

# Wyoming Environmental Compliance and Public Land News - August 2017

Insight — 08/08/2017

## Public Land and Environmental News

### EPA and BLM Methane Rules in Limbo

The fates of EPA's and BLM's methane rules remain very much intertwined and uncertain. Both agencies have announced a similar three-step process to revise, rescind, or repeal each rule consistent with the President's February 2017 Executive Order instructing cabinet officers to look for every opportunity to alleviate unnecessary regulatory burdens. Under the first step of this process, both agencies have sought to temporarily stay certain provisions of the rules using exceptions to the Administrative Procedure Act's (APA) general requirement that such actions must go through notice and comment rulemaking. Following a challenge from environmental groups, the D.C. Circuit struck down EPA's temporary 90-day stay, reviving the effectiveness of the rule. As of the writing of this newsletter, the D.C. Circuit is considering industry petitions for rehearing; although, it is notable EPA, itself, did not file a petition for rehearing. Thus, absent the D.C. Circuit granting industry's petition and reversing its prior decision, NSPS OOOOa will remain in effect pending further administrative action.

With regard to BLM's Venting and Flaring Rule, while merits briefing before Judge Skavdahl in Federal District Court in Wyoming has been extended to this fall, several environmental groups along with the attorneys general for California and New Mexico have challenged BLM's temporary stay. The lawsuit was filed in the Federal District Court for the Northern District of California and briefing in that case has been expedited. The case will share many similarities with the (so far) successful challenge to EPA's temporary stay of NSPS OOOOa, focusing on arguments that the BLM unlawfully sidestepped the APA. Unless and until plaintiffs prove successful in overturning the temporary stay, however, the January 2018 compliance deadlines under the Venting and Flaring rule remain stayed.

As noted above, both agencies have committed to a three-step process. The temporary stays mark step-one. The second step will be a formal notice and comment rulemaking to stay certain provisions of each rule. EPA published its proposed rule staying certain provisions of NSPS OOOOa on June 16, 2017 and will accept comments until August 9, 2017. BLM has not yet published a rule proposing to stay certain requirements of the Venting and Flaring Rule, but is expected to do so shortly.

Once the stays are in place for each rule under notice and comment

rulemakings, each agency plans to undertake formal rulemaking to revise, rescind, or repeal each rule. This third step in the process will constitute the substantive revisions to the rules. As evidenced by the quick challenges to the temporary stays, each stage of this process is likely to be litigated. For this reason, the fate of each rule is likely to be uncertain for quite some time. It will be critical for stakeholders to continue watching and participating in the respective court cases and rulemakings.

### **BLM News**

#### Interior Orders Review of Sage-Grouse Resource Management Plans

In early June, Secretary of the Department of the Interior Ryan Zinke signed a Secretarial Order calling for a 60-day review of the 2015 Sage-Grouse RMP amendments. Those RMP amendments, which were the culmination of years of cooperative local, state, and federal efforts to avoid a listing of the bird pursuant to the Endangered Species Act, put in place a range-wide conservation strategy that focuses on minimizing man-made disturbance in the best sage-grouse habitats. The RMPs, as discussed in the December 2015 newsletter, place caps on development in priority habitat ranging from 3% to 5%, generally foreclose any development within 3.1 miles of leks, and prohibit wind and utility construction in priority habitat.

One of the drivers of the review, according to Secretary Zinke, is the concern that states were not given a sufficient voice in, nor sufficient management flexibility as a result of, the RMP amendment process. Zinke promises that the review will "open up a state's ability to formulate a plan shaped to that state rather than just us."

Wyoming Governor Mead largely supported the BLM RMP amendments in Wyoming, which were consistent with the Governor's Executive Order and core area strategy, and less restrictive than management requirements in other states. Governor Mead and Colorado Governor John Hickenlooper wrote to Zinke asking that he not change course on the RMP amendments.

