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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

STATE OF WYOMING, et al.,)	Civil Case No. 15-CV-43-SWS
)	(consolidated with 15-CV-41-SWS)
<i>Petitioners,</i>)	
v.)	RESPONDENTS' SUPPLEMENTAL
)	CITATIONS TO
UNITED STATES DEPARTMENT OF)	ADMINISTRATIVE RECORD IN
THE INTERIOR, et al.,)	SUPPORT OF BRIEF IN
)	OPPOSITION TO WYOMING'S
<i>Respondents.</i>)	AND COLORADO'S MOTION FOR
)	PRELIMINARY INJUNCTION
)	

Respondents S.M.R. Jewell, Secretary of the Interior, the United States Department of the Interior, the United States Bureau of Land Management (“BLM”), and Director of the BLM Neil Kornze hereby submit their supplemental citations to the Administrative Record in support of their Brief in Opposition (ECF No. 68) to the Motion for Preliminary Injunction filed by Petitioners Wyoming and Colorado (ECF No. 32).

In its June 24, 2015 Order (ECF No. 97), the Court directed that “[w]ithin seven (7) calendar days of the lodging of the Administrative Record, the parties may file citations to the record in support of their respective positions” and that “[n]o further argument will be considered.” That deadline was extended until September 18, 2015 by this Court’s Order of September 2, 2015 (ECF No. 115). The Administrative Record was Noticed and Certified on August 27, 2015 (ECF No. 113) and lodged with the Clerk of Court on August 28, 2015 (ECF No. 113).

Consistent with the Court’s Order, the supplemental citations in this brief are organized within the section headings matching those of Respondents’ Brief in Opposition, and refer to the page number, paragraph number, and sentence number of that Brief in Opposition.¹ Per the Court’s instructions, we have not included any additional argument. However, for the Court’s convenience, we have included parenthetical indications of the specific language or contents to which we draw the Court’s attention in our record citations.

The citations contained herein supplement those citations to the Final Rule, Rule Preamble and other documents already provided with Respondents’ Brief in Opposition – which are incorporated by reference here. For the Court’s convenience, the Final Rule and Preamble in

¹ When we refer to a page number from our previous brief herein, we refer to the number at the bottom of the page generated by the word processing system by which the document was created, not the page number at the top of the page generated by the Court’s ECF system.

the Federal Register may be located at pages DOIAR0101929-DOIAR0102024 in the Administrative Record. The Regulatory Impact Analysis for [the Final] Hydraulic Fracturing Rule may be located at DOIAR0100522-DOIAR0100640.

ADMINISTRATIVE RECORD CITATIONS

Section II.A.2. The SDWA Does Not Displace BLM's Authority under FLPMA and the MLA

p. 19 First paragraph, continued from page 18, first and second sentences (questioning adequacy of state regulations in meeting BLM's statutory responsibilities for public and tribal trust lands and need for national consistency in such rules). *See, e.g.*, Hydraulic Fracturing Comment Issues Comments and Response, p. 4, DOIAR0032258 (explaining the necessity for federal regulation even in light of the existence of state regulations); Tip of the Mitt Watershed Council comments on supplemental proposed rule, p. 8, DOIAR0056190 (explaining and endorsing the need for consistent federal regulations in addition to state and tribal regulations); The Nature Conservancy comments on supplemental proposed rule, p. 8, DOIAR0057184 (asserting the need for uniform federal regulations in light of varying, inconsistent state regulatory regimes); The Wilderness Society comments on the supplemental proposed rule, pp. 3-5, DOIAR0056306-DOIAR0056308 (asserting that BLM regulation setting uniform, minimum standards for hydraulic fracturing on federal lands is necessary because the existing patchwork of state regulations leaves gaps, can be changed at any time by states, and does not meet BLM's statutory stewardship responsibilities); Regulatory Impact Analysis for Final Rule, pp. 51-56, DOIAR0100575-DOIAR0100580 (comparing state regulations); Resources for the Future, The State of State Shale Gas Regulation – Executive Summary, May 2013, DOIAR0045522-DOIAR0045529 (independent study of state shale gas regulations,

including regulation of hydraulic fracturing, finding substantial variability or heterogeneity in requirements and stringency, as well as a lack of transparency); U.S. Government Accountability Office, Draft Report, Unconventional Oil and Gas Development - Key Environmental and Public Health Requirements, September 2012, pp. 46-48, DOIAR0027877-DOIAR0027879 (comparing hydraulic fracturing regulations in six states); Sportsmen for Responsible Energy Development comments on supplemental proposed rule, pp. 1-2, DOIAR0055813-DOIAR0055814 (asserting that federal lands are a public trust to be managed for multiple uses and that BLM has a stewardship responsibility, for which it must provide a uniform baseline of regulation and cannot abdicate on the basis that states regulate hydraulic fracturing).

p. 21 First full paragraph, third sentence (“The Final Rule simply supplements existing federal regulations applicable to Federal and Indian trust lands....”). *See, e.g.*, Final Rule Preamble, DOIAR0101930, DOIAR0101931, DOIAR0101935, DOIAR0101936 (describing how the BLM Rule builds on existing regulation of oil and gas operations on federal and tribal lands). *See also* preamble to the supplemental proposed rule, DOIAR0047451- DOIAR0047452 (BLM’s Rule builds on existing BLM regulations for oil and gas operations on federal and tribal lands).

