

Wyoming Environmental Compliance and Public Land News - December

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Insight — 12/3/2013

Public Land News

White House to Make Nominations for Four Top DOI Posts

The White House has announced President Obama's intention to fill four top posts at DOI. First, Neil Kornze will be nominated to be the next BLM Director. Kornze currently serves as BLM's principal deputy director and 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.

The second nomination will be Janice M. Schneider, who is currently a partner at Latham & Watkins LLP in Washington DC, to be Assistant Secretary for Land and Minerals Management. In the past, Schneider has served as Counselor to the Deputy Secretary of the Interior, a trial attorney at the Department of Justice's Environment and Natural Resources Division, and Attorney-Advisor in Interior's Office of the Solicitor. If confirmed, Schneider would oversee BLM, including the Bureau's current initiatives for sustainable management of public lands and associated federal energy and mineral resources. Secretary of the Interior Sally Jewell stated, "Janice's expertise in natural resource, energy development, and environmental law and policy will enable us to continue to safely and responsibly expand America's conventional and renewable energy exploration and development under President Obama's all-of-the-above energy strategy."

Third, the White House will nominate Rhea Suh as Assistant Secretary of Interior for Fish and Wildlife and Parks. In that position, Suh would set policy and oversee the National Park Service and the Fish and Wildlife Service. Suh is currently Assistant Secretary of the Interior for Policy.

Finally, President Obama intends to nominate Tommy Beaudreau as Assistant Secretary of the Interior for Policy, filling Suh's current post. Beaudreau currently serves as both acting secretary of the Interior for Land and Minerals Management, which Janice Schneider will take over, and as director of the Bureau of Ocean Energy Management.

DOI Issues Order to Streamline Mitigation on a Landscape Scale

On October 31, Secretary Jewell issued her first order as Secretary of the Interior for a department-wide mitigation strategy focused on addressing conservation on a regional and landscape scale. The Order directs the DOI Energy and Climate Change Task Force, led by the Deputy Secretary, to develop within 90 days a coordinated Department-wide strategy to "strengthen mitigation practices so as to effectively offset impacts of large development projects of all types through the use of landscape-level planning, banking, in-lieu fee arrangements, or other possible measures." In a speech announcing the Order, Secretary Jewell stressed the importance of landscape-based approaches rather than ad hoc, project-by-project mitigation. The Order applies to both renewable energy projects and fossil fuel projects on federal land. Secretary Jewell's speech announcing the order can be found [here](#).

BLM and Wyoming State Historic Preservation Officer Release Draft Protocol

BLM and the Wyoming State Historic Preservation Officer (SHPO) are considering revisions to the State Protocol governing how National Historic Preservation Act (NHPA) Section 106 is implemented for BLM undertakings in the State of Wyoming. Public meetings were held around the state in October and November. The existing State Protocol can be found on the BLM Wyoming website. A copy of the revised draft State Protocol is not available online but can be obtained by emailing Kathy Boden at kboden@blm.gov or calling Kathy at (307) 775-6017.

New EPA CO2 Limits Impact Wyoming Coal-Fired Power Plant Proposals

EPA has proposed revised carbon pollution standards that would require new coal-fired power plants to emit no more than 1,100 pounds of carbon dioxide per megawatt hour. New natural gas-fired power plants would need to meet a limit of 1,000 pounds per hour for large turbines, and 1,100 pounds per megawatt hour for small turbines. Carbon dioxide emissions at Wyoming's existing coal-fired power plants range from 2,100 to 2,600 pounds per megawatt hour. The standards are designed to guarantee reliance on advanced technologies including carbon capture and sequestration (CCS). According to EPA, the proposed standards "reflect an ongoing trend in the power sector" to shift toward cleaner technologies, and the standards "are not expected to have notable costs and are not projected to impact electricity prices or reliability." The U.S. Chamber of Commerce submitted a letter to Congress opposing the proposed rule and criticizing the rule's requirement for CCS technology: "EPA's designation of CCS as the best system for compliance under this rule amounts to little more than a regulatory euphemism for what is plainly a ban on the construction of new coal-fired power plants." The U.S. Chamber opposed any mandate of CCS technology, which is not yet commercially-viable and at this time would result in increased power prices passed on to ratepayers in every sector of the economy.

