

Chapter 5

Hot Topics on Public Lands at End of Obama Era

Rebecca W. Watson

Welborn Sullivan Meck & Tooley P.C

Denver, Colorado

Nora Pincus

Welborn Sullivan Meck & Tooley P.C.

Salt Lake City, Utah

Synopsis

§ 5.01.	Introduction.....	125
§ 5.02.	Public Land Legal Basics.....	125
	[1] — The Public Lands.....	125
	[2] — Eras of Federal Land Management.....	126
	[a] — Acquisition.....	127
	[b] — Disposition	128
	[c] — Retention.....	132
	[d] — Management.....	134
§ 5.03.	Oil and Gas on Public Lands: 2010 Leasing Reforms and Regulatory Actions.....	137
	[1] — Background to Obama Oil and Gas Initiatives	137
	[2] — BLM 2010 Leasing Reform	138
	[a] — The Prelude to Reform	138
	[b] — Salazar Issues Reform: BLM Instruction Memorandum 2010-117	139
	[c] — BLM Instruction Memorandum 2010-118	142
	[d] — 2010 Leasing Reform Scorecard	142
	[3] — Upcoming BLM Regulatory Reforms	144
	[a] — BLM Hydraulic Fracturing Rule	144
	[b] — Royalty Reform (Rental, Minimum Bids, Bonding and Penalty Reform, Too).....	147
	[i] — Royalty Rates	148
	[ii] — Annual Rental Payments	149
	[iii] — Minimum Acceptable Bid.....	150
	[iv] — Bonding.....	150
	[v] — Civil Penalty Assessment.....	151
	[c] — Onshore Order No. 9 and NTL-4A, “Venting and Flaring”	151
	[d] — Other BLM Regulatory Updates	153
	[i] — Onshore Order 1, Approval of Operations	153

	[ii] — Onshore Orders 3 (Site Security), 4 (Oil Measurement) and 5 (Gas Measurement)	153
	[e] — BLM NEPA (National Environmental Policy Act) Greenhouse Gas Guidance	154
§ 5.04.	Expediting Green Energy on Public Lands	156
	[1] — Public Land Green Energy Background	156
	[2] — Public Land Green Energy in Obama Administration	157
	[a] — Initial Actions at BLM	157
	[b] — 2011 BLM Renewable Energy Guidance	159
	[i] — Solar PEIS (Programmatic Environmental Impact Statement)	159
	[ii] — 2011 Renewable Energy Instruction Memoranda and Rulemaking	160
	[3] — BLM Renewable Energy Results and Regulatory Next Steps	161
	[a] — Results	161
	[b] — BLM Renewable Energy Proposed Regulations	162
	[4] — The U.S. Forest Service and Renewable Energy	165
§ 5.05.	Evolution of Land Use Planning	166
	[1] — A Shift in Land Use Planning Philosophy	166
	[2] — Interior Landscape-Level Planning	168
	[a] — Rapid Ecoregional Assessments	168
	[b] — Landscape Mitigation Secretarial Order	170
	[c] — Wildlands, National Monuments and Arctic Drilling	171
	[i] — Wilderness and the BLM’s “Wildlands Policy”	171
	[ii] — National Monuments	176
	[d] — Greater Sage-Grouse RMP (Risk Management Plan Amendments)	177
	[i] — Background	177
	[ii] — BLM’s Sage-Grouse RMP Amendments ..	178
	[3] — U.S. Forest Service 2012 Planning Rule	182
	[a] — The Rule	183
	[b] — Mineral Development Under the Rule	184
§ 5.06.	Sagebrush Rebellion 3.0	188
	[1] — State “Take Back” of Public Lands	189
	[2] — The Cliven Bundy Standoff	193
§ 5.07.	Conclusion	195

§ 5.01. Introduction.

As presidential candidates begin to declare for 2016, the Obama Administration is racing to the finish line to put in place regulations that candidate Obama declared in 2008 would “transform” U.S. energy policy. The Bureau of Land Management (BLM) at the U.S. Department of the Interior (Interior) has been at the center of that transformation. In March 2015 at the Center for Strategic and International Studies, Interior Secretary Sally Jewell, in a major speech outlining her energy priorities, declared, “I am determined to help make energy development safer and more environmentally sound in the next two years. Helping our nation cut carbon pollution should inform our decisions about where we develop, how we develop and what we develop.”¹ With that she outlined a series of new regulatory reforms to be rolled out in the administration’s last two years to regulate oil and gas and expedite renewable energy on public lands.

Perhaps to an unusual extent, public land issues have a unique impact on people who live and work in the 12 public land states. These issues also have a long legacy — stretching back to the founding of our country. For both reasons, passions have always run high when it comes to finding the “balance” in public land management. This chapter will begin with a summary of the foundation for public land law and policies. We will then look back at what the Obama Administration has put in place for public land energy and land use planning and what is ahead as this Administration leaves office. Throughout, we will consider the impact of these policies on industry, advocates and citizens of the West.

§ 5.02. Public Land Legal Basics.**[1] — The Public Lands.**

Nearly one third of the United States’ land mass is under the jurisdiction and management of the federal government.² The public lands are what

¹ Press Release, U.S. Department of the Interior, *Secretary Jewell Offers Vision for Balanced, Prosperous Energy Future* (March 17, 2015).

² 1 George Cameron Coggins and Robert L. Glicksman, *Public Natural Resources Law* § 1:1, 3 (2d. ed. 2015) [hereinafter Coggins & Glicksman].