

## Jenn Anderson

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**From:** Jenn Anderson  
**Sent:** Friday, May 01, 2015 9:04 AM  
**To:** Michael J. Nasi (mnasi@jw.com)  
**Cc:** Cooke John (john.cooke.senate@state.co.us); David Blake  
**Subject:** Follow-up from our lunch meeting

Hi Michael and Senator Cooke,

I followed up on some of the questions that came up over lunch earlier this week, and below is what I found. In short, the SIP review process that is already in statute would not apply to the state plan required to be submitted to the EPA under the new carbon emissions rule, nor would our office review such a plan as if it were another state rule, since it is not being passed pursuant to state law.

1. Are SIPs treated like other state regulations in that they are reviewed by the AG the same way other regulations are reviewed to ensure the agency has not exceeded its statutorily delegated authority?

Generally, SIPs go through a rulemaking process before the Colorado Air Quality Control Commission (AQCC). The SIP rulemaking is then reviewed by the AGO like other rule adoptions. However, in limited instances, the AQCC adopts changes to SIPs that contain elements other than regulations. The regular rule review process under the state APA concerns only regulations promulgated under state law. To the extent a SIP change is made that does not involve a rule promulgation, the SIP does not go through the review process.

2. Does the SIP review process that's already in place pursuant to CRS 25-7-133 apply to all SIPs? In other words, if SB 258 were passed, would both processes apply?

Sect. 133 applies to all SIPs. However, for clarification, the state plan required to be submitted pursuant to the proposed 111(d) rule is not a "SIP" as that term is used in CRS 25-7-133 or Sect 110 of the federal Clean Air Act. The review process required under CRS 25-7-133 applies to SIPs that the state submits under Sect 110 of the federal Clean Air Act, not Sect 111. So CRS 25-7-133 would not apply to the state plan the AQCC adopts and submits to EPA pursuant to Sect 111. For this reason, if SB258 were to be adopted, there would not be a duplicative process. If SB258 is not adopted, CDPHE may still decide to have the state plan for compliance with 111(d) reviewed by the legislature under the CRS 25-7-133 process prior to submission to EPA, but it is not required.

Please let me know if we can help in any way with drafting amendments to present on Monday.

Jennifer M. Anderson  
Legislative Liaison  
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1300 Broadway, 10<sup>th</sup> Floor  
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## Jenn Anderson

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**From:** Jenn Anderson  
**Sent:** Monday, May 04, 2015 8:07 AM  
**To:** 'tim.dore.house@state.co.us'  
**Cc:** Cooke John (john.cooke.senate@state.co.us)  
**Subject:** Questions to ask re SB 258

Hi Representative Dore,

Here are three questions I think would be great to ask CDPHE when they testify on SB 258 today:

1. Under current law, regardless of whether this bill passes, would the State Carbon Emissions Plan be subject to review by the legislature in the same way that other rules promulgated by state agencies are?
2. Assuming the EPA finalizes the carbon emissions rule this summer and the deadline for submission of a state plan is set at next summer, what timeline and process would CDPHE employ over the next year prior to submission to the EPA?
3. My understanding is that the EPA's proposed carbon emissions rule is far reaching and would require the EPA to act outside of its statutorily mandated authority to regulate carbon emissions that are traditionally regulated by the PUC. Do you believe you have the statutorily delegated authority to implement the EPA's proposed carbon emissions rule? If so, where does that authority come from?

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## Jenn Anderson

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**From:** Alexandria Wilson  
**Sent:** Wednesday, July 22, 2015 5:10 PM  
**To:** Jenn Anderson  
**Subject:** FW: CORA Request

Jenn,

I believe you may have documents related to the below CORA request. We have an extension to the end of next week but wanted to give you a heads up. I will send you the necessary search terms within the next few days once I receive them from Casey S.

Regards,

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**From:** Alexandria Wilson  
**Sent:** Tuesday, July 21, 2015 9:40 AM  
**To:** Fred Yarger; Casey Shpall  
**Cc:** David Blake; Melanie Snyder  
**Subject:** CORA Request

Good morning,

Please see CORA request below from a David Arkush, Director of the Public Citizen's Climate Program. His inquiry is primarily regarding the BLM suit and everything in relation to it. This CORA request as of now is due Thursday, 7/23 COB but I will request for a 7 day extension.

Regards,

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**From:** Attorney General  
**Sent:** Tuesday, July 21, 2015 8:09 AM  
**To:** Alexandria Wilson  
**Subject:** FW: Records Request

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**From:** David Arkush [<mailto:darkush@citizen.org>]  
**Sent:** Monday, July 20, 2015 9:29 PM  
**To:** Attorney General  
**Subject:** Records Request

June 20, 2015

VIA EMAIL

Public Information Officer

Colorado Attorney General's Office

Ralph L. Carr Judicial Center

1300 Broadway, Floor 10

Denver, CO 80302

(O) 720-508-6554

[Attorney.General@state.co.us](mailto:Attorney.General@state.co.us)

Re: Records Request

Dear Records Custodian,

This letter constitutes a request for records under Colorado's Open Records Act § 24-72-201 et seq. If you are not the proper custodian of records for this request, please forward this request on to the appropriate designee.

This letter is from Public Citizen, national non-profit organization with more than 400,000 members and supporters. We represent consumer interests through lobbying, litigation, administrative advocacy, research, and public education on a broad range of issues including consumer rights in the marketplace, product safety, financial regulation, worker safety, safe and affordable health care, campaign finance reform and government ethics, fair trade, climate change, and corporate and government accountability.

For the purpose of these requests, the term "records" is used as defined in Colorado open records laws, and refers to any recorded information, whether kept in written, electronic, or any other form.

I request that you make available for inspection and copying the following public records. This request covers documents created or modified during the period January 1, 2014 to the date of this letter.

1. All communications between any person or persons within the Colorado Attorney General's office and any person or persons not within the Colorado Attorney General's office, including calendar records of such communications, that refer or relate to one or more of the following:

a. The regulations finalized by the Federal Bureau of Land Management ("BLM") on or about March 20, 2015, entitled Oil and Gas; Well Stimulation, Including Hydraulic Fracturing, on Federal and Indian Lands (the "BLM Regulations");

b. Any drafts of the BLM Regulations;

c. The lawsuit that the Colorado Attorney General joined on or about April 24, 2015, regarding the BLM Regulations (State of Wyoming v. United States Department of the Interior, Case No. 15-CV-00043-SWS) (the "Lawsuit against BLM");

d. The regulations proposed by the United States Environmental Protection Agency entitled Standards of Performance for Greenhouse Gas Emissions From New Stationary Sources: Electric Utility Generating Units; Proposed Rule, published at 79 Fed. Reg. 1,430; and Carbon Pollution Standards for Modified and Reconstructed Stationary Sources: Electric Utility Generating Units; Proposed Rules, published at 79 Fed. Reg. 34,960 (“Carbon Pollution Standards”);

e. The regulations proposed by the United States Environmental Protection Agency on or about June 18, 2014, entitled Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units, published at 79 Fed. Reg. 34,830 (the “Clean Power Plan”).

2. All internal communications of the Colorado Attorney General’s office that refer or relate to one or more of the following:

- a. The BLM Regulations;
- b. Any drafts of the BLM Regulations;
- c. The Lawsuit against BLM;
- d. The proposed Carbon Pollution Standards;
- e. The proposed Clean Power Plan.

3. All other public records (other than those requested in items 1 and 2) in the possession or control of the Colorado Attorney General’s office that refer or relate to one or more of the following:

- a. The BLM Regulations;
- b. Any drafts of the BLM Regulations;
- c. The Lawsuit against BLM;
- d. The proposed Carbon Pollution Standards;
- e. The proposed Clean Power Plan.

I am seeking these records for a non-commercial public purpose, including non-profit research. I request a reduced or waived fee for searching or copying these records in that the disclosure of the requested information is in the public interest and will contribute significantly to the public’s understanding of the regulation of oil and gas activities and the regulation of GHGs.

If the records are in electronic form or can be scanned and sent by email, I request to receive those records solely by electronic means sent to: [darkush@citizen.org](mailto:darkush@citizen.org). If the copies cannot be transmitted electronically, and any anticipated charges will total less than \$250, please mail the copies of the records to me with an itemized invoice. If the anticipated charges will be in excess of \$250, or if your office requires prepayment for copies, please contact me first before processing my request, I may elect to first inspect the records, and then designate certain records for copying.

If you deny this request for records in whole or in part, I ask that you provide a written statement of the reasons for the denial that cites the law or regulation that you rely on for each record withheld. If any of the requested

records are in active use, in storage or otherwise unavailable at this time, I request that you set a date and hour when the records will be available for inspection.