The National Mining Association similarly stated "Just because EPA believes CCS is ready doesn't make it so, and technology experts say it isn't. The last thing American households need is another 'rush-before-

ready' policy that gambles with our economic and energy future." The U.S. Chamber also indicated its support for draft legislation developed by Representative Ed Whitfield (R-Ky.) and Senator Joe Manchin (D- W. Va.) which would prohibit EPA from mandating CCS until it has been adequately employed on commercial-scale power plants and would delay EPA greenhouse gas regulations for existing power plants from becoming effective until expressly authorized by Congress. The House Subcommittee on Energy and Power held a hearing on EPA's proposed rule and the draft Whitfield-Manchin bill on November 14.

EPA's proposed rule replaces the carbon standards rule proposed in April 2012 which has been withdrawn, and thus new comments must be submitted within sixty days after the new proposed rule is published in the Federal Register. More information and EPA's fact sheet can be found [here](#).

Sage-Grouse News

Environmental Groups File BLM Petition to Stop Drilling in Core Areas

On October 24, WildEarth Guardians filed a petition with the DOI and BLM to stop or slow down BLM authorized oil and gas drilling in the sage-grouse core area near Douglas, Wyoming. The petition was filed in response to the State's September announcement that it had reached an agreement with Chesapeake Energy to permit drilling on existing oil and gas leases in the Douglas Core Area. Though Chesapeake has committed to numerous mitigation measures, agreed to fund \$2.3 to \$2.8 million in conservation measures, and claimed a net benefit for the sage-grouse, the petition requests that BLM issue an order prohibiting new roads or wellpads because the proposed development will exceed disturbance thresholds for core areas set in the Governor's Executive Order.

BLM Releases Draft Sage-Grouse RMP Revisions Across the West

In November, BLM rolled out several sage-grouse RMP revisions covering Oregon, Utah, Idaho, southwestern Montana, Nevada, and northeastern California. The Utah RMP includes a small sliver of southwest Wyoming. The preferred alternative in the Utah RMP would build on the State of Utah's Conservation Plan for Greater Sage-Grouse and the State of Wyoming's Core Area Strategy, with additional conservation requirements developed by the BLM Utah in coordination with the Fish and Wildlife Service. Public comments on the five alternatives outlined in the Utah RMP revision are due January 29, 2014. For more information, [click here](#).

Industry Group Questions Science Behind National Technical Team Recommendations

In a November 19, 2013 letter, the Western Energy Alliance accused DOI of using "flawed" science to support the December 2011 National Technical Team Report and recommendations for sage-grouse management, which have been used to develop revisions to RMPs across the West. The letter also faults DOI for failing to consider "extensive state and local conservation efforts already in place." The Western Energy Alliance requests that DOI not rely upon the NTT Report as a basis for prescriptive land use decisions that conflict with multiple use of public

lands and valid existing rights.

BLM Annual Pinedale Wildlife Planning Meeting Set for 2014

The BLM Pinedale Field Office, in coordination with the Pinedale Anticline Project Office, will host its wildlife annual planning meeting on Wednesday, Feb. 19, 2014 in Pinedale. An annual planning meeting is required by the 2008 supplemental environmental impact statement and record of decision for the Pinedale Anticline Project Area. To more fully address topics of community interest, the Pinedale Field Office has subdivided the original annual planning meeting into three annual meetings focused on development, wildlife and air, and water and socioeconomics. The February meeting will focus on wildlife, including sage-grouse and mule deer. For more information, please go [here](#).

