

Wyoming Environmental Compliance and Public Land News - February 2015

Wyoming Environmental Compliance and Public Land News - February 2015

Insight — 2/4/2015

Public Land News

Obama to Propose Measures to Limit Methane Emissions from Oil and Gas Development

The Obama administration recently outlined a proposal to regulate for the first time methane emissions from new natural gas wells. The regulations may attempt to cut methane emissions up to forty-five percent (45%) by 2025 compared to 2012 levels. The administration is targeting methane on the theory that it is more powerful than carbon dioxide at trapping heat in the atmosphere. The proposed regulations join many others regulatory efforts by the Obama Administration to slow global warming.

Opposition to these efforts in Congress has only strengthened since last November's midterm elections. The oil and gas industry points out methane emissions are already declining because gas producers are actively working to reduce methane leakage. For producers, less methane leakage means more methane is available to sell.

Colorado and Wyoming already have some regulations in place that overlap with the proposal. John Robitaille, vice president of the Petroleum Association of Wyoming, says Wyoming producers would be largely unaffected by the rule as far as he can tell. "I believe that Wyoming is in the forefront of protecting our air quality and I believe that the EPA is catching up to Wyoming," he said. Echoing this sentiment, Kathleen Sgamma of the Western Energy Alliance, a trade group representing oil and gas companies, said: "The president's plan is another case of the administration adding new red tape to make mandatory what industry has been doing voluntarily for several years."

The Obama Administration has not yet revealed key details about the proposal, such as how the regulations will affect industry's bottom line and how deeply they will reduce greenhouse gases. That information will become available once EPA and the Department of the Interior propose formal rules. The agencies will issue these proposed rules later in 2015. After the rulemaking process, the rules could become final in 2016.

Council on Environmental Quality Releases Two NEPA Guidance Documents

In December 2014, the President's Council on Environmental Quality (CEQ) released two important guidance documents related to the

implementation of the National Environmental Policy Act (NEPA). One was a revised draft guidance regarding the consideration of greenhouse gas (GHG) emissions and climate change in NEPA reviews (Draft Climate Change Guidance), which supersedes the draft guidance on this topic that the CEQ issued in 2010. The CEQ is accepting public comments on the Draft Climate Change Guidance until February 23. The other was Final Guidance on Effective Use of Programmatic NEPA Reviews (Programmatic NEPA Guidance), which was originally issued in draft form in August 2014. Both of these guidance documents are part of the Administration's effort to modernize federal agency implementation of NEPA to improve the transparency, involvement of the public, and efficiency of environmental reviews.

For more information regarding these guidance documents, please go [here](#).

DOI Releases Draft Office of Natural Resource Revenue Regulations on Valuing Coal and Oil and Gas

On January 6, 2015, the Office of Natural Resource Revenue (ONRR) proposed new rules governing the valuation of Federal oil and gas and Federal and Indian coal. 80 Fed. Reg. 608 (Jan. 6, 2015). The most significant changes include the proposals to:

- Eliminate the current valuation benchmarks for non-arm's-length Federal gas sales, and instead, value such gas based on the gross proceeds received from the first arm's-length sale (affiliate re-sales), optional index prices, or weighted average pool prices;
- Eliminate the current valuation benchmarks for non-arm's-length Federal and Indian coal sales, and instead, value such coal based on the gross proceeds received from the first arm's-length sale (affiliate re-sales); and
- Adopt a "default rule" for valuing oil, gas, and coal, which gives ONRR discretion, in certain circumstances, to establish a greater royalty value than the gross sales proceeds less allowable costs.

Interested parties may submit comments on or before March 9, 2015. For more information, go [here](#).

BLM News

Leadership Changes at Wyoming BLM

On January 2, BLM State Director Don Simpson resigned his post. Mary Jo Rugwell, Wyoming BLM's Associate State Director since August 2012, took on the job of acting State Director. Ms. Rugwell is a Wyoming native and has been working for BLM for over 30 years, including as part of the fluid minerals leasing program in Wyoming, as an Assistant Field Manager for Lands & Minerals in New Mexico, as the field manager in Kemmerer, Wyoming, and as the Southern Nevada District Manager in Las Vegas, Nevada.

Larry Claypool stepped into Ms. Rugwell's former role as Wyoming Associate State Director. A petroleum engineer by trade, for the past six years, Mr. Claypool has been the Deputy State Director for Minerals and

Lands. Prior to that, Mr. Claypool worked in the BLM Casper office as Chief of the Wyoming Reservoir Management Group. Mr. Claypool has been with the BLM for 31 years.

