



## Office of the Governor

September 10, 2012

The Honorable Ken Salazar  
Secretary  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, D.C. 20240

Re.: Oil and Gas; Well Stimulation, Including Hydraulic Fracturing, on Federal and Indian Lands

Dear Secretary Salazar,

Thank you for the opportunity to comment on the Bureau of Land Management's (BLM) proposed rule for well stimulation, including hydraulic fracturing, on federal and Indian lands. Regulation of well stimulation and hydraulic fracturing is necessary and Wyoming regulates them. Federal rules are not necessary and have the effect of weakening the effectiveness of Wyoming's rules. I request you either reject the rules or give maximum deference to states already regulating these activities.

Unnecessary and duplicative regulations will reduce jobs and revenue. Oil and gas royalties from drilling on public lands are a significant source of revenue for the federal government and Wyoming. Former BLM Director Bob Abbey testified to the Senate in 2012 that there is already "a shift [in oil and gas production] to private lands in the east and south where there is a lesser amount of federal mineral estate." These rules result in a layered regulation pushing investment from public land and exacerbating that shift. The effect is fewer jobs, less economic development and a dangerous precedent for future federal regulatory actions.

In 2010, Wyoming was the first state in the nation to develop and adopt rules for public disclosure of chemicals used in hydraulic fracturing operations. Wyoming's rules address well-bore integrity and flowback water from hydraulic fracturing operations. These regulations were developed with sound science and create a responsible balance between environmental protection and energy production. The BLM regulations unnecessarily duplicate Wyoming's

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rules and introduce burdensome and unreasonable encumbrances to a process already efficiently and effectively managed by the State of Wyoming.

Under Wyoming's rules developers are required to provide information to the Wyoming Oil and Gas Conservation Commission (WOGCC) on any well whether it is on state, federal or fee land. For years, the WOGCC has worked with the BLM state office to ensure Wyoming's regulations are implemented consistently.

States are and have always been the primary regulators of the oil and gas industry. States have a responsibility to provide suitable protection for the public. Since 1996, the WOGCC has considered changes to its rules 19 times. States are nimble and can make or revise rules quickly with input from a variety of industrial and environmental interests. If the rules or the administration of those rules require work, we will take appropriate action. In comparison, the BLM's existing hydraulic fracturing regulations were established in 1982 and last revised in 1988.

While I believe you should reject the BLM's proposed rules, if you allow the BLM to implement proposed regulation, then I request the BLM develop a provision giving deference to those states effectively regulating hydraulic fracturing. The BLM's Surface Management regulations – 43 CFR § 3809.200 through § 3809.204 – provide an example worth considering. There, the BLM established a process that defers regulatory requirements to state administration in an effort to avoid unnecessary administrative delay and duplication. In Wyoming, the Department of Environmental Quality, Land Quality Division manages surface mining and exploration for locatable minerals on public lands. Public lands are protected and the BLM relies on the DEQ to meet both the State's and the BLM's obligation effectively with minimum expense and maximum efficiency. Wyoming manages hardrock mining on federal lands in partnership with the BLM.

I have attached additional comments on the BLM's proposed regulation. State agencies will provide detailed individual comments to the extent these rules pertain to the mission of their offices. Those comments are incorporated here by reference.

I appreciate your consideration of my comments and requests. Please do not hesitate to contact me.

Sincerely,



Matthew H. Mead  
Governor

MHM:mdm

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cc: The Honorable Michael B. Enzi, U.S. Senate  
The Honorable John Barrasso, U.S. Senate  
The Honorable Cynthia Lummis, U.S. House of Representatives

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### ***State Consultation***

BLM hosted public forums in North Dakota, Arkansas, Colorado, and Washington, D.C and consulted with Tribes, industry and the environmental community. The BLM has not, however, consulted with states, including Wyoming either formally or informally. This is troubling and contrary to the assertion that the BLM will work closely with state agencies. The BLM should not dismiss the states' role or expertise, especially when recycling state rules for federal regulation. I respectfully request the BLM consult with the State of Wyoming as soon as possible.

