

Keeping Up: What Wyoming Practitioners Need to Know About Recent Energy & Environmental Regulations

Thursday, September 15th

2:45 - 5:00 PM

Keith S. Burron
Crowley Fleck PLLP
237 Storey Boulevard Suite 110
Cheyenne, WY 82009
Phone: (307) 426-4100
kburron@crowleyfleck.com

Keith Burron joined Crowley Fleck PLLP's Cheyenne office as a Senior Counsel in 2015. His practice in the areas of water rights and water quality spans 25 years in both the public and private sectors. Keith maintains a regional practice in water and natural resource matters serving clients in the industrial, agricultural, energy and commercial sectors. In 2015, he was appointed as an Alternate Commissioner for Wyoming on the Upper Colorado River Commission and he closely follows water policy issues in the western states.

David D. Freudenthal
Crowell & Moring, LLP
1604 Pioneer Avenue
Cheyenne, WY 82001
Phone: (307) 996-1400
dfreudenthal@crowell.com

After winning an upset victory as a Democrat in one of America's most overwhelmingly Republican states, former Governor Dave Freudenthal served two terms as Wyoming's 31st governor. Freudenthal's eight years in office were marked by a constructive bi-partisan relationship with a Republican-dominated legislature, which ultimately moved the State of Wyoming forward on many fronts. Freudenthal strove to ensure Wyoming's long-term future by focusing on education, community-building and resource preservation. Freudenthal's administration worked to balance resource extraction and preservation with regulatory approaches designed to enhance long-term growth. Under his leadership, Wyoming was the first state to adopt meaningful regulation of hydraulic fracturing and worked to prevent a listing by the federal government of the Greater Sage Grouse. Freudenthal's administration was also devoted to establishing a legal framework for carbon capture and sequestration and increasing pipeline capacity and electric transmission infrastructure to move Wyoming's energy to national markets. Upon leaving the office of Governor, Freudenthal enjoyed one of the highest approval ratings in the nation.

Katie Schroder
Davis Graham & Stubbs LLP
1550 17th Street, Suite 500
Denver, CO 80202
Phone: (303) 892-7254
katie.schroder@dgsllaw.com

Katie Schroder is a partner at Davis Graham & Stubbs LLP in Denver. Ms. Schroder counsels clients on oil and gas leasing and development on federal lands and agency compliance with

the National Environmental Policy Act, Endangered Species Act, and National Historic Preservation Act.

Mr. Schroder is currently a vice-chair, and former chair, of the Public Land and Resources Committee within the ABA's Section of Environment, Energy, and Resources and sits on the board of directors of Western Energy Alliance. She also serves as a trustee to the Rocky Mountain Mineral Law Foundation.

After clerking for Justice Alex J. Martinez of the Colorado Supreme Court, Ms. Schroder began her career as an attorney-advisor in the U.S. Department of the Interior's Office of the Solicitor as part of the Solicitor's Honors Program. She then spent 10 years with a boutique law firm in Denver. She holds a B.A. from Rice University and a J.D. from the University of Colorado School of Law.

Alexander Karl Obrecht
Baker & Hostetler
1801 California Street, Suite 4400
Denver, CO 80202
Phone: (303) 764-4082
aobrecht@bakerlaw.com

Alexander K. Obrecht concentrates his practice on natural resources and energy regulation and litigation, including appeals, with a developing focus on energy transportation - particularly crude oil transportation by rail. He is part of the BakerHostetler team representing the Independent Petroleum Association of America and Western Energy Alliance in litigation against the U.S. Bureau of Land Management regarding its final rule on hydraulic fracturing on federal and Indian lands. Alex holds a B.A. in economics from Harvard University and a J.D. from the University of Wyoming College of Law. Prior to law school, Alex worked at Credit Suisse, a Swiss investment bank.

Nancy Elizabeth Vehr
Wyoming Department of Environmental Quality
Air Quality Division
200 West 17th Street, 3rd Floor
Cheyenne, WY 82002
Phone: (307) 777-3746
nancy.vehr1@wyo.gov

Nancy has been the Administrator for the Wyoming Department of Environmental Quality, Air Quality Division since November 2015. Prior to joining the Division, Nancy served as special counsel for a Wyoming law firm. Nancy also represented the Division for ten years while serving as a Senior Assistant Attorney General at the Wyoming Attorney General's Office. Prior to practicing law, Nancy was a nurse.

BakerHostetler



BLM'S HYDRAULIC FRACTURING RULE AND THE OBAMA ADMINISTRATION'S OIL & GAS AGENDA

Alexander K. Obrecht
 Wyoming State Bar Convention
 Keeping Up: What Wyoming Practitioners Need to Know About Recent
 Energy & Environmental Regulations
 Laramie, Wyoming
 September 15, 2016

8/17/2016

Wyoming State Bar: HF Rule

The Agenda

BakerHostetler

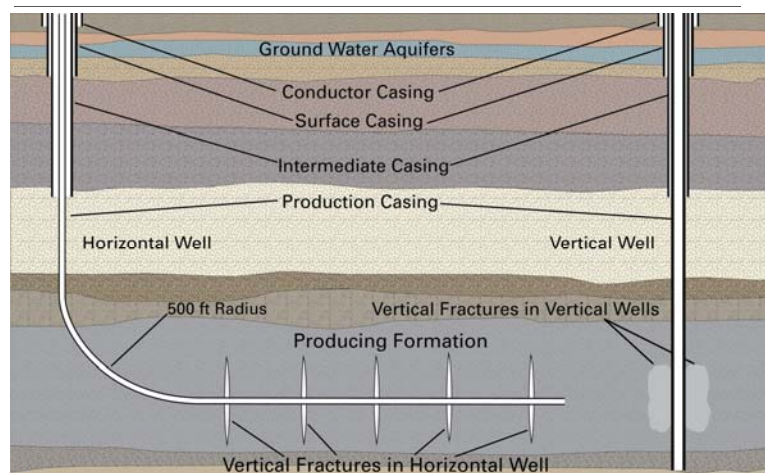
- The Hydraulic Fracturing Rule
- The Lawsuit
- Scope and Stakes of Hydraulic Fracturing on Federal Lands
- History and Politics



8/17/2016

Wyoming State Bar: HF Rule

Hydraulic Fracturing: What Is It?

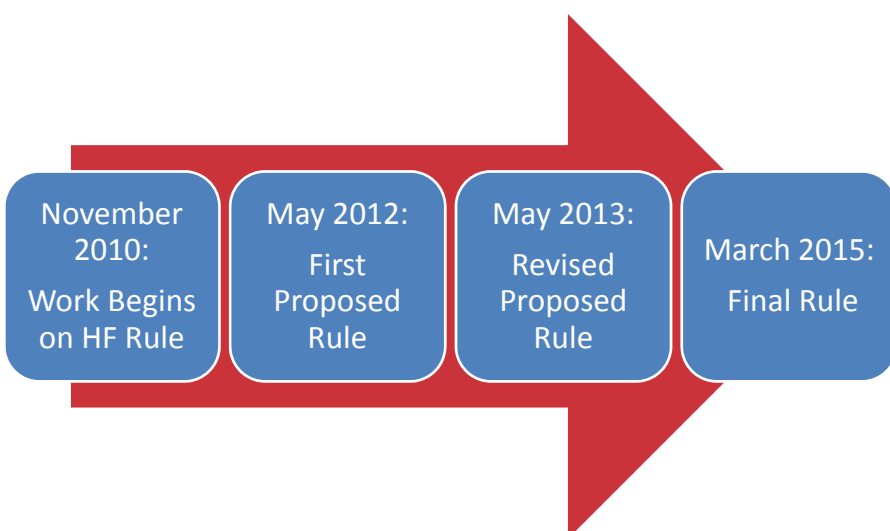


It is a well stimulation technique by which water, sand, and certain chemicals are injected into tight-rock formations (typically shale) to create fissure in the rock that allow oil and gas to escape for collection in a well.

8/17/2016

Wyoming State Bar: HF Rule

Rulemaking Timeline



8/17/2016

Wyoming State Bar: HF Rule

First Proposed Rule May 11, 2012, 77 Fed. Reg. 27,691

BakerHostetler

Focus on *"Best Practices"*

- Confirmation that wells used in fracturing operations meet appropriate construction standards:
 - Isolation of "usable water" up to 10,000 TDS ppm
 - CBLs before stimulation activities
- Require the public disclosure of chemicals used in hydraulic fracturing operations on Federal lands; and
- Require that operators put in place appropriate plans for managing flowback waters from fracturing operations.



8/17/2016

Wyoming State Bar: HF Rule

Moving the Needle: May 24, 2013, 78 Fed. Reg. 36,136

BakerHostetler

- **Well Integrity**
 - Type well concept
 - CEL v. CBL
 - Limited application to hydraulic fracturing
 - Revised definition of "usable water"
- **FracFocus**
- **Water Management**
 - Flowback vs. Produced Water
 - Pits vs. Tanks
- **Variances**



8/17/2016

Wyoming State Bar: HF Rule

Final Rule: 80 Fed. Reg. 16,128
Key Provisions

 **GET PRE APPROVED**
 It's quick, easy, and hassle free! Fill out our quick application and you'll receive a decision response online within seconds!



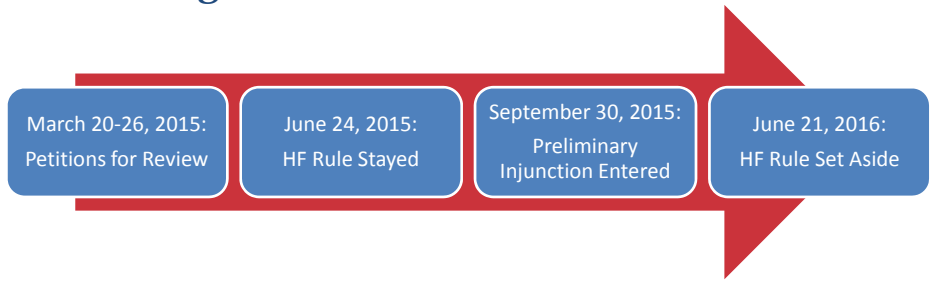
Frac Focus
 Chemical Disclosure Registry
www.FracFocus.org

8/17/2016

BakerHostetler

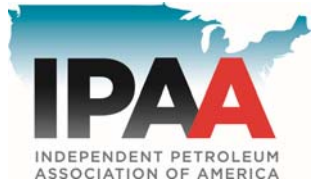
The Lawsuit

- **Petitioners**
- **Procedural History**
- **Preliminary Injunction**
- **Ruling on the Merits**




March 20-26, 2015: Petitions for Review	June 24, 2015: HF Rule Stayed	September 30, 2015: Preliminary Injunction Entered	June 21, 2016: HF Rule Set Aside
--	----------------------------------	---	-------------------------------------

8/17/2016 Wyoming State Bar: HF Rule





IPAA
INDEPENDENT PETROLEUM
ASSOCIATION OF AMERICA





WESTERN ENERGY
ALLIANCE


Raker-Hostettler











8/17/2016
Wyoming State Bar: HF Rule



The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.

