

Wyoming Environmental Compliance and Public Land News - June 2017

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Public Land and Environmental News

Trump Calls for National Monument Review

On April 26, 2017, President Trump signed an executive order directing the Department of the Interior (DOI) to review the designations of national monuments of more than 100,000 acres made since 1996. The 100,000-acre review applies to 21 national monuments in the western United States, plus the 87,500-acre Katahdin Woods and Waters National Monument in Maine and five vast marine monuments.

In reviewing the monument designations, DOI Secretary, Ryan Zinke, is to consider:

- (i) the requirements and original objectives of the 1906 Antiquities Act (Act), including the Act's requirement that reservations of land not exceed "the smallest area compatible with the proper care and management of the objects to be protected";
- (ii) whether designated lands are appropriately classified under the Act as "historic landmarks, historic and prehistoric structures, [or] other objects of historic or scientific interest";
- (iii) the effects of a designation on the available uses of designated federal lands, including consideration of the multiple-use policy of section 102(a)(7) of the Federal Land Policy and Management Act (43 U.S.C. 1701(a)(7)), as well as the effects on the available uses of federal lands beyond the monument boundaries;
- (iv) the effects of a designation on the use and enjoyment of non-federal lands within or beyond monument boundaries;
- (v) concerns of State, tribal, and local governments affected by a designation, including the economic development and fiscal condition of affected States, tribes, and localities;
- (vi) the availability of federal resources to properly manage designated areas; and
- (vii) such other factors as the Secretary deems appropriate.

82 Fed. Reg 2042920430 (May 1, 2017).

Upon its release of a list of monuments implicated under the executive order, the DOI announced the first ever formal public comment period for members of the public to officially weigh in on monument designations under the Act. The 15-day comment period began May 11, 2017 and ended May 26, 2017. Legal challenges are expected, as no president has ever rescinded a monument designation.

Zinke said he will review the Bears Ears monument located in Utah first and is expected to make a recommendation to President Trump in June 2017. Zinke is further expected to issue a full report on all monuments in late summer of 2017. Bears Ears purportedly protects Native American cultural heritage and sacred sites. President Obama created the Bears Ears monument in the final days of his administration. Utah's governor and congressional delegation opposed the designation, claiming Bears Ears monument was designated against the wishes of citizens eager for development.

For more information on the monument review process, see <https://www.doi.gov/pressreleases/interior-department-releases-list-monuments-under-review-announces-first-ever-formal>

Court Abates Regional Haze Litigation

In 2014, EPA issued a final rule approving in part and disapproving in part Wyoming's State Implementation Plan (SIP) to address nitrogen oxide (NOx) emissions. At the same time, EPA replaced the disapproved parts with a Federal Implementation Plan (FIP), including NOx best available control technology (BACT) determinations for certain Basin Electric Power Cooperative (Basin Electric) and PacifiCorp facilities. EPA's action was challenged in the 10th Circuit Court of Appeals, Case No. 14-9259 and consolidated cases, by Wyoming, the operators, and conservation organizations. Following a settlement agreement between Basin Electric, EPA, and Wyoming, the Court, over objection of the conservation organizations, abated all of the consolidated cases pending final action by EPA on the settlement.

BLM News

Coal Leasing Moratorium Lifted

On March 28, President Trump signed an executive order to terminate the Department of the Interior's three-year coal-leasing moratorium. The President's order was followed on March 29 by Secretary Zinke's implementing order. The reaction from the environmental community was swift—Defenders of Wildlife, Sierra Club, WildEarth Guardians, and others filed a lawsuit in the United States District Court for the District of Montana on the same day as Zinke's order, alleging the Obama-era moratorium could not be lifted without environmental review.

In a press release, Secretary Zinke declared that the death of the coal-leasing moratorium would “put America on track to achieve the President's vision for energy independence and bringing jobs back to communities across the country.” He went on, “American energy powers our national and local economies. But for too many local communities, energy on public lands has been more of a missed opportunity and has failed to include

local consultation and partnership. Today's orders allow for Americans to benefit from safe and environmentally responsible development on federal lands and put America on track for energy independence."

The order clears the way for coal mine expansion, particularly in Wyoming, and also signals what is likely to be a protracted legal battle implicating allegations about the localized impacts of coal mining on public lands and waters, as well as the larger debate over coal-fired power's contribution to global climate change.

Congress Repeals BLM's Planning 2.0 Rule

On March 27, President Trump, without comment, signed into law a congressional resolution terminating BLM's Planning 2.0 Rule. The Planning 2.0 Rule was aimed at updating the BLM's 1983 planning rules under the Federal Land Policy and Management Act. Critics objected to the revised rule, however, arguing that it would reduce opportunities for local government and stakeholder input and instead concentrate decision-making power in Washington D.C. For a more in depth look at the Planning 2.0 Rule, see the February 2017 edition of the Wyoming Environmental Compliance and Public Land News.