Please set a date and hour, within three working days following receipt of this letter, at which time the records will be made available for inspection, as required by § 24-72-203, C.R.S. If access to these records will take longer, please cite the extenuating circumstances and let me know when I should expect copies or the ability to inspect the requested records.

Thank you for considering my request. Please do not hesitate to contact me if you have any questions regarding this request.

Very truly yours,

David Arkush

Director

Public Citizen's Climate Program

215 Pennsylvania Ave, SE

Washington, DC 20003

[darkush@citizen.org](mailto:darkush@citizen.org)

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**David J. Arkush | Managing Director**

Public Citizen's Climate Program

215 Pennsylvania Ave SE, Washington, DC 20003

TEL: [REDACTED], CELL: [REDACTED]

EMAIL: [darkush@citizen.org](mailto:darkush@citizen.org)

## Jenn Anderson

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**From:** Fred Yarger  
**Sent:** Friday, June 26, 2015 7:48 AM  
**To:** Jenn Anderson  
**Subject:** RE: July 2 meeting to discuss options for response to forthcoming CDPHE rulemaking on EPA's CPP

I have some concerns with my participation in this kind of meeting. Let's discuss.

**Fred Yarger**  
O: 720.508.6168 | M: 720.291.6430

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**From:** Jenn Anderson  
**Sent:** Thursday, June 25, 2015 1:40 PM  
**To:** Fred Yarger  
**Subject:** FW: July 2 meeting to discuss options for response to forthcoming CDPHE rulemaking on EPA's CPP

Hi Fred,

Please see the below e-mail regarding a meeting at the Capitol with the Senate Majority Leader and others on July 2 at 9 a.m. I know you're really busy, but if you are available to attend, it might be good to have you there. Specifically, they're asking about our rule review process in anticipation of State Implementation Plans that will be submitted for rule review by our office in response to the EPA's carbon emissions and ozone rules. If you're available and would like to attend, I'll send you an invite.

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**From:** [charlesaz42@aol.com](mailto:charlesaz42@aol.com) [<mailto:charlesaz42@aol.com>]  
**Sent:** Thursday, June 25, 2015 12:03 PM  
**To:** [jbcookelaw@hotmail.com](mailto:jbcookelaw@hotmail.com); [jackjcoffey@comcast.net](mailto:jackjcoffey@comcast.net); [arobertson@tristategt.org](mailto:arobertson@tristategt.org); [jbliss@irea.coop](mailto:jbliss@irea.coop); [amy@i2i.org](mailto:amy@i2i.org); Jenn Anderson; [seanpaige@msn.com](mailto:seanpaige@msn.com)  
**Cc:** [jessemallory81@yahoo.com](mailto:jessemallory81@yahoo.com); [ariana.busby@state.co.us](mailto:ariana.busby@state.co.us); [bill.skewes@state.co.us](mailto:bill.skewes@state.co.us)  
**Subject:** July 2 meeting to discuss options for response to forthcoming CDPHE rulemaking on EPA's CPP

You are invited to participate in a meeting at 9:00 AM on July 2 in Sen. Scheffel's office, Room 250 at the capitol. to review the many facets of the state's response to new EPA rulemaking. The meeting will last from 9:00 to 10:00.

Among the topics to be discussed are --

(1) the likely CDPHE timetable and "playbook" for rulemaking activities assuming a mid-August release of the final Clean Power Plan rules;

- (2) possible legislative response to CDPHE rulemaking, including new legislation to generate hearings, public debate, and hold CDPHE accountable;
- (3) the role of the AG and AG attorneys in the CDPHE rulemaking process, including the AG's opinion of the legal sufficiency of any new CDPHE or AQCC rules within the annual Rule Review process;
- (4) possible series of 3-4 public town hall type public meetings to alert consumers and the public to the likely impact of the CPP rules on utility rates, jobs and the reliability of the grid, among other issues-- possible locations being Grand Junction, Pueblo, Greeley, and Thornton or Denver.
- (5) continued coalition-building among all interested stakeholders and consumer groups;
- (6) expanding the public debate from the CPP rules to the broader theme of EPA overreach by including the EPA ozone and WOTUS rules;
- (7) the need for speeches, op-ed commentaries and other public information activities over the next 6 months.

Please let me know if you want to invite anyone else -- for example, experts on the impact of the WOTUS and ozone rules.

## Jenn Anderson

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**From:** Melody Mirbaba  
**Sent:** Thursday, June 25, 2015 2:02 PM  
**To:** Jenn Anderson  
**Subject:** RE: Please send information relating to all cases in which we are opposite the federal government

I'm sorry I didn't get back to you yesterday. I'm still waiting to hear back from two people, but here's what I have. I'll get that information to you today.

The Human Services Unit (which represents the Department of Human Services), has the following three cases: (Tanya Wheeler is the First and provided this information)

- (1) *Food & Nutrition Services (FNS) Disallowance*. FNS, the State's federal partner in administering the Food Assistance (food stamps) program, disallowed approximately \$953,000 in federal matching funds for administrative contract costs associated with the Colorado Benefits Management System (CBMS). Federal regulations require states to submit contract amendments to FNS for prior approval when the costs associated with those amendments exceed a certain threshold, and CDHS did not do so. CDHS requested a supplemental appropriation from the General Assembly to pay the disallowance, and the Joint Budget Committee approved the request on June 19, 2015. CDHS is also negotiating with FNS to reduce the disallowance amount by approximately \$20,000 based on FNS's calculation error. (This case has received some press attention).
- (2) *Colorado Division of Vocational Rehabilitation v. U.S. Mint – Denver*. This arbitration before the Department of Education turns on whether the gift shop of the Denver Mint is a "vending facility" subject to the Randolph-Sheppard Act's priority for blind vendors to run such facilities on federal properties. It also involves the distribution of vending machine income under the Randolph-Sheppard regulations. The arbitration hasn't been calendared yet, but the parties are scheduled to mediate in July.
- (3) *Fitzsimons Nursing Home vs. CMS*. CDHS/Fitzsimons appealed the determination of the Centers for Medicare and Medicaid Services' (CMS) survey conducted on behalf of CMS by CDPHE on August 8, 2013, which resulted in a finding of Immediate Jeopardy and Substandard Quality of Care. CMS filed a Motion For Summary Judgment on April 4, 2014. CDHS filed its Response to the Motion For Summary Judgment on May 19, 2014. We are awaiting a ruling from the Departmental Appeals Board of the US Department of Health and Human Services. (Note: our understanding is that this length of delay is not entirely unusual).

The Public Utilities Commission reports the following: (Todd Lundy is the First and provided this information)

- (1) Joint Dispatch Agreement Petition: Public Service and Black Hills filed a petition with the Federal Energy Regulatory Commission for approval of a joint dispatching arrangement, in which the generation resources of the participants are pooled and used to draw power in a manner that reduces generation costs to the participants. The PUC filed comments with FERC asserting that the joint dispatch arrangement must not interfere with the PUC's authority to regulate generation resources and practices. On a scale of assessing the adversarial nature of this proceeding, it is at the very bottom -- I do not anticipate any adversarial process, formal or informal, resulting from this docket. On Tuesday, FERC issued an order rejecting Public Service's petition for approval of its proposed joint dispatch agreement. FERC's order does not alter the relative absence of any adversarial process between Colorado and FERC on this matter
- (2) EPA Clear Air Plan: The Chair of the PUC participated in comments filed by the state of Colorado with the EPA opposing the benchmarks contained in the proposed rules to reduce carbon emissions from existing power plants. Those comments requested the starting point to be about 2005 rather than the proposed 2012, which

would grant the state credit for the emission reductions and resultant expenditures incurred by the state to reduce emissions before 2012. The benchmark issues may result in an adversarial relationship between the state and the EPA. Of course, many states and industry representatives will challenge the EPA's rules as beyond the EPA's authority under Section 111(d) of the Clean Air Act.

The Health Care Unit reports the below: (Jen Weaver is the first and provided this information)

*HCPF v. Centers for Medicare and Medicaid Services (CMS)* By notice dated July 30, 2013, CMS disallowed \$10,677,539 in federal funds for administrative costs related to outstationing eligibility determination functions at Denver Health for the time period between April 1, 2005 and June 30, 2010. A second disallowance was issued in the amount of \$2,692,324 for the time period between June 30, 2011 and September 30, 2011. The Department appealed both disallowances to the Departmental Appeals Board (DAB) at the U.S. Department of Health and Human Services. The cases have been consolidated and are fully briefed. We are awaiting a decision from the DAB.