New BLM Report Finds Pinedale Groundwater Contamination Not Linked to Natural Gas Industry

A new BLM report, released November 19, finds that natural gas operations are not linked to local groundwater contamination in the Pinedale area. Low levels of hydrocarbons detected in groundwater in the area were largely attributable to natural processes, not drilling activity. Local environmental groups continue to question these findings. BLM's water quality report can be found [here](#).

Abandoned Mine Land Funds Restored by Proposed Helium Bill

On October 4, President Obama signed into law the Helium Stewardship Act of 2013. In addition to providing a management strategy for the Federal Helium Reserve and encouraging private production of alternative helium supplies, the law also raises additional revenue that will help to partially restore Abandoned Mine Lands funding to Wyoming. Wyoming is now set to receive \$13 million in Abandoned Mine Land funding for fiscal year 2014 and \$60 million for fiscal year 2015.

State News

Governor Mead Holds Water Strategy Listening Sessions Across the State

Governor Matt Mead is seeking opinions from interested individuals and groups across the state on how Wyoming can better manage, develop, protect, conserve and restore its water. The Governor's Office will host listening sessions as the first step in developing a Wyoming Water Strategy. The meetings are an outgrowth of the state energy strategy Mead announced in May. "The Wyoming Energy Strategy lays out a direction for how we can best develop energy and conserve the environment. Water is our most valuable resource and that is why we need to ensure we, as a state, identify specific action items for how to be leaders in water management," Governor Mead said. "I am hopeful that these listening sessions will be widely attended and help shape this Water Strategy." More information on the strategy can be found [here](#).

Listening sessions were held in November in Saratoga, Lander, Jackson

and Gillette. Upcoming listing sessions are listed below:

- December 2nd, 2:00 - 4:00, co-hosted by the Wyoming County Commissioners Association at Little America, Cheyenne, Wyoming.
- December 5th, 10:00 – 12:00, co-hosted by the Petroleum Association of Wyoming at the Parkway Plaza Hotel and Convention Centre, Casper, Wyoming.
- December 6th, 10:00 – 12:00, co-hosted by the Shoshone Conservation District at the Community Center, Lovell, Wyoming.
- December 19th, 3:00 - 5:00, co-hosted by Goshen County Economic Development at the Eastern Wyoming College Fine Arts Auditorium, Torrington, Wyoming.

Governor Creates Healthy Forest Taskforce

Governor Matt Mead has asked a group of stakeholders to develop recommendations on how Wyoming can best improve the health of its forests. The Taskforce on Forest Health is comprised of representatives from federal, state, and local government, industry, conservations groups, and forest user groups. Lisa McGee, Wyoming Outdoor Council's, and Jim Neiman, Vice President and CEO of Neiman Industries, co-chair the Taskforce. The Taskforce will provide recommendations by the fall of 2014.

Legislative Update

Flaring Bill Defeated in Legislative Committee

Wyoming's Joint Revenue Committee rejected, in a 8-to-2 vote, a proposed bill that would have subjected flared natural gas to a 6 percent state severance tax. Natural gas may be flared at the well when transportation and processing infrastructure is unavailable or uneconomic, and flaring is currently regulated by the Wyoming Oil and Gas Conservation Commission. One of the concerns raised to the committee was whether the proposed tax would violate the state constitution, by taxing a product that is not captured or sold. However, opponents of flaring have argued that flaring wastes an energy resource and results in uncaptured revenue for the state. A report compiled for the Joint Revenue Committee estimated the potential revenue from flared natural gas at approximately \$300,000 per year. Concerns over flaring have been increasing and include concerns raised by private surface owners in Converse County.

While the proposed tax bill was rejected, flaring is likely to continue to be an issue of concern throughout agencies. Grant Black, Supervisor of the Oil and Gas Conservation Commission indicated earlier this year at a meeting with Young Professionals in Energy that the Commission staff would continue to carefully scrutinize flaring requests. The Office of State Lands and Investments indicated in its September meeting with industry representatives that it will also continue to ask questions about requests for flaring, particularly at wells near existing infrastructure, due to increased pressure from royalty owners and landowner concerns. At another interim legislative meeting this fall, the environmental effects of flaring on air

quality were a topic of discussion.

