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Testimony on “Federal Regulation: Economic, job and energy security implications of federal hydraulic fracturing regulations”
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My name is Shawn Reese. I am the Policy Director for Governor Matt Mead of Wyoming. I thank the Committee for inviting the State of Wyoming to testify at this hearing today. I also thank the Committee for hearing this testimony in Denver, Colorado. Western states often feel that the unique attributes of the West are not well understood when regulation is created in Washington, DC. For policy makers, it is important to be in close proximity to where policy manifests itself. I hope that this western vantage creates a better understanding of state regulatory actions and the exacerbated effect of federal rules on states with a preponderance of federal land. I also hope to impress upon you that the layering of federal regulation atop state regulation is not only unnecessary, but also consequential. Though these issues have a western flavor, they should be part of the national discussion about energy policy.

The consequences I will discuss today are:

1. Jobs, the economy and national energy security suffer from delays due to federal regulations.
2. State and federal revenues decline.
3. Cumulative impacts of layering federal regulations upon each other.
4. Duplicative nature of regulating an area the states are already regulating.

The States: Laboratories of Democracy

The federal government owns 48% of the land surface and 67% of the mineral estate in Wyoming. Other western states have a higher percentage of federal land ownership. States do not control all of the elements of energy development. Yet, Wyoming and other energy producing western states have an inherent right and duty to address the needs of their citizenry and economic base while producing energy on behalf of the nation. Last Friday, Governor Mead met with other western governors to discuss a host of western issues, in particular the impact of federal regulation on states with large federal land holdings. There is broad concern from the states about the future of energy development in the West. The governors also discussed the innovative approaches each is taking to address energy and environmental issues. Those governors agree that it is in each state’s best interest to closely regulate practices like hydraulic fracturing—and many states are doing it. Imitation is the finest form of flattery—and Western states readily borrow best practices from one another. From hydraulic fracturing rules to sage grouse strategies, western states often look to one another to find new and innovative approaches to managing natural resource development, while making adjustments to fit the individuality of our states.

Cumulative Impacts

Besides meeting in Denver, I'd also like to thank you for the hearing topic: *Federal Regulation: Economic, job and energy security implications of federal hydraulic fracturing regulation*. I do not profess to be an expert on the technical aspects of state or federal rules and regulations related to hydraulic fracturing, but from my perspective as director of policy, I see the cumulative negative impacts of federal regulation without apparent benefit. While this testimony is related to hydraulic fracturing, the cumulative impact of a myriad of rules and regulations without an examination of the compound effect is systemic throughout the federal agencies. Hydraulic fracturing regulations are one more indication of that trend.

On January 18, 2011, President Obama issued Executive Order 13563 which mandates the scrutiny of cost and economic impact of new federal agency regulations. Within that Executive Order are general principles of regulation which state, "Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation." The Executive Order requires each agency to "tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations." A meaningful cost and benefit analysis is rarely applied to rules in isolation, and to my knowledge not applied to related rules from one or more agencies. It is unlikely that hydraulic fracturing rules, whether promulgated through the BLM or EPA, will be evaluated collectively or within the broader context. The consequences to energy producing states and the nation will be fewer jobs, a less predictable energy supply and less state and federal revenue from mineral royalties. The cumulative effect is especially pronounced in a federal land state such as Wyoming.

Wyoming Facts and History of Leadership

Wyoming is an energy state. It is the largest exporter of British thermal units (Btu's) within the United States. It is number one in coal production and number two in natural gas production. We are 8th in rank for oil production. It is home to the largest reserves of uranium in the United States. Besides being an energy state, Wyoming is a tourism state. It is an agriculture state. Those three sectors are the foundation of Wyoming's economy with energy and tourism the first and second largest. Our economic foundation—energy, tourism, and agriculture—requires close regulatory scrutiny from the state. Development impacts must be weighed against not only human and environmental health, but also done in a way that has little impact to any of the other economic drivers. A state like Wyoming, which is a destination for millions of visitors per year, and whose land is extensively farmed and ranched, can ill afford to turn its cheek to regulatory matters.

Besides being a state with a uniquely interconnected economic base, Wyoming is sparsely populated. This point is worthy of mention. With a population of little more than 560,000—state governance is very close and very personal. It requires nimbleness, responsiveness, effectiveness, and creativity. It demands cooperation. Given the different and sometimes polarized interests of all involved parties, the State brings together these groups, along with

industry, non-governmental agencies, local and state government and federal agencies to develop scientifically sound and sensible solutions to complex problems.

