

# Wyoming Environmental Compliance and Public Land News - August 2014

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Insight — 8/5/2014

### Public Land News

#### **BLM News**

##### Proposed Bill Would Revise Oil and Gas APD Permit Process

After the Government Accountability Office issued a series of reports criticizing the BLM's management of oil and gas permitting earlier this year (available [here](#), [here](#), and [here](#)), ten western senators introduced a bipartisan bill in June (S 2440) to revise the agency's existing oil and gas permitting process. Beginning in 2016 and continuing through 2026, the bill would replace the current \$6,500 processing fee for APDs with a \$9,500 fee, indexed for inflation. The \$47.5 million generated annually by imposition of the new fee would be transferred to a BLM Permit Processing Improvement Fund. From 2016 through 2020, the bill would allocate fifteen percent of the fee revenue to the field office issuing the APD and the remainder to overall permit processing. After 2020, all fee revenue would be allocated to support overall permit processing. The bill would also allow BLM to increase the number of offices involved in the permitting program.

#### **Special Status Species News**

##### Comment Period for Habitat Rules Extended to October 9

On June 26, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service extended the public comment period until October 9 for two proposed rule changes and one draft policy relating to critical habitat designation and Section 7 consultation under the ESA (available [here](#)).

The proposed rules and policy changes would: (1) revise the definition of "adverse modification" used by the agencies during Section 7 consultation to evaluate the impact of federal agency actions on critical habitat; and (2) clarify the process and criteria for designation of critical habitat. The new rules provide a new definition of the "geographical area occupied by the species" and "physical and biological features," both used as criteria for designating occupied habitat. The most significant change to the rules may be the broadening of critical habitat to include areas of degraded and unoccupied habitat that the FWS deems as essential to the species survival and recovery, but that currently do not include any physical or biological features supporting the species' life history. The new definition of

"destruction or adverse modification" of critical habitat, which federal agencies must avoid in carrying out federally authorized or funded action, is expanded to include actions that "appreciably diminish" the conservation value of critical habitat, including actions that "significantly delay" the development of habitat that is not currently suitable for the species.

#### Final Policy on "Significant Portion of Range" Released

On July 1, FWS and NMFS released their final policy interpreting the language "significant portion of its range" as it relates to ESA Section 4 listing criteria (available here). To qualify as endangered under the ESA, a species must be "in danger of extinction throughout all or a significant portion of its range." However, neither the ESA itself nor agency regulations define this phrase.

The new policy aims to eliminate confusion, and identifies two situations in which a species may qualify as endangered: (1) it may be endangered throughout all of its range; or (2) it may be endangered throughout only a significant portion of its range. In the latter situation, a portion of a species range is deemed to be "significant" if the agencies determine that "the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all its range." If the species is found to be in danger of extinction within a significant portion of its range, the entire species throughout all its range will be listed.

While the new policy considers habitat occupied by members of a species on a seasonal basis as within the species range, it excludes habitat historically, but not currently, occupied.

#### FWS Releases Proposed Policy on Voluntary Prelisting Compensatory Mitigation

On July 22, 2014, FWS announced its proposed policy for voluntary prelisting compensatory mitigation. The policy is intended to incentivize prelisting conservation measures on federal and non-federal land by allowing parties engaging in prelisting conservation actions to accrue credits, which can later be used to offset postlisting impacts to the species. The policy has been of greatest interest to stakeholders potentially affected by the impending listing of the greater sage-grouse.

Under the proposed policy, only conservation actions taken pursuant to a valid state plan, which is part of a larger written conservation strategy, could qualify as credit-generating conservation actions. In addition, credits can only be "spent" within the state in which they originated. Comments on the policy are due by September 22, 2014. For additional information, the Federal Register notice can be found here.

#### FWS Proposes Changes to Eagle Permit Rules

On June 23, the FWS issued a notice of scoping and announced five public meetings scheduled for late July and early August regarding its

efforts to revise its bald and golden eagle take permit rules. The agency seeks perspectives from government agencies, Native American tribes, scientists, industry, NGOs, and others on eagle population management objectives, compensatory mitigation, and programmatic permit issuance criteria. Input gathered at the meetings and during the comment period will serve to inform the agency's preparation of a draft EA or EIS, and proposed regulatory revisions. Before finalizing the EA/EIS and revised regulations, FWS will open another public comment period. Comments on the notice of scoping are due before September 22, 2014.