U.S. Const. art. 4 § 3, cl. 2.

8/17/2016
Wyoming State Bar: HF Rule

The Safe Drinking Water Act prohibits “any underground injection” without a permit, 42 U.S.C. § 300h(b)(1)(A), (C), and defines “underground injection” as “the subsurface emplacement of fluids by well injection.”

[U]nderground injection of contaminants is clearly an increasing problem. Municipalities are increasingly engaging in underground injections of sewage, sludge, and other wastes. Industries are injecting chemicals, byproducts, and wastes. Energy production companies are using injection techniques to increase production and to dispose of unwanted brines brought to the surface during production. Even government agencies, including the military, are getting rid of difficult to manage waste problems by underground disposal methods. Part C is intended to deal with all of the foregoing situations insofar as they may endanger underground drinking water sources.

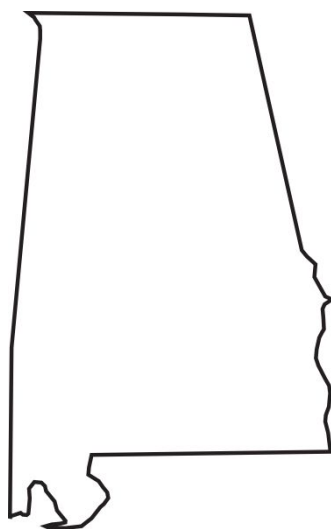
H.R. Rep. No. 93-1185, 1974 U.S.C.A.N. at 6481 (emphasis added).

8/17/2016

Wyoming State Bar: HF Rule

***Legal Envtl. Assistance Found., Inc. v. EPA,
118 F.3d 1467, 1474-75 (11th Cir. 1997).***

BakerHostetler



“The process of hydraulic fracturing obviously falls within this definition, as it involves subsurface emplacement of fluids by forcing them into cavities and passages in the ground through a well.”

“Congress directed EPA to regulate ‘underground injection’ activities, not ‘injection wells.’”

8/17/2016

Wyoming State Bar: HF Rule

Energy Policy Act of 2005

Regulations of the Administrator under this section for State underground injection control programs may not prescribe requirements which interfere with or impede—

(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations, or

(B) any underground injection for the secondary or tertiary recovery of oil or natural gas,

Unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection.

42 U.S.C. § 300h(b)(2)

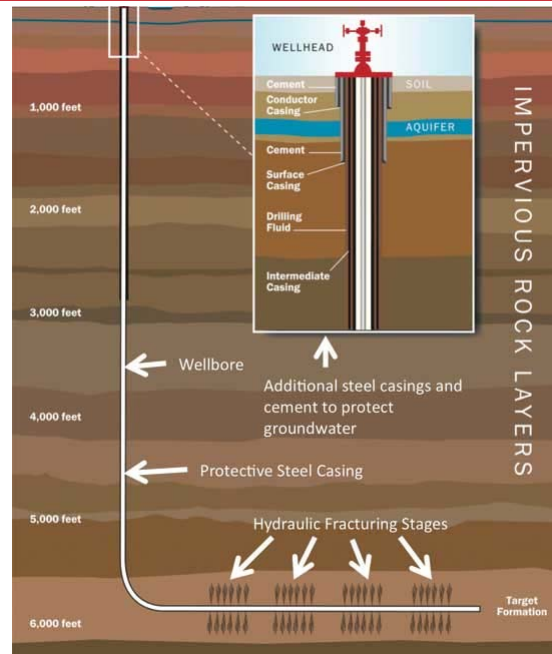
The term "underground injection" excludes "the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities."

42 U.S.C. § 300h(d).



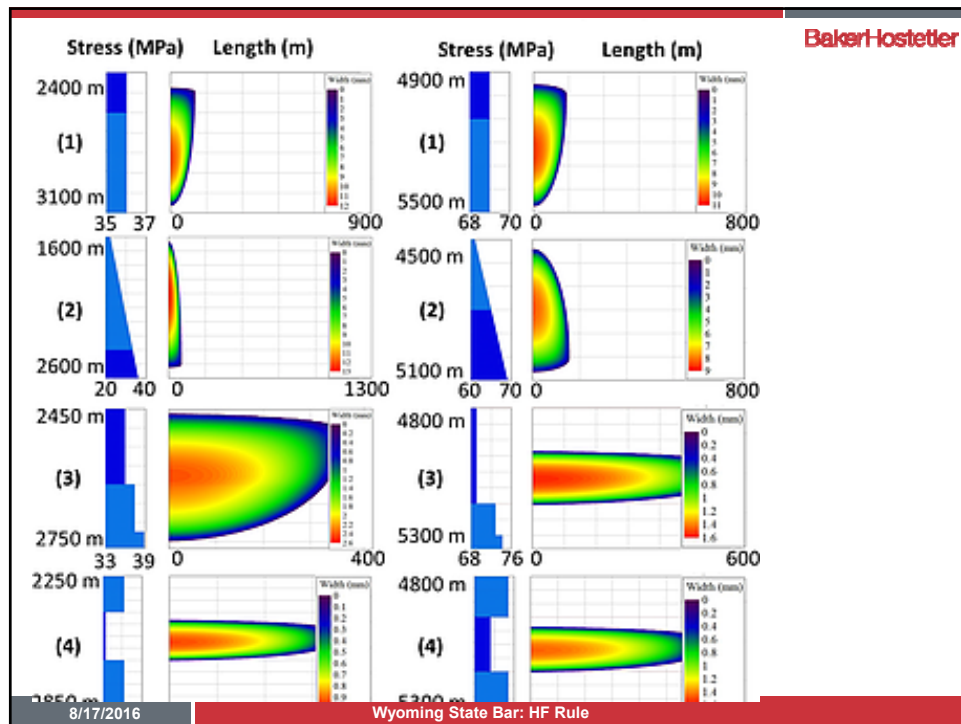
8/17/2016

Wyoming State Bar: HF Rule



8/17/2016

Wyoming State Bar: HF Rule

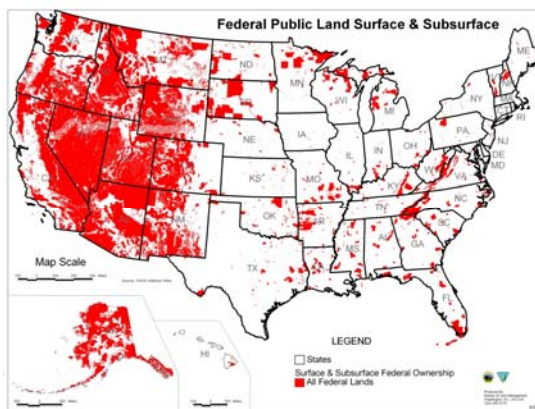


Scope & Stakes

- Federal Lands
- Surface Management
- Revenues

The Federal Mineral Estate

- 700 million subsurface acres
- 56 million acres of Indian mineral estate
- Appx. 36 million acres currently under lease (in 33 states)
- 47,000 active oil and gas leases on public lands*
- 95,000 oil and gas wells*



*As of June 30, 2014

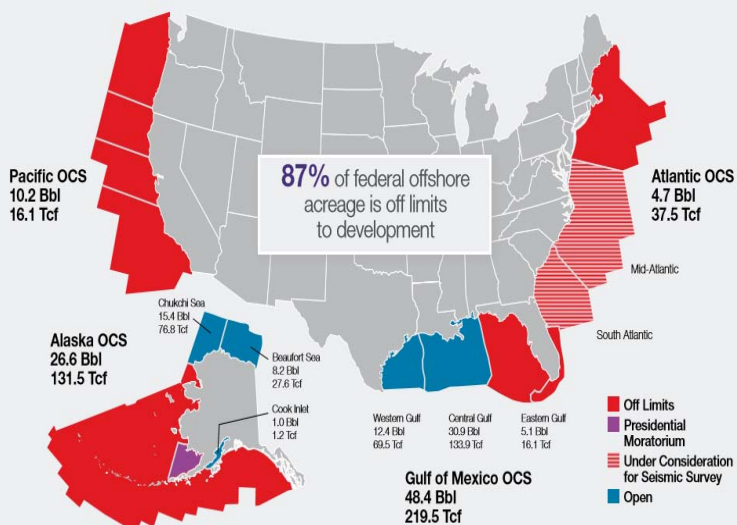
8/17/2016

Wyoming State Bar: HF Rule

17

U.S. Offshore Undiscovered Technically Recoverable Federal Oil and Natural Gas Resources

(billion barrels — Bbl and trillion cubic feet — Tcf)