Filling Mr. Claypool's former role as acting Deputy State Director for Lands and Minerals for 90 days is Duane Spencer, the Buffalo Field Office Manager. Mr. Spencer has worked for BLM for 30 years and has been in the Buffalo Field Office since March 2009. He has also held various BLM posts in Wyoming, Colorado, and New Mexico.

Wyoming Files Suit Against BLM for Wild Horse Mis-management

On December 8, 2014, the State of Wyoming filed suit against the United States Department of the Interior and BLM claiming that the federal government failed to appropriately manage wild horses in Wyoming, pursuant to the Wild Free-Roaming Horses and Burros Act. Wyoming claims the Act requires BLM to manage wild horses below previously set appropriate levels and to remove excess horses when populations exceed those levels. Wyoming argues that excess horses can harm habitats used by other wildlife species, including sage-grouse, antelope, deer and elk.

BLM is also under pressure from wild horse advocates who sued BLM earlier in 2014 claiming that BLM was doing too much to round up wild horses from herd management areas near Rock Springs. The Friends of Animals group held protests at BLM's Rock Springs office last fall and has petitioned the Department of the Interior to grant wild horses and burros federal protections under the Endangered Species Act. The group also claims that BLM failed to follow environmental laws in approving roundups in 2014.

Buffalo Field Office and Wyoming State Geological Survey Release CBM Water Report

On December 15, 2014, the BLM Buffalo Field Office (BFO) and the Wyoming State Geologic Survey released the Updated Open File Report 2014-01: 2013 Coalbed Natural Gas Regional Groundwater (CBNG) Monitoring Report Update: Powder River Basin (PRB), Wyoming. The report presents data from BLM's deep monitoring well network in the Wyoming PRB and provides initial interpretations of the data. The BLM BFO deep monitoring well network measures the drawdown in the producing zones and provides data with which to evaluate potential leakage between the CBNG water-producing coal deposits and adjacent sandstone aquifers. Groundwater models and drawdown predictions are used to forecast potential hydrogeological impacts of CBNG production in Wyoming.

The report notes that water levels at most monitoring well sites held relatively stable during 2013, but Big George Coal showed continued decline in groundwater levels as gas production continued or increased, and the Upper Wyodak showed areas of groundwater recovery where gas production ceased or is declining. Water levels are predicted to recover at more monitoring well sites as CBNG production and the associated water production continue to decrease. The report is available at:
<http://www.wsgs.wyo.gov/Public-Info/OnlinePubs/OFR-2014-01.aspx>

Special Status Species News

Bill Would Delist Wyoming Wolf

Wyoming's congressional delegation is teaming up with Wisconsin lawmakers to introduce a bill that would delist the wolf in both states. The bill comes in the wake of two separate court rulings late last year reversing and remanding the Fish and Wildlife Service's decisions to delist the gray wolf in Wyoming and the Great Lakes areas. The bill would not prevent the Fish and Wildlife Service from re-listing the wolf after further status review, but would enforce the agency's earlier decisions to delist the wolf. Insiders expect the bill to be introduced soon with bi-partisan support, and the support of the Obama Administration.

Congressional Appropriations Rider Seeks to Delay Sage-Grouse Listing Rule

In December, as part of its 2015 spending bill, Congress passed an appropriations amendment that may delay the Fish and Wildlife Service's decision whether to list the greater sage-grouse. The law precludes the Secretary of the Interior from "writ[ing] or issu[ing] pursuant to section 4 of the Endangered Species Act of 1973 . . . a proposed rule for greater sage-grouse." Pub. L. 112-235, § 112. The Fish and Wildlife Service is under a court-imposed deadline to make a decision whether the sage-grouse should be listed by September 30, 2015. Criticizing Congress's action, the Secretary of the Interior has vowed to continue collaborative efforts at sage-grouse conservation. While the Department of the Interior cannot "write or issue" a proposed rule, Secretary Jewell reinforced her intent that the Fish and Wildlife Service "will reach a decision as to whether listing is warranted or not" by the September 2015 court deadline regardless of the legislation. She stated that the Service will continue to work "with urgency alongside our federal, state and local partners to put conservation measures in place to protect important sagebrush habitat and avert the need to list the greater sage-grouse." If the Service ultimately determines listing is not warranted, nothing in the spending bill would preclude publications of those findings, which would not constitute a "proposed rule."

