

Oral Argument Scheduled for August 27, 2017
IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

STATE OF WYOMING; et al.,)	
<i>Petitioners-Appellees,</i>)	
)	
and STATE OF NORTH DAKOTA, , et al.,)	
<i>Intervenors-Appellees,</i>)	Nos. 16-8068, 16-8069
v.)	
)	
RYAN ZINKE, et al.,)	
<i>Respondents-Appellants,</i>)	
)	
and SIERRA CLUB, et al.,)	
<i>Intervenors-Appellants.</i>)	

NOTICE OF PROPOSED RULE

Appellees Bureau of Land Management, et al. (“BLM”) hereby notify the Court that on July 25, 2017, BLM published in the Federal Register a notice of proposed rulemaking entitled: “Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands; Rescission of a 2015 Rule.” *See* 82 Fed. Reg. at 34464. As explained in the notice, “the BLM believes that the 2015 final rule unnecessarily burdens industry with compliance costs and information requirements that are duplicative of regulatory programs of many states and some tribes. As a result, we are proposing to rescind, in its entirety, the 2015 final rule.” *Id.* at 34465. The proposed rule “would restore the regulations in part 3160 of the [Code of Federal Regulations] to exactly as they were before the 2015 final rule,” and “would not result in any change from current

requirements because the 2015 final rule never went into effect.” *Id.* at 34467. The notice is subject to a 60-day comment period before BLM takes further action.

The “2015 final rule” to which the notice refers is the Hydraulic Fracturing Rule that is before the Court for review in this appeal. The notice of proposed rulemaking is consistent with the description that BLM has previously provided to the Court as a basis to hold this appeal in abeyance. *See* BLM Supp. Reply Br. at 2-3. Publication of the notice of proposed rulemaking does not affect the substance of the arguments that the parties have made to the Court in their supplemental briefs, and BLM will be prepared to address questions about this notice at oral argument on July 27, 2017.

Respectfully submitted,

JEFFREY H. WOOD

Acting Assistant Attorney General

ERIC GRANT

Deputy Assistant Attorney General

Of Counsel:

RICHARD MCNEER

Office of the Solicitor

U.S. Department of the Interior

Washington, DC

/s/ Andrew C. Mergen

ANDREW C. MERGEN

J. DAVID GUNTER II

U.S. Department of Justice

Environment and Natural Resources Div.

P.O. Box 7415

Washington, DC 20044

July 25, 2017

90-5-1-4-20425

CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that with respect to the foregoing

NOTICE

- (1) all required privacy redactions have been made;
- (2) if required to file additional hard copies, that the ECF submission is an exact copy of those documents;
- (3) the digital submissions have been scanned for viruses with the most recent version of a commercial virus scanning program, Microsoft Forefront Client Security Version 4.9.219.0, Antivirus definition 1.223.2192.0, and according to the program are free of viruses.

s/ Andrew C. Mergen

ANDREW C. MERGEN

CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2017, I electronically filed the foregoing Notice with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit using the appellate CM/ECF system.

Service will be accomplished by the appellate CM/ECF system to registered users, and by U.S. Mail or e-mail (with permission) to other users, sent within one business day of filing.

s/ Andrew C. Mergen

ANDREW C. MERGEN