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## Alexandria Wilson

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**Subject:** Legal challenges to Fracking Rule- Counsel for Petitioners & Fed. Defs.  
**Location:** Dial In #: 1-877-270-3379; Conference ID: 2973731

**Start:** Wed 5/20/2015 1:00 PM  
**End:** Wed 5/20/2015 2:00 PM

**Recurrence:** (none)

**Meeting Status:** Accepted

**Organizer:** Andrew Emrich

**Categories:** Meetings

## Alexandria Wilson

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**From:** Jenn Anderson  
**Sent:** Thursday, April 02, 2015 10:00 AM  
**To:** David Blake  
**Subject:** Fwd: Proposed carbon emissions enn(LLS 15-0936)  
**Attachments:** 15-0936\_01.pdf; ATT00001.htm

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:** Cooke John <[jbcookelaw@hotmail.com](mailto:jbcookelaw@hotmail.com)>  
**Date:** April 1, 2015 at 8:30:49 AM MDT  
**To:** "[jenn.anderson@state.co.us](mailto:jenn.anderson@state.co.us)" <[jenn.anderson@state.co.us](mailto:jenn.anderson@state.co.us)>  
**Subject:** **FW: Proposed carbon emissions enn(LLS 15-0936)**

Here you go!

## Alexandria Wilson

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**From:** David Blake  
**Sent:** Wednesday, June 12, 2013 5:03 AM  
**To:** Laura-Jane Weimer  
**Subject:** Fwd: Bureau of Land Management Proposed Rule on Hydarulic Fracturing  
**Attachments:** image001.png; image002.gif  
  
**Categories:** The Guys- Higher Pri

Please add to the Schedule. Thanks.

Sent from my iPhone

Begin forwarded message:

**From:** Casey Shpall <[Casey.Shpall@state.co.us](mailto:Casey.Shpall@state.co.us)>  
**Date:** June 11, 2013, 7:56:24 PM EDT  
**To:** John Suthers <[John.Suthers@state.co.us](mailto:John.Suthers@state.co.us)>, Terri Connell <[Terri.Connell@state.co.us](mailto:Terri.Connell@state.co.us)>, David Blake <[David.Blake@state.co.us](mailto:David.Blake@state.co.us)>  
**Cc:** Jake Matter <[Jake.Matter@state.co.us](mailto:Jake.Matter@state.co.us)>, Patti Dubose <[Patti.Dubose@state.co.us](mailto:Patti.Dubose@state.co.us)>  
**Subject: Re: Bureau of Land Management Proposed Rule on Hydarulic Fracturing**

Please reserve July 1 from 2-3 for this meeting. Terri - is the AG conference room available? Thanks, Casey

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**From:** Casey Shpall  
**Sent:** Tuesday, June 11, 2013 05:20 PM  
**To:** John Suthers; Terri Connell; David Blake  
**Cc:** Casey Shpall; Jake Matter  
**Subject:** Fw: Bureau of Land Management Proposed Rule on Hydarulic Fracturing

Will the afternoon of July 1 work for you to meet with the oil and gas industry on the new revised BLM rules? Thanks, Casey

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**From:** Sam Knaizer [<mailto:sknaizer@newfield.com>]  
**Sent:** Tuesday, June 11, 2013 04:25 PM  
**To:** Casey Shpall  
**Cc:** Terri Connell; David Blake; 'kwonstolen@bwenergyllaw.com' <[kwonstolen@bwenergyllaw.com](mailto:kwonstolen@bwenergyllaw.com)>  
**Subject:** RE: Bureau of Land Management Proposed Rule on Hydarulic Fracturing

Casey,

After speaking with Ken I would like to propose the afternoon of July 1<sup>st</sup>. Please let me know if this works with schedules on your end.

