and proprietary. Some western Republicans are also urging the EPA to cease investigations into states' abilities to regulate hydraulic fracturing.

For the notice of advanced rulemaking and instructions on how to submit comments, which must be received on or before August 18, 2014, click [here](#). For the BLM's proposed rule, click [here](#).

Other Public Land News

DOI Announces Plans for New Landscape-Level Mitigation Strategies

On April 10, the Department of the Interior outlined a new landscape-level mitigation strategy across federal lands moving away from mitigation on a project-by-project basis. A detailed description of the strategy can be found in Interior's Energy and Climate Change Task Force report. The strategy includes four key objectives: (1) Identifying key landscape-scale attributes, and the conditions, trends, and baselines that characterize these attributes; (2) Developing landscape-scale goals and strategies; (3) Developing efficient and effective compensatory mitigation programs for impacts that cannot be avoided or minimized; and (4) Monitoring and evaluating progress and making adjustments, as necessary, to ensure that mitigation is effective despite changing conditions. In a prepared statement, Secretary Jewell described the purpose of the strategy to "provide greater certainty for project developers when it comes to permitting and better outcomes for conservation through more effective and efficient project planning." The landscape-scale mitigation effort will be assisted by development of a proposed geospatial mapping system intended to help BLM better manage federal lands.

Courts Reject Challenges by Environmental Groups to Powder River Basin Coal Lease Sales.

Two federal courts recently rejected challenges by environmental groups to BLM coal lease sales in the Powder River Basin.

On December 24, 2013, a unanimous three-judge panel of the D.C. Circuit Court of Appeals rejected two consolidated challenges by WildEarth Guardians, the Sierra Club, Defenders of Wildlife, and the Powder River Basin Resource Council to BLM's decision to the lease the West Antelope II coal tracts to a subsidiary of Cloud Peak Energy. The environmental

groups had argued that BLM failed to analyze the impacts of the leasing decision on a range of environmental impacts, including air quality, global climate change, and the pace of post-mining reclamation at other PRB mines. In rejecting each of these arguments, the Court upheld an earlier decision from the D.C. trial court that had also upheld BLM's leasing decision for the West Antelope II tracts against nearly identical arguments.

Similarly, on March 31, 2014, the D.C. District Court rejected a similar challenge by WildEarth Guardians, Defenders of Wildlife, and the Sierra Club to BLM's decision to lease the Belle Ayr North and Caballo West coal tracts to subsidiaries of Alpha Natural Resources and Peabody Energy Company, respectively. Plaintiffs had raised similar challenges as in the West Antelope II case, arguing that BLM had failed to analyze impact of the leasing decision on air quality and global climate change. The D.C. District Court relied in large measure on the D.C. Circuit's West Antelope II decision and rejected each of Plaintiffs' arguments. To date, each of the WildEarth Guardians' challenges to BLM's coal leasing decisions for the PRB has been soundly rejected by federal courts.

GAO's NEPA Report Finds Scant Data on Analyses

According to a April 15 GAO report, federal agencies do not have readily available data on the quantity, cost, or benefit of NEPA environmental analyses. While the Council on Environmental Quality (CEQ) provides estimates regarding the percentages of different types of analyses performed, individual agencies do not routinely record this precise data. Agencies also do not routinely track the cost of NEPA analyses. According to the CEQ and EPA, there is no way to do so on a government-wide scale. The GAO also reports that the benefits of NEPA analyses are mostly qualitative.

Critics of NEPA pointed to the report as evidence that the process is largely inefficient. Independent Petroleum Association of America Vice President of Federal Resources and Political Affairs Dan Naatz called the process "costly, largely hidden from the public, and duplicative of other environmental legislation." According to Chairman of the House Natural Resources Committee, Rep. Doc Hastings, "there is a clear need to improve and modernize the law to ensure that environmental reviews are completed in an efficient and timely manner so responsible decisions can be made on projects that will lead to new jobs and a growing economy."

More on Congressional responses to the report can be found [here](#). For more information on the report itself, [click here](#).