In 2011 the total number of oil and natural gas wells producing in Wyoming averaged 35,991 wells.” Almost 100% of Wyoming’s oil production, 153,300 barrels per day and 36.2% of Wyoming’s natural gas production, 2.4 billion cubic feet per day, comes from wells that were hydraulic fracture treated. The importance of natural gas in the State’s overall revenue picture cannot be overstated. FY2010 oil and gas production contributed nearly \$2 billion in royalties, sales and use tax, conservation mills, property taxes, severance taxes, and federal lease royalties. Currently, Wyoming’s petroleum industry directly employs approximately 18,000 people with an annual payroll of over \$1 Billion. Royalties are distributed to cities and towns, the University of Wyoming, highways and construction projects.

Regulation and Jobs and the Wyoming Economy

Because of the importance of natural gas to our economy, we are sensitive to federal oversight. Over half of all oil and gas development that occurs in Wyoming takes place on lands administered by the BLM. Proposed actions on federal land must undergo analysis under the National Environmental Policy Act. Between 1994 and 2005, the estimated environmental impact statement cycle-time from draft to record of decision was 2 ½ years to 3 years. Since 2005, that same cycle time increased from 5 to 8 years and there has not been an EIS completed in Wyoming since 2008. Litigation or the belief that there will be litigation paralyzes the analysis and approval of these developments, ultimately delaying or squelching drilling, employment opportunities, government revenues and national energy security.

The aforementioned delays are limited not only to development; in addition there are lengthy processes required to lease land or begin production. It can take anywhere from 4 to 6 weeks for a BLM field office, well versed in processing applications to issue a permit to drill (APD) and anywhere from 6 to 18 months or more for less experienced field offices in Wyoming. By way of comparison, Wyoming’s Department of Environmental Quality processes in two to six weeks a no less rigorous application for permit to drill and its associated completion and well stimulation activities.

Although we are not here today to talk about delay, its consequence cannot be severed from this discussion. Any new hydraulic fracturing rules and regulations should be evaluated within the current context—one of chronic delay. If there are staffing issues that are causing delay with permits to drill, how will the same staffing capacity be able to accommodate the administration of new rules? Beyond delay and the specter of even more delay, Wyoming is concerned about redundancies created when federal rules mimic and layer state rules.

To make a point Governor Mead has made many times: with states’ rights come states’ responsibilities. Wyoming’s regulatory bodies oversee various aspects of oil and gas production: the Wyoming Oil and Gas Conservation Commission; the State Board of Land Commissioners, the Department of Environmental Quality and the State Engineer’s Office. These bodies make rules using sound science, a participatory process close to the people, and they weigh concerns about the environment, impacts on revenue, and issues raised by industry. Recent actions by the

Board of Land Commissioners, of which the Governor is a member, have created restrictions on burning off, or flaring, natural gas vented from oil wells on state lands.

Wyoming: The First State to Require Hydraulic Fracturing Disclosure

Most notable are Wyoming's 2010 rules related to hydraulic fracturing stimulation. These rules protect groundwater and the identification of permitted water supply wells within ¼ mile of drilling and spacing units, or as approved by the Wyoming Oil and Gas Conservation Commission, of which the Governor is a member. The rules set requirements for well integrity, casing depths and design, and cementing properties. Stimulation fluid chemical additives, compounds and concentration rates all must be disclosed. Disclosure of all chemical compounds planned to be injected is required prior to performing the job. Wyoming requires all chemical compound disclosure as part of the stimulation approval. Disclosure of all chemical compounds actually injected is required post treatment. Chemical compound information is posted on the Wyoming Oil and Gas Conservation Commission (WOGCC) web page (<http://wogcc.state.wy.us>). The rules also provide requirements for handling of the well stimulation load fluid recovery. Wyoming's regulations are applied to oil and gas operations on private and state lands as well as to Federal public lands.

Are Wyoming's rules working? There is no evidence to the contrary. Wyoming has no documented cases of groundwater contamination caused by hydraulic fracturing. Other states have modeled regulations after those adopted by Wyoming, and many elements of the BLM's proposed rules reflect Wyoming's rules. WOGCC has strong oversight, with a sufficient and capable staff with to administer the rules. In short, Wyoming has acted responsibly in developing rules. Wyoming has shown leadership. Wyoming and other states have responded appropriately focusing on the balance between development and the environment. It is a system that works.