Thanks,

Sam

## Sam Knaizer

### Government and Regulatory Affairs

Office: 303-383-4162

Mobile: 720-250-6388



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**From:** Casey Shpall [<mailto:Casey.Shpall@state.co.us>]

**Sent:** Friday, June 07, 2013 11:32 AM

**To:** Sam Knaizer

**Cc:** Terri Connell; David Blake

**Subject:** Re: Bureau of Land Management Proposed Rule on Hydarulic Fracturing

We can, however I am out of the office for the next 2 weeks. Could you please coordinate with Ken Wonstolen to come up with some dates in July when you are both available and I will check John Suthers' schedule. Thanks, Casey

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**From:** Sam Knaizer [<mailto:sknaizer@newfield.com>]

**Sent:** Friday, June 07, 2013 11:06 AM

**To:** Casey Shpall

**Subject:** RE: Bureau of Land Management Proposed Rule on Hydarulic Fracturing

Good morning Casey,

I hope this e-mail finds you well.

Now that we have a revised BLM rule on hydraulic fracturing I was wondering if we might reschedule the meeting we postponed. Generally we remain concerned that the revised rule still infringes on state water laws and has broad negative implications for state water rights moving forward.

Best regards,

## Sam Knaizer

### Government and Regulatory Affairs

Office: 303-383-4162

Mobile:720-250-6388

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**From:** Casey Shpall [<mailto:Casey.Shpall@state.co.us>]

**Sent:** Tuesday, January 22, 2013 4:07 PM  
**To:** Sam Knaizer  
**Subject:** Re: Bureau of Land Management Proposed Rule on Hydarulic Fracturing

The meeting scheduled for January 24 at 2:00 is postponed until March since the BLM has withdrawn its rule for reworking. Thanks, Casey

**From:** Sam Knaizer [mailto:[sknaizer@newfield.com](mailto:sknaizer@newfield.com)]  
**Sent:** Monday, January 07, 2013 11:10 AM  
**To:** Casey Shpall  
**Subject:** RE: Bureau of Land Management Proposed Rule on Hydarulic Fracturing

Casey,

Thank you for agreeing to meet and coordinating the parties. I will be there and at this time do not have any plans to bring anyone else.

Look forward to seeing you soon,

Sam

**Sam Knaizer**  
**Government and Regulatory Affairs**  
Office: 303-383-4162  
Mobile: 720-250-6388

"Newfield Exploration"

**From:** Casey Shpall [mailto:[Casey.Shpall@state.co.us](mailto:Casey.Shpall@state.co.us)]  
**Sent:** Friday, January 04, 2013 11:05 AM  
**To:** Sam Knaizer  
**Subject:** RE: Bureau of Land Management Proposed Rule on Hydarulic Fracturing

John Suthers can meet on the BLM HF Rule on January 24, 2013, at 2:00 p.m. Ken Wonstolen is also invited to attend. Please let me know if you will be bringing any other people. We will be meeting in our new building. See address below. Thanks, Casey

*Casey Shpall*

*Deputy Attorney General*

*Natural Resources and Environment Section*

[casey.shpall@state.co.us](mailto:casey.shpall@state.co.us)

**Notice of Address Change**

**Effective *January 22, 2013***, the Colorado Department of Law will operate from the Ralph L. Carr Colorado Judicial Center. The *new address and phone number* will be:

Colorado Department of Law  
Natural Resources and Environment Section  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway, 7th Floor  
Denver, Colorado 80203  
(720) 508-6000 Main

**From:** Sam Knaizer [<mailto:sknaizer@newfield.com>]

**Sent:** Monday, December 03, 2012 4:48 PM

**To:** Casey Shpall; Jake Matter

**Subject:** Bureau of Land Management Proposed Rule on Hydarulic Fracturing

Good afternoon Ms. Shpall and Mr. Matter,

I am writing to you regarding the proposed Bureau of Land Management Rule ("Proposed Rule") to regulate hydraulic fracturing. I recognize that the Attorney General's Office represents client agencies that may have an interest in this rule and thought it might be helpful to outline some specific concerns related to the very narrow issue of water rights and management in Colorado.

