

Wyoming Environmental Compliance and Public Land News - August

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Insight — 8/1/2013

Public Lands News

House Natural Resources Subcommittee Holds Hearing on Powder River Basin Coal

On July 9, 2013, the U.S. House of Representatives Natural Resources Committee, Subcommittee on Energy and Mineral Resources held an oversight hearing on the importance of Powder River Basin coal. The hearing, entitled "Mining in America: Powder River Basin Coal Mining, the Benefits and Challenges," focused on the economic and national security importance of PRB coal. Witnesses at the hearing included Dan Coolidge, Chairman of the Campbell County Commission, Darrin Old Coyote, Chairman of the Crow Nation in Montana, Mary Hutzler, Senior Fellow at the Institute for Energy Research, and Acting Department of Interior Inspector General, Mary Kendall.

Commissioner Coolidge testified about the importance of PRB coal to the residents of Campbell County, the State of Wyoming, and the country as a whole. Chairman Darrin Old Coyote testified about the significant role the production and export of PRB coal has for the economic well-being of the Crow Tribe as well as America's energy independence. Several of the witnesses spoke about the political and regulatory challenges facing the coal industry in light of the Obama Administration's global warming policy initiatives.

The hearing also focused on the accuracy of a report that was recently issued by Acting Inspector-General Kimball, entitled "Coal Management Program, U.S. Department of the Interior." Wyoming Representative Cynthia Lummis and other members of the Natural Resources Committee challenged Ms. Kimball's critique of the procedures used by the Bureau of Land Management in determining the fair market value for federally leased coal deposits. In particular, Rep. Lummis challenged the report for failing to identify the numerous lease sales where the bids for federal coal exceeded BLM's determination of fair market value and instead focused solely on the few instances where coal was leased for bids that fell below BLM fair market value calculations.

For more on the hearing, [click here](#).

Sage-grouse updates

- **USGS Sage-Grouse Baseline Report Available.** On June 3, the U.S. Geological Survey released a report that documents and summarizes several decades of sage-grouse study, including activities, programs, and policies affecting its conservation. The report will support the Bureau of Land Management and U.S. Forest Service sage-grouse planning efforts by providing consistent baseline information on which to base environmental impact assessments and management decisions.
- **Pinedale Winter Concentration Area Report Released.** This spring, at the Governor's Sage-Grouse Implementation Team's request, the Wyoming chapter of The Wildlife Society spearheaded a team to review the methods for delineating winter concentration areas in the Pinedale area. The team's report, dated April 27 and released in May, finds that current techniques used to delineate winter concentration areas could be improved by developing a resource selection function (RSF) model that would use sage-grouse observation data, vegetation, and landscape features to create a map of important winter sage-grouse areas. Better information on winter concentration areas will improve winter conservation efforts. Encana has offered to pay for the cost of developing the RSF model.
- **BLM Pinedale Anticline Project Office Considers Sage-Grouse Mitigation Action Plan.** On June 27, BLM hosted a public meeting to present the details of its sage-grouse mitigation plan developed as an adaptive measure to respond to a drop in sage-grouse numbers at the leks in the Duke's Triangle Complex. The plan, available [here](#), prioritizes on-site measures within the Duke's Triangle Complex for immediate implementation, applying a theoretical model to identify priority habitats in the area. Near-site mitigation will occur within the next two years. And opportunities for off-site mitigation will be considered, but without an established timeline. A list of potential mitigation actions providing immediate sage-grouse benefits were identified for the priority areas, including increasing forb composition through seeding efforts, enhancing riparian areas, marking fences, and reducing human disturbance by limiting maintenance activity and pad construction during lekking season. BLM will report implementation progress annually. Public comments were due on July 3 and BLM is currently finalizing the plan.
- **Northwest Mining Association Questions Process and Science Behind BLM's National Technical Team Report Recommendations.** On May 20, the Northwest Mining Association released a report prepared by biologist Megan Maxwell that critiques BLM's process and final findings in the National Technical Team Report on sage-grouse released in December 2011. NWMA's report concludes that BLM's team made significant mischaracterization of past research, and that its report was based on methodological bias, substantial errors (including technical errors) and omissions, lack of independent authorship and peer

review. NWMA further criticizes the National Technical Team for failing to place its recommendations within the context of the Endangered Species Act and BLM's Special Status Species Manual. The report questions BLM's reliance on the NTT recommendations as it considers changes to resource management in its regional planning efforts.