Melody Mirbaba  
Deputy Attorney General  
Direct: (720)508-6165

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**From:** Jenn Anderson  
**Sent:** Thursday, June 25, 2015 1:54 PM  
**To:** Melody Mirbaba  
**Subject:** RE: Please send information relating to all cases in which we are opposite the federal government

Hi Melody,

Were you able to gather the requested information? Do you need more time?

Jennifer M. Anderson  
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Cell: (720) 318-9868

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**From:** Melody Mirbaba  
**Sent:** Monday, June 22, 2015 4:11 PM  
**To:** Jenn Anderson  
**Subject:** RE: Please send information relating to all cases in which we are opposite the federal government

Thanks! I've got two Firsts who are on vacation; one is back tomorrow and the other is back on Thursday. I plan to gather the information from all of my firsts and send it to you in one email (to save you the brain damage of figuring out if you've heard from everyone in my section). I'll get it to you as soon as possible, but it may be Thursday sometime before I have the last of the information. If you don't mind getting it piecemeal, I can send you what I have on Wednesday and update you on Thursday when I have the last of the info.

Melody Mirbaba  
Deputy Attorney General  
Direct: (720)508-6165

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**From:** Jenn Anderson  
**Sent:** Monday, June 22, 2015 3:59 PM  
**To:** Melody Mirbaba  
**Subject:** RE: Please send information relating to all cases in which we are opposite the federal government

Hi Melody,

The AG has requested this information as soon as possible, so the next 1-2 days would be great,

Jennifer M. Anderson  
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**From:** Melody Mirbaba  
**Sent:** Monday, June 22, 2015 3:57 PM  
**To:** Jenn Anderson  
**Subject:** RE: Please send information relating to all cases in which we are opposite the federal government

Jenn,

I've learned that unless I give them a time-frame, I won't hear from anyone (especially now that a lot of people are on vacation). When do you want the response?

Melody Mirbaba  
Deputy Attorney General  
Direct: (720)508-6165

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**From:** Jenn Anderson  
**Sent:** Monday, June 22, 2015 3:32 PM  
**To:** FIRSTS  
**Cc:** Deputies; David Blake  
**Subject:** Please send information relating to all cases in which we are opposite the federal government

Hello Everyone,

David has asked me to compile a list of all cases that we have in which are adverse to the federal government. This does not just include litigation, but also includes rulemakings in which we've submitted comments, etc. Could you please send me a list that includes the name/title of the matter and a very short (1-3 sentence summary)? We don't need an in depth summary at this point, but I will follow-up if I need to. For now, we mainly need an inventory with enough description to know what the matter relates to.

Let me know if you have any questions,

Jennifer M. Anderson  
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## Jenn Anderson

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**From:** Erin Lamb  
**Sent:** Thursday, June 11, 2015 11:53 AM  
**To:** Jenn Anderson  
**Subject:** RE: Xcel Speaking Engagement Tomorrow

No worries! Best to double check

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**From:** Jenn Anderson  
**Sent:** Thursday, June 11, 2015 11:48 AM  
**To:** Erin Lamb  
**Subject:** RE: Xcel Speaking Engagement Tomorrow

Ok Great. I forgot that you had said you had already printed this – sorry – there was probably no need to re-send it.

Jennifer M. Anderson  
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1300 Broadway, 10<sup>th</sup> Floor  
Denver, CO 80203  
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---

**From:** Erin Lamb  
**Sent:** Thursday, June 11, 2015 11:48 AM  
**To:** Jenn Anderson; Cynthia Coffman  
**Subject:** RE: Xcel Speaking Engagement Tomorrow

I have this in her folder for her review and am typing up talking points and possible questions. I will make sure you get a copy as well in case Cynthia is unable to answer something and looks to you

---

**From:** Jenn Anderson  
**Sent:** Thursday, June 11, 2015 11:42 AM  
**To:** Cynthia Coffman  
**Cc:** Erin Lamb  
**Subject:** Xcel Speaking Engagement Tomorrow

Hi Cynthia,

I think this might have gotten lost in your e-mail, but I wanted to make sure you saw it before tomorrow. This is what Mike Beasley said about the speaking engagement tomorrow morning at Xcel:

I spoke with Mike Beasley, and he was able to give me some insight into what to expect next Friday. The group consists of about 50 upper to middle level management employees. They are politically very sophisticated (participate in the Xcel Energy Employee PAC, attend Town Hall meetings, etc.) – all politically minded and politically active. In the past they've had Cory Gardner, Mark Udall, Lynn Bartels, the Governor and state legislators speak. He said that he would recommend an overview of what the AG's office does and focus on initiatives that our office is working on – a sort of get to know Cynthia and our office type of speech – but keep it interesting (not boring). He said they've probably already been updated on the legislative session, and he would stay away from discussing Senator Cooke's carbon emission's bill,

unless asked, since it was controversial within the company (they didn't take a position). He said they probably won't allow politically loaded questions, but some of the issues they're probably most concerned about or would ask about if they were allowed, include the following:

- The general authority of the PUC.
- The OCC and whether it should be in the AG's office like it used to be (why or why not)
- She could get asked her general constitutional view of home rule authority, due to efforts by cities like Boulder are trying to municipalize Xcel's assets.

Jennifer M. Anderson  
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**To:** Cynthia Coffman  
**Cc:** Erin Lamb  
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- The general authority of the PUC.
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## Jenn Anderson

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**From:** David Blake  
**Sent:** Wednesday, June 03, 2015 6:27 PM  
**To:** Jenn Anderson; Erin Lamb  
**Subject:** RE: Cynthia speaking at Xcel

Yes.

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**From:** Jenn Anderson  
**Sent:** Wednesday, June 03, 2015 11:11 AM  
**To:** Erin Lamb; David Blake  
**Subject:** RE: Cynthia speaking at Xcel

Do you think they'll ask about the EPA's proposed carbon emissions rule?

Jennifer M. Anderson  
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**From:** Erin Lamb  
**Sent:** Wednesday, June 03, 2015 10:55 AM  
**To:** David Blake  
**Cc:** Jenn Anderson  
**Subject:** Cynthia speaking at Xcel

David,

Cynthia is speaking next Friday at Xcel Energy and Jenn will be staffing her. They have asked for Cynthia to speak generically about the AG's office-what we do, enjoying new role, what are the big issues, etc. The POC has said we do not need to go into specific detail pertaining to the company, but who can I go to for a quick briefing so Cynthia is aware of any issues/litigation/new law in case they ask about it?

I assume Cynthia will have Jenn answer any new legislation questions.

Erin Lamb  
Executive Assistant to the Attorney General  
Office of the Attorney General  
1300 Broadway 10<sup>th</sup> Floor, Denver 80203  
720.508.6554  
[Erin.lamb@state.co.us](mailto:Erin.lamb@state.co.us)

## Jenn Anderson

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**From:** Cynthia Coffman  
**Sent:** Tuesday, April 28, 2015 9:31 AM  
**To:** Jenn Anderson; David Blake  
**Subject:** RE: SB 258 [Requiring Coordinated Review of Carbon Emissions Plan]

Does Cooke plan to do this for other SIPS, or just this one?

Sent on the new Sprint Network from my Samsung Galaxy S<sup>®</sup>4.

----- Original message -----

**From:** Jenn Anderson  
**Date:** 04/28/2015 8:46 AM (GMT-06:00)  
**To:** Cynthia Coffman  
**Subject:** Fwd: SB 258 [Requiring Coordinated Review of Carbon Emissions Plan]

Hi Cynthia,

David asked me to send this to you. We have a lunch scheduled for today w/ Senator Cooke.

Please forgive brevity and typos, as this was sent from my mobile phone.

Jennifer M. Anderson  
Legislative Liaison  
Office of the Attorney General  
(720) 318-9868

Begin forwarded message:

**From:** Jenn Anderson <[Jenn.Anderson@state.co.us](mailto:Jenn.Anderson@state.co.us)>  
**Date:** April 24, 2015 at 2:22:19 PM MDT  
**To:** Fred Yarger <[Fred.Yarger@state.co.us](mailto:Fred.Yarger@state.co.us)>  
**Cc:** David Blake <[David.Blake@state.co.us](mailto:David.Blake@state.co.us)>  
**Subject:** SB 258 [Requiring Coordinated Review of Carbon Emissions Plan]

Hi Fred,

Attached is the most recent version of SB 258 which will be heard in House committee next week. I've also attached the analysis that C. Clarke did on SB 258. Casey disagreed with Clay Clarke's opinion regarding the Separation of Powers issue, since 25-7-133 CRS, gives the Legislature the opportunity to review all State Implementation Plans (SIP) promulgated by the Air Quality Control Commission before the Plans can be submitted to the U.S. Environmental Protection Agency and revise the SIP by bill if it believes the SIP does not accomplish the intended purpose. However, there is still the Presentment Clause issue raised by Clay in his memo which could be fixed by requiring a bill instead of a resolution which would require signature by the Governor.

