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Public Land News

Wyoming Looks to Future Amid Coal and Oil & Gas Declines
Wyoming is feeling the squeeze as declines in coal, oil, and natural gas prices and production begin to take a toll. Citing a $159 million revenue shortfall for fiscal year 2016, Governor Matt Mead announced a hiring freeze for State employees and has suggested $215 million in cuts to the state's upcoming biennium budget. State revenue forecasts predict a decrease in Wyoming general-fund monies from $3.48 billion in the current two-year funding cycle to $2.94 billion in 2017 and 2018. Approximately seventy percent of the state's general fund revenue derives directly from energy development. What's behind the slump in each of these major Wyoming industries?

Coal

Wyoming's coal production from mines in the northeastern part of the State declined by 4.8 percent in 2015. Since 2008, Wyoming's coal production has decreased by approximately 19%. Analysts have attributed the declines to low natural gas prices and new federal regulations limiting greenhouse gas emissions from coal-fired facilities. Earlier this year, Peabody Energy Corp., the nation's largest coal producer, closed its local corporate office in Gillette and laid off approximately 20 employees. Several coal companies active in Wyoming have recently filed for bankruptcy, including Arch Coal and Alpha Natural Resources. The potential impact on Wyoming is huge: data from the Center for Energy Economics at the University of Wyoming indicate that coal mining and associated businesses make up 14% of the state's economy and provide one in every five jobs in the state.

Potentially exacerbating already difficult times for Wyoming's coal industry is U.S. Department of Interior (DOI) Secretary Sally Jewell's January 15 announcement of a three-year moratorium on federal coal leasing. During the three-year period, DOI will reconsider aspects of the federal coal program, including control over leasing decisions and the current royalty structure. The Bureau of Land Management (BLM) has said that up to 18 applications currently in progress may still be allowed to go forward. On the suspended leasing processes list are two leases-by-application in the Powder River Basin: the Antelope Mine (Wyoming) and West Decker Mine (Montana) recently submitted applications for lease expansions that are now far less likely to receive final approval. In addition, BLM cites six projects that could be held up in Wyoming because of the federal moratorium, and six more that may qualify for an exception. Some economists say impacts on Wyoming's economy are uncertain, as many coal companies have large amounts of coal reserves stockpiled.

Oil

Over the past two years, oil prices have declined steadily, falling from more than $100 a barrel in the first half of 2014 to less than $27 a barrel in mid-January of this year. The number of oil rigs active in Wyoming has decreased from a high of 112 in 2006 to its current low of 15. International law firm Haynes and Boone LLP found that 42 North American oil companies declared bankruptcy in 2015—when oil was $100 per barrel, many companies took on debt in order to start new drilling projects. Now that oil prices have plummeted by nearly 75%, some companies have proven unable to repay the debts they incurred when prices were high. Access to the Haynes and Boone *Oil Patch Bankruptcy Monitor* can be found here.

Two oil companies with operations in Wyoming have filed for bankruptcy to date: Tulsa-based Samson Resources and Denver-based Escalera Resources. According to Haynes and Boone, “mid-sized and small producers are likely the most at risk, whereas the very largest firms like Anadarko, BP, Kaiser-Francis, and EOG Resources have enough capital to weather the storm.”

The Petroleum Association of Wyoming, however, has registered optimism that oil prices will rebound soon, and that the State will recover more quickly than it has from downturns in the past.

Natural gas

Wyoming's natural gas production declined by 14% in 2015, marking the sixth consecutive year production has fallen in the State. Though Wyoming natural gas output continues to decline, total U.S. output continues to increase, mostly due to new wells in shale formations in the Eastern part of the country. In Wyoming, aging wells in the Jonah Field and the Pinedale Anticline are beginning to produce less gas, and not enough new wells are being drilled to offset the declining production. For drilling and production in the State to recover, prices for Western gas will have to improve, but experts do not predict such a price rebound any time soon.

Wyoming Delegation Leads Efforts to Lift Oil Export Ban
Due in part to efforts by Wyoming Senator John Barrasso, in a bi-partisan effort, Congress recently lifted the more than forty-year-old ban on U.S. crude oil exports. Democrats agreed to lift the ban in exchange for Republican support to extend tax credits for renewable energy projects, along with removal of riders related to various environmental issues. The legislation gives President Obama the right to impose a year-long halt in oil exports in the event of a national emergency.

While economists at the University of Wyoming do not expect significant exports or drilling increases in Wyoming's near future, some have suggested that lifting the ban may help reverse negative recent oil price trends and keep some companies in business. One economist believes it may take up to a decade for significant economic effects, such as increased drilling, to occur. Another expert said that removal of the ban likely will not effect the price of domestic gasoline, natural gas, or coal. However, over time, the ability to export oil may lead to an increase in the number of available domestic oil wells to cushion the U.S. in a future energy crisis, and may help companies develop less expensive, more advanced drilling technologies.

U.S. Fish and Wildlife Service Proposes Rules for Oil and Gas Development on Wildlife Refuges

On December 11, 2015, the U.S. Fish and Wildlife Service (Service) issued a proposed rule to update the fifty-year-old regulations currently governing management of non-federal oil and gas development on National Wildlife Refuge System lands. Private entities own and have the legal right to develop subsurface minerals on many Service lands, including national wildlife refuges. The proposed rule continues to allow extraction of oil and gas, but requires stricter compliance with industry best management practices.

More than 100 refuges currently host oil and gas operations, including nearly 1,700 actively producing wells, and thousands of additional inactive or plugged wells. Noting that “improperly conducted oil and gas development on refuges can result in significant damage to wildlife and their habitats” the Service said in a press release that the new regulations will “reduce refuge impacts, including habitat loss and degradation, wildlife mortality and displacement, and other risks to ecological integrity.”