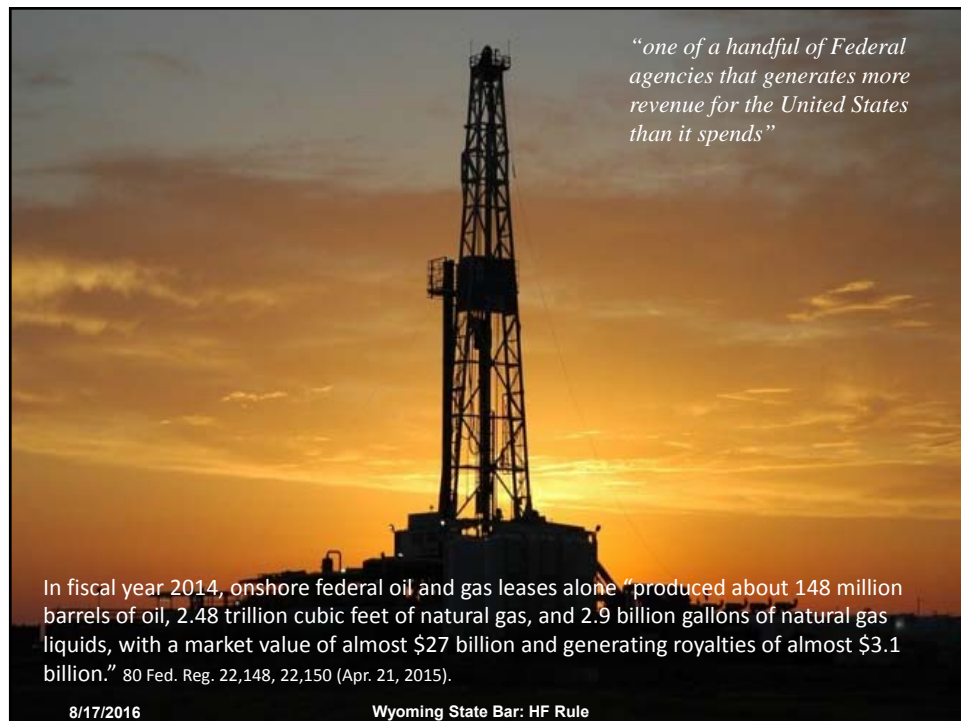
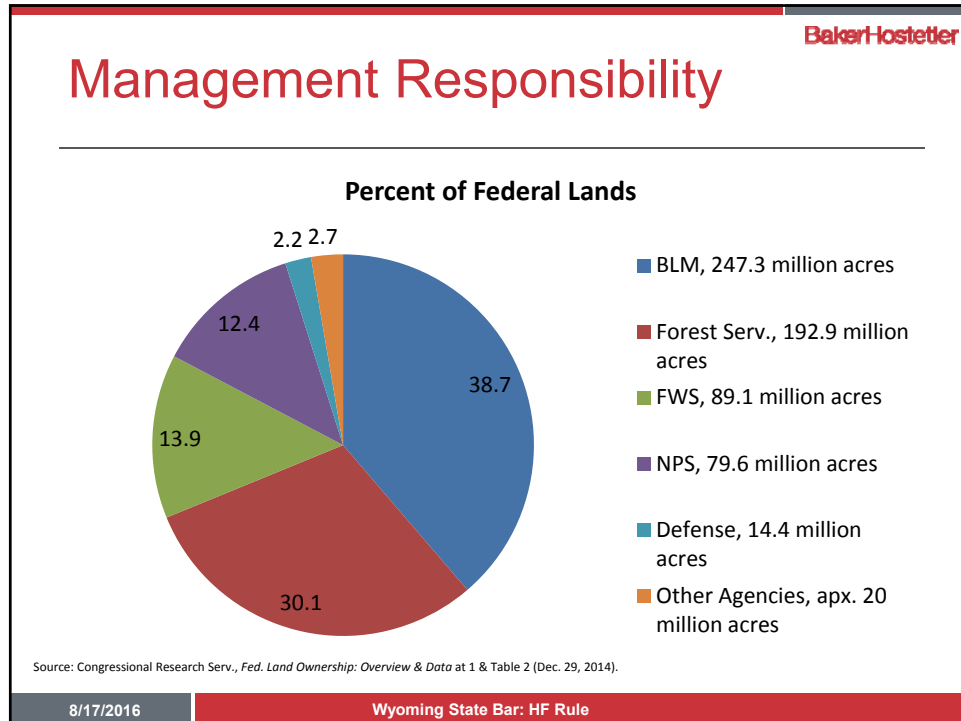


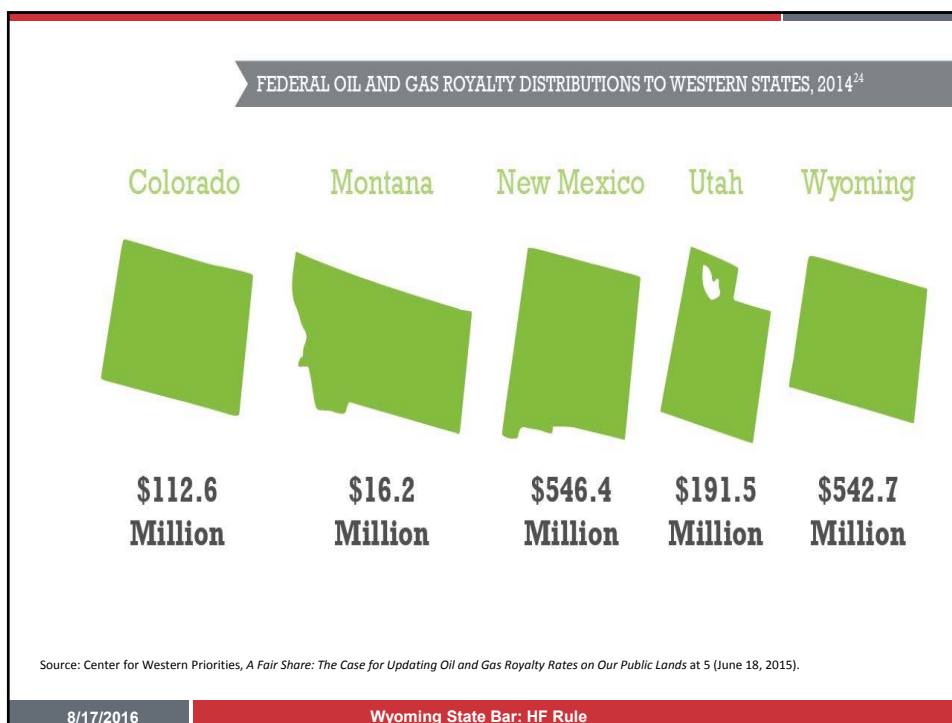
Source: The Bureau of Ocean Energy Management (BOEM).

Source: API, Feb 2015 Offshore Access Report

8/17/2016

Wyoming State Bar: HF Rule





BakerHostetter

Obama Administration

- The HF Rule: History and Significance
- Candidate Obama
- President Obama
- The Second Term “Regulatory Assault”
- The Federal Exodus

8/17/2016 Wyoming State Bar: HF Rule

Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands

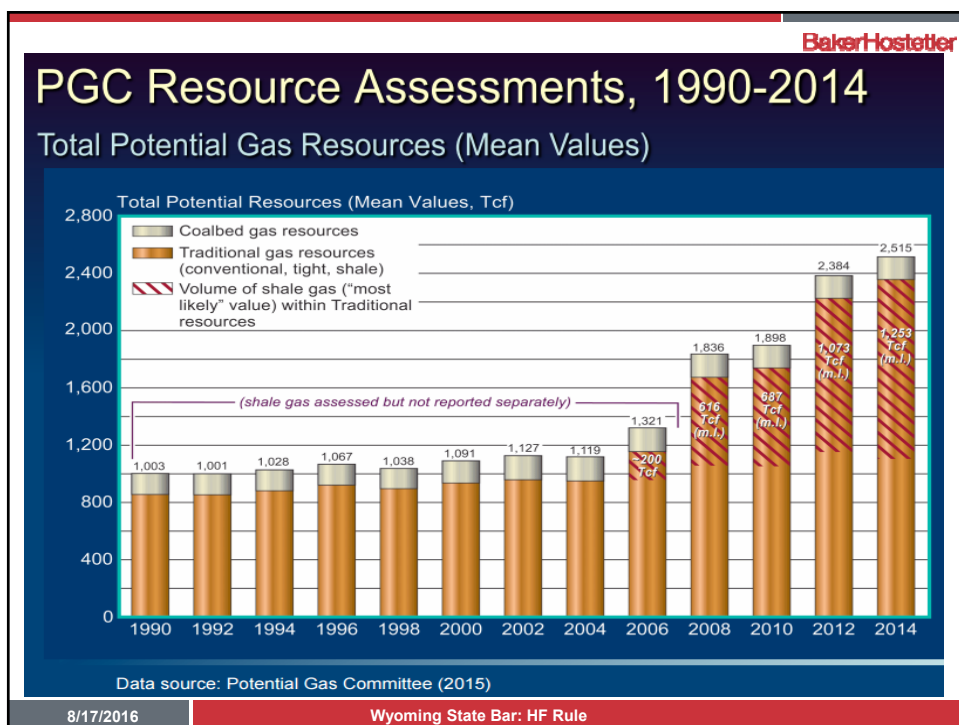
80 Fed. Reg. 16,128 (Mar. 26, 2015).

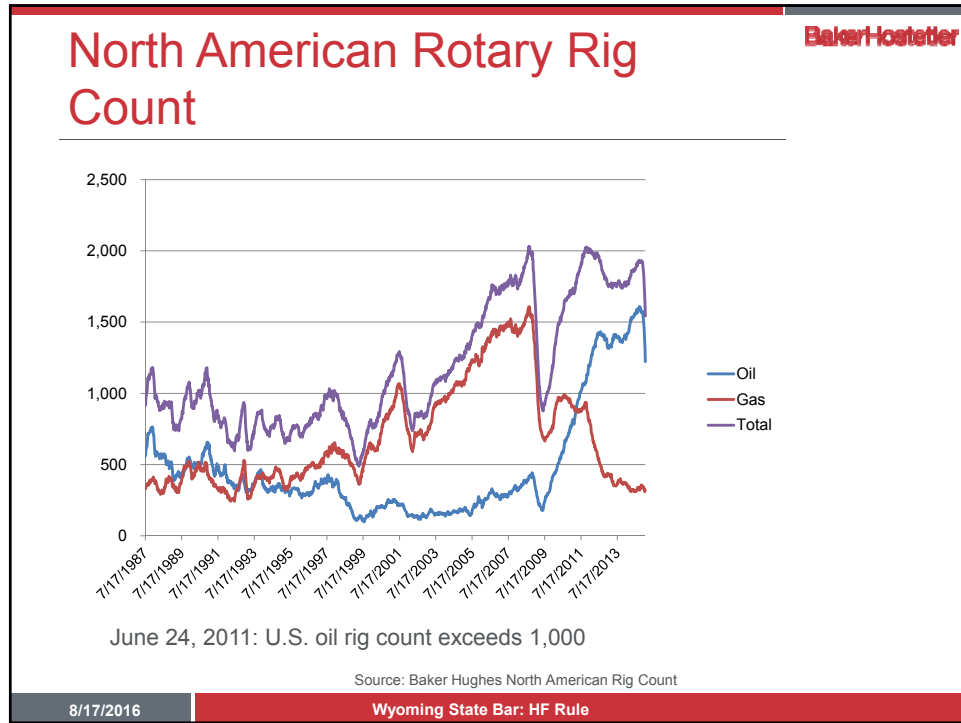
The BLM began work on this rule in November 2010, when it held its first public forum amid growing public concern about the rapid expansion of complex hydraulic fracturing.

80 Fed. Reg. at 16,128.

8/17/2016

Wyoming State Bar: HF Rule









State Response September 2010

1. Protection of Groundwater and the identification of permitted water supply wells within a quarter-mile of the drilling site;
2. Clarification of Requirements for well integrity, casing setting depths, casing design, and cementing properties;
3. Requirements for disclosure of well stimulation fluid chemical additives, compounds, and concentrations or rates; and
4. Requirements for the handling of recovered fluids

Source: Univ. of Wyo., *Hydraulic Fracturing: A Wyoming Energy Forum*, Summary Report at 6 (Sept. 26-27-2011).