Buffalo and Big Horn Basin RMPs Released

On June 28, BLM released draft revisions to the Buffalo Resource Management Plan. The Draft RMP is available [here](#). BLM's preferred alternative incorporates the Governor's Core Area Protection Strategy for limiting impacts to greater sage-grouse. The National Technical Team's recommendations are considered under Alternative B, and while not fully incorporated into the preferred alternative, some recommendations are included as required design features for activities in priority sage-grouse habitats. Comments are due in 90 days.

On July 12, BLM made available its supplement to the draft RMP for the Big Horn Basin (encompassing the Cody and Worland field office areas) to consider additional management restrictions to benefit sage-grouse. The supplement is available [here](#). The original draft RMP was released in April 2011 before BLM announced its region-wide sage-grouse planning effort. This supplement considers additional restrictions in sage-grouse habitat in response to the regional planning process. BLM adds two new alternatives that would designate Areas of Critical Environmental Concern covering between 1.1 and 1.2 million acres of sagebrush habitat. BLM's preferred alternative, however, remains unchanged, and continues to afford sage-grouse protection consistent with the Governor's Core Area Protection Strategy. The supplement is available for 90 days of public comment.

BLM Extends Comment Period for Proposed Rule to Regulate Hydraulic Fracturing on Federal and Indian Land

The BLM published notice on June 10, 2013, that it was extending the public comment period by 60 days on the revised proposed rule to regulate hydraulic fracturing (fracking) on Federal and Indian land. Comments are now due to the BLM on or before August 23, 2013. The revised proposed rule focuses on regulation of (1) disclosure of chemicals used in fracking operations, (2) assurances of well-bore integrity, and (3) preparation of a water management plan for handling fracking fluids on the surface. The revised proposed rule can be found [here](#).

Wyoming State Agency News

WOGCC Begins Formal Rulemaking for Baseline Water Quality Testing

The Wyoming Oil and Gas Conservation Commission began formal rulemaking that would require baseline groundwater testing throughout the state. The proposed rule would require oil and gas operators to collect groundwater samples within half a mile of a proposed well location prior to

beginning development. Operators would need to submit the baseline sample results with an Application for Permit to Drill. The proposed rule also requires a monitoring program after the completion of wells. A Sampling and Analysis Plan specifying the sampling protocols for operators and contractors has also been proposed as Appendix K of the proposed rule. Baseline water testing is part of Governor Matt Mead's Wyoming Energy Strategy.

The proposed rule can be found here. Comments may be submitted and will be available on the agency's website. The Commission anticipates a public hearing and a decision on the final rule in October.

State of Wyoming Takes Over Investigation of Pavillion Water Quality Concerns

On June 20, 2013, the EPA announced that the State of Wyoming will further investigate drinking water quality in the rural area east of Pavillion, Wyoming. The EPA had been studying the area since 2009, after residents in the area complained of objectionable taste and odor in their well water. EPA began working with the State and Tribes to identify the source and extent of impacts on domestic well water quality. After several phases of sampling, EPA's domestic water well sampling results showed several constituents of concern; however, according to EPA's news release here. EPA was unable to determine the source of those constituents.

On the other hand, several environmental publications report that EPA found that abandoned oil and gas waste pits were responsible for some degree of shallow groundwater pollution in the area, but that deeper groundwater pollution was caused by hydraulic fracturing (fracking). EPA's news release does not implicate fracking as the cause of groundwater pollution, and instead states that "EPA efforts to evaluate potential migration pathways from deeper gas production zones to shallower domestic water wells in the Pavillion gas field are inconclusive."

The investigation by WDEQ and WOGCC will build off of the work EPA has completed and further study well bore integrity, waste pits and domestic water wells. To fund the study, Encana, the company operating the oil and gas wells in the area east of Pavillion, has made a grant in the amount of \$1.5 million. This grant will be used to hire a third-party expert to assist the State with the investigation. The investigation is scheduled to be completed and a final report issued by September 30, 2014.