In addition to giving states more control of sage-grouse management, Interior will consider placing more emphasis on protecting or enhancing sage-grouse populations—numbers of birds—as opposed to focusing on habitat protection, which was the approach taken in the 2015 RMPs. Revisions to the RMPs may also incorporate captive breeding or predator control approaches. The mining industry has high hopes that any revisions to the RMPs will abandon the Obama administration's plan to withdraw 10 million acres of habitat from new mining claims.

A report by the Department of the Interior review team to Secretary Zinke on August 4 lists short- and long-term recommendations that Zinke has directed Deputy Secretary David Bernhardt to be implementing. Those recommendations include modifying oil and gas leasing policy to look for more opportunities in priority habitat, allowing states to set population objectives, investigating changes to the mineral withdrawal areas, and changing grazing management to reduce "improper grazing" while increasing livestock use. It is unclear how many of the recommendations will be implemented. Some may be accomplished through instruction

memoranda, while others may require plan amendments.

#### BLM Requests Input on Streamlining NEPA and Planning Processes

On July 3, BLM opened the door to new approaches and ideas to streamline both the National Environmental Policy Act process and land use planning processes. BLM's stated goal is to "identify inefficiencies and redundancies that should be eliminated . . . while ensuring that we fulfill our legal and resource stewardship responsibilities."

The call for comments starts the process anew to replace the BLM Planning Rule 2.0, which, as described in the June 2017 newsletter, was championed by the Obama administration and repealed by Congress in March. State and local governments asserted that the Planning Rule 2.0 left those governments with the highest interest in management of the public lands with less input into the planning process.

BLM sought comment from July 3 to July 24, 2017.

#### Secretary Zinke Orders DOI to Streamline APD Approvals

On July 6, 2017, Secretary of the Department of the Interior ("DOI") Ryan Zinke signed a secretarial order to tackle permitting backlogs and delays, identify solutions to improve the permitting process on federal lands, and to identify solutions to improve access to additional parcels of federal land that are appropriate for mineral development. The purpose of the order, as stated therein, is to ensure that quarterly lease sales are consistently held and to identify other ways the DOI may promote the exploration and development of both federal onshore oil and gas resources and federal solid mineral resources.

Zinke specifically directed Interior officials to address oil and gas permitting backlogs and delays. The Bureau of Land Management (BLM) is required by federal statute to issue a decision on an Application for Permit to Drill (APD) within 30 days. However, the BLM approved APDs on a 257 day average in 2016, and as of January 1, 2017, the BLM had 2,802 APDs pending. While emphasizing the importance of cutting bureaucracy and providing certainty to industry, Zinke acknowledged that Interior officials must still determine how to reduce the BLM's permitting timeline to the short 30-day window. The analysis will consider both the apportionment of staff and the review of permitting processes. Zinke noted, "[t]his is not going to be done overnight, because what we don't want is unintended consequences."

### **Species News**

#### Grizzly Bear Delisted

On August 1, 2017, the U.S. Fish and Wildlife Service officially delisted grizzly bears in the Greater Yellowstone Ecosystem. By conservative estimates, there are now close to 700 bears in the Greater Yellowstone Ecosystem, which includes Montana, Wyoming and Idaho. It will now be up to these states and tribal wildlife authorities to manage the populations in their respective jurisdictions so as to maintain a total of at least 500 bears and 48 females with cubs.

Wyoming Governor Matt Mead applauded the decision, stating that "Grizzly bears have met or exceeded recovery objectives since 2003 and have long warranted delisting." The State of Wyoming has been involved in the management, recovery and listing decisions. According to Wyoming Game and Fish chief warden Brian Nesvik, the state has already spent \$45 million on grizzly bear recovery and management and Wyoming Game and Fish was a member of the Interagency Grizzly Bear Study Team, which studied the status of the bear and recommended delisting.

It is anticipated that the delisting decision will spark litigation. On June 30, 2017, a number of groups submitted notices of intent to sue the Service for removing the grizzly bear from the endangered species list. The Center for Biological Diversity, EarthJustice, the Northern Cheyenne Tribe, Sierra Club and the National Parks Conservation Association collectively sent a notice of intent to sue as did the Humane Society of the United States. The Western Environmental Law Center and WildEarth Guardians also joined to file a notice of intent to sue.