Legislative Task Force Considers Transfer of Federal Lands to State

The Task Force on Transfer of Public Lands met in October to continue discussions on the transfer of federal public lands to the state and to consider the Task Force's recommendations. The Task Force decided to order an in-depth study into plans for Wyoming to gain control over federal lands, despite an opinion from the Wyoming Attorney General's Office that such an attempt rests on shaky legal footing. The study was sent to the agriculture and minerals interim committees, as well as the Select Federal Natural Resource Management Committee, which voted on November 20, 2013 for draft legislation to establish a new select committee to conduct further study of federal lands in the state. The draft bills now go to the Joint Interim Committee on Minerals, Business, and Economic Development.

Office of State Lands and Investments (OSLI)

Bridget Hill Appointed Director of OSLI

On October 2, 2013, Governor Matt Mead appointed Bridget Hill as the new Director of the Wyoming Office of State Lands and Investments (OSLI). Hill, who has worked for the Wyoming Attorney General's Office for eight years and represented the OSLI during her tenure, replaced Ryan Lance, who moved into the private sector.

Wyoming Oil & Gas Conservation Commission (WOGCC)

Water Quality Testing Rules Released

The WOGCC approved its new baseline groundwater sampling, analysis, and monitoring rule, effective March 1, 2014. Water wells and springs permitted for beneficial use by the State Engineer's Office, located within a half-mile radius of a proposed oil or gas well, injection well, or other Commission-approved well, will need to be sampled within one year prior to drilling activities. This baseline sampling plan shall include four wells or springs within the half-mile radius, although the rule specifies exceptions if fewer than four water sources are in that area, specifies criteria for selecting only four sources if more than four water sources are in the area, and provides for variances in certain conditions. If water sources are completed in different aquifers, a sample must be collected from each aquifer. This rule also allows for operators to submit a master groundwater sampling, analysis, and monitoring plan for geographic areas of development.

Follow up testing is required first between 12 and 24 months after setting the production casing, followed by a second sample at least 24 months later, but between 36 and 48 months after setting the production casing. Samples must be tested for, at a minimum: temperature, pH, specific conductance, turbidity, dissolved oxygen, total dissolved solids, dissolved gases, alkalinity, major anions, major cations, selenium, barium, boron, strontium, bacteria, total petroleum hydrocarbons, BTEX compounds, and naphthalene.

This baseline groundwater testing rule is a component of the Governor's Wyoming Energy Strategy announced in May 2013 and is the result of a

multi-month public comment period with input from industry representatives and other stakeholders. In a statement, Governor Mead identified this rule as "another example of Wyoming leading the nation in striking the right balance between producing needed energy and protecting our natural resources."

WOGCC to Propose New Horizontal Spacing Rule

The WOGCC may initiate formal rulemaking procedures in early 2014, to amend its Chapter 3, Section 2 rules to include a horizontal well-spacing rule. An initial, preliminary draft of the proposed rule would set standard spacing of horizontal wells at 640 acres and would remove the 18 degree azimuth rule. Establishing the standard by rule should reduce the number of hearings set for horizontal spacing requests and relief from the 18 degree azimuth rule. Special provisions in Chapter 3, Section 2 for Southwest Wyoming, Powder River Deep, and Powder River CBM wells are expected to remain in the rule.

Wyoming Department of Environmental Quality (WDEQ)

Upper Green River Basin Ozone Update

EPA designated the Upper Green River Basin (UGRB) area as "marginal" nonattainment for the eight-hour ozone NAAQS of 0.075 ppm on July 12, 2012. WDEQ-AQD has already completed a number of activities designed to bring the UGRB back into ozone attainment. WDEQ-AQD expanded the Jonah Field and Pinedale Anticline area to include the Lance field. Operators producing in the two areas will be required to follow the same regulations and use best available technology to prevent excess volatile organic compound emissions. The agency hopes to complete rulemaking that incorporates New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants into Wyoming Air Quality Standards and Regulations by the end of 2013.