I've also attached Laurence Tribe's testimony regarding the EPA's proposed carbon emissions rule.

Jennifer M. Anderson  
Legislative Liaison  
Colorado Department of Law  
Office of the Attorney General  
1300 Broadway, 10<sup>th</sup> Floor  
Denver, CO 80203  
Office: (720) 508-6555  
Cell: (720) 318-9868

**Jenn Anderson**

---

**From:** David Blake  
**Sent:** Tuesday, April 28, 2015 6:14 AM  
**To:** Jenn Anderson  
**Cc:** Fred Yarger  
**Subject:** Re: In case you didn't see this Oped

We still think there is a non-delegation problem though it's unclear under CO law. Did anyone make that argument at the hearing?

Sent from my iPhone

On Apr 27, 2015, at 11:03 PM, Jenn Anderson <[Jenn.Anderson@state.co.us](mailto:Jenn.Anderson@state.co.us)> wrote:

**VINCENT CARROLL**

## **Carroll: The biggest job facing Colorado**

*By Vincent Carroll*  
*The Denver Post*

POSTED: 04/25/2015 05:00:00 PM MDT

The most important task facing state officials in the next 13 months has nothing to do with water, schools, fracking, the sage grouse or even economic development — not directly anyway. It is to create a plan to reduce carbon-dioxide emissions that satisfies the U.S. Environmental Protection Agency without jeopardizing reliability of the electrical grid or boosting bills by punishing amounts.

It's a huge duty that may represent an unprecedented makeover of the electrical system.

And yet the Hickenlooper administration is dead set against a bill requiring legislative approval of the eventual plan.

Now, maybe the administration has dug in against Senate Bill 258 because it originally was flawed, containing more than one provision that might have frustrated adoption of a plan. But that is no longer the case. The amended bill has two main components: legislative approval of the state plan and a formal review (not veto) by the Colorado Public Utilities Commission. Both components are critical to ensuring a transparent process and a fully vetted proposal.

Meanwhile, the bill now explicitly asserts that submitting a state plan is "the preferred method of complying with the federal emission regulations."

But still the administration resists, insisting that a single agency — the Colorado Department of Public Health and Environment (CDPHE), through rulemaking at the Air Quality Control Commission (AQCC) — have the first, second and last word on the plan.

No one disputes that the CDPHE must be the lead agency. But this is a big deal. It could result in the closing of power plants, in colossal investments in equipment and resources (which consumers inevitably pay), in emissions trading within the state or among several states, and in unprecedented measures to mandate energy efficiency.

Should a single agency really fly solo, with no formalized role for either the General Assembly or the PUC, the principal regulatory body with expertise in such critical areas as cost and reliability of the electrical grid?

There is no dispute about the PUC's expertise, by the way. In remarkably revealing testimony this month in the Senate, the director of environmental programs for the CDPHE freely admitted the fact

"We recognize that the expertise on reliability and cost and a variety of other things — that the PUC really is the entity that has that expertise," said Martha Rudolph. And while her agency will consult with PUC experts on an ongoing basis, she advised against giving it a formal review role. Trust us, she insisted.

More surprisingly, she spoke against a mandate for legislative approval of the plan even as she pledged to seek legislative approval.

"By law we have to submit all [State Implementation Plans] to the legislature, for review," Rudolph said. "This is not technically a SIP, but I can assure you that in some way we would bring this to the legislature for approval. It's not a legal requirement, but we would do that."

Then why oppose a bill that would guarantee such approval? And what does "in some way" mean? Let's clarify what it means with legislation.

Rudolph suggested SB 258's mandates would slow the process and risk violating the EPA deadline. But she knows the deadline of June 2016 is all but impossible already. Her own boss said as much in a letter to the EPA in December.

SB 258 passed the Senate but may well falter in the House. If so, it will amount to one of the signal failures of the session.

*E-mail Vincent Carroll at [vc Carroll@denverpost.com](mailto:vc Carroll@denverpost.com). Follow him on Twitter: @vc CarrollDP*

*To send a letter to the editor about this article, submit [online](#) or check out our [guidelines](#) for how to submit by e-mail or mail.*

## Jenn Anderson

---

**From:** Alexandra King <alexandra.king.legislativeaide@gmail.com>  
**Sent:** Friday, April 24, 2015 4:27 PM  
**To:** Jenn Anderson  
**Cc:** Alexandria Wilson; Fred Yarger; David Blake; jbcookelaw@hotmail.com  
**Subject:** Re: Meeting with Senator Cooke to discuss SB 258

Hello All,

Please meet Senator Cooke and Mike Nasi at Randolph's in the Warwick Hotel (1776 Grant Street) at 12:00PM.

Please let me know if you have any questions and have a lovely weekend.

-Alex

Sent from my iPhone

On Apr 24, 2015, at 3:19 PM, Jenn Anderson <[Jenn.Anderson@state.co.us](mailto:Jenn.Anderson@state.co.us)> wrote:

Sounds good, Alex,

Please tell us where and what time.

Jennifer M. Anderson  
Legislative Liaison  
Colorado Department of Law  
Office of the Attorney General  
1300 Broadway, 10<sup>th</sup> Floor  
Denver, CO 80203  
Office: (720) 508-6555  
Cell: (720) 318-9868

---

**From:** Alexandra King [<mailto:alexandra.king.legislativeaide@gmail.com>]  
**Sent:** Friday, April 24, 2015 3:14 PM  
**To:** Alexandria Wilson  
**Cc:** Jenn Anderson; Fred Yarger; David Blake; [jbcookelaw@hotmail.com](mailto:jbcookelaw@hotmail.com)  
**Subject:** Re: Meeting with Senator Cooke to discuss SB 258

Good Afternoon,

Lunch on Tuesday, the 28th is the best time for the Senator.

-Alex

Sent from my iPhone

On Apr 24, 2015, at 1:45 PM, Alexandria Wilson <[Alexandria.Wilson@state.co.us](mailto:Alexandria.Wilson@state.co.us)> wrote:

Good Afternoon,

Senator Cooke recently requested a meeting with the AG office to discuss SB 258 (procedure for approving carbon emissions plan pursuant to the EPA proposed rule). The collective availability of the AG attendees is lunch, Tuesday, the 28<sup>th</sup> at noon and breakfast from 8-9 or 9-10. Please let me know what time works best for the Senator.

Regards,

Alexandria V. Wilson  
Administrative Assistant  
Office of the Attorney General  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway, 10th Floor  
Denver , Colorado 80203  
Main: 720-508-6000  
Direct: 720-508-6561  
[Alexandria.Wilson@state.co.us](mailto:Alexandria.Wilson@state.co.us)

## Jenn Anderson

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Main: 720-508-6000  
Direct: 720-508-6561  
[Alexandria.Wilson@state.co.us](mailto:Alexandria.Wilson@state.co.us)

## Jenn Anderson

---

**From:** Fred Yarger  
**Sent:** Friday, April 24, 2015 2:26 PM  
**To:** Jenn Anderson  
**Cc:** David Blake  
**Subject:** RE: SB 258 [Requiring Coordinated Review of Carbon Emissions Plan]

The great Professor Tribe!

Thanks for putting this together.

**Fred Yarger**  
O: 720.508.6168 | M: 303.638.1131

---

**From:** Jenn Anderson  
**Sent:** Friday, April 24, 2015 2:22 PM  
**To:** Fred Yarger  
**Cc:** David Blake  
**Subject:** SB 258 [Requiring Coordinated Review of Carbon Emissions Plan]

Hi Fred,

Attached is the most recent version of SB 258 which will be heard in House committee next week. I've also attached the analysis that C. Clarke did on SB 258. Casey disagreed with Clay Clarke's opinion regarding the Separation of Powers issue, since 25-7-133 CRS, gives the Legislature the opportunity to review all State Implementation Plans (SIP) promulgated by the Air Quality Control Commission before the Plans can be submitted to the U.S. Environmental Protection Agency and revise the SIP by bill if it believes the SIP does not accomplish the intended purpose. However, there is still the Presentment Clause issue raised by Clay in his memo which could be fixed by requiring a bill instead of a resolution which would require signature by the Governor.

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Cell: (720) 318-9868

## Jenn Anderson

---

**From:** Stephen Flaherty <Stephen.Flaherty@halliburton.com>  
**Sent:** Wednesday, May 06, 2015 7:33 AM  
**To:** Jenn Anderson  
**Subject:** BLM

Good morning Jenn. I have heard that Utah will be joining the lawsuit against the BLM. Do you know where New Mexico stands?