Section II.B. Petitioners Fail to Demonstrate Irreparable Harm

p. 23 First full paragraph, third and fourth sentences (allegation of “200 days to approve an APD” is “inconsistent with BLM’s own data”). *See, e.g.*, BLM Responses to Comments by BP America, Inc., p. 5, DOIAR0033337 (noting, in response to operators’ assertion that BLM’s Dickinson, ND office takes 298 days to approve APDs, that there were 198 APDs with deficiencies which were on hold pending the *applicants’* fixing of

those deficiencies, but that there were zero APDs waiting more than *30 days* after the deficiencies were addressed by the applicant); BLM Responses to Comments by Pioneer Natural Resources, USA, Inc., p. 2, DOIAR0110491 (same). *See also* Annual APD Comparison, DOIAR0110207 (showing a steady increase in the ratio of APDs processed vs. APDs received).

p. 23 First full paragraph, eighth sentence (BLM’s “analyses ... concluded that processing a request to conduct hydraulic fracturing operations will increase the time required to process an APD by only four hours.”). *See, e.g.*, Final Rule Preamble, Analysis of Incremental Cost, pp. 280-282, DOIAR0099465-DOIAR0099467 (explaining that BLM’s analysis concludes that only four additional hours of processing time will be required for APDs with the additional requirements under Final Rule). *See also* BLM Director’s Questions and Responses, January 21, 2015, p. 3, DOIAR0093795 (same); Questions and Answers “Bureau of Land Management’s Hydraulic Fracturing Rule”, p. 13, DOIAR0023050 (explaining that, since the rule only adds incremental information to an existing APD process, BLM does not anticipate that the rule’s requirements will impact the processing time for an APD).

p. 24 Footnote 16 (“the fact that ‘development ... typically occur[s] in the hundreds or thousands’ of wells ... would not change the per-well incremental cost of the rule nor its value in proportion to the overall cost of drilling the wells.”). *See, e.g.*, Regulatory Impact Analysis of Final Rule, p. 88, DOIAR0100612 (explaining that incremental costs in BLM’s analysis were derived by dividing total per-well costs of each requirement by the estimated total annual cost of hydraulic fracturing operations).

Section II.C. The Balance of Harms and Public Interest Do Not Favor a Preliminary Injunction

p. 25 First paragraph, continued from p. 24, final sentence (BLM needs tools such as the final rule “to respond to risks and public concerns associated with the growth of hydraulic fracturing of oil and gas wells”). *See, e.g.*, Environmental Defense Fund comments on supplemental proposed rule, pp. 37-38, DOIAR0056108-DOIAR0056109 (explaining that “disclosure of chemicals used in hydraulic fracturing[,]” such as through FracFocus, “enhances public safety, promotes transparency, and will ultimately lead to the use of less deleterious chemicals”), pp. 7-8, DOIAR0056078-DOIAR0056079 (noting that an “area of review” concept as in the BLM rule and state regulatory regimes is an increasingly utilized approach to minimize the risk of “[s]ubsurface communication of hydraulic fracturing fluid through existing boreholes and natural fractures [i.e., frack hits,]” which “is a serious concern” in light of “reports from Pennsylvania, Colorado, and Alberta, among other states [which] have documented incidences of ... frack hits”); Western Urban Water Coalition comments on supplemental proposed rule, pp. 2-7, DOIAR0056735-DOIAR0056740 (noting that hydraulic fracturing could potentially impact water sources used by Coalition members and urging that BLM’s final rule contains necessary tools to minimize that risk through chemical disclosure, monitoring of hydraulic fracturing activities, and isolation and protection of groundwater); Sportsmen for Responsible Energy Development comments on supplemental proposed rule, pp. 2-6, DOIAR0055814-DOIAR0055818 (endorsing measures in BLM rule to protect surface waters, groundwater and other resources, including full disclosure of fracturing chemicals, cement evaluation logs, and mechanical integrity testing, among others); The Wilderness Society comments on supplemental proposed rule, pp. 1, 3-4,

DOIAR0056304, DOIAR0056306-DOIAR0056307 (asserting that BLM regulation is a necessary baseline to ensure that hydraulic fracturing is conducted pursuant to robust standards to protect resources, as required under the Federal Land Policy and Management Act), pp. 5-14, DOIAR0056308-DOIAR0056317 (explaining the need for disclosure of fracturing chemical information, storage of recovered water in tanks, mechanical integrity testing, and ensuring cement integrity, among others); Environmental Working Group comments on supplemental proposed rule, pp. 1-2, DOIAR0056063-DOIAR0056064 (explaining that oil and gas production and drilling operations are inherently risky activities that can cause significant damage to the environment and human health and therefore require updated BLM regulations to address these risks and meet BLM's statutory mandate); Tip of the Mitt Watershed Council comments on supplemental proposed rule, p. 2, DOIAR0056184 (explaining that hydraulic fracturing may endanger groundwater, surface water, clean air, human and animal health, fish and wildlife habitat, and recreation opportunities); Sierra Club, et al. comments on supplemental proposed rule, p. 2, DOIAR0056815 (explaining that hydraulic fracturing presents risks to groundwater, surface water, air, soil, fish and wildlife habitat, and human and animal health); Center for Biological Diversity comments on supplemental rule, p. 2, DOIAR0057115 (explaining that fracking and the resulting toxic wastewater have developed an extensive track record of spills, accidents, leaks, pollution, and property damage – resulting in severe and often irreversible impacts to air, water, wildlife, and health); High Country Citizens' Alliance, et al. comments on rule, p. 1, DOIAR0057699 (expressing familiarity with water contamination concerns related to hydraulic fracturing).

p. 25 First full paragraph, second sentence (noting that Petitioners have not addressed the “adequacy of regulation by the numerous other states subject to the final rule”). *See supra*, citations for p. 19.

Respectfully submitted this 18th day of September 2015.

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of September 2015 a copy of the foregoing **Respondents' Supplemental Citations to Administrative Record in Support of Brief in Opposition to Wyoming's and Colorado's Motion for Preliminary Injunction** was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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