As a member of the oil and gas community here in Colorado, we are concerned that the Proposed Rule potentially infringes on state water laws and has broad negative implications for state water rights moving forward. Whether operators use water that originates on federal, private or tribal land, such uses are governed by state water laws. We believe the proposed federal approval and mitigation requirements unlawfully circumvent the prior appropriation doctrine and deprive landowners, cities and industry in the western states of one of their most valuable economic interests--water.

BLM claims the Proposed Rule is necessary to provide information to the public and to assure fracturing is done in a way that protects the environment. BLM intends to “protect all usable waters during drilling operations...” Well Stimulation, Including Hydraulic Fracturing, on Federal and Indian Lands, 77 Fed. Reg. 27,691, 27,695 (May 11, 2012). In so doing, BLM either seeks to create a federal “super” water right or to impose riparian law on the western states. Neither is tenable under BLM’s statutory authority and Congress’ long-standing deference to state water allocation systems.

BLM would also require that the operator “disclose specific information about the water source to be used in the fracturing operation, including the location of the water that would be used as the base fluid.” *Id.* at 27,696. Estimates of the volume of water recovered during flow back, swapping and recovery from production would also be required to “ensure that the facilities needed to process or contain the estimated volume of fluid will be available on location.” *Id.* Section 3162.3-3(c)(7) “would require the operator to provide, at the request of the BLM, additional information pertaining to any facet of the well stimulation proposal” to “ensure that operations are consistent with applicable laws and regulation.” *Id.* at 27,696 – 697 (emphasis added). Among other things, this information could include the water quality of water to be used as the base fluid.

Such requirements could create a parallel federal permitting or adjudication system in conflict with the state-administered priority system. This would render existing water rights and the States’ authority over water allocation meaningless. Water rights and water use in the Western states would then face chaos and uncertainty wherever federal and tribal lands are concerned. According to BLM, this information is necessary to determine the impacts associated with operations and the need for any mitigation applicable to Federal and Indian lands.” *Id.* at 27,698. Absent clear and specific congressional authorization, BLM has no authority to impose conditions or mitigation requirements on state water uses. So long as water is used consistent with state water laws, BLM has absolutely no authority to require “mitigation” for alleged “impacts.” Consistent with state water laws, operators should be able to use, reuse, store or otherwise dispose of produced water free from federal interference as BLM proposes. As authority, BLM cites the Federal Land Policy and Management Act (FLPMA), “[i]n managing the public lands, the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the public lands.” 43 U.S.C. 1732(b). BLM also cites 43 CFR 3161.2, “all operations be conducted in a manner which protects other natural resources and the environmental quality.” FLPMA

does not authorize BLM to unilaterally impose water quality standards on water use or otherwise interfere with water use on public lands.

Furthermore, any requirement for federal approval and/or mitigation required on state water use is unlawful. Colorado's constitution provides that the right to appropriate unappropriated waters shall never be denied. Colo. Const. art. XVI, § 6. The water of every natural stream in Colorado is public property dedicated to the people's use by diversion and application to beneficial use, subject to the rights of prior appropriators. Colo. Const. art. XVI, §5.

Additionally, for over 150 years, Congress has deferred to the States in matters related to the appropriation and administration of water. BLM's proposed rule on hydraulic fracturing could create a federal "super" water right or impose riparian law on prior appropriation states. Neither is tenable under BLM's statutory authority and Congress' long-standing deference to state water allocation systems. BLM intends to establish "a consistent oversight and disclosure model" to ensure oil and gas operations are "consistent with applicable laws and regulations." This would lead to a parallel federal permitting or adjudication system in clear conflict with state water laws and longstanding federal deference to them.

