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**Before the  
House Natural Resources Committee**

*DOI Hydraulic Fracturing Rule: A Recipe for Government Waste, Duplication and Delay*

**May 8, 2013**

Chairman Hastings, Ranking Member Markey, and Members of the Committee, thank you for the opportunity to appear before you today. I am the Executive Director of the Wyoming County Commissioners Association (WCCA), which consists of the Boards of County Commissioners of all twenty-three Wyoming counties. The WCCA exists to strengthen the counties and the people who lead them through a program of networking, education and unified action.

WCCA believes that a Department of the Interior (DOI) hydraulic fracturing rule is unnecessary and unwarranted, as the State of Wyoming already has in place a robust hydraulic fracturing regulatory program.

**Infringement on Wyoming Water Rights**

The vagueness in the Bureau of Land Management's (BLM's) proposed rule, especially related to how the BLM intends to regulate hydraulic fracturing to "protect" and "mitigate" water quality impacts, leads to significant concerns of usurpation of the state's ownership and regulatory right over groundwater in Wyoming. Under the Wyoming Constitution "[t]he water of all natural streams, springs, lakes or other collections of still water, within the boundaries of the state" are property of the state. (Wyo. Const. Art. VIII, § 3). When Congress admitted Wyoming to the union in 1890, the federal government assented to the appropriation of the waters of the state to the government of Wyoming. In the hydraulic fracturing rule, the BLM intends to "protect all usable waters during drilling operations," an act which could usurp Wyoming's right under the Tenth Amendment of the United States Constitution to regulate its water resources.

On federal BLM land, the BLM is the surface owner, and most likely the mineral estate owner. However, the BLM is not the owner, nor the regulator, of the groundwater. The BLM's attempt to assert regulatory authority through the regulation of hydraulic fracturing over groundwater is an invasion upon the State of Wyoming's ownership and right to protect and regulate its groundwater. The BLM should defer regulation of hydraulic fracturing to the State of Wyoming and other states who have in place a robust fracking regulatory program and should not create a parallel federal system that is unnecessarily duplicative and will likely increase well permitting delays and costs.

**Wyoming's Hydraulic Fracturing Rule**

The State of Wyoming has led the nation in proactively regulating hydraulic fracturing. In 2010, Wyoming became the first state in the country to require the disclosure of hydraulic fracturing constituents. There was no requirement for Wyoming to develop hydraulic fracturing regulations. The

Wyoming Oil and Gas Conservation Commission self-imposed stringent regulations after extensive consultation with all involved stakeholders and in concert with public involvement and comment. Wyoming's regulations, which were developed locally and are best suited to address the local factors related to oil and natural gas development in this state, were developed based on sound science and the protection of public health, safety and the environment.

Regulation of Wyoming's water and energy development is best left to state government, as opposed to the adoption of a one-size-fits-all federal rule. State regulatory officials, who have specific statutory mandates to ensure protection of Wyoming's clean air, water and environment, as well as the conservation of the state's oil and gas resources, are in a far better position to regulate protection of the state's resources as opposed to the BLM, a federal public land management agency.

Operators are required to abide by Wyoming's rules no matter where their activities take place – federal, state or fee lands. There is no need for the BLM to duplicate Wyoming's efforts.

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

As local government officials, the county commissioners in Wyoming work very closely with the Wyoming BLM state and field offices and are all too familiar with their ever shrinking budgets, as well as their ever expanding work load. We have been told that the BLM will need to re-prioritize funding of its various programs in order to implement this new proposed regulatory program. We are extremely concerned that the local BLM budgets, which are already stretched too thin given the workload the BLM faces in Wyoming, will be severely impacted, and implementation of other key BLM programs will suffer or ultimately be eliminated.

As elected officials in a western federal land state with over 48% of federal lands, the commissioners rely upon federal land managed by the BLM to sustain our local economy. The counties feel a direct impact when our local field offices cannot meet their obligations, particularly when the result is the delay in energy permit application approvals. Given the BLM's inability to provide its local offices with sufficient resources to keep up with its current work load, it is not appropriate for the BLM to create a new regulatory program which it cannot ensure adequate funding for efficient implementation.

Additionally, we question the BLM's ability to hire and maintain a workforce with sufficient knowledge and experience required to adequately regulate hydraulic fracturing. A nationwide regulatory program administered by the BLM, which is duplicative of already existing state programs, will have a hard time hiring, training and maintaining a staff sufficient to successfully implement the proposed regulations, which will result in permitting delays. State experts are already in place in Wyoming and in other states with hydraulic fracturing regulations. Unnecessary duplication of regulatory efforts will lead to an inadequate hiring pool of qualified professionals.

The State of Wyoming is in a far better position to fund and staff a hydraulic fracturing regulatory program. Both the Wyoming Governor's Office and the Wyoming Legislature have demonstrated a commitment to ensure adequate funding for implementation and staffing of this important state

regulatory program. Given the financial and political situation in Washington, we question whether a similar commitment can be made by the federal government, particular by the BLM, given its ever shrinking national budget. A program of this magnitude cannot be efficiently carried out without the addition of highly skilled personnel who come at a premium in a competitive western job marketplace.

### **Delayed Permitting & Its Impact on Local Economies**

The county commissioners are the local government officials with direct responsibility for the economic stability of Wyoming's counties, and as such they are sensitive to the financial impact that this rule may have on county income streams. Collectively, the commissioners rely heavily on the revenue generated from the production of oil and gas in Wyoming and county commissioners, more than anyone, feel the economic impact associated with delays in permitting and production. Reductions in revenue generated from oil and gas development have a direct impact on the services that county officials are able to provide for county residents, and thus the economic impacts associated with the implementation of this rule are felt the most at the local level.

Wyoming County Commissioners have concerns that the promulgation of this duplicative and unnecessary rule will cause delays in permit approval and will also likely discourage the development of some wells altogether. The loss of well development will have an obvious and significant impact on Wyoming counties' economic viability and cumulatively on the economic viability of the entire state economy, as the oil and gas industry contributed over \$2.4 billion to the State of Wyoming through the payment of royalties and taxes and employed over 26,000 people statewide in 2011.

### **Defer to the States**

For all these reasons, the WCCA has asked the BLM to defer regulation of hydraulic fracturing to states that have adequate hydraulic fracturing regulations in place, which certainly is Wyoming. Proactive state regulations have the highest likelihood for successful protection of water resources because they are best able to respond to localized impacts and issues, as opposed to a redundant federal hydraulic fracturing rule.

Thank you for the opportunity to appear before you today. I look forward to answering questions.

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