#### Governor Mead Endorses ESA Reform

Wyoming Governor Matt Mead has officially endorsed a set of recommendations to improve the Endangered Species Act (ESA) developed by the Western Governors Association's (WGA) Species Conservation and Endangered Species Act Initiative, a group of stakeholders representing agriculture, energy, sportsmen and conservationists, and Federal, state and local governments. As chairman of WGA, Governor Mead launched this initiative to "promote and elevate the role of states in species conservation efforts and explore ways to improve the ESA."

Recommendations include statutory amendments, such as requiring the Department of the Interior Secretary to determine whether to designate critical habitat for a species and requiring the U.S. Fish and Wildlife Service to convene a 12-month recovery team following a listing to develop a recovery plan. Regulatory and administrative recommendations include considering whether assurances could be granted on public land as part of Candidate Conservation Agreements with Assurances for permitted public land users and requiring the Secretary to consider all efforts to protect a species when deciding whether to list. The recommendations also include funding suggestions.

The WGA and Governor Mead will now bring their recommendations to Congress, President Trump and the agencies in an effort to reform the ESA through law and policy.

#### **State News**

##### EPA Budget Cuts Will Impact Wyoming DEQ

Parts of the Trump administration's proposed cuts to the Environmental Protection Agency's (EPA) budget could be a problem for Wyoming. In order to run its programs and carry out national federal mandates, the Wyoming Department of Environmental Quality (WDEQ) receives a sizeable amount of federal funds, most of which come from the EPA. In March 2017, Administrator for the EPA, Scott Pruitt, proposed cutting the

EPA budget by nearly one-third.

In the president's preliminary budget, grant programs, like one recently awarded to the WDEQ for about \$1 million to clean up lakes and streams, would be cut. However, Todd Parfitt, WDEQ Director, has said he does not believe the proposed Trump administration cuts are likely to survive the congressional budget process.

About 27 percent of the 2017 WDEQ budget includes federal dollars and the rest of the budget comes from Wyoming's general fund and fee collections. WDEQ also gets a sizable amount from Abandoned Mine Lands funds. With those funds, over time the WDEQ will become more reliant on federal funds.

For more information click [here](#).

#### Plans Move Forward for Clean Coal Facility in Powder River Basin

A group of investors is planning to raise \$80 million to build a coal enhancement facility in the Powder River Basin. The Wyoming facility would be the first commercial plant to use a methodology perfected by Clean Coal Technologies to treat and dry coal so that it burns hotter.

Wyoming coal, while some of the cheapest in the U.S., burns cooler than its counterpart from places like Appalachia. The treatment may make Wyoming coal more attractive to foreign markets, which may allow Wyoming producers to increase the value of their coal.

The technology to be used at the proposed facility is U.S. designed, engineered and tested. It was modeled and first tested at a site in Oklahoma.

For additional information click [here](#).

#### WOGCC Proposes New Rules

On May 31, 2017, the Wyoming Oil and Gas Conservation Commission (WOGCC), published a Notice of Intent to Amend/Adopt Rules and Regulations proposing the adoption, update and amendment of procedural rules found in Chapters 1 and 5 of the WOGCC rules. The proposed amendment and adoption of rules and regulations primarily relate to and concern practice and procedure before the WOGCC, fees, costs and charges for inspecting, copying, and producing public records. The proposed changes do not affect Chapter 3 rules governing operations. The proposed changes are available electronically on the WOGCC website.

Written comments regarding the proposed amendments were to be submitted no later than July 28, 2017 for WOGCC consideration. Although a public hearing on the proposed rules has not been scheduled, a public hearing will be held if requested by twenty-five persons, a government subdivision or by an association having not less than twenty-five members. The proposed amendments will be considered by the WOGCC at its regularly scheduled meeting on August 8, 2017 at 9:00 A.M. in Casper, Wyoming.

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