Despite Secretary Jewell's declaration, Western governors remain unclear on how the spending bill may affect ongoing federal and state sage-grouse conservation efforts. On January 16, the Western Governors' Association submitted a letter to the Secretary asking that she specify when a final listing decision would be made, whether the Bureau of Land Management planning effort will be affected, and whether the states will continue to receive funding for sage-grouse conservation efforts.

EPA News

EPA Issues New Proposed Ozone NAAQS of 65-70 ppb

On November 26, 2014, EPA proposed a new primary National Ambient Air Quality Standard (NAAQS) for Ozone of 65-70 parts per billion (ppb), a more stringent standard than the current 2008 Ozone NAAQS of 75 ppb. If EPA reduces the standard to 65 ppb, 53 of the 63 counties with qualified monitors in the Mountain West would not meet the standard. At 70 ppb, 32 of 63 counties would not meet the standard. EPA acknowledges that

because many areas in the Mountain West are subject to high background levels of ozone, the more stringent NAAQS will pose particular problems for compliance in these areas. Six counties in Wyoming would fall above the proposed standards, including Fremont, Laramie, Sweetwater, Sublette, Uinta, and Teton counties if a 65ppb limit is adopted, and adding Campbell and Carbon counties, if a 60 ppb limit is adopted.

The proposed rules may shape the future of Wyoming's current debate over how emissions from oil and gas wells, storage tanks, and other gas field equipment should be addressed. Prompted by a ozone non-attainment finding for the Pinedale area, the Wyoming Department of Environmental Quality Air Quality Division has developed proposed controls that may set a precedent for other areas of the state where oil and gas development is on the rise. Those Industry groups caution against a one-size-fits all approach, but oil and gas companies have already begun developing and implementing sophisticated technology to reduce emissions.

For more information on the proposed ozone rules, please go [here](#).

Other States Join Wyoming in Suit Over Boundaries of the Wind River Reservation

Ten states filed a joint amicus brief urging the Tenth Circuit Court of Appeals to employ a standard of review giving equal weight to the facts and legal conclusions presented by the EPA and Wyoming related to the EPA's recent decision that Riverton and surrounding lands in Wyoming remain Indian Country. Alabama, Colorado, Idaho, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, and Utah all filed the brief with the Court of Appeals early in January.

The states do not take a position on the EPA's determination in late 2013 that the Wind River Indian Reservation was never diminished by federal action one hundred years ago. The EPA addressed the boundary issue in granting a request from the Northern Arapaho and Eastern Shoshone tribes to treat their joint reservation as a separate state under the Clean Air Act.

The ten states' briefing maintains that applying federal common law principles to historical facts is outside EPA's area of expertise in administering the federal Clean Air Act. As a result, the Tenth Circuit ought to give the same amount of weight to Wyoming's interpretation of the facts as it typically would to EPA's.

Governor Matt Mead appreciates the support of Wyoming's sister states: "Wyoming—and no state—should have its sovereignty affected through federal agency action. The EPA is fundamentally wrong, and I am glad for the support of all these states in this matter."

State News

Legislative Update

The 63rd Wyoming Legislature began its General Session on January 13

and barring some unforeseen special session, will adjourn on March 6. On the whole, the session has been relatively quiet. There is a great deal of concern regarding the drop in oil and natural gas prices and the impact that has on Wyoming's budget. To date, there have not been any serious or significant proposed changes to Wyoming environmental laws. There are several attempts to curb federal control of federal lands and several resolutions asking the federal government to give Wyoming more control, but those efforts are mostly symbolic. Most of the debate this year has been around things such as expanding Medicaid under the Affordable Care Act, discussing the New Generation Science Standards, and global warming as part of the common core approvals, and other similar type issues.

While there has not been legislation proposed yet, several environmental groups have been lobbying the legislature regarding flaring. We assume this is a prelude to some effort, but have not seen the proposed bill yet.

WOGCC News

New Setback Rule on the Horizon

The Wyoming Oil and Gas Conservation Commission has initiated rulemaking to change provisions to drilling setback requirements. The proposed rules would move the mandatory setbacks from 350 feet to 500. Several environmental groups are making an effort and submitting testimony and comments to have the setbacks moved to 1,320 feet. This would mean that no drilling location could be closer than a quarter mile from any occupied structure. Such a rule would have tremendous impacts on drilling activity, especially in southeastern Wyoming where drilling activity is taking place in more populated areas. We strongly encourage anyone with an interest in drilling activity to comment to the WOGCC.