Also if you need anything on EPA or the impact operationally let me know. Great seeing you yesterday.

Stephen A. Flaherty  
Director State and Local Government Affairs  
Halliburton  
1125 17<sup>th</sup> Street  
Suite 1900  
Denver, CO 80202  
303-899-4768 office  
303-483-3355 cell  
[Stephen.flaherty@halliburton.com](mailto:Stephen.flaherty@halliburton.com)

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**Jenn Anderson**

---

**From:** Erin Lamb  
**Sent:** Friday, April 24, 2015 2:18 PM  
**To:** Everybody  
**Subject:** COLORADO ATTORNEY GENERAL JOINS LAWSUIT TO PROTECT STATE AUTHORITY TO REGULATE HYDRAULIC FRACTURING



**PRESS RELEASE**

Colorado Department of Law  
Attorney General Cynthia H. Coffman

**FOR IMMEDIATE RELEASE**

April 24, 2015

**CONTACT**

Erin Lamb  
720-508-6554  
[Erin.lamb@state.co.us](mailto:Erin.lamb@state.co.us)

**COLORADO ATTORNEY GENERAL JOINS LAWSUIT TO PROTECT STATE AUTHORITY TO REGULATE HYDRAULIC FRACTURING**

**DENVER**—Colorado Attorney General Cynthia H. Coffman, on behalf of the State of Colorado, joined a lawsuit this week challenging hydraulic fracturing regulations recently issued by the Federal Bureau of Land Management (BLM). Colorado joins Wyoming and North Dakota in the litigation. The lawsuit raises a straightforward legal question: whether BLM can impose its own regulations on hydraulic fracturing, even though federal law does not give it that power and instead allows states to regulate in this area.

The following statement is to be attributed to Colorado Attorney General Cynthia H. Coffman:

“Colorado has robust regulations on oil and gas development, including hydraulic fracturing, and our agency regulators are doing a good job implementing them. I believe it is important to test BLM’s novel assertion of regulatory authority in an area that has been traditionally—and in this case expressly—reserved for the states.

To be clear, this case is not about whether hydraulic fracturing should or should not be regulated. It should be regulated, and Colorado is doing so. However, the debate over hydraulic fracturing is complicated enough without the federal government encroaching on states’ rights. This lawsuit will demonstrate that BLM exceeds its powers when it invades the states’ regulatory authority in this area. It

will also allow further dialogue on this important public policy issue as Colorado continues to refine its regulatory approach to the industry.”

# # #

## Jenn Anderson

---

**From:** David Blake  
**Sent:** Saturday, May 30, 2015 7:16 AM  
**To:** Fred Yarger  
**Cc:** Jenn Anderson; Michelle Lyng; Erin Lamb  
**Subject:** Re: LTE from AG Coffman

Pithy!

Sent from my iPhone

On May 30, 2015, at 6:49 AM, Fred Yarger <[Fred.Yarger@state.co.us](mailto:Fred.Yarger@state.co.us)> wrote:

Let's just issue the brief as a press release!

Happy Connecting. Sent from my Sprint Samsung Galaxy S® 5

----- Original message -----

**From:** David Blake <[David.Blake@state.co.us](mailto:David.Blake@state.co.us)>  
**Date:** 05/29/2015 9:48 PM (GMT-07:00)  
**To:** Fred Yarger <[Fred.Yarger@state.co.us](mailto:Fred.Yarger@state.co.us)>  
**Cc:** Jenn Anderson <[Jenn.Anderson@state.co.us](mailto:Jenn.Anderson@state.co.us)>, Michelle Lyng <[Michelle.Lyng@state.co.us](mailto:Michelle.Lyng@state.co.us)>, Erin Lamb <[Erin.Lamb@state.co.us](mailto:Erin.Lamb@state.co.us)>  
**Subject:** Re: LTE from AG Coffman

Fred - could you please make it a little longer and more boring? Thanks, Dave

Sent from my iPhone

On May 29, 2015, at 1:39 PM, Fred Yarger <[Fred.Yarger@state.co.us](mailto:Fred.Yarger@state.co.us)> wrote:

Michelle, if you want to speak to the press person for Wyoming, here's his contact information:

**David Bush**

Office of Governor Matt Mead Communications Director

**Phone: 307.777.7437**

**E-mail: [david.bush@wyo.gov](mailto:david.bush@wyo.gov)**

State Capitol, Room 124 Cheyenne, WY 82002

Here's another option for the statement:

The BLM rule will take effect in less than a month, even though the States' lawsuit has raised serious concerns about BLM's legal authority to enact its rule. Today we requested a court order preventing the rule from becoming effective until the judge has the opportunity to decide whether the BLM has exceeded its jurisdiction. We believe the

judge will agree with us. The BLM rule attempts to regulate in an area reserved to the states—an area that Colorado has been responsibly regulating for decades. The court order we've requested will prevent confusion until these important legal questions are answered, and it will protect an important source of Colorado jobs from unnecessary and duplicative federal regulation.

**Fred Yarger**

O: 720.508.6168 | M: 303.638.1131

---

**From:** David Blake

**Sent:** Friday, May 29, 2015 12:24 PM

**To:** Fred Yarger; Jenn Anderson; Michelle Lyng; Erin Lamb

**Subject:** RE: LTE from AG Coffman

Were getting there...

The BLM's rule is set to take effect in less than a month. Our motion simply asks the Court to hold off its taking effect prematurely. The underlying lawsuit raises serious questions about the legality of BLM's regulatory reach in an area reserved for the states—an area that Colorado has been responsibly regulating for decades. The court should take the opportunity to answer the central question before the regulations create confusion, duplication and negatively impact Coloradans: has BLM exceeded its legal authority in its effort to regulate fracking in Colorado?

---

**From:** Fred Yarger

**Sent:** Friday, May 29, 2015 11:51 AM

**To:** Jenn Anderson; Michelle Lyng; Erin Lamb

**Cc:** David Blake

**Subject:** RE: LTE from AG Coffman

I want to avoid the word "irreparable harm" for a number of reasons. Here's a revision:

The BLM's rule is set to take effect in less than a month. In the meantime, we've raised serious concerns about BLM's legal authority to enact its rule. That's why we asked for an order preventing the rule from taking effect until the court has an opportunity to determine whether the BLM exceeded its jurisdiction by regulating in an area reserved for the states—an area that Colorado has been responsibly regulating for decades. The injunction we've requested will prevent confusion, and it will protect Colorado from unnecessary and duplicative federal regulation, until these important legal questions are answered.

**Fred Yarger**

O: 720.508.6168 | M: 303.638.1131

---

**From:** Jenn Anderson

**Sent:** Friday, May 29, 2015 11:30 AM

**To:** Michelle Lyng; Erin Lamb

**Cc:** David Blake; Fred Yarger

**Subject:** RE: LTE from AG Coffman

How about this:

The BLM's rule is set to take effect in less than a month and will result in irreparable harm to Colorado's economy and sovereignty; therefore, we've asked the court to enjoin the rule from taking effect until the court has ruled on whether the BLM has exceeded its authority by regulating in an area that has been reserved for the states.

Jennifer M. Anderson  
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Office of the Attorney General  
1300 Broadway, 10<sup>th</sup> Floor  
Denver, CO 80203  
Office: (720) 508-6555  
Cell: (720) 318-9868

---

**From:** Michelle Lyng  
**Sent:** Friday, May 29, 2015 11:10 AM  
**To:** Erin Lamb; Jenn Anderson  
**Cc:** David Blake; Fred Yarger  
**Subject:** RE: LTE from AG Coffman

How about this? Too warm and fuzzy.

This decision will have far-reaching, negative consequences for Colorado's families who rely on energy development for their livelihoods. We are asking the court to grant this injunction because we believe the federal government has overstepped its bounds by enacting this rule. We are representing Colorado's families when we request that the BLM wait for the court's ruling before causing economic harm to our state.

---

**From:** Erin Lamb  
**Sent:** Friday, May 29, 2015 9:58 AM  
**To:** Michelle Lyng; Jenn Anderson  
**Cc:** David Blake; Fred Yarger  
**Subject:** RE: LTE from AG Coffman

Or something about "We are asking for a delay (again, don't really like that word) until the court has had a chance to determine whether BLM has exceeded their authority by promulgating the rule. The state of Colorado will suffer irreparable harm if the court does not grant the injunction." It's a very rough draft but working on it.