### Sage-Grouse News

- Western Governors Urge FWS to Allow States to Lead on Sage-Grouse

The Western Governors' Association (WGA) recently indicated that support for sage-grouse conservation efforts from western states and private landowners might wane if the greater sage-grouse is formally listed as threatened or endangered under the ESA.

According to Wyoming Governor Matt Mead, "nobody has a greater interest in doing the right things in our states than the governors." He added that the governors "want Washington to pay attention to what we're doing."

In a resolution adopted by the WGA, Governor Mead called for the federal government to reverse its position on the sage-grouse's candidacy for listing under the ESA, citing state conservation plans currently in place for the bird. The resolution states that the Association supports "all reasonable management efforts" designed to conserve species and prevent listing, and posits that FWS endorsement of state sage-grouse conservation plans "should give rise to a regulatory presumption by federal agencies that an ESA listing is not warranted."

The resolution also argues for state participation in ESA listing determinations—particularly for listings that could significantly impact state economies—and for use of state grouse conservation plans, rather than federal plans, in grouse management. Under the approach advocated in the resolution, federal agencies would have to use biological data collected by state wildlife agencies as a "principal source to inform listing decisions," and collaborate with state agencies to avoid duplicative data analysis. While federal agencies would review state plans, consult with states, and ultimately endorse the plans, states would take the lead on grouse conservation efforts. [Read the full text of the resolution here.](#)

- BLM Finalizes Lander RMP Revisions

In late June, the Bureau of Land Management (BLM) announced final approval of the Lander Resource Management Plan (Lander RMP), which will provide guidance to the agency for management

of 2.4 million acres of surface land and 2.8 million acres of sub-surface mineral estate in central Wyoming.

The Lander RMP, which is the first BLM resource management plan to specifically address greater sage-grouse habitat, incorporates Wyoming's sage-grouse core area strategy. Wyoming Governor Matt Mead, who was present at the signing of the document, said that, "by adopting Wyoming's plan, the BLM has taken a holistic view, strengthening sage-grouse protection and making our strategy more effective."

The Lander RMP also protects congressionally designated scenic and historic trails, creates a master leasing plan that seeks to balance resource development and protection of natural areas, and addresses livestock grazing on public lands.

- U.S. Fish and Wildlife Service Launches Sage-Grouse Informational Website

The FWS recently launched a new website entirely devoted to the greater sage-grouse and selected three public affairs officers to manage the agency's communication program.

The website provides information about efforts to protect the greater sage-grouse and its habitat and ways to get involved. It also includes the latest news on the bird, maps of its habitat, fact sheets, and official documents.

- Defenders of Wildlife Releases Report Questioning Wyoming's Core Area Strategy

Despite the fact that the Fish and Wildlife Service has approved Wyoming's core area strategy as an effective sage-grouse conservation approach, at least one environmental group is raising questions about whether other approaches may be better. Environmental advocacy group Defenders of Wildlife recently released a report criticizing Wyoming's sage-grouse "core area" conservation strategy for failing to restrict energy development and other land use activities potentially harmful to the bird. While recognizing Wyoming's pioneering efforts in sage-grouse conservation (the state was the first to implement a conservation strategy for the species based on large-scale habitat protection), the report claims that Wyoming's strategy will not adequately conserve the species and should not be used as a model for other state or federal plans.

## **EPA News**

[EPA Proposes Carbon Pollution Standards for Existing, Modified, and](#)

### Reconstructed Power Plants

Under a proposed rule issued June 2, 2014, EPA would mandate an average 30% reduction in total U.S. CO2 emissions from existing fossil-fuel-fired power plants by 2030. EPA expects the proposed rule will lead to \$7.3 billion in compliance costs by 2030, the rule establishes separate emissions reduction targets for each state, and requires states to submit plans to EPA detailing their proposed strategies for ensuring compliance.

EPA cites four methods states can use to reduce emissions at existing plants, but notes that states are not limited to these methods alone: 1) reducing emissions at existing coal plants via heat rate improvements, 2) replacing coal-fired generation with natural gas-fired generation (or other lower-emission generation), 3) replacing coal-fired generation with renewable generation or nuclear, and 4) reducing energy demand (and by extension, emissions) via energy efficiency incentives or regulations. Additionally, the rule would allow states to use regional cap-and-trade programs to meet the EPA standards.