State News

WOGCC News

New Supervisor Appointed

The WOGCC has named Mark Watson as the new Supervisor. Mr. Watson is well known by anyone that has dealt with the Commission as he has over 30 years of experience at the WOGCC. Mr. Watson was most recently the interim Supervisor. Governor Mead announced the hiring, stating, "Mark is creating needed stability and continuity while staying on

top of efforts to implement the model baseline water rule, tackling our aggressive plan for abandoned wells and moving ahead with a revision of the setback rule." The Commission also announced that it will be establishing a new Deputy Supervisor position and is starting to take applications for that job.

WOGCC Prepares to Study New Oil and Gas Setback Requirements

A rule change being considered by Wyoming regulators would push oil and gas operations further away from homes, schools, and other residential buildings. At a public meeting in Casper on April 15, 2014, Mark Watson, interim Oil and Gas Supervisor for the WOGCC, stated that his agency will prioritize an examination of the minimum distance required between energy development and residences, which is currently 350 feet. Concerns have been raised by landowners and environmentalist who argue that energy operations near communities devalue property and diminish the quality of life. While Watson has not specifically said that minimum distances between homes and energy operations should be raised, he remarked that one proposal to set the minimum setback distance of one mile is too far. Watson also noted that flaring and bond requirements will also be studied, but only after a review of the setback distances is complete.

Baseline Water Testing Rule to Remove Ambiguity in Wyoming

The WOGCC adopted a rule that will remove ambiguity about whether there is any relationship between drilling and groundwater contamination. As of March 1, 2014, operators are required to perform initial baseline water testing on water sources within a half mile radius of a planned drillsite no more than 12 months before drilling begins. Follow-up water quality testing is then required 12-18 months after production casing or liner has been set and again 36-48 months later. Along with field observations of the water such as odor, color, sediment, bubbles, and effervescence, operators will also be required to document certain water characteristics including total dissolved solids, dissolved gases, presence of bacteria, total petroleum hydrocarbons, and presence of the BTEX compounds benzene, toluene, ethylbenzene, and xylenes. If a free gas or a dissolved methane concentration of greater than 5 mg/l is detected, a gas compositional analysis will be conducted to determine the gas type. Producers drilling on federal lands will be required to meet groundwater quality monitoring standards set forth by both the BLM and the state.

Estimates by Gov. Mead's office found that new groundwater testing requirements will cost operators between \$2,000 and \$6,000 for each of the three required sampling stages for a new drill site. For multi-well pads, operators will only be required to perform testing for the first well drilled and cased. The Petroleum Association of Wyoming estimates the initial round of sampling will cost around \$5,800 and then \$4,814 for each subsequent round, for a total cost of \$15,458.

<http://www.ogj.com/articles/uogr/print/volume-2/issue-2/baseline-water-testing-rule-to-remove-ambiguity-in-wyoming.html>

News From the Governor's Office

[Governor Mead Presses Ahead with Orphaned Well Program](#)

In April 2014 Gov. Mead declared that Wyoming needs to "step up" its efforts to close wells abandoned after the decline of the coal bed methane industry. The Governor's office recently announced that the WOGCC has selected contractor Pluggin Along LLC of Gillette to conduct reclamation work, including wellbore plugging, on 141 wells in the Ucross and Spotted Horse areas in Sheridan and Campbell counties. Approximately 1,200 so-called orphaned wells in the Powder River Basin were left after many operators went bankrupt following a crash in natural gas prices, which left companies unable to pay for reclaiming the land. In December 2013, Mead announced a plan to plug around 300 wells in each of the next four years. The project's funding comes from revenues from the conservation tax, which is assessed on oil and gas production.

<http://governor.wy.gov/media/pressReleases/Pages/GovernorMeadPleaseDthatWorkWillStartonOrphanedWellPlugging.aspx>

Governor Mead Prepares to Sue EPA Over Failure to Approve State Plan

In late April, Wyoming Governor Matt Mead announced that Wyoming intends to file suit against the EPA for its failure to take action on the state's plan for air quality regulation. The Clean Air Act (CAA) requires states to develop plans to limit certain pollutants and to submit those plans to the EPA. The CAA further requires the EPA to approve or deny a state's plan within 18 months after submission. The agency failed to take any action regarding Wyoming's plan within this timeframe. If the EPA does not act on Wyoming's plan before the end of June, Governor Mead says the state will file a civil action against the agency. If filed, this would not be the first lawsuit against the EPA in which Wyoming has been involved. According to the Casper-Star Tribune, Wyoming has filed or been part of twelve such cases.