Governor Mead Questions EPA's New Regional Haze Standards

Wyoming Governor Matt Mead provided testimony at one of two public hearings held by EPA in July regarding EPA's proposed federal implementation plan to reduce regional haze. Section 169 of the Clean Air Act requires EPA to regulate the visibility over Class I areas (wilderness areas and national parks). EPA directed states to prepare state implementation plans to regulate regional haze that limits visibility over Class I areas. EPA accepted part of Wyoming's state implementation plan to reduce regional haze, but proposed replacing part of the state rule with

a federal implementation plan.

According to Governor Mead and a state analysis of the federal plan, the proposed EPA rule will cost utilities \$1 billion in initial capital expenditures, followed by annual expenses of \$100 million. These costs borne by public utilities will be passed on to ratepayers and, according to Mead, the impact to regional haze will be negligible. Public comment and expert testimony was accepted July 17 in Cheyenne and July 26 in Casper. Written comments by Governor Mead, Wyoming's Congressional delegation, and WDEQ were submitted in June. The deadline for written comments has been extended; written comments may be submitted until August 26. EPA's proposed rule can be found [here](#).

WDEQ Posts New Industrial Stormwater Notice of Intent Requirements

A new small construction general permit was issued July 8, 2013, which replaces the permit that expired in 2011 and was continued until July 8, 2013. All projects beginning on or after July 8, 2014 must meet the requirements of the new permit. Projects started under the previous permit will need updated Storm Water Pollution Prevention Plans by January 1, 2014.

Effective July 1, 2013, a new Large Construction Notice of Intent (NOI) and a new NOI for the Mineral Mining General Permit and Industrial General Permit have replaced all previous versions. The new NOIs will facilitate upfront payment of WYPDES permit fees. All NOIs received after July 1, 2013 must use these new forms and include fee payments.

For more information on the new requirements, [click here](#).

AQD Proposes Revised Rules. WDEQ-Air Quality Division is proposing revisions to Chapter 3 (General Emission Standards), Chapter 4 (State Performance Standards for Specific Existing Sources), Chapter 5 (National Emission Standards), Chapter 6 (Permitting Requirements), Chapter 8 (Nonattainment Area Regulations), and Chapter 11 (National Acid Rain Program). The proposed revisions are generally to adopt by reference or otherwise comply with components of federal rules implementing the Clean Air Act.

Noteworthy proposed revisions include the revisions to Chapter 3, Section 2 (Emission standards for particulate matter) which is being revised to address the treatment of excess emissions. Chapter 6, Section 4 (Prevention of Significant Deterioration) will be updated to list new minor source baseline dates for fine particulate matter, (2) include revised language from the federal rule regarding treatment of condensable particulate matter, and (3) clarify when the maximum allowable increment is exceeded for particulate matter. Chapter 8, Section 5 will be a new section called the "ozone nonattainment emission inventory rule" which will require the submittal of emission inventories from facilities or sources located in an ozone nonattainment area(s) pursuant to the requirements of Section 182 of the Clean Air Act.

A rulemaking hearing before the Environmental Quality Council is scheduled for September 12 at the Herschler Building in Cheyenne. Written comments can be submitted until August 29. The proposed rules and instructions for submitting comments can be found [here](#).

Wyoming Game & Fish to Host Sage-Grouse Training. The Wyoming Game and Fish Department will host three public meetings in September to educate agency personnel and the public on the use of the sage-grouse Density/Disturbance Calculation Tool (DDCT). The Wyoming Geographic Information Science Center (WyGISC) will also include training on the Wyoming Interagency Spatial Database & Online Management (WISDOM) System. Trainings will be held from 9:00 a.m. to 3:00 p.m. on September 25 in Rock Springs, September 26 in Worland, and September 27 in Casper.

LQD Advisory Board to Consider Streamlining Rules. The LQD Advisory Board is set to meet via conference call on August 19, 2013 beginning at 10:00 a.m. to discuss LQD's initial review of the Coal and Noncoal Rules and Regulations for areas that may be streamlined. This review was initiated in response to the Governor's request that state agencies review their regulations for areas that may be reduced or removed in order to provide more effective and efficient regulation. For more information, [click here](#).

LQD Considers Rule Changes for In Situ Mining. The LQD has released proposed changes to its Chapter 11 Noncoal rules for In Situ Mining. The rules were last amended in 2005 and the proposed changes are intended to bring the rules up to date, improve efficiency in application processing, and address EPA concern regarding aquifer exemption boundaries. For more information on the rule changes, [click here](#).

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