The agency expects to finalize the proposed rule by June 30, 2015, and states would have up to one year from that date to submit their plans to the agency. States requiring more time to create a plan may request an extension: individual states would have an additional year to submit a plan, while states submitting multi-state plans would have two additional years.

Parties wishing to comment on the proposed rule must do so within 120 days of the date of its publication in the Federal Register, or October 30. The rule has drawn sharp criticism from Wyoming Governor Matt Mead, along with industry groups including the National Mining Association.

### Supreme Court Strikes Down Portion of EPA Greenhouse Gas Rules

On June 23, the Supreme Court in a 5-4 decision struck down part of an EPA greenhouse gas (GHG) reduction program, holding that the agency improperly required stationary sources to obtain permits if they qualified for the program based on greenhouse gas emissions alone.

Utilities, industry groups, and twelve states challenged the regulations, including vehicle emission standards and EPA's endangerment finding. The Supreme Court declined to address those issues, limiting its review to whether EPA's inclusion of GHGs in its Prevention of Significant Deterioration (PSD) program was lawful. The PSD program requires facilities to obtain permits before beginning construction or modification: to obtain a permit, the facility must incorporate the "best available" control technology to reduce emissions of harmful pollutants.

### U.S. House Committee and Wyoming Governor Questions EPA Proposed Definition of "Waters of the United States"

Congressional members and Wyoming Governor Matt Mead recently urged the Environmental Protection Agency (EPA) to withdraw a proposed rule that seeks to re-define "waters of the United States," a term that describes EPA and U.S. Army Corps of Engineers jurisdiction under the

Clean Water Act (CWA).

Democratic and Republican members of the U.S. House of Representatives Small Business Committee said the EPA failed to consider the economic impact the proposed rule could have on small businesses. Republican members also said the proposed definition, which uses words such as "adjacent" and "riparian area," does not clearly convey what waters would be covered under the CWA and related regulations.

Governor Mead called the rule "expansive, obtrusive, expensive and substantive," saying the definition would extend "well beyond the Congressional purpose and intent of the Clean Water Act." He also suggested the rule would expand the federal government's role in farming and ranching activities.

The EPA extended the period for public comment to October 20, 2014. More information on the rule, and instructions on how to submit comments can be found [here](#).

### **State News**

#### **WOGCC News**

##### **Bonding Increases Proposed for Wyoming Oil and Gas Wells**

As Wyoming struggles to close approximately 1,200 abandoned Powder River Basin CBM wells, and landowners and environmentalists clamor for higher bonding requirements on oil and gas wells, Wyoming Oil and Gas Conservation Commission Supervisor Mark Watson showed tentative support for increased bonding requirements. Wyoming could implement a "stair-stepped" approach to bonding, where companies pay in proportion to the number of wells they own. Industry groups oppose increased bonding for new oil and gas wells, saying higher payments are unnecessary, and would prefer instead to pay higher production taxes to finance the state's efforts to plug abandoned CBM wells.

#### **News From the Governor's Office**

##### **Wyoming Unveils New Energy Resource Tracking Website**

Wyoming Governor Matt Mead recently created a website as part of Wyoming's Action Plan for Energy, Environment, and Economy designed to highlight Wyoming's Energy Strategy.

After unveiling the website, Governor Mead stated that "energy and the environment are critical to the people of Wyoming and this strategy aims at striking a balance for our economic prosperity and quality of life." The website, which also provides overviews of the state's economic and environmental efforts, news and documents, contact information, will serve as another way for the public to receive updates on the state's efforts and to give input. The website can be found [here](#).

##### **Governor Mead Urges Federal Government To Follow Wyoming's Lead on**



### Pollution Control

In a statement released regarding EPA's new CO2 emissions standards for coal-fired power plants, Wyoming Governor Matt Mead criticized the agency's approach as "heavy-handed" and vowed to "take steps to fight for coal" should he find the regulations unreasonable. Mead cited Wyoming's positive track record of balancing energy development with environmental protection, and argued that the federal government should follow Wyoming's lead on energy "in all ways, but especially when proposing rules and regulations."

Along with seven other governors, Mead signed a letter to President Obama drafted by the Republican Governors Association that presses for withdrawal of EPA's proposed rule. The letter urges the Administration to adopt an energy policy that allows states to take the lead on regulatory issues, and argues that the EPA rule will result in job losses and higher energy prices for consumers.