---

**From:** Erin Lamb  
**Sent:** Friday, May 29, 2015 9:40 AM  
**To:** Michelle Lyng  
**Subject:** RE: LTE from AG Coffman

Could it be something simple like, " Our office is asking the court to delay the effective date of the rule until it has the opportunity to decide whether the Federal Bureau of Land Management's rule exceeds its jurisdiction. The delay (but different word) is important because it will provide more clarity to the ongoing debate of federal vs. state regulation of this industry."

I know you and Fred have talked about this is more detail so add or take away whatever doesn't work.

---

**From:** Michelle Lyng  
**Sent:** Friday, May 29, 2015 9:32 AM  
**To:** Erin Lamb  
**Subject:** FW: LTE from AG Coffman

---

**From:** Michelle Lyng  
**Sent:** Friday, May 08, 2015 4:59 PM  
**To:** Erin Lamb  
**Subject:** FW: LTE from AG Coffman

---

**From:** Michelle Lyng  
**Sent:** Friday, May 08, 2015 4:18 PM  
**To:** '[letters@gjsentinel.com](mailto:letters@gjsentinel.com)'  
**Subject:** FW: LTE from AG Coffman

Good afternoon,

I tried to send this; however, your server kicked it back. Can you please confirm that you have received this?

Many thanks,

Michelle

---

**From:** Michelle Lyng  
**Sent:** Friday, May 08, 2015 4:17 PM  
**To:** '[letters@gjsentinel.com](mailto:letters@gjsentinel.com)'; '[bob.silbernagel@gjsentinel.com](mailto:bob.silbernagel@gjsentinel.com)'  
**Subject:** LTE from AG Coffman

Good afternoon Bob,

Attached please find a letter-to-the-editor from Colorado Attorney General Cynthia Coffman on the OAG's decision to join the BLM suit. We'd be grateful if you would consider publishing it. Please feel free to contact me with any questions.

Thank you,

Michelle Lyng  
202-380-7114

## Jenn Anderson

---

**From:** Michelle Lyng  
**Sent:** Friday, May 29, 2015 11:21 AM  
**To:** Erin Lamb; Jenn Anderson  
**Cc:** David Blake; Fred Yarger  
**Subject:** RE: LTE from AG Coffman

Sorry, that may be the case - I may have incorrectly inferred that from the previous statement. By all means, let's be accurate.

---

**From:** Erin Lamb  
**Sent:** Friday, May 29, 2015 11:19 AM  
**To:** Michelle Lyng; Jenn Anderson  
**Cc:** David Blake; Fred Yarger  
**Subject:** RE: LTE from AG Coffman

I think that's good. But I think we need to take out "by enacting this rule" or change the wording because I thought it wasn't to be enacted before June 24? Also – aren't we asking for the court to delay the rule instead of for the BLM to wait?

---

**From:** Michelle Lyng  
**Sent:** Friday, May 29, 2015 11:10 AM  
**To:** Erin Lamb; Jenn Anderson  
**Cc:** David Blake; Fred Yarger  
**Subject:** RE: LTE from AG Coffman

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## Jenn Anderson

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**To:** Jenn Anderson; Michelle Lyng; Erin Lamb  
**Cc:** David Blake  
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202-380-7114



## United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

**MAY 27 2015**

IN REPLY REFER TO

Honorable Cynthia Coffman  
Attorney General  
State of Colorado  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway, 10th Floor  
Denver, Colorado 80203

Dear Attorney General Coffman:

Thank you for your letter of May 13, 2015, to Assistant Secretary Janice Schneider asking the Department of the Interior (Department) to extend the effective date of the hydraulic fracturing rule by at least nine months. I am responding for Assistant Secretary Schneider and the Department because the Department is in litigation with your State about the hydraulic fracturing rule.

After considering your letter, the Department declines to extend the effective date of the hydraulic fracturing rule. The final rule represents the culmination of a multiple-year public process through which the Department's Bureau of Land Management (BLM) developed common-sense regulations "to ensure the environmentally responsible development of oil and gas resources on Federal and Indian lands . . ." 80 Fed. Reg. 16,128 (March 26, 2015). As explained in the preamble to the final hydraulic fracturing rule, the effective date has already been lengthened to 90 days after publication in the *Federal Register* instead of the minimum 60 days. As noted in the preamble, although BLM considered longer effective dates, "the public also expects new requirements for hydraulic fracturing to be implemented in a timely manner."

In addition, the final rule includes a transition provision (43 C.F.R. 3162.3-3(a)), which allows the industry time to transition from the previous regulations to the new regulations and to adapt contracts and practices to the rule without causing major disruptions in operations. Postponing those published compliance dates would cause confusion for the public and the industry.

Finally, as summarized in the preamble to the final hydraulic fracturing rule, and as explained in more detail in the Regulatory Impact Analysis for the rule, the Department concludes that implementation of the final rule will not be a significant burden for the industry and will not dissuade development of geologically promising public or Indian lands. For all these reasons, the Department believes that the public interest would not be served by a delay in the effective date of the rule.

The Department recognizes that your State shares with us the objective of properly regulating hydraulic fracturing operations. The BLM looks forward to a continued productive partnership with your State's agencies to achieve our shared goals of safe and environmentally sound production of oil and gas for our nation.

An identical letter has been sent to Attorney General Wayne Stenehjem of North Dakota and to Attorney General Peter K. Michael of Wyoming.

If you have any questions, please contact Deputy Solicitor Jack Haugrud at 202-208-4507.

Sincerely,

A handwritten signature in cursive script, appearing to read "Hilary C. Tompkins".

Hilary C. Tompkins  
Solicitor

## Jenn Anderson

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**From:** Erin Lamb  
**Sent:** Wednesday, June 03, 2015 12:16 PM  
**To:** Cynthia Coffman; Fred Yarger; David Blake; Casey Shpall; Jenn Anderson  
**Cc:** Michelle Lyng; Melanie Snyder  
**Subject:** BLM Response Letter received  
**Attachments:** 060215 - BLM Response Letter.pdf

Office of the Interior has sent a response to our letter. See attached.

Erin Lamb  
Executive Assistant to the Attorney General  
Office of the Attorney General  
1300 Broadway 10<sup>th</sup> Floor, Denver 80203  
720.508.6554  
[Erin.lamb@state.co.us](mailto:Erin.lamb@state.co.us)

## Jenn Anderson

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**From:** Michelle Lyng  
**Sent:** Wednesday, June 03, 2015 2:14 PM  
**To:** Erin Lamb; Cynthia Coffman; Fred Yarger; David Blake; Casey Shpall; Jenn Anderson  
**Cc:** Melanie Snyder  
**Subject:** RE: BLM Response Letter received

Hi all, we did a quick media sweep and Twitter review and have not seen anything on this yet. We have a few ways we could approach this:

- 1) No comment
- 2) Reactive only
- 3) Press release condemning the BLM's overreach (if appropriate given where we are in the process)

While I would recommend at least a reactive statement, whether we do a press release entirely depends on whether you/Cynthia want to be known for this issue. After the last round of media (which was a mixed bag) on this topic, I think getting ahead of the message is not a bad idea.

Thanks,

Michelle

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**From:** Erin Lamb  
**Sent:** Wednesday, June 03, 2015 12:16 PM  
**To:** Cynthia Coffman; Fred Yarger; David Blake; Casey Shpall; Jenn Anderson  
**Cc:** Michelle Lyng; Melanie Snyder  
**Subject:** BLM Response Letter received

Office of the Interior has sent a response to our letter. See attached.

Erin Lamb  
Executive Assistant to the Attorney General  
Office of the Attorney General  
1300 Broadway 10<sup>th</sup> Floor, Denver 80203  
720.508.6554  
[Erin.lamb@state.co.us](mailto:Erin.lamb@state.co.us)

**Instances where the DOL has taken action adverse to the federal government**  
6/25/15

**I. Solicitor General**

- **BLM Fracking Rule: *States of Wyoming, Colorado, North Dakota, and Utah v. U.S. Dept of the Interior, 15-cv-43 (D. Wyo.)***: The states are challenging the jurisdiction of the Bureau of Land Management to regulate various aspects of hydraulic fracturing operations to protect groundwater. We argue that BLM lacks this authority, and that Congress explicitly acted to reserve state authority to regulate in this area on both federal and non-federal land.
- **WOTUS: *States of North Dakota, et al., v. U.S. Environmental Prot. Agency (D.N.D.) (NOT YET FILED)***: We are joining a coalition of 13 states challenging the recently finalized “waters of the united states” rule, because, as we understand the rule, it improperly expands the federal government’s jurisdiction under the Clean Water Act. Another nine states are suing in the district of Columbia; up to six other states are suing in other districts.
- ***In re Gunnison Sage-Grouse Endangered Species Act Litigation, No. 15-cv-286 (D. Colo.)***: We represent the Colorado Department of Natural Resources in litigation to overturn the federal government’s decision to (1) list the Gunnison Sage Grouse as “threatened” under the Endangered Species Act and (2) designate 1.4 million acres as critical habitat for the species, despite the fact that half that land is not current habitat for the bird and much of it is unsuitable as habitat for the bird.
- ***People for the Ethical Treatment of Property Owners v. U.S. Fish & Wildlife Serv., Nos. 14-4151 and 14-4165 (10th Cir.)***: We joined an amicus brief arguing that the federal government lacks power to regulate a purely intrastate species with no commercial value.
- **Clean Power Plan / Clean Air Act Section 111(d)**: Three of the Governor’s department heads filed a comment letter regarding the upcoming “clean power plan” regulations.
- **Ozone**: CDPHE submitted comments regarding the federal government’s upcoming rule governing ambient air quality standards for ozone.
- ***Massachusetts v. U.S. Securities and Exchange Comm’n, No 15-1150 (D.C. Cir.) (STATUS UNCLEAR)***: The Colorado Division of Securities may participate in this case as an amicus curiae. The suit challenges the SEC’s rule governing who may invest in crowdfunding transactions. Only our client will participate in the suit; the State will not be named as amicus curiae, nor will General Coffman.