Wyoming Gov. Says EPA's Proposed Power Plant Standards Flawed

Wyoming Governor Matt Mead recently criticized the U.S. Environmental Protection Agency (EPA) proposed rule requiring new coal-fired power plants to install unproven and costly carbon capture and sequestration (CCS) technologies to meet new CO₂ emissions caps. In a letter to EPA Administrator Gina McCarthy, Governor Mead suggested that EPA's proposal is not legally, technologically, or economically justified. Wyoming is the leading coal supplier to the United States, and this proposal could adversely impact Wyoming's economy.

Mead argues that carbon capture and sequestration (CCS) technologies have not yet been proven on a commercial scale. Coal plants considering installing the technology, along with the only CCS-compatible plant currently under construction, have experienced billions of dollars in cost overruns and timing delays. In reviewing the proposed rule, the federal Office of Management and Budget cautioned EPA that commercial-scale CCS has not been demonstrated. The rule also creates uncertainty for utilities making long-term investment decisions with substantial amounts of ratepayer dollars. Read the full press release here.

Governor Mead Continues to Work on Wyoming Water

Wyoming state officials will present a summary of nine listening sessions regarding Wyoming's water strategy at the Water Conference on June 4, 2014. The listening sessions solicited a broad range of public input on

Wyoming's water strategy and priorities. "The thoughts and enthusiasm of Wyoming people is critical. Hundreds of folks came out to take part in the listening sessions," Governor Matt Mead said. "Wyoming's water is its most important natural resource. These public meetings have given us a better understanding of the opportunities and challenges we face in relation to water."

The Water Conference will be held at 9:00 a.m., June 4, 2014, at the Oil & Gas Conservation Commission, 2211 King Blvd., Casper, Wyoming. The public is encouraged to attend. Meetings will also be broadcast live on the internet.

Office of State Lands and Investments

Wyoming Office of State Lands and Investments to Hold Royalty Reporting Seminar

The Wyoming Office of State Lands and Investments will hold two free two-day seminars at which Royalty Compliance Supervisor Billie Hunter will discuss finalized and approved royalty reporting policies, minimum annual royalty payments, suspensions of production operations, as well as in-depth training on how to report royalties using the eRMA 2.0 system. The seminars will take place at 122 W. 25th Street, Room B63 in Cheyenne on June 2-3, 2014, or June 9-10, 2014. Hunter will cover the following topics: mineral reporting policy, royalty free on lease fuel, division orders, eRMA 2.0 agreement policy, suspension of production operations, required monthly support media, natural gas flaring policy, unit and communitization agreement reporting, Wyoming royalty payment act, and use of eRMA 2.0 for reporting and amendments.

Wyoming Department of Environmental Quality (WDEQ)

Crow Creek Sediment TMDL Public Comment Period Open

DEQ has completed the sediment total maximum daily load (TMDL) for a portion of Crow Creek, which flows through Cheyenne. The TMDL project was in response to possible violations of surface water standards. The study involved analysis of the creek's historical data, recent data, and water quality models. The draft Crow Creek sediment TMDL report is publicly available. DEQ is accepting comments on the draft TMDL report until June 12, 2014.

Land Quality Division Hearing on Proposed Revisions to Coal Rules and Regulations

The Wyoming Environmental Quality Council (EQC) will consider proposed revisions to DEQ-Land Quality Division's coal rules and regulations at a hearing on July 10, 2014. The proposed revisions impact chapters 1, 2, 6, 12, and 16 of the coal rules and regulations, which affect requirements for valid existing rights, ownership and control, blasting and the transfer assignment or sale of permit rights.

The EQC is currently seeking comments on the proposed revisions. The hearing will take place at the University of Wyoming School of Energy Resources, Encana Auditorium, 1000 E. University Drive, Laramie,

Wyoming at 10:00 a.m. on July 10, 2014.

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