8/17/2016
Wyoming State Bar: HF Rule

BakerHostetter

Local Efforts

BakerHostetter



August 2011: The Town of Dryden amends its zoning ordinance "to specify that all oil and gas exploration, extraction and storage activities were not permitted in Dryden." *In re Wallace v. Town of Dryden*, 16 N.E.3d 1188, 1192 (N.Y. 2014) .

8/17/2016

Wyoming State Bar: HF Rule

BakerHostetter

Cecil Ordinance No. 9-2011 (December 2011)




- Converts oil and gas development to a conditional use
- Includes regulatory oversight of:
 1. Road Use, Bonding, and Traffic Safety
 2. Site preparation (clearing and cutting)
 3. Equipment Placement
 4. Work and access hours
 5. Coordination with first responders
 6. Dust control
 7. Noise control
 8. Air Quality & Emissions
 9. Lighting restrictions
 10. Notice to adjacent stakeholders and local officials
 11. Application and Attorneys' fees
 12. Insurance
 13. Local officials' inspections
 14. Wildlife protection
 15. Security
 16. Worker Housing

8/17/2016

Wyoming State Bar: HF Rule

BakerHostetter

- Four oil and gas leases covering 2,700 acres in Fresno and Monterey counties
- Prepared an EA at leasing stage, relying on a 2006 EIS that envisioned a development scenario of fewer than 15 wells (and only one well on the lease parcels) within the next 15-20 years
- BLM reasoned site-specific review could be performed at drilling state
- 2 of 4 leases included NSO provisions



- Ctr. for Biological Diversity v. Bureau of Land Management*, No. C 11-6174-PSG (N.D. Cal. Mar. 31, 2013) (filed Dec. 8, 2011).

8/17/2016 Wyoming State Bar: HF Rule 31

I am absolutely certain that generations from now, we will be able to look back and tell our children that this was the moment when we began to provide care for the sick and good jobs to the jobless; this was the moment when the rise of the oceans began to slow and our planet began to heal.




Barack Obama
St. Paul, Minnesota
June 3, 2008

8/17/2016 Wyoming State Bar: HF Rule

Baker-Hostettler

“We’re going to have to prioritize”

Baker-Hostettler



“Energy we have to deal with today, . . . Health care is priority number two.”

Barack Obama (Oct. 7, 2008).
Belmont University (Nashville, Tennessee)

8/17/2016
Wyoming State Bar: HF Rule











8/17/2016
Wyoming State Bar: HF Rule

Broad Regulatory Initiatives

Regulations Rundown | Moves planned by the Obama Administration

REGULATORY ACTION	THE BASICS	PROPOSAL	FINAL
Hydraulic Fracturing	The Interior Department plans to require chemical disclosures and tougher standards for fracking for wells on public lands.	May 2013	early 2015
Methane Emission Regulations by the EPA	EPA has said it would decide whether to or to what extent it would establish the first national standard for methane emissions as an air pollutant.	January 2015	To Be Determined
Arctic Drilling	The Interior Department is writing proposed regulations for offshore drilling in the Arctic.	Early 2015	October 2015
Royalty Rates for Onshore Oil and Gas Leases	The Interior Department will seek comment on whether it should change the royalty process for onshore oil and gas leases to, according to the administration, "better ensure a fair return to the public."	Early 2015	To Be Determined
Blowout Preventers	The Interior Department is promulgating tougher standards for blowout preventers, a kind of drilling equipment that broke down and partly caused BP's Deepwater Horizon explosion in 2010.	February 2015	July 2015
Methane Emission Regulations by the Interior Department	Interior's Bureau of Land Management is writing a rule to require companies to cut down on how much methane, a component of natural gas, is vented from or flared from wells.	April 2015	April 2016
Reconsideration of a 2012 EPA Fracking Rule	Facing legal threats from both industry and environmentalists, EPA agreed to reconsider, and potentially expand, portions of a rule it finalized in 2012 cutting down on traditional pollutants from new hydraulically fracked natural-gas wells.	May 2015	June 2016
Transportation of Crude Oil by Rail	In response to the increase in crude-by-rail and a series of fiery accidents, the Transportation Department is upgrading its safety regulations for trains carrying flammable liquids (oil & ethanol).	July 23, 2014	2015
Renewable Fuel Standards	As required by a 2007 law, EPA requires increasingly large amounts of different types of ethanol to be blended into gasoline each year. Given multiple delays, EPA hopes to address the volume levels for 2014, 2015 and 2016 all in 2015.	November 15, 2013	2015

Source: U.S. federal government

Source: WALL STREET J. (Dec. 29, 2014).

8/17/2016


Wyoming State Bar: HF Rule

Second Term Regulatory & Enforcement Initiatives

Initiative	Date
"Unbundling" of processing costs	2012-2013
Private Oil and Gas Development within NWRS	Feb. 24, 2014
ONRR Civil Penalty Assessment	May 20, 2014
Rights-of-Way on Indian Lands	June 17, 2014
Valuing of Oil and Gas for Royalty Assessment	Jan. 6, 2015
Lease Terms	Apr. 21, 2015
"Major Portion Pricing" for Indian royalties	June 12, 2015
Onshore Order 3	July 13, 2015
Onshore Order 4	Sept. 30, 2015
Onshore Order 5	Oct. 13, 2015
Venting & Flaring	Feb. 5, 2016
Land Management ("Planning 2.0")	Feb. 2016

8/17/2016

Wyoming State Bar: HF Rule



Federal Regulations IPAA is Tracking

March 2016

Understanding that states have safely and effectively regulated the American oil and natural gas industry for decades, the following is a sample of the growing regulatory challenges that the industry is currently facing at the federal level:

- BLM Proposed Rule to revise planning activities to have more authority under FLPMA
- BLM final rule on hydraulic fracturing on federal lands (currently in litigation)
- BLM venting and flaring rule to reduce methane emissions (Onshore Order 6), which includes regulatory lift of 12.5% royalty rate
- BLM Onshore Order 3 on regulation of oil and gas operations dealing with site security and commingling
- BLM Onshore Order 4 on measurement of gas from federal leases
- BLM Onshore Order 5 on measurement of gas from federal leases
- BLM consideration of whether to raise royalty rates, rental fees, financial assurance (bonding) requirements and other requirements for oil and gas exploration and production
- BLM onshore right-of-way regulations
- Administration requests for new or higher fees or royalties
- BOEM rejections of lease extension requests in Arctic
- BOEM notice to offshore lessees regarding financial assurance requirements for the OCS
- BSEE offshore well control rule
- BSEE offshore production safety rule
- BSEE offshore Arctic rule
- BOEM offshore bonding
- BOEM offshore 5-Year Plan- BOEM Air Regulations for Offshore
- BOEM rejections of lease extension requests in Arctic
- NEPA CEO guidance on the impacts of greenhouse emissions and climate change
- ONRR royalty valuation
- ONRR ANPR for royalty rate increase, lease bonuses, rentals, civil penalties, and bonding requirements
- EPA and USACE final rulemaking on navigable waters definition (finalized but tied up in litigation)
- EPA effluent limitations guidelines
- EPA tighter standard for ozone pollution
- EPA emission regulations for methane and volatile organic compounds from oil and natural gas wells (NSPS Subpart OOOOa, CTOs for Ozone Nonattainment Areas, Source Determination, Minor Source Review on Tribal Lands)
- EPA consideration of emission regulations for existing oil and gas wells
- BLM and U.S. Forest Service protections for greater sage grouse
- USFWS protections for lesser prairie chicken
- USFWS and NMFS critical habitat rule
- USFWS and NMFS adverse modification rule
- USFWS and NMFS notice of proposed rulemaking on petitions to list species or designate critical habitat
- USFWS and NMFS final rule governing incidental take statements
- USFWS advanced notice of proposed rulemaking on voluntary prelisting conservation credits
- USFWS final policy on 403C/evaluation
- USFWS programmatic EIS on Migratory Bird Treaty Act incidental take permit program
- USFWS Final Rule for non-federal oil and gas development on national wildlife refuges
- USFWS Draft methodology for prioritizing bottlenecked species
- White House National Ocean Policy rule
- PHMSA regulation on crude oil testing
- PHMSA rule on regulation of tanker cars hauling crude oil and other flammable liquids by rail
- PHMSA pipeline integrity inspection rule
- PHMSA hazardous liquids pipeline management rule
- PHMSA safety of gas transmission pipelines
- OSHA rule on occupational silica exposure
- SEC proposed rule implementing Sec. 1504 of Dodd-Frank

For questions or more information, contact the IPAA government relations team at 202-837-4712 or www.ipaa.org.

- 3/15/2016 EPA Greenhouse Gas Reporting Program Changes with IPAA, AXPC
- 3/8/2016 BLM Venting and Flaring Information Collection Requirements with IPAA, AXPC
- 2/11/2016 BLM Canceled Lease Sales
- 12/23/2015 NPS 9B Regulations with API, IPAA, and AXPC
- 12/14/2015 BLM Onshore Order No. 3 with IPAA
- 12/14/2015 BLM Onshore Order No. 4 and No. 5
- 12/14/2015 BLM Onshore Order No. 4 with API and IPAA
- 12/14/2015 BLM Onshore Order No. 5 with API and IPAA
- 12/9/2015 EPA NSPS JJJJ
- 12/4/2015 EPA NSPS OOOOa and CTG
- 12/4/2015 EPA Tribal NSR
- 12/4/2015 EPA Source Determination
- 11/13/2015 Methane Challenge with IPAA and AXPC
- 10/16/2015 Extension Request for EPA, BLM Proposed Oil and Gas Rules
- 10/9/2015 BLM Onshore Order No. 3
- 8/28/2015 EPA Hydraulic Fracturing Study
- 8/12/2015 Onshore Order No. 3 Comments to OMB
- 7/6/2015 EPA Quad O SBAR Panel
- 4/22/2015 Quad O Storage Vessel Definition
- 3/17/2015 Ozone NAAQS 2015
- 2/22/2015 Greenhouse Gas Reporting Rule 2015 Revisions
- 11/26/2014 Bureau of Indian Affairs Proposed Rule for Rights-of-Way
- 11/14/2014 EPA Waters of the United States
- 9/18/2014 TSCA ANPR for Fracking Chemical Reporting
- 8/20/2014 EPA Tribal NSR ANPR for Oil and Natural Gas Permits
- 8/18/2014 EPA NSPS Subpart OOOO Amendments
- 8/18/2014 EPA Tribal NSR Engine General Permits
- 8/4/2014 US Forest Service Groundwater Directive
- 7/31/2014 Utah Division of Air Quality Four Rules for Oil and Natural Gas
- 6/16/2014 Methane White Paper with IPAA
- 5/30/2014 BLM Venting and Flaring Outreach
- 4/24/2014 Western Energy Alliance Subpart W Revision with AXPC
- 3/28/2014 Utah Division of Air Quality General Approval Order
- 3/17/2014 Tribal NSR with AXPC
- 1/27/2014 Social Cost of Carbon to OMB

Total Number of “Major” Final Rules Published 1997-2014

Calendar Year	Number of “Major” Final Rules
1997	61
1998	76
1999	51
2000	77
2001	70
2002	51
2003	50
2004	66
2005	56
2006	56
2007	61
2008	95
2009	84
2010	100
2011	80
2012	68
2013	80
2014	80

Source: Government Accountability Office

BakerHostetter

Land Management Agencies











8/17/2016 Wyoming State Bar: HF Rule

BakerHostetter





FERC
FEDERAL ENERGY REGULATORY COMMISSION







Office of Natural
Resources Revenue







**U.S. Department of
Transportation**

8/17/2016 Wyoming State Bar: HF Rule



Ensuring the Taxpayer a Fair Return for Federal Onshore Oil and Gas Resources Act of 2015
H.R. 4389, 114th Cong. (Jan. 13, 2016).