Finally, the federal government defers to comprehensive state control over the appropriation of water, including water on federal lands. Even federal claims to water are subject to state laws. So long as water is used consistent with state water laws, BLM has no authority to require "mitigation" for water use in hydraulic fracturing. BLM has no statutory authority to regulate water use for oil and gas on federal lands and is mandated to protect water rights as "valid existing rights." BLM's own policies recognize that states have the authority and responsibility for the allocation and management of water resources within their boundaries.

BLM has proposed a tremendous roadblock to water use related to oil and gas on federal lands. Contrary to longstanding deference to the states, BLM seems to seek veto power over whether water can be used for drilling and, if so, how it may be stored and disposed of.

BLM published the Proposed Rule on May 11, 2012, and seeks to have the final rule published by the end of the year. Given that the final rule will likely be published sometime later this month, should you be amenable, I would like to schedule a meeting with you and some of my colleagues as soon as possible to discuss this matter further.

Thank you for your consideration. I look forward to hearing from you soon.

Best regards,

**Sam Knaizer**  
**Government and Regulatory Affairs**  
Office: 303-383-4162  
Mobile: 720-250-6388

"Newfield Exploration"

Attachments:  
image001.png (4454 Bytes)  
image002.gif (3566 Bytes)

## Alexandria Wilson

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**From:** David Blake  
**Sent:** Tuesday, April 07, 2015 3:02 PM  
**To:** Jenn Anderson; Fred Yarger  
**Subject:** FW: The AG will be interested in this --- or should be  
**Attachments:** EPA.HHRG-114-IF03-Wstate-TribeL-20150317-U1.pdf

Here ya go! I still have the AFP letter on my desk.

**From:** [charlesaz42@aol.com](mailto:charlesaz42@aol.com) [<mailto:charlesaz42@aol.com>]  
**Sent:** Tuesday, April 07, 2015 11:28 AM  
**To:** David Blake  
**Subject:** The AG will be interested in this --- or should be

The EPA's "CPP" is clearly an unconstitutional violation of the separation of powers, says Harvard's Larry Tribe and many other legal scholars. Does not our state's constitutionally elected AG have an opinion on this unlawful assertion of regulatory power?

<http://www.nytimes.com/2015/04/07/us/laurence-tribe-fights-climate-case-against-star-pupil-from-harvard-president-obama.html?smprod=nytc&smid=nytc&share&r=0>

Also, for your convenience, attached is Prof. Tribe's full congressional testimony on the EPA plan, which is an unlawful assertion of federal control over Colorado's electric power industry.

## Alexandria Wilson

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**From:** charlesaz42@aol.com  
**Sent:** Thursday, March 19, 2015 5:00 PM  
**To:** David Blake  
**Subject:** EPA "CPP" rulemaking  
**Attachments:** EPA.HHRG-114-IF03-Wstate-Tribel-20150317-U1.pdf; McConnell+NGA+Op-Out+Letter.pdf

DAVID:

I attach two documents which Attorney General Coffman probably will want to see --- the March 17 congressional testimony of Prof. Lawrence Tribe on the constitutionality of the new EPA rules on carbon emissions by power plants, and the March 19 three-page letter on the same topic from US Senate Majority Leader Mitch McConnell to the National Governors Association. AG Coffman will be interested because she is a strong proponent of federalism and is pledged to defend Colorado against unwarranted federal intrusions.

Senator John Cooke will introduce a new bill shortly to address the matter of state compliance with the EPA's "Clean power Plant" rule. Sen. McConnell's letter to the NGA suggests that states consider refraining from complying with the rule -- i.e., not submit a "State Implementation Plan" -- until after the US Supreme Court has ruled on the matter. As you know, it is being challenged by a 13-state lawsuit in the DC Circuit Court of Appeals.

**Alexandria Wilson**

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**From:** Fred Yarger  
**Sent:** Monday, May 18, 2015 1:53 PM  
**To:** 'Andrew Emrich'  
**Subject:** Accepted: Legal challenges to Fracking Rule- Counsel for Petitioners & Fed. Defs.