Wyoming's rules are being contested—specifically the allowance for exemption from public disclosure of trade secrets. We are confident that the state has responsibly administered the rules. We will welcome clarification from the courts about the administration or interpretation of Wyoming's rules. If the courts indicate otherwise, adjustments will be made in a timely fashion. Recognizing the sheer size of the federal government, I cannot imagine a timely reconsideration of rules if they were federal.

Wyoming in the News

Six months ago, a small town in Wyoming became the international focus in the hydraulic fracturing debate. The area around Pavillion, Wyoming has a long history of gas development. The last well in the Pavillion field was stimulated in 2007, years before stricter standards were implemented by the WOGCC. The Wind River formation serves as both the shallow ground water aquifer (400 feet or less) and the deeper natural gas reservoir (3000 feet or greater). The EPA prematurely concluded that groundwater had been contaminated by chemicals from hydraulic fracturing—a conclusion based on a single detect in a single monitoring well and a conclusion not shared by Wyoming state agency scientists. The fervor created by the premature report has had reverberations not only for industry, but also for Pavillion residents. Even though the town's drinking water is safe, public perceptions are taking a toll on property values and

businesses. These comments are not intended to minimize the need for definitive answers or Wyoming's commitment to work with residents, industry, and the EPA in finding a long-term water solution for those outside of Pavillion who have poor water. Rather, it is a demonstration that federal actions have ramifications; federal actions must be well-founded.

Questionable need for duplicative rules

Later this year, we will see the results of an EPA study on the impact on water of hydraulic fracturing. Yet, months before its release, the BLM will be proposing new rules. BLM has offered no criticism of Wyoming's rules, and so were bewildered to learn that it is going to propose its own regulation. Governor Mead wrote to Secretary Salazar: "I am concerned that the proposed rules will duplicate and possibly be sequential to Wyoming's rules. Such layering of federal rules on top of existing rules is unnecessary, burdensome, and unreasonable. Such redundancy will add cost and delay to a process that is already efficiently, effectively regulated by the State of Wyoming."

As is often the case with the BLM, much interpretation and guidance is often left to local field offices. This deference creates inconsistencies and uncertainty. Certainty is critical to business planning and the encouragement of increased capital investment in the state. Knowledgeable and sufficient staffing levels are paramount to successful regulation. Without adequate staffing, there will be disincentives for industry expansion or development on federal lands. States like Wyoming already are at a competitive disadvantage with those states without significant amounts of federal lands. The implementation of these proposed rules will push operators more than they already are to develop other locations where there are no federal lands. The consequences will be seen in fewer jobs and decreased revenues in western states.

New Environmental Protection Agency (EPA) oil and gas air rules are in large part based on the program we have had in Wyoming for years. Elements of this program had been recently adopted by other states, too. When a federal entity decides to create a regulation based on existing state efforts, it tries hard to accommodate each states' issues by making a "one-size fits all" rule. What results is a federal program that does not easily fit the circumstances in each state, and generally creates extra work for all states. We think this will be the case for the new air rules, and likely hydraulic fracturing rules as well.

The new air quality rules will create extra reporting requirements that are redundant to what we already require of operators in our permitting program. Some parts of the rule are more stringent, some less so.

Additional reporting, performance testing and inspection requirements in the federal rule may act as a deterrent to our efforts to encourage voluntary equipment modifications to reduce ozone precursors in areas of non-attainment.

Conclusion

Time and again, Wyoming has taken on energy and conservation related issues and found the ways in which development can enhance our economic and environmental wellbeing. From hydraulic fracturing rules to air quality strategies--Wyoming leads the way in developing

solutions that work for its people, its environment and its future. Wyoming has exercised its responsibility well. The stakes are high: oil and gas royalties from drilling on public lands are a significant source of revenue for the federal government and Wyoming. Duplicative and unnecessary regulation on public lands could have the adverse effect of forcing operators to shift investment away from public lands, thus impeding needed economic development and employment.

Wyoming, like the other states, is active in addressing development issues in an effective, creative and responsive way. Unnecessary and burdensome rules create unpredictability and make futile-- if not outright stifle--the states' ability to engage with diverse stakeholders to develop consensus around state regulatory issues. These issues are paramount to energy development. The President's Executive Order, "Supporting Safe and Responsible Development of Unconventional Domestic Natural Gas Resources" states that "close interagency coordination is important for effective implementation" of natural gas policy. States should be included in this work group. States have demonstrated leadership in the development of natural gas, which is indicative of our commitment to meet the demand for energy consumption, a healthy economy and job growth.