### Jeremiah Rieman Appointed as Governor's Natural Resources Policy Director

Governor Mead selected Jeremiah Rieman as his Natural Resources Policy Director. Prior to this appointment, Rieman served as the governor's natural resources policy advisor, and worked as an administrator for the Wyoming Workforce Development Council.

### Wyoming Governor Asks for Public Input on State's Water Strategy

Wyoming Governor Matt Mead recently asked the public to play an active role in developing and finalizing the Wyoming Water Strategy.

In early June, Governor Mead released a list of possible initiatives that might be taken as part of the strategy. The list, which is described as a "pool of possibilities from which the final initiatives will be selected," includes ideas from the public for plans to build new dams or additional infrastructure in the Green River Basin and at Glendo Reservoir, to create a transbasin diversion from the Upper Green River to the North Platte system, to utilize hydropower, and to modify weather.

Governor Mead hosted nine listening sessions around the state last year and presented the results of those sessions at a public conference on June 9, 2014. More information on how to submit comments or take a survey relating to the Water Strategy can be found [here](#).

### Governor's Forest Task Force Preparing Final Report and Recommendations

The Wyoming Governor's Task Force on Forests is finalizing recommendations to help guide future discussion about forest management between the state, the federal government and private partners.

In 2013, Governor Matt Mead convened the Task Force to develop a more coordinated approach to managing the state's 11.8 million acres of forests

in light of the bark beetle epidemic, white pine blister rust, forest fires, invasive species, and drought. The Task Force is composed of a diverse group of stakeholders including industry, conservation groups, forest users and representatives of federal, state, and local government. Since November 2013, the Task Force has hosted five public meetings across the state.

More information on the Task Force, including meeting summaries and technical presentations, can be found [here](#).

#### Wyoming Files Application for CO2 Pipeline Corridor

As part of Wyoming Governor Matt Mead's Energy Strategy, the Wyoming Pipeline Authority (WPA) submitted to the Bureau of Land Management (BLM) a plan to establish pipeline corridors across the state.

The Wyoming Pipeline Corridor Initiative (WPCI) would establish 1,150 miles of pipeline corridors along existing rights-of-way on federal lands in most of Wyoming's counties and across nine BLM field offices. The plan is primarily designed to enable the transportation of carbon dioxide (CO2) to existing oil fields to enable enhanced oil recovery (EOR) through CO2 flooding.

Governor Mead, who seeks to reduce permitting time and enhance energy projects, said the WPCI "can assist industry, make CO2 from power plants an asset, reduce overall CO2 emissions and increase oil recovery." The state collaborated with BLM and other federal agencies to develop the plan.

More information on the WPCI, and a map of proposed corridors, can be found [here](#).

#### Governor Seeks Carbon Research Test Center

The Wyoming Legislature approved Governor Matt Mead's request for \$15 million to build an integrated test center for developing commercial uses of carbon. The center would be located adjacent to a coal-fired power plant in Wyoming, and would supply gas to researchers attempting to develop different uses for CO2. The Governor has asked representatives from industry to work on this project, and is engaging with Wyoming utilities to explore interest in hosting the test center.

"Power companies and coal producers are excited about this proposal. Wyoming has an abundance of coal and we know we must find productive ways to put coal and its byproducts to use," Governor Mead said. "We are showing leadership in supporting this kind of advanced research."

#### **Wyoming Department of Environmental Quality (WDEQ)**

##### Non-Attainment Rules for Upper Green River Basin Delayed

The Wyoming Department of Environmental Quality (WDEQ) Air Quality Advisory Board (AQAB) recently moved to delay the recommendation of a proposed rule that would establish requirements for existing oil and gas



production facilities located in the Upper Green River Basin ozone nonattainment area (UGRB area).

The rule, which was proposed by the Air Quality Division (AQD) of the WDEQ, would establish requirements for all single and multiple well pad oil and gas production facilities or sources and all associated production equipment located in the UGRB area that were in existence as of January 1, 2014.

The AQAB said regulators need more time to consider concerns raised by industry and environmental groups who generally support the rule, but seek to propose some changes. The Petroleum Association of Wyoming, for example, is concerned that compliance by January 1, 2016, as the rule requires, is not achievable. The Environmental Defense Fund, on the other hand, asks that the rule be changed to require more frequent leak inspections and to cover compressor stations.