A UGRB Air Quality Citizens Advisory Task Force (Task Force) was formed in early 2012 and has helped increase stakeholder involvement. The Task Force submitted ten recommendations to the WDEQ-AQD in September 2012. WDEQ-AQD will implement three of these recommendations by March 2014: (1) provide forecasts for 2014's winter ozone season; (2) promote the development and implementation of ozone contingency plans; and (3) develop a request for proposals to research and quantify emissions from produced water tanks.

WDEQ-AQD will also seek to implement other elements of the Task Force's recommendations through the rest of the year. In particular, WDEQ-AQD will develop rules to address oxides of nitrogen and volatile organic compounds. More information on the agency's plans related to UGRB ozone strategy can be found [here](#).

Solid and Hazardous Waste and Water Quality Division presentation

The Solid and Hazardous Waste Division (SHWD) will make a rulemaking presentation to the Water and Waste Advisory Board at 9:00 a.m. December 5, 2013 in the Oil and Gas Conservation Commission's Auditorium in Casper. The presentation will explain DEQ-SHWD's proposed changes to Solid Waste Rules and Regulations Chapter 1,

General Provisions, and the creation of Chapter 17, Municipal Solid Waste Landfill Remediation Program.

Following the SHWD presentation, the Water Quality Division (WQD) will present the recently revised Stream and Lake Shore Restoration Best Management Practice (BMP) Manual. The revisions have already been approved by the Wyoming Nonpoint Source Task Force. Public comment on the revisions concluded in July 2013. The Water and Wastewater section will also present information regarding greywater disposal, pathogens, and septic tank access.

LQD Revises Guidance Documents

The Land Quality Division recently revised a number of guidelines. Guideline 4 on in-situ mining, Guideline 12 on standardized reclamation performance bond format and cost calculation methods, and Guideline 12A which focuses on noncoal small-scale mining operations were all revised. Details on these revisions are available [here](#).

Industrial Siting Commission Proposes New Rules

The Industrial Siting Division (ISD) is seeking comment to proposed revisions of Chapters 1 and 2 of the Rules and Regulations of the Industrial Siting Council (Rules). Chapter 1 provides the rules for preparation and processing of applications for permits to construct, operate, and decommission large industrial facilities. Chapter 2 sets forth the practice and procedures by which the Industrial Siting Council (ISC) decides whether to grant permits to construct industrial facilities. Revisions to the Rules are necessary to incorporate legislative changes to the Industrial Development Information and Siting Act, which became effective in 2011 and 2012. The proposed revisions are also designed to address Governor Mead's April 9, 2013 memorandum requesting that state agencies streamline their rules. Further, the revisions are designed to correct typographical errors, rectify obsolete statutory references, and clarify administrative procedures.

Chapter 1 includes additions which would allow the Director to provide conditional jurisdictional determinations. Additionally, a permit transfer procedure is proposed which includes language allowing ISD to recommend changes to the names of permit holders at regularly scheduled ISC meetings so that the agency's records accurately reflect an entity's proper name.

Of note with respect to wind energy facilities, Chapter 1 includes language to provide an order process in the event a bond which has been placed to assure proper reclamation and decommissioning is forfeited. Additionally, a process is proposed for ISD to request information from affected landowners of wind energy facilities and to circulate comments received from state agencies to the affected landowners.

The ISD held an open house in Casper on October 29, 2013 to receive public comment on the proposed revisions. The ISD also accepted written comments through November 29, 2013. The ISD will document all public comment, incorporate agreed upon changes, and present a final proposal for the Rules to the ISC at a hearing to be held December 18, 2013 at 10

a.m. at the Platte Valley Community Center in Saratoga, Wyoming.

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