- Amend 30 U.S.C. § 226 to raise minimum royalty from 12.5% to 18.75%
- Double minimum bonus bid from \$2 to \$4 per acre
- Double minimum annual rentals from \$1.50 to \$3 per acre (and from \$2 to \$4 per acres after five years)



Rep. Alan Lowenthal (D-CA)

8/17/2016

Wyoming State Bar: HF Rule

Falling Behind



Source: W. Energy Alliance, Red Tape Nation

BLM believes that the additional information that would be required by this rule would be reviewed in conjunction with the APD and within the normal APD processing timeframe. If an operator submits a request in an NOI, however, further processing time should be expected. 80 Fed. Reg. at 16,177.

8/17/2016

Wyoming State Bar: HF Rule

Dare to Flare?

BakerHostetter



8/17/2016

Wyoming State Bar: HF Rule

January 12, 2016

BakerHostetter

BakerHostetter

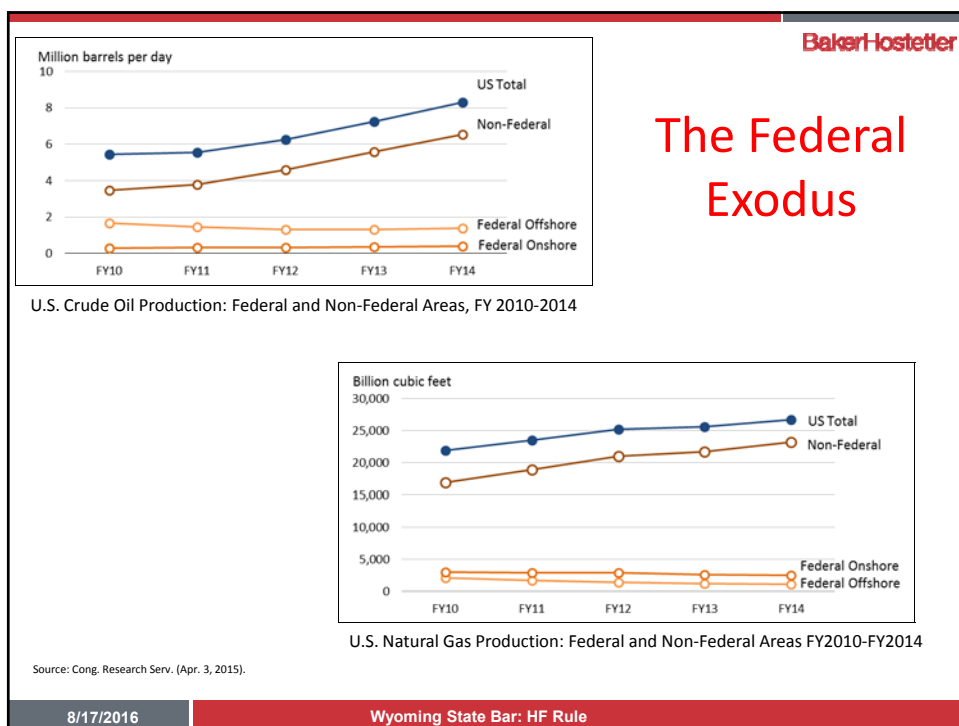


Washington Post / YouTube / MGN

That's why I'm going to push to change the way we manage our oil and coal resources, so that they better reflect the costs they impose on taxpayers and our planet.


8/17/2016

Wyoming State Bar: HF Rule



BakerHostetler

Thanks and Go Pokes!



Alex Obrecht concentrates his practice on natural resources and energy regulation and litigation, including appeals, with a developing focus on energy transportation, particularly crude oil and liquefied natural gas transportation by rail. Having grown up and attended law school in Wyoming, one of the leading energy-producing states in the country, Alex adds a practical understanding to the complex legal environment in which his clients operate.

Prior to law school, Alex worked with Credit Suisse, a Switzerland-based investment bank. During his tenure, he was involved in securities trading that occurred after the Macondo well blowout, which gave Alex insight into the corporate and financial aspects of issues affecting his energy clients.

Telephone: 303-764-4082
Email: aobrecht@bakerlaw.com

8/17/2016 Wyoming State Bar: HF Rule



Atlanta
Chicago
Cincinnati
Cleveland
Columbus
Costa Mesa
Denver
Houston
Los Angeles
New York
Orlando
Philadelphia
Seattle
Washington, DC

www.bakerlaw.com

These materials have been prepared by Baker & Hostetler LLP for informational purposes only and are not legal advice. The information is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. Readers should not act upon this information without seeking professional counsel. You should consult a lawyer for individual advice regarding your own situation.

© 2015 BakerHostetler®

Recent Federal Water-Related Initiatives Important to Wyoming Practitioners

Keith Burron

Crowley Fleck PLLP

Wyoming State Bar Annual Meeting, 2016

High Points for Wyoming Practitioners:

- **Federal Initiatives and Updates:**

- *Waters of the United States Rule (WOTUS)*
- *US Supreme Court's ACOE v. Hawkes Co. Decision*
- *EPA "Draft Technical Report" on the effect of stream depletions on aquatic life*

1. WOTUS Rule:

- EPA & Corps 2015 Rule defining “Waters of the United States” for jurisdictional purposes under the CWA. Proposed as a result of Supreme Court decisions providing guidance on reach of CWA that suggested a need for clarity over what is jurisdictional.
- Rule is Controversial and extensive PR campaigns on both sides:
 - Farm Bureau “Ditch the Rule”
 - EPA “Ditch the Myth” and extensive social media campaigns
 - GAO—Aspects of EPA’s social media campaign violated prohibitions against publicity or propaganda and grass roots lobbying.

Debate and uncertainty is most evident where there is typically little or no water — “Adjacent” and “Other” Waters under the Rule (“Significant Nexus”)





WOTUS Determination--Broad Reaching Effects

- Implicates several sections of the Clean Water Act—
 - Federal prohibition on discharges of pollutions except in compliance with CWA (Sec. 301)
 - Requirements for point source discharge permits (NPDES) and Dredge and Fill Permits (Sec. 402, 404)
 - Water quality standards and measures to attain them (Sec. 303)
 - Oil spill liability and spill prevention and control measures (Sec. 311)
 - Certification of compliance with state water quality standards (Sec. 401)
 - Enforcement (Sec. 309)
- Also impacts other federal laws, e.g., Oil Pollution Act, ESA (T&E consultation triggered by issuance of federal permits).

Current Status of WOTUS Rule and Challenges

- Final rule published May 27, 2015 effective August 28, 2015.
- Judicial review started before rule was final. Dozens of federal court challenges in district and circuit courts.
- Many circuit cases consolidated in 6th Circuit, which issued nationwide stay of the Rule on October 9, 2015 and found petitioners had demonstrated a substantial possibility of success on the merits of their claims. Subsequent 6th Circuit determination that it in fact has jurisdiction to hear the merits.
- North Dakota District Court challenge by 13 states, including Wyoming. District Court ordered stay of rule in the 13 states. Case on hold pending 6th Circuit's decision, but not dismissed.
- 11th Circuit also has case pending which could result in potential circuit split.
- Congress passed a joint resolution of disapproval that would have stopped the rule. President vetoed the resolution in February, 2016. Cases continue.

2. Supreme Court Case: *ACOE v. Hawkes Co.*, 5/31/16

- Issue: Is a Corps of Engineers approved Jurisdictional Determination (JD) final agency action appealable to federal district court under the APA?
- Background: Project proponent can seek a JD where there is a question about whether an action will affect WOTUS and require a federal permit, or whether no permit is required.
- Corps can issue a JD that is binding on EPA and the Corps for 5 years ("safe harbor").
- But, if JD finds jurisdiction present and the proponent disagrees, the Corps has historically said the JD is not reviewable final agency action under APA.
- That leaves proponents the option of risking an enforcement action if they proceed without a permit, or following the permitting process (time and money) and seeking review after a final permit decision.
- Proponent in *Hawkes* disagreed with Corps JD finding of jurisdiction and appealed the JD. D. Ct. found the JD not reviewable, 8th Cir. reversed, unanimous Supreme Court affirmed the 8th Circuit. So, approved JD's are final agency action appealable under the APA.

Thoughts Regarding *Hawkes* Decision

- Will Corps be reluctant to issue approved JD's and instead rely more on advisory preliminary determinations, which offer proponents less certainty and protection from potential enforcement?
- What does it mean for WOTUS cases, if anything? Justice Kennedy concurring opinion—CWA reach is notoriously unclear and “continues to raise troubling questions regarding the government’s power to cast doubt on the full use and enjoyment of private property throughout the Nation.”
- Justice Kennedy concurrence viewed as significant to WOTUS cases due to EPA and Corps heavy reliance on his prior concurring opinion in *Rapanos*, which spawned the agencies extensive development of the widely criticized “significant nexus” test in the WOTUS rule.

3. Draft EPA-USGS Technical Report: Protecting Aquatic Life from Effects of Hydrologic Alteration (Spring, 2016)

- EPA asserts the draft Report was “developed because hydrologic alteration can be a contributor of impairment for water bodies that are designated to support aquatic life.” (Regulations.gov EPA notice)
- Draft Report purports to be a “nonprescriptive framework” to “quantify flow targets for the preservation of aquatic life and habitat” and provides framework to “develop flow targets to protect aquatic life and habitat.”
- Comment period produced significant opposition to the draft Report from industry, states, water suppliers and agriculture.