Congress Declines to Repeal BLM Oil and Gas Methane Rule

On May 10, 2017, the U.S. Senate voted 51 to 49 against a resolution that would have ended an Obama-era Bureau of Land Management rule regulating methane flaring and venting. The policy, known as the Waste Prevention, Production Subject to Royalties and Resource Conservation rule, restricts natural gas emissions from oil and gas production, forcing producers to capture methane rather than flare it at drilling sites. The resolution's failure was a surprise, as the Republican-controlled Congress has used the Congressional Review Act to overturn thirteen other rules promulgated by the Obama Administration.

With the venting and flaring rule still in place, litigation between BLM and the rule's opponents, who include the State of Wyoming, will continue. The Department of the Interior has also indicated that it may suspend, revise, or rescind the rule.

Species News

Feds Return Wolves to Wyoming Management

On May 1, 2017, the U.S. Fish and Wildlife Service (FWS) issued a final rule reinstating the removal of Federal protections for the gray wolf in Wyoming under the Endangered Species Act (ESA). The FWS issued the final rule in compliance with a March 3, 2017 United States Court of Appeals Order and subsequent April 25, 2017 mandate instructing the FWS to remove the wolves in Wyoming from the endangered and threatened species list and return management to the State of Wyoming.

The decision constitutes the culmination of years of legal wrangling resulting from the FWS's initial delisting of the species on September 10, 2012. The 2012 final rule found that the best scientific and commercial data available indicated that gray wolves in Wyoming were recovered and no longer in need of protection as an endangered or threatened species

under the ESA. Finding the wolf population stable and threats sufficiently minimized, the FWS accepted the post-delisting monitoring and management framework proposed by the State of Wyoming (the “Wyoming Plan”).

Various groups challenged the delisting and on September 23, 2014 – after two years of management under the Wyoming Plan – the U.S. District Court for the District of Columbia vacated and set aside the 2012 delisting and reinstated Federal ESA protections and oversight on the basis that the Wyoming Plan, which remained subject to legislative amendment, did not adequately protect the species. The State of Wyoming and the FWS appealed the decision. On March 3, 2017, the U.S. Court of Appeals, in a unanimous opinion, reversed the 2014 ruling of the U.S. District Court and on April 25, 2017 the court issued a mandate, consistent with its order, reversing the U.S. District Court's vacatur of the 2012 delisting of wolves in Wyoming. On April 25, 2017, Wyoming Governor Matt Mead issued a statement applauding the decision to return the species to the monitoring and management framework of the Wyoming Plan, calling it “a good day for Wyoming.”

State News

Wyoming DEQ Adopts Final Practice and Procedure Rules

The Wyoming Environmental Quality Council (EQC) adopted revisions to the Wyoming Department of Environmental Quality (WDEQ) Rules of Practice and Procedure (Rules) at a public hearing on March 22, 2017. The final rule was filed with the Wyoming Secretary of State on April 24, 2017.

Changes were made to Chapters 1, 2, 3, 4, 5, 6, 7, and 9 of the Rules. Chapter was 4 repealed in its entirety and 6 was repealed and replaced with a new Chapter 9. Chapters 1, 2, 3, 5, 7, and 9 were modified in order to adopt much of the uniform contested case rules developed by the Wyoming Office of Administrative Hearings and to be consistent with the requirements of the WDEQ and EQC, and state or federal law governing or applicable to the WDEQ and EQC, in accordance with W.S. §16-3-103(j). The Rules were also modified to update and clarify requirements applicable to rulemaking, petitions for award of costs and expenses under W.S. §35-11-437(f), Director review involving surface coal mining operations, hearings before the Department, and very rare or uncommon areas.

Copies of the WDEQ Rules are available electronically on the Wyoming Secretary of State website at <https://rules.wyo.gov/>

Public Hearing Schedule for Proposed Water Quality Rules Revisions

On June 23, 2017, the Wyoming DEQ, Water and Waste Advisory Board (WWAB), will meet in Casper, Wyoming to consider proposed amendments to Chapters 1 and 14 of the Water Quality Rules and Regulations. The proposed revisions primarily concern (1) water quality standard variances and (2) financial assurances, and the public is invited to provide comments.

With regard to variances, the proposed revisions would establish a process whereby the Water Quality Division (WQD) of the DEQ could grant variances to the water quality standards to specific discharges in cases where meeting a water quality based effluent limit would result in substantial and widespread economic and social impacts. The proposed financial assurances revisions would remove exemptions for grandfathered facilities.

At the conclusion of the hearing, WQD will request WWAB consider the proposed revisions and make a recommendation of adoption to the Environmental Quality Council.

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