According to the Service, specific provisions of the rule would “ensure operators are properly plugging non-producing wells and containing spills; provide the Service the necessary tools to work with operators through a permitting process to avoid new impacts; allow refuge managers to prescribe measures to prevent or minimize impacts; improve maintenance and monitoring of equipment to reduce the rate of spill incidents; and ensure operators immediately contain and report any spills to the Service and restore any spill damages to refuge resources and uses. Furthermore, operators would remain financially liable for any ongoing damages to refuge resources and uses.”

The National Park Service proposed similar revisions to its regulations earlier in 2015. These revisions would require all oil and gas operations in the national park system to comply with the updated regulations, including a provision that operators pay the full cost of reclamation. Oil and gas development currently occurs in 12 of the 408 National Park System units, and 60% of these oil and gas operations are exempt from Park Service regulations.

A copy of the service's proposed rule can be found here.

Wyoming Completes Final Guidance for Calculating Sage-Grouse Mitigation Debits

On December 22, 2015, the Wyoming Sage-Grouse Implementation Team released its Final Mitigation Framework for calculating sage-grouse mitigation debits for activities in sage-grouse core areas. Total debits are based on the way in which the proposed activity exceeds core area standards (activity within 0.6 miles of a lek, roads within 1.9 miles of a lek, or disturbance exceeding the 5% or 1/640 acre caps) and the habitat quality of the disturbed acres. The greater the quality of the disturbed habitat, the greater the mitigation debits. The purpose of the guidance is to allow those with proposed projects to identify potential risks and costs, and promote early mitigation planning.

BLM Proposes New Venting and Flaring Rule for Public Lands
On January 22, 2016, U.S. Department of the Interior Secretary Sally Jewell announced a proposal to update existing venting and flaring regulations applicable to oil and gas production on public and American Indian lands. In developing the rule, the BLM seeks to “help curb waste of our nation's natural gas supplies, reduce harmful methane emissions and provide a fair return on public resources for federal taxpayers, Tribes and States.” Specifically, the proposed rule would impose restrictions on how much operators can flare over several years, require operators to submit plans for gas capture and delivery before drilling, mandate the installation of leak-detecting technology, and prohibit venting of natural gas with limited exceptions. The proposed rule would also provide that BLM can specify a royalty rate of 12.5% or more for onshore oil and gas leases. The proposed rule can be found here and the public will have 60 days to comment on the proposed rule once published.

State News

Wyoming Petitions EPA to Reconsider Clean Power Plan
On December 21, 2015, the State of Wyoming submitted a petition to EPA, requesting that EPA reconsider the Clean Power Plan rule. The petition for reconsideration is in addition to the petition for judicial review submitted by Wyoming and 23 other states to the U.S. Court of Appeals for the D.C. Circuit, objecting to the rule. On January 21, 2016, the D.C. Circuit Court refused the states' request to halt implementation of the Clean Power Plan until litigation is resolved. The states have since requested that the U.S. Supreme Court grant a stay. Wyoming's concerns focus on the final rule's requirements for Wyoming, which were more than double what EPA originally proposed. As stated by Governor Mead, “This rulemaking has been flawed from the very beginning. The Final Rule is the result of an unfair process – it has both procedural and substantive deficiencies. . . . I am directing the Attorney General to use every tool in the legal toolbox to stop this arbitrary and extremely harmful Rule.”

The Clean Power Plan regulates greenhouse gas emissions from existing power plants and represents a key climate initiative of the Obama administration. The Clean Power Plan essentially requires coal-fired power plants to switch to natural gas and is also being challenged by numerous industry and business groups that claim the Plan will cause severe consequences to the reliability of the electrical grid and the economy.

Wyoming Oil and Gas Conservation Commission Finalizes New Bonding Rules

The Wyoming Oil and Gas Conservation Commission (WOGCC) unanimously approved a new rule that increases blanket bonds for oil and gas operators from $25,000 to $100,000. Blanket bonds allow operators to post a single bond to cover all of their wells and the funds are used to cover reclamation costs should an operator no longer be able to do so. The WOGCC initially proposed a bond rate of $150,000. The new rule can be found at the Wyoming Secretary of State's website.

WOGCC Update on Flaring Rule

The comment period on the WOGCC proposed flaring rule closed on January 22, 2016. The agency announced it was considering changes to its flaring rule last November. The proposed changes largely codify existing policies by placing limitations on daily venting quantities and require operators to include details about gathering, transportation, and treatment facilities in their gas capture plans. The WOGCC's proposed rule has been criticized for not going far enough by some, including the Environmental Defense Fund, Powder River Basin Resource Council, and the Wyoming Outdoor Council. The Petroleum Association of Wyoming expressed some concerns that the WOGCC overestimated the amount of gas actually flared when developing the rule and proposed minor changes in its comments. All public comments on the rule can be found here.

Wyoming Proposes Changes to Air Quality Rules

The Wyoming Air Quality Division (AQD) has proposed changes to the Rules of Practice and Procedure relating to the Environmental Quality Council. Under the proposed rule, Section 16 will be added to the Rules and the State Implementation Plan to clarify that the Environmental Quality Council must have at least a majority of members who represent the public interest and do not derive a significant portion of their income from sources subject to Air Quality permits or enforcement orders. Members of the Council must disclose any potential conflicts of interest. These requirements were added to ensure the Council's composition aligns with the Clean Air Act, Section 128(a)(1) and (2). A public hearing on the proposed rule will be held at 1:30 p.m. on March 2, 2016, in Room 1699 of the Herschler Building, 122 West 25th Street, Cheyenne, Wyoming.

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