EPA-USGS Draft Technical Report (Continued)

- Public Comments widely criticize the Report, highlighting that:
 - CWA jurisdiction is over pollutants, not flow.
 - The CWA does not permit regulation of flow and the Report recommends action in contravention of Section 101(g), which expressly protects the authority of states to allocate quantities of water.
 - The Report fails to consider the importance of water uses other than aquatic life, fails to accommodate unavoidable hydrologic alteration associated with all human activities, and incorrectly implies that hydrologic alteration is necessarily detrimental to aquatic life.
 - The report, styled as a “technical” document, also discusses policy and legal issues, recommending that states take certain actions to incorporate flow into water quality standards under the auspices of the CWA.
 - Wyoming commented through Governor’s Office, WDEQ and WSEO.

4. Water Issues Summary

- Current federal initiatives are asserting broader jurisdiction over what land and water features are jurisdictional under the CWA.
- Current federal initiatives are examining ways to broaden traditional water quality regulation to include control of land use and to include flow as a component of water quality regulation.
- Examples: WOTUS, Draft Aquatic Life Report, USFS Groundwater Directive (withdrawn), BLM Fracking Rule.
- Strong resistance by states and other stakeholders has been important to counterbalancing these federal efforts.
- The interplay between federal and state jurisdiction over water resources, and the evolving judicial landscape on these issues present significant challenges for Wyoming practitioners trying to advise clients on “routine” industry, agricultural and land use issues.

Thank You



Keeping Up: What Wyoming Practitioners Need to Know About Recent Energy & Environmental Regulations- Air Quality

Wyoming State Bar - September 15, 2016

Nancy E. Vehr



Disclaimer

Nancy is here on her own time. Her views and opinions are her own and do not necessarily represent the official policy or position of the State of Wyoming, the Department of Environmental Quality, or the Air Quality Division.

Highlights for the next 20 minutes . . .

- ▶ Overview of the Clean Air Act and Wyoming's Air Quality Program
- ▶ Recent/Pending Air Quality Regulations:
 - Clean Power Plan
 - Regional Haze
 - Sulfur Dioxide (SO₂)
 - Ozone
 - Exceptional Events
 - OOOOa (pronounced "Quadoay")
 - Source Determination
 - and many others . . .

Overview of the Clean Air Act

- ▶ Title I: Air Pollution Prevention and Control

PRIMACY - "Congress finds ... that air pollution prevention ... and air pollution control at its source is the primary responsibility of States and local governments ..." CAA § 101(a)(3)

PURPOSE: "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population" CAA §101(b)(1)

▶ How?

- National Ambient Air Quality Standards (NAAQS) CAA § 109
- Implementation Plans (SIP/FIP) CAA § 110
- New Source Performance Standards (NSPS) CAA § 111
- National Emission Standards for Hazardous Air Pollutants (NESHAPS) CAA § 112
- Prevention of Significant Deterioration (PSD) CAA §§ 160 - 169
- Visibility (aka Regional Haze) CAA §§ 169A & B
- Nonattainment Area Provisions CAA §§ 171-193

Overview of Wyoming Air Quality

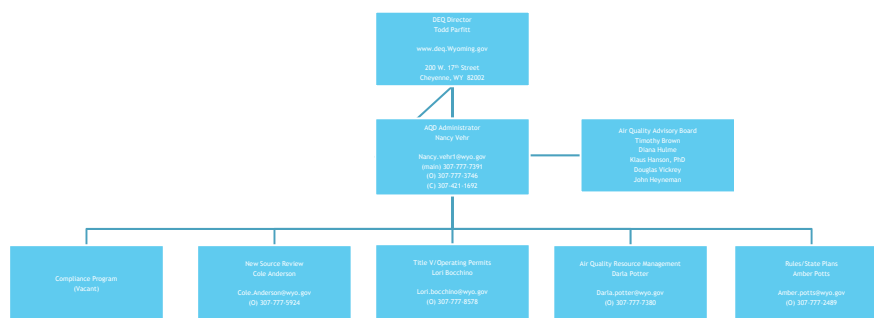
► Wyoming Environmental Quality Act (W.S. § 35-11-102)

“Whereas pollution of the air... of this state will imperil public health and welfare [create nuisances, be harmful, and impair beneficial uses]; it is hereby declared to be the **policy and purpose** of this act to enable the state to prevent, reduce and eliminate pollution; to preserve, and enhancement of the air ... resources of the state; to preserve and exercise the primary responsibilities and rights of the state of Wyoming; to retain for the state the control over its air ... and to secure cooperation ... in carrying out these objectives”

► How? (W.S. § 35-11-____)

- Article 1: General Provisions
- Article 2: Air Quality
 - Discharge/Emission restrictions (-201)
 - Ambient Standards (-202)
 - Title V Operating Permits (-203 to -212)
 - Greenhouse Gas Restrictions (-213)
 - Emission Trading (-214)
- Article 7: Complaints
- Article 8: Permits
- Article 9: Penalties
- Article 10: Judicial Review

Wyoming Air Quality Programs and Contacts:



Wyoming Air Quality District Offices

Wyoming Air Quality Compliance Districts



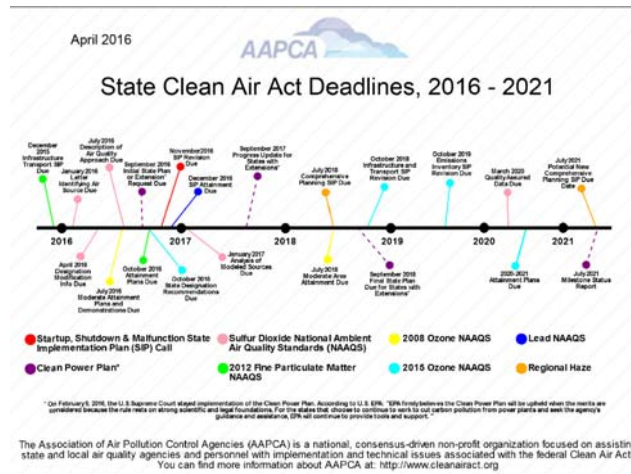
Legend

★ District Office	AQD Compliance Program Manager Fred Di Lella, 307-777-3774, fred.dilella@wyo.gov 122 West 25th Street, Herschler Building 2E, Cheyenne, WY 82002				
District 1	District 2	District 3	District 4	District 5	
Brian Bohlmann, P.E. 307-777-6993 122 W. 25th Street Cheyenne, WY 82002 brian.bohlmann@wyo.gov	Chris Hanity 307-473-3470 152 N. Durbin Street Suite 100 Casper, WY 82601 chris.hanity@wyo.gov	Tanner Shatto 307-675-5626 2100 West 5th Street Sheridan, WY 82801 tanner.shatto@wyo.gov	Greg Meeker 307-335-6932 510 Meadowview Dr. Lander, WY 82520 greg.meeker@wyo.gov	Tony Hoyt 307-335-6934 510 Meadowview Dr. Lander, WY 82520 tony.hoyt@wyo.gov	

Inventory, Monitoring, Permitting, And Compliance Tracking (IMPACT)

- ▶ Enhance the quality, efficiency, and consistency of the Division's management of air quality data
- ▶ Minimizes administrative permit processing time
- ▶ Minimizes repetitive data entry
- ▶ Submit data electronically
- ▶ Data transparency

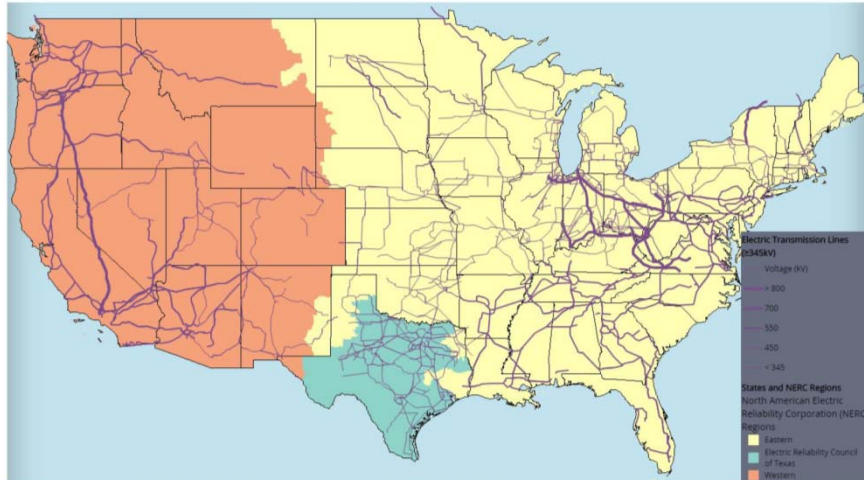
Recent/Pending Air Quality Regulations



Clean Power Plan

- * New Sources
- * Existing Sources
- * Federal Plan
- * Model State Plan
- * Clean Energy Incentive Program

Background: Electrical Grid



Background: Wyoming Electrical Generation in 2012

- ▶ 49.6 MWh
- ▶ 66% consumed outside of Wyoming
- ▶ Generation mix of 88% coal, 9% wind, and 3% NG and hydro
- ▶ Rate Based Generation of 2,331 lbs CO₂/MWh
- ▶ Mass Based Generation of 49,998,736 tons CO₂

New Sources aka § 111(b)

- ▶ 2012: EPA proposal
- ▶ 2014: EPA withdrew previous and re-proposed
- ▶ 10/23/2015: Final Rule - 80 FR 64510
- ▶ Coal Limits
 - New: 1400 lbs CO₂/MWh-gross with Supercritical Pulverized Coal and Carbon Capture
 - Modified: If >10% increase/5 years then standard = best historical annual since 2002
 - Reconstructed: 1800 - 2000 lb CO₂/MWh-gross if heat input >/< 2000 MMBtu/hr
- ▶ Natural Gas Limits
 - New/reconstructed 1000 lb CO₂/MWh-gross; 120 lb CO₂/MMBtu for non-base load
- ▶ Briefing through November 2016

Existing Sources aka § 111(d)

- ▶ 6/18/2014: Proposal (79 FR 34830) (WY Rate goal = 1714 lb/MWh; DSM)
WY DEQ and PSC Comments
- ▶ 10/23/2015: Final Rule 80 Fed. Reg. 64662
Decrease CO₂ EGU Emissions by 32% by 2030
WY Rate based goal for 2030 of 1299 lb CO₂/MWh (44.27%)
WY Mass based goal for 2030 of 31,634,412 tons of CO₂
Differences: State/regional; 3 Building Blocks (Efficiency, gas, RE)
Appealed to DC Circuit
- ▶ 12/21/2015: Wyoming Petitioned EPA for Reconsideration
- ▶ 1/21/2016: DC Circuit denied Motions for Stay
27 State Petitioners / 18 State Respondents
- ▶ 2/9/2016: US Supreme Court Stay
- ▶ 3/3/2016: Wyoming Budget Bill § 020, footnote 3
- ▶ 9/27/2016: Oral Argument, DC Circuit en banc panel

Existing Sources Briefing:

► Legal Issues:

- EPA's methodology for setting emission rates is flawed
 - No clear congressional authorization for significant effects on US economy
 - Standards not achievable at individual sources
 - Generation shifting ≠ standard of performance
- § 111(d) clause prohibits regulation because plants already regulated under § 112
- § 111(d) grants authority to States not EPA to establish standards of performance
- Tenth Amendment prohibits EPA from forcing States to implement

► Procedure/Record-based Issues:

- Violates rulemaking procedures because final rule is not logical outgrowth of proposal
- EPA did not adequately demonstrate BSER (reliable, efficient, not exorbitantly costly)
- Arbitrary & Capricious not to allow plants constructed before 2013 to generate credits
- Arbitrary & Capricious not to consider lignite unique, infrastructure build, & reliability
- Arbitrary & Capricious state goals

Existing Sources: Wyo Budget § 20, fn 3

3. No funds appropriated in this section shall be expended to produce a state plan to implement provisions of the Environmental Protection Agency's Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,662 (October 23, 2015) while the stay issued by the United States Supreme Court in the case of West Virginia, et al. v. EPA, et al., Docket No. 15A773, remains in force and effect. Nothing in this footnote shall prohibit the expenditure of funds by the department to attend meetings and otherwise be informed as to any potential need to develop and submit a state plan.