Comments to WOGCC

- Address comments to:
Mark Watson State Oil and Gas Supervisor
PO Box 2640
Casper, WY 82602-2640
- Faxed comments will be accepted to (307) 234-5306
- Emailed comments are accepted at WOGCCRules@wyo.gov
- Comments will be accepted until 5:00 pm February 23, 2015

News From the Governor's Office

Governor Mead Calls on EPA to Rescind Existing Source Carbon Emissions Rule

In December, Governor Mead issued a letter to EPA Administrator Gina McCarthy requesting that EPA withdraw its proposed carbon emission rules for existing power plants. According to the Governor, the rule would exceed EPA's authority under the Clean Air Act. Mead also outlined concerns over the rule's effect on the energy and electricity industries and highlighted the burden to "our nation's economic security and prosperity with almost no environmental or health benefit." The letter also details

errors in the EPA's calculations for improved efficiency from power plants and renewable energy consumption.

Governor Supports Forest Task Force Recommendations

The Governor's Task Force on Forests released its report with recommendations for proactively managing Wyoming forests. Included in the report are short- and long-term strategies which the Wyoming state government may implement by coordinating with the federal government, local governments, and private partners. "The Task Force on Forests has worked hard and its proposals are realistic and measurable," Governor Mead said. "I asked for a plan that fits Wyoming—the Task Force got it right."

The report presents twelve major recommendations and over fifty sub-recommendations for the Governor to consider. The recommendations analyze three categories of issues facing Wyoming's forests: fire and other disturbance; resource management; and economic opportunities and innovation.

Governor Releases Wyoming Water Strategy

Governor Matt Mead released Wyoming's Water Strategy on January 15, 2015. The Water Strategy was developed through extensive public input. Governor Mead's office sponsored nine community comment meetings across the state. More than seven thousand individuals commented on the Water Strategy in person, via email, or through survey responses.

The Water Strategy contains ten initiatives covering areas such as water management, development, protection, conservation, and restoration. The initiative builds on existing programs and infrastructure. Over the next year, the Governor's office will develop plans to implement these initiatives in specific ways that are measurable and attainable. "We will continue to seek critical input to help complete the tasks at hand from groups and individuals across Wyoming," said Mead. "Water is tied to everything we do in Wyoming. It is tied to everything we have done, and it is tied to everything we will do. The time for action is now. This strategy moves us forward."

Wyoming Department of Environmental Quality (WDEQ)

New Deputy Director Named

The Wyoming Department of Environmental Quality (DEQ) director, Todd Parfitt, has named Alan Edwards as the new deputy director for the agency. Edwards currently serves as the administrator for DEQ's Abandoned Mine Lands Division and will continue to do so.

"Alan has demonstrated tremendous leadership in every role he has filled with the agency," said Parfitt. "Alan has served as the AML Administrator for four years and unselfishly served as the Interim Land Quality Division and Solid and Hazardous Waste Division Administrators prior to those positions being filled."

One of Edward's first actions as deputy director will be to fill in as the Land Quality Division administrator as the agency goes through the selection

process to appoint a new administrator for that division.

Draft 2013 Regional SO₂ Emissions and Milestone Report

The draft 2013 Regional Sulfur Dioxide (SO₂) Emissions and Milestone Report is now available for public comment. The report determines whether average adjusted SO₂ emissions from 2011, 2012, and 2013 emitted by large industrial sources exceed the 2013 SO₂ emission milestone set in the Regional Haze State Implementation Plans for New Mexico, Utah, Wyoming, and Albuquerque-Bernalillo County. These three states and the county jointly submitted regional haze plans and cooperated in the development of the report.

The draft report shows that total 2013 adjusted SO₂ emissions from large industrial sources in all four jurisdictions were 101,381 tons—higher than the 2012 adjusted emissions total of 96,430 tons. Across 2011, 2012, and 2013, the average adjusted emissions is 105,402 tons. Based on this average, a preliminary determination has been made that the three states and one county met the 2013 regional SO₂ milestone of 185,795 tons under the revised plans.

The public comment period for the draft report will end on Wednesday, March 4, 2015.

This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.