**II. State Services**

**A. The Human Services Unit has the following cases on behalf of the Department of Human Services:**

- ***Food & Nutrition Services (FNS) Disallowance***. FNS, the State’s federal partner in administering the Food Assistance (food stamps) program, disallowed approximately \$953,000 in federal matching funds for administrative contract costs associated with the Colorado Benefits Management System (CBMS). Federal regulations require states to

## Instances where the DOL has taken action adverse to the federal government

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submit contract amendments to FNS for prior approval when the costs associated with those amendments exceed a certain threshold, and CDHS did not do so. CDHS requested a supplemental appropriation from the General Assembly to pay the disallowance, and the Joint Budget Committee approved the request on June 19, 2015. CDHS is also negotiating with FNS to reduce the disallowance amount by approximately \$20,000 based on FNS's calculation error. (This case has received some press attention).

- ***Colorado Division of Vocational Rehabilitation v. U.S. Mint – Denver:*** This arbitration before the Department of Education turns on whether the gift shop of the Denver Mint is a “vending facility” subject to the Randolph-Sheppard Act’s priority for blind vendors to run such facilities on federal properties. It also involves the distribution of vending machine income under the Randolph-Sheppard regulations. The arbitration hasn’t been calendared yet, but the parties are scheduled to mediate in July.
- ***Fitzsimons Nursing Home vs. CMS:*** CDHS/Fitzsimons appealed the determination of the Centers for Medicare and Medicaid Services’ (CMS) survey conducted on behalf of CMS by CDPHE on August 8, 2013, which resulted in a finding of Immediate Jeopardy and Substandard Quality of Care. CMS filed a Motion For Summary Judgment on April 4, 2014. CDHS filed its Response to the Motion For Summary Judgment on May 19, 2014. We are awaiting a ruling from the Departmental Appeals Board of the US Department of Health and Human Services. (Note: our understanding is that this length of delay is not entirely unusual).

### **B. Public Officials Unit reports the following:**

- **First Response Network Authority Comments:** Comments were submitted on behalf of the Office of Information & Technology (“OIT”) to the First Responder Network Authority, an independent federal governmental authority, known as “FirstNet”. The comments criticize the federal government’s approach, particularly with regard to the federal government’s administrative process for adopting policies/regulations. Certain comments challenged Federal FirstNet’s interpretation of its enabling statute and the scope of its authority *visa-vis* the participating states. Essentially, OIT’s position is that the federal government’s interpretation of FirstNet’s enabling statute is overly broad and infringes on the state’s authority. OIT’s comments center around a concern that the federal government’s approach oversteps the state’s authority or right to participate as its own jurisdiction within the nationwide first responder network.

### **C. The Public Utilities Commission reports the following:**

- **Joint Dispatch Agreement Petition:** Public Service and Black Hills filed a petition with the Federal Energy Regulatory Commission for approval of a joint dispatching arrangement, in which the generation resources of the participants are pooled and used to draw power in a manner that reduces generation costs to the participants. The PUC filed comments with FERC asserting that the joint dispatch arrangement must not interfere with the PUC’s authority to regulate generation resources and practices. On a scale of assessing the adversarial nature of this proceeding, it is at the very bottom -- I do not

## Instances where the DOL has taken action adverse to the federal government

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anticipate any adversarial process, formal or informal, resulting from this docket. On Tuesday, FERC issued an order rejecting Public Service's petition for approval of its proposed joint dispatch agreement. FERC's order does not alter the relative absence of any adversarial process between Colorado and FERC on this matter

- **EPA Clear Air Plan:** The Chair of the PUC participated in comments filed by the state of Colorado with the EPA opposing the benchmarks contained in the proposed rules to reduce carbon emissions from existing power plants. Those comments requested the starting point to be about 2005 rather than the proposed 2012, which would grant the state credit for the emission reductions and resultant expenditures incurred by the state to reduce emissions before 2012. The benchmark issues may result in an adversarial relationship between the state and the EPA. Of course, many states and industry representatives will challenge the EPA's rules as beyond the EPA's authority under Section 111(d) of the Clean Air Act.

### D. The Health Care Unit:

- ***HCPF v. Centers for Medicare and Medicaid Services (CMS)*:** By notice dated July 30, 2013, CMS disallowed \$10,677,539 in federal funds for administrative costs related to outstationing eligibility determination functions at Denver Health for the time period between April 1, 2005 and June 30, 2010. A second disallowance was issued in the amount of \$2,692,324 for the time period between June 30, 2011 and September 30, 2011. The Department appealed both disallowances to the Departmental Appeals Board (DAB) at the U.S. Department of Health and Human Services. The cases have been consolidated and are fully briefed. We are awaiting a decision from the DAB.

## III. Natural Resources

- ***EPA's Proposed Greenhouse Gas Reduction Rule for Power Plants:*** The EPA has proposed rules under Section 111 of the Clean Air Act for reduction of CO<sub>2</sub> from new and existing power plants. While CDPHE generally supports the proposal, there are details the agency would like to see changed before EPA adopts the final rule including, but not limited to, our CO<sub>2</sub> emission goal which does not afford early action credit for Colorado's accomplishments to date.
- ***EPA's Proposed Revision to the Ozone National Ambient Air Quality Standard:*** The EPA has proposed to revise the standard to a level within the range of 0.065 to 0.070 parts per million, down from the current primary standard of 0.075 ppm. CDPHE commented on this proposal, raising a few issues, including the concern that EPA could adopt a new standard near the bottom of the range. "Background" ozone (the level of ozone present in certain areas of Colorado due to international, interstate and natural sources) could be above such a standard, meaning we may be unable to meet the standard under any circumstance.

## IV. Consumer Protection

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- November 24, 2014 letter to the Federal Trade Commission commenting on proposed revisions to the Telemarketing Sales Rule and urging some greater consumer protections.
- September 9, 2014 letter to the Federal Communications Commission formally requesting an opinion from the Federal Communications Commission (the “FCC”) regarding telephone carriers’ legal ability to implement call-blocking technology. The FCC accepted that request and, just last month, issued an order allowing telecommunications companies to block, at a customer’s request, robo-calls.
- May 30, 2014 amicus brief in support of petitioners in *North Carolina Board of Dental Examiners v. Federal Trade Commission* – opposing the FTC’s attempt to deny state action immunity to a state regulatory board and hold it liable for antitrust violations.
- February 24, 2014 letter to Chairmen of the House and Senate Judiciary Committees expressing support of their efforts to enact bipartisan patent reform legislation, and sharing concerns with the currently proposed S. 1720 and the recently passed H.R. 3309, regarding patent troll and potential preemption of state law.
- February 5, 2014 letter to the Office of the United States Trade Representative requesting that the United States Trade Representative act to preserve the ability of state and local governments to regulate tobacco products to protect the public health.
- December 19, 2013 letter to Congressional leadership urging Congress to extend the Mortgage Forgiveness Tax Relief Act. State AG’s had supported the same extension the previous year and argued again that this relief was crucial to both the homeowners struggling to regain their financial footing and to the battered housing market whose recovery is slow and still uncertain.
- September 24, 2013 letter to the U.S. Food and Drug Administration urging it to take all available measures to meet the FDA’s stated deadline of October 31, 2013, to issue proposed regulations that will address the advertising, ingredients, and sale to minors of electronic cigarettes (also known as e-cigarettes).
- September 6, 2013 amicus brief in support of petitioners (USDOJ filed an amicus brief opposing the states) in *Michigan v. Bay Mills Indian Community* arguing that an Indian Tribe operating an illegal casino off reservation and in violation of the Indian Gaming Regulatory Act was not entitled to sovereign immunity from suit.