### ***Federalism***

BLM's proposed rule discounts Executive Order 13132, *Federalism*, stating "A Federalism assessment is not required because the proposed rule would not have a substantial direct effect on the states [or] the relationship between the national government and the states..." Federal Register, Vol. 77, No. 92. Wyoming's regulations are applied on federal, private and state lands. BLM's proposed regulation, as currently drafted, will have a substantial direct effect on the State of Wyoming and establishes a duplicative and inconsistent regulatory system without demonstration that additional public health, safety or environmental protection will be achieved. It sets a dangerous precedent that strains state-federal relationships. States, not the federal government, are best positioned to create effective public policy solutions. States are closer to the people, the jobs, the land and the water. Wyoming has the highest interest in doing it right. I respectfully request the BLM reconsider Executive Order 13132, in particular Section 2, "Fundamental Federalism Principles" and Section 3, "Federalism Policymaking Criteria".

### ***Water***

The BLM's proposed regulation blurs the lines between regulatory authority and Wyoming primacy. Article 8, Section 1 of Wyoming's Constitution provides, "The water of all natural streams, springs, springs, lakes or other collections of still water, within the boundaries of the state, are hereby declared to be the property of the state." Wyoming explicitly protects priority of appropriation for beneficial uses and the right to appropriate waters. Wyoming Constitution, Article 8, Section 3. The BLM should not, intentionally or unintentionally, challenge Wyoming water law or water rights. Wyoming is granted primacy for implementation of the Clean Water Act and the Safe Drinking Water Act. The BLM must not interfere with Wyoming's right to regulate and protect the quality of surface and ground water.

### ***BLM Budget and Staffing***

Federal permitting processes are crippled by chronic delay. Federal hydraulic fracturing rules will exacerbate this condition. Current drilling permit delays are attributed to staffing issues. New rules add new burdens. Declining budgets and reductions in staff are likely in the era of debt and slow economic recovery. BLM estimates annual workforce requirements to administer

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these regulations will range from 15 to 18 full time employees in 2013 (no justification for the estimate is provided). BLM would need to hire, train, and maintain a workforce with the appropriate knowledge and experience to adequately administer hydraulic fracturing regulations and this presents a challenge. The State of Wyoming adequately regulates oil and gas development and has committed resources to implement its regulatory program. There is no need for the BLM to expand its administrative footprint in Wyoming—and it is questionable if the federal government will have the fiscal wherewithal to do so.

### ***Economic Analysis***

The BLM oversimplifies the rule's costs and overstates its benefits. It has not provided an adequate assessment of socioeconomic and administrative impacts. The BLM economic analysis is insufficient and must be reconsidered. An inadequate economic assessment fails to give the public information on the consequences of the regulation, particularly in a time when jobs are at stake.

### ***Environmental Analysis***

The environmental assessment prepared by the BLM is insufficient. The draft regulation constitutes a “major federal action significantly affecting the quality of the human environment,” under the National Environmental Policy Act. *See* 42 U.S.C. § 4332(C). The environmental assessment fails to consider the true significance of the proposed rule. The BLM is required by 40 C.F.R. § 1508.27 to consider both the context and intensity of the effects of the draft regulation on the quality of the human environment. It is clear that the draft regulation will have far reaching effects in Wyoming and across the nation in both the short and long term. The impacts of the regulation will be costly, and in states like Wyoming with adequate existing regulatory schemes will provide no benefit. Moreover, hydraulic fracturing regulations must recognize unique characteristics of geography and geology, and the existing environmental assessment makes no effort to do so. The effects of the draft regulation, particularly the economic effects, are also highly controversial and uncertain. The draft regulation establishes a troublesome precedent for future actions, and most certainly will result in cumulative impacts that were not addressed in the environmental assessment. In sum, the BLM underestimates the significance of its action.