Existing Sources: STAY

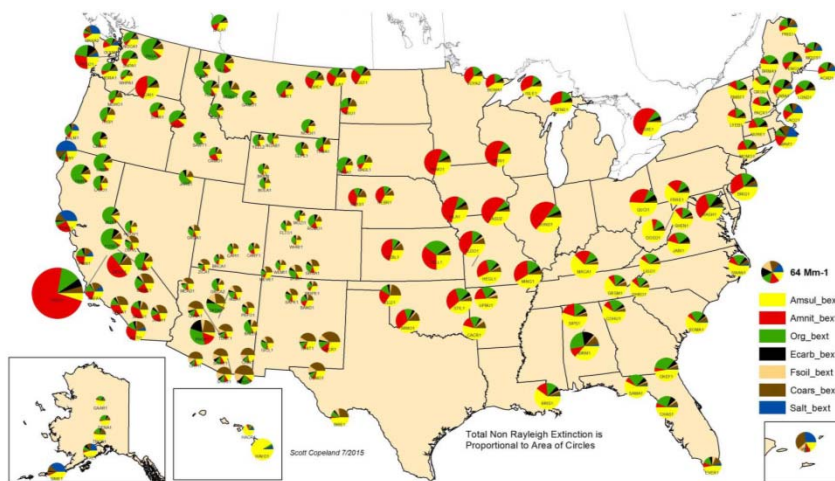
- ▶ 9/6/2016: Final Plan or Extension Demonstration Submittal
- ▶ 9/6/2017: Extension Demonstration Progress Update
- ▶ 9/6/2018: Extension Demonstration Final Plan
- ▶ 7/1/2021: State milestone status reports
- ▶ 1/1/2022: Start of Compliance Periods
- ▶ 7/1/2025: Step 1 goal state demonstration for period 2022-2024
- ▶ 7/1/2028: Step 2 goal state demonstration for period 2025-2027
- ▶ 1/1/2030: Deadline to meet emission goal
- ▶ 7/1/2030: Step 3 goal state demonstration for period 2028-2029
- ▶ 7/1/2032: State demonstration for final 2030 goal and every 2 years

Existing Sources NOT Stayed:

- ▶ Federal Plan and Model Trading Rules
 - 10/23/2015 - Proposed - 80 FR 64965
 - Rate - emission reduction credit
 - Mass - allowances
 - 1/21/2016 - Wyoming Comments
 - Stranded assets - remaining useful life
 - Impediments to market development
 - Early action credits/allowances is illusory
 - Automatic approval to avoid state plan backlog
 - Prefer state instead of federal administrative appeals process
- ▶ Clean Energy Incentive Program
 - 6/30/2016 - Proposed - 81 FR 42940
 - 9/2/2016 - Comment period ends

Regional Haze

Regional Haze: haziest day causes - 2014



Regional Haze

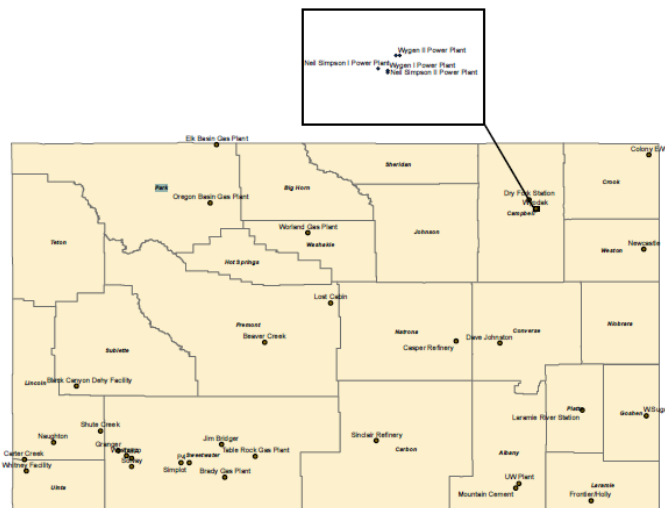
- ▶ 7/1/1999: EPA's Regional Haze Rule
- ▶ 2003 - 2011: Wyoming submits plan and revisions to EPA
- ▶ 12/12/2012: EPA approves Wyoming's Plan for SO₂ and PM
- ▶ 12/16/2013: Wyoming's 5-year progress report out for public comment
- ▶ 1/30/2014: EPA partially disapproves Wyoming's Plan for Nox
- ▶ 9/9/2014: Tenth Circuit stays EPA's disapproval
- ▶ 5/4/2016: Proposes Amendments to Plan Requirements - 81 FR 26942
Clarify, 7/2021 SIP due dates; Revise RAVI & Progress Reports
- ▶ 7/8/2016: Draft guidance document available for comment - 81 FR 44608
- ▶ 7/31/2018: Updated SIPs due

Sulfur Dioxide (SO₂)

SO₂: 2010 Standard/Implementation and DRR

- ▶ 6/22/2010: EPA Final Rule (75 Fed. Reg. 35520) - 75 ppb/1hr
- ▶ 8/5/2013: EPA nonattainment designations (78 FR 47191)
- ▶ 3/20/2015: EPA Updated Guidance for Area Designations
- ▶ 8/21/2015: Data Requirements Rule - 80 FR 51052 - Sources >2000 tons/yr
Emission Limit < 2000 TPY, Model, or Monitor
- ▶ 1/15/2016: AQD source list submitted
- ▶ 7/1/2016: AQD submitted Monitoring Plan and Protocols
- ▶ 7/2/2016: Round 2 Designations - None in Wyoming
- ▶ 1/1/2017: Monitoring Sites operational x 3 years
- ▶ 1/13/2017: Modeling Analyses submittal deadline
- ▶ 12/31/2017: Round 3 Designations [non-monitored areas]
- ▶ 12/31/2020: Round 4 Designations [monitored/other areas]

DRR: Wyoming Sources



Ozone

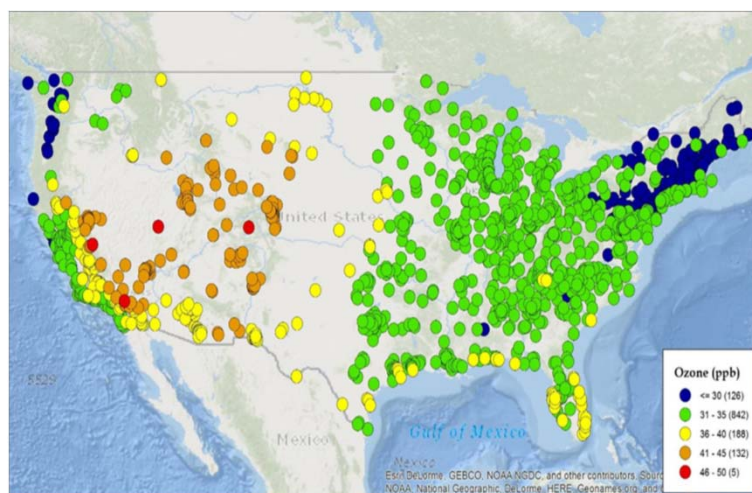
Ozone: 2008 Standard/Implementation

- ▶ 2008: Ozone Standard - 75 ppb (annual 4th-highest daily max 8hr avg)
- ▶ 5/21/2012: Nonattainment Designations
Wyoming UGRB
- ▶ 7/20/2015: Marginal Area Attainment Date
- ▶ 5/4/2016: Determination of Attainment for Wyoming's UGRB - 81 FR 26697
- ▶ 6/29/2016: Notice of lodging proposed Consent Decree - 81 FR 42351

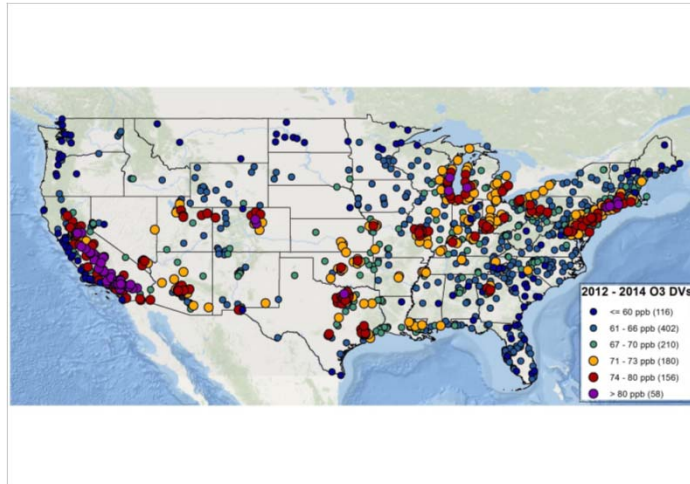
Ozone: 2015 Standard/Implementation

- ▶ 10/1/2015: Final Rule
EPA Ozone Implementation Memo
- ▶ 12/30/2015: EPA issued white paper on background ozone
- ▶ 2/25/2016: EPA issued Area Designations Guidance
EPA workshop on background ozone
- ▶ 10/1/2016: State's Proposed Designation Recommendations Due
- ▶ 6/2/2017: EPA's 120-day designation response letter
- ▶ 10/1/2017: EPA final designations
- ▶ 10/2018: Infrastructure State Plans Due