## Jenn Anderson

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**From:** Jenn Anderson  
**Sent:** Friday, April 24, 2015 11:30 AM  
**To:** Cynthia Coffman; David Blake  
**Cc:** Fred Yarger; Alexandria Wilson; Erin Lamb  
**Subject:** Fwd: Meeting Request

Cynthia and David,

Below is a meeting request to discuss SB 258 (procedure for approving carbon emissions plan pursuant to the EPA proposed rule) w/ Senator Cooke and legal council from TX who testified as an expert on the bill who will be in town next week. I know Cynthia will be out of town, but I think it may be beneficial to meet w/ them and hear their perspective on the bill. Let me know if you would like me to setup a meeting and who should be there,

Please forgive brevity and typos, as this was sent from my mobile phone.

Jennifer M. Anderson  
Legislative Liaison  
Office of the Attorney General  
(720) 318-9868

Begin forwarded message:

**From:** Alexandra King <[alexandra.king.legislativeaide@gmail.com](mailto:alexandra.king.legislativeaide@gmail.com)>  
**Date:** April 24, 2015 at 10:05:05 AM MDT  
**To:** Jenn Anderson <[Jenn.Anderson@state.co.us](mailto:Jenn.Anderson@state.co.us)>  
**Subject:** Meeting Request

Hello Jenn,

Senator Cooke would like to request a meeting with you and the Attorney General Cynthia Coffman. Mike Nasi, who I believe you have previously met, will be in town Monday, the 27th through Tuesday, the 28th for a legislative briefing on 111(d). They would like to meet with you both at some point during Mr. Nasi's time here.

Please take a look at your schedules and let me know if you are available for drinks and/or dinner on Monday, April 27th or for breakfast or lunch on Tuesday, April 28th.

Of course you both are welcome to attend the legislative briefing on 111(d). Please let me know if you are interested and I would be happy to send you more information.

--

**Alexandra King**

Aide to Senator Cooke  
Senate District 13

Aide to Representative Lawrence  
House District 39

## Jenn Anderson

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**From:** Jenn Anderson  
**Sent:** Friday, April 24, 2015 11:48 AM  
**To:** Alexandria Wilson  
**Subject:** Fwd: Meeting Request

Please setup are ting w/ Senator Cooke on Tuesday lunch or breakfast of next week. David, me and Fred should be there. Make sure it fits their schedules. Thanks,

Please forgive brevity and typos, as this was sent from my mobile phone.

Jennifer M. Anderson  
Legislative Liaison  
Office of the Attorney General  
[\(720\) 318-9868](tel:7203189868)

Begin forwarded message:

**From:** Fred Yarger <[Fred.Yarger@state.co.us](mailto:Fred.Yarger@state.co.us)>  
**Date:** April 24, 2015 at 11:39:04 AM MDT  
**To:** David Blake <[David.Blake@state.co.us](mailto:David.Blake@state.co.us)>, Jenn Anderson <[Jenn.Anderson@state.co.us](mailto:Jenn.Anderson@state.co.us)>  
**Cc:** Cynthia Coffman <[Cynthia.Coffman@state.co.us](mailto:Cynthia.Coffman@state.co.us)>, Alexandria Wilson <[Alexandria.Wilson@state.co.us](mailto:Alexandria.Wilson@state.co.us)>, Erin Lamb <[Erin.Lamb@state.co.us](mailto:Erin.Lamb@state.co.us)>  
**Subject:** RE: Meeting Request

I'd prefer breakfast or coffee on Tuesday rather than an evening meeting on Monday. When you have a chance, please send me the current version of the bill and any pertinent internal e-mails. Thanks.

**Fred Yarger**  
O: 720.508.6168 | M: 303.638.1131

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**From:** David Blake  
**Sent:** Friday, April 24, 2015 11:32 AM  
**To:** Jenn Anderson  
**Cc:** Cynthia Coffman; Fred Yarger; Alexandria Wilson; Erin Lamb  
**Subject:** Re: Meeting Request

Well, I think we have to take the meeting and it is Fred and I with the lead. Cynthia should not be there.

Dave

Sent from my iPhone

On Apr 24, 2015, at 11:29 AM, Jenn Anderson <[Jenn.Anderson@state.co.us](mailto:Jenn.Anderson@state.co.us)> wrote:

Cynthia and David,

Below is a meeting request to discuss SB 258 (procedure for approving carbon emissions plan pursuant to the EPA proposed rule) w/ Senator Cooke and legal council from TX who testified as an expert on the bill who will be in town next week. I know Cynthia will be out of town, but I think it may be beneficial to meet w/ them and hear their perspective on the bill. Let me know if you would like me to setup a meeting and who should be there,

Please forgive brevity and typos, as this was sent from my mobile phone.

Jennifer M. Anderson  
Legislative Liaison  
Office of the Attorney General  
(720) 318-9868

Begin forwarded message:

**From:** Alexandra King  
<[alexandra.king.legislativeaide@gmail.com](mailto:alexandra.king.legislativeaide@gmail.com)>  
**Date:** April 24, 2015 at 10:05:05 AM MDT  
**To:** Jenn Anderson <[Jenn.Anderson@state.co.us](mailto:Jenn.Anderson@state.co.us)>  
**Subject: Meeting Request**

Hello Jenn,

Senator Cooke would like to request a meeting with you and the Attorney General Cynthia Coffman. Mike Nasi, who I believe you have previously met, will be in town Monday, the 27th through Tuesday, the 28th for a legislative briefing on 111(d). They would like to meet with you both at some point during Mr. Nasi's time here.

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Of course you both are welcome to attend the legislative briefing on 111(d). Please let me know if you are interested and I would be happy to send you more information.

--

**Alexandra King**

Aide to Senator Cooke  
Senate District 13

Aide to Representative Lawrence  
House District 39

## Jenn Anderson

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**From:** Jenn Anderson  
**Sent:** Friday, April 24, 2015 2:22 PM  
**To:** Fred Yarger  
**Cc:** David Blake  
**Subject:** SB 258 [Requiring Coordinated Review of Carbon Emissions Plan]  
**Attachments:** 258\_ren.pdf; SB258 analysis by C. Clarke.docx; EPA.HHRG-114-IF03-Wstate-TribeL-20150317-U1.pdf

Hi Fred,

Attached is the most recent version of SB 258 which will be heard in House committee next week. I've also attached the analysis that C. Clarke did on SB 258. Casey disagreed with Clay Clarke's opinion regarding the Separation of Powers issue, since 25-7-133 CRS, gives the Legislature the opportunity to review all State Implementation Plans (SIP) promulgated by the Air Quality Control Commission before the Plans can be submitted to the U.S. Environmental Protection Agency and revise the SIP by bill if it believes the SIP does not accomplish the intended purpose. However, there is still the Presentment Clause issue raised by Clay in his memo which could be fixed by requiring a bill instead of a resolution which would require signature by the Governor.

I've also attached Laurence Tribe's testimony regarding the EPA's proposed carbon emissions rule.

Jennifer M. Anderson  
Legislative Liaison  
Colorado Department of Law  
Office of the Attorney General  
1300 Broadway, 10<sup>th</sup> Floor  
Denver, CO 80203  
Office: (720) 508-6555  
Cell: (720) 318-9868

First Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

**REENGROSSED**

*This Version Includes All Amendments  
Adopted in the House of Introduction*

LLS NO. 15-0936.01 Duane Gall x4335

**SENATE BILL 15-258**

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**SENATE SPONSORSHIP**

Cooke and Sonnenberg,

**HOUSE SPONSORSHIP**

Dore,

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**Senate Committees**

Agriculture, Natural Resources, & Energy  
Appropriations

**House Committees**

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**A BILL FOR AN ACT**

101      **CONCERNING A REQUIREMENT FOR COORDINATED REVIEW PRIOR TO**  
102            **THE ADOPTION OF A STATE PLAN FOR THE REDUCTION OF**  
103            **CARBON DIOXIDE EMISSIONS BY COLORADO ELECTRIC**  
104            **UTILITIES, AND, IN CONNECTION THEREWITH, ENACTING THE**  
105            **"COLORADO ELECTRIC CONSUMERS' PROTECTION ACT" AND**  
106            **MAKING AN APPROPRIATION.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)*

The bill requires that, before the Colorado air quality control

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

SENATE  
3rd Reading Unamended  
April 23, 2015

SENATE  
Amended 2nd Reading  
April 22, 2015