In July 2012, the Environmental Protection Agency designated the UGRB area as "Marginal" nonattainment for ozone under national air quality standards. Since then, the WDEQ has taken steps to address air quality in the area, including this proposed this new rule, creating new policies, forming a stakeholder task force, and releasing the UGRB Ozone Strategy.

The AQD hosted a public meeting on July 31, 2014 to consider comments on and inform the public about the proposed rulemaking. A telephone meeting will be held on August 4. The proposed rule, submitted comments and other information can be found here.

#### Public Comments Accepted for Bear River, Blacks Fork and Smiths Fork TMDLs

The Wyoming Department of Environmental Quality (WDEQ) announced completion of the Total Maximum Daily Load (TMDL) for portions of the Bear River, the Blacks Fork, and the Smiths Fork in southeast Wyoming.

The TMDLs determine the amount of specific pollutants that can be discharged into the waterbodies while still ensuring compliance with state water quality standards. The Bear River TMDL addressed sediment load, while the Blacks Fork and Smith Fork TMDLs looked at E. coli levels.

More information on all three TMDLs, as well as TMDLs generally, can be found here. Public comments on the TMDLs were accepted by the WDEQ until early July.

#### Water and Waste Advisory Board to Consider New Permit and Salinity Standards

On July 25, the Wyoming Water and Waste Advisory Board (WWAB) hosted a public meeting to discuss proposed revisions to Wyoming Water Quality Rules and Regulations.

Among the revisions proposed by Wyoming Water Quality Division was the inclusion of a passage that would ensure the WQD would issue a permit for land application of biosolids should the EPA refuse or fail to do so. The

WQD also proposed incorporating salinity standards and requirements into another chapter of the regulations which contains all permit program requirements. This would "consolidate all of the state point source discharge regulations under a single chapter in conformance with the intent of the Governor's rule streamlining initiative."

More information on the meeting and proposed revisions can be found [here](#).

#### CWA Section 319 Nonpoint Source Pollution Control Funds Available

The Water Quality Division of the WDEQ recently announced that it is accepting applications for water quality projects awarded under Sections 319 and 205(j) of the Clean Water Act.

Section 319 funds must be used to address nonpoint source pollution and are available on a competitive basis to public and private entities, including local governments, cities, counties, school systems, colleges and universities, nonprofit organizations, state agencies, federal agencies, watershed groups, for-profit groups and under limited circumstances, individuals. Section 205(j) funds are used to address water quality planning and assessment. These funds are available to cities, counties, and conservation districts on a competitive basis.

The funds, to be allocated in the Fall of 2014, are available for the 2015 fiscal year. A pre-submittal review by the agency is available to applicants who submit their draft proposals by August 4, 2014. Final proposals are due September 19, 2014. Application guidelines, required forms, and other information can be found [here](#).

#### DEQ Begins Testing Pavillion Groundwater

The WDEQ will begin testing groundwater near Pavillion, Wyoming for chemicals, glycol, surfactant, potential bacteria, pesticides and herbicides.

The testing will, for the most part, replicate an earlier study conducted by the U.S. Environmental Protection Agency (EPA) which concluded that the cause of groundwater contamination was nearby natural gas operations. The EPA's heavily criticized findings were never finalized or submitted for peer review. The EPA has since turned over its investigation to the state.

One shortcoming of the EPA study was its failure to consider the possibility of agricultural contamination. WDEQ groundwater section manager Mark Thiesse plans to conduct a more comprehensive analysis: "Everything we can think of we will look at."

Once the study is completed, it will be reviewed by an independent expert. The plan is to then send the report to Encana, which owns the gas fields in the area, and the EPA, for review before the report is released to the public. As the WDEQ studies groundwater, the Wyoming Oil and Gas Conservation Commission is studying the integrity of natural gas wells and produced water storage pits. These studies will undergo the same review process.

Members of the Pavillion Area Concerned Citizens filed a state records request for a draft of the reports, arguing that there is no legal basis for allowing Encana or the EPA early review.

More information on this story can be found [here](#).

#### Land Quality Division to Hold August 18 Meeting

The WDEQ LQD Advisory Board will hold a meeting via telephone conference on August 18 to address a vacancy in the advisory board and updates to the LQD rulemaking efforts. For more information on the meeting, [click here](#).

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