Background Ozone



Ozone Design Values: 2012-2014



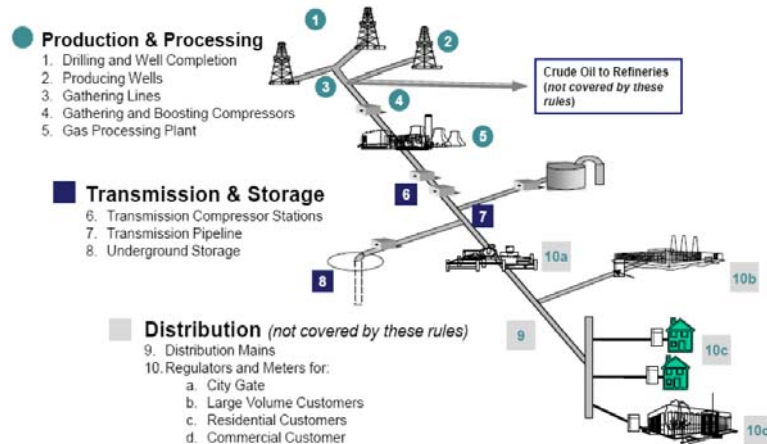
Exceptional Events

Exceptional Events and Wildfire Guidance

- ▶ CAA § 319 - may exclude monitoring data influenced by exceptional events from the calculation of whether a monitor is violating an ambient standard
- ▶ 11/20/2015: Proposed Rule, 80 Fed. Reg. 72840
- ▶ 2/3/2016: Wyoming Comments on proposed Rule and Guidance
- ▶ Final Rule (pending)

NSPS 0000a

NSPS 0000a Coverage:



Source: Adapted from American Gas Association and EPA Natural Gas STAR Program

NSPS 0000a

- ▶ 4/15/2014: EPA White Papers - Wyoming submitted comments
- ▶ 9/18/2015: EPA Proposed 0000a
- ▶ 6/3/2016: EPA Final Rule - 81 FR 35824
- ▶ 5/12/2016: Wyoming's 2016 Oil and Gas Permitting Guidance

- ▶ Don't forget about other federal actions . . . BLM Proposed Venting and Flaring Rule (81 Fed. Reg. 6616, 2/8/2016) . . .
 - DEQ's comments
 - BLM lacks air quality regulatory authority
 - Inaccurate emission stream assumptions
 - Creates redundancy and inconsistency
 - Variance process flaws

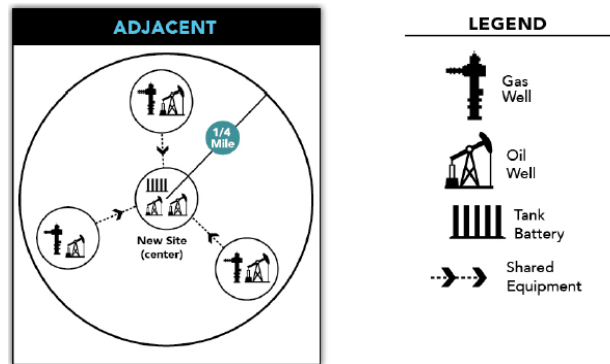
- ▶ Information Collection Requests: Existing Sources & Emerging Technologies

Source Determination

Source Determination aka Aggregation

- ▶ 9/18/2015: EPA Proposed
 - Option 1 - “Adjacent” means nearby (1/4 mile)
 - Option 2 - “Adjacent” means functionally interrelated (> ¼ mile ok)
- ▶ Wyoming’s robust permitting program applies Best Available Control Technology (BACT) and uses 3 part test:
 - Common control and ownership
 - Same 2-digit Source Industrial Classification Code
 - Contiguous or adjacent
- ▶ 6/3/2016: EPA Final (81 FR 35622)

Source Determination: Adjacent



Many other items . . .

- ▶ Ambient Standard reviews and implementation (Designations and Infrastructure plans)
- ▶ PSD Compliance Demonstration Tools (pending)
 - Significant Impact Level (SILs) Guidance for Ozone and $PM_{2.5}$
 - Model emissions rates for precursors
- ▶ Guideline on Air Quality Models (Appendix W to 40 CFR Pt. 51) (pending)
- ▶ E-Notice Rule for NSR and Title V Permitting (Wyoming Comments)
- ▶ Regional Consistency regulation amendments (final)
- ▶ Title V
 - Removal of the Title V “emergency” affirmative defense regulations (pending)
 - Title V Petitions (pending)
 - Title V Program and fee evaluation guidance (pending)
- ▶ Cross-State Air Pollution Rule (CSAPR aka “Transport Rule”) (pending)
- ▶ Part 58 Ambient Monitoring Revisions - 3/28/2016



QUESTIONS?

THANK YOU!

THE UNINTENDED IMPACTS OF AVOIDING A SAGE-GROUSE LISTING

KATHLEEN C. SCHRODER

Member
LexMundi
World Ready

Davis Graham & Stubbs LLP
DGSLAW.COM



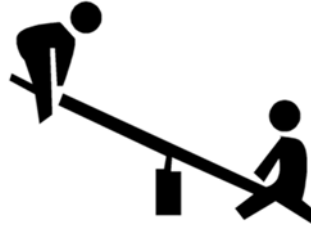
Davis Graham & Stubbs LLP
DGSLAW.COM





SAGE-GROUSE LISTING BACKGROUND

- Not warranted determination on January 12, 2005.
 - Overturned by court in December of 2009.
- Warranted but precluded determination in March of 2010.
- Threats cited included:
 - Lack of protection in land use plans
 - Energy development
- Center for Biological Diversity settlement required listing decision in FY 2015.



CHALLENGES TO LAND USE PLANS



- Western Watersheds Project challenged all Bush Administration RMPs in Idaho, Nevada, and Wyoming.
- In 2011, court in Idaho found that the Craters of the Moon RMP and the Pinedale RMP did not adequately protect sage-grouse.
- Court ordered BLM to prepare new RMPs by 2014 and 2016, respectively.



BLM'S RESPONSE

- Notice of Intent for Wyoming – May 28, 2010, 75 Fed. Reg. 30,054.
- Notice of Intent range-wide – Dec. 9, 2011, 76 Fed. Reg. 77,008.



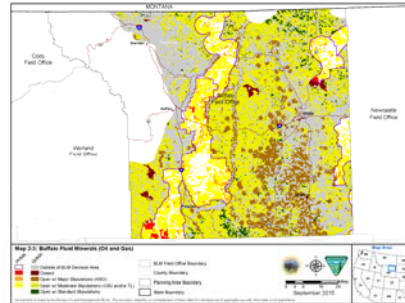
LAND USE PLAN AMENDMENTS

- Draft Environmental Impact Statements released in 2013 and 2014.
- Final EISs/Proposed Resource Management Plans and Plan Amendments issued May 28, 2015.
- Records of Decision released September 23, 2015 (Forest Service) and September 24, 2015 (BLM).

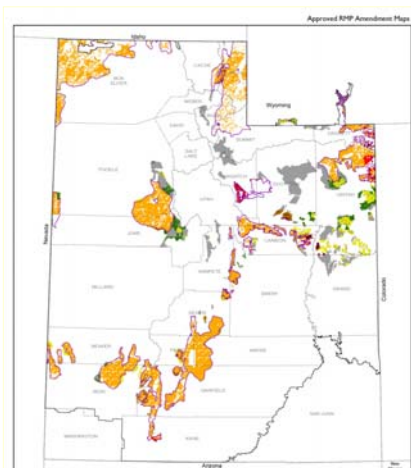


WHAT IT LOOKS LIKE: WYOMING

- 1 location per 640 acres
- 5% disturbance cap
- 0.6 mi NSO from leks in core
- 0.25 mi NSO from leks outside core
- Seasonal and timing – Dec. 1 to June 30



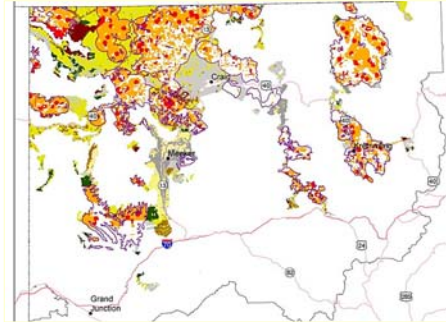
WHAT IT LOOKS LIKE: UTAH



- 1 location per 640 acres
- 3% disturbance cap
- 3.1 mi USGS lek buffers
- 4 mi noise restrictions and tall structures restrictions
- Seasonal and timing – Nov. 15 to Aug. 15 (2 to 4 mi)
- Compensatory mitigation = net conservation gain
- Adaptive management

WHAT IT LOOKS LIKE: COLORADO

- 1 location per 640 acres
- 3% disturbance cap
- 1 mi NSO around leks
- 3.1 mi USGS buffers
- Seasonal and timing – Mar. 1 to July 15 (4 mi)
- Compensatory mitigation = net conservation gain
- Adaptive management



AND THE VERDICT IS...

- Not warranted for listing as endangered or threatened.
- 80 Fed. Reg. 59,857 (Oct. 2, 2015).





LITIGATION!

- *Western Exploration LLC v. U.S. Department of the Interior*, No. 3:15-cv-00491 (D. Nev. filed Sept. 23, 2015) (suit by counties, the State of Nevada, and mining, ranching, and oil and gas interests). Cross-motions for summary judgment were filed by the parties on May 13 and May 18, 2016.
 - Preliminary injunction requested and denied January 5, 2016.
- *Otter v. Jewell*, No. 1:15-cv-01566 (D.D.C. filed Sept. 25, 2015) (suit brought by Governor Butch Otter in his official capacity on behalf of the State of Idaho). The court allowed environmental interests to intervene, but limited commercial interests to amicus status. Cross-motions for summary judgment were filed in February 26 and March 25, 2016.



MORE LITIGATION

- *Herbert v. Jewell*, No. 2:16-cv-00101 (D. Utah filed Feb. 4, 2016) (suit brought by Governor Gary Herbert, the State of Utah, and the Utah State School and Institutional Trust Lands Administration). Environmental interests' motion to intervene is pending.
- *Western Watersheds Project v. Schneider*, No. 1:16-cv-00083 (D. Idaho filed Feb. 25, 2016). On May 3, 2016, the Western Stock Growers Association and the Petroleum Association of Wyoming intervened.
- *American Exploration & Mining Ass'n v. U.S. Department of the Interior*, No. 1:16-cv-00737 (D.D.C. filed Apr. 19, 2016) (mining focus).



EVEN MORE LITIGATION

- *Western Energy Alliance v. U.S. Department of the Interior*, No. 1:16-cv-00112 (D. N.D. filed May 12, 2016) (oil and gas focus).