

Testimony of Tim Barber, Yates Petroleum Corporation  
House Committee on Small Business  
Subcommittee on Investigations, Oversight and Regulations

*Powering Down: Are Government Regulations Impeding Small Energy Producers  
and Harming Energy Security?*

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Good Morning Mr. Chairman and Members, my name is Tim Barber. I am employed by Yates Petroleum, managing the regulatory department in the Gillette, Wyoming office. Yates Petroleum is a privately held independent oil and gas producer with offices in New Mexico, Colorado and Wyoming employing approximately 425 people. My comments focus on my experiences with the Wyoming BLM.

There are two foundational problems with how BLM is currently conducting itself that I believe merits attention and accountability.

1. BLM (and Interior), are daily adding unneeded and duplicated regulation through policy making, guidance documents, instructional memorandum and individual staff interpretation – none of which go through a rulemaking process or are approved by Congress *but are treated as if they were actual law or rule*. I call this “entrepreneurial regulation.”
2. BLM is not following the foundational rule and law it is required to. Ironically the reason given for not meeting its responsibilities in foundational regulation is sometimes that they don’t have time to because they have to work on the items in #1.

Let me provide some specifics:

- a. Onshore Order #1 spells out an orderly process for approval of APDs (Application for Permit to Drill), that binds BLM and the Applicant to processing timelines. The Onshore Order #1 process should take not more than 90 to 120 days for BLM to approve an APD. At the BLM office in Buffalo Wyoming, applicants regularly wait 2 years after application to receive their permits, and some applications have been in to this field office for 5 and 6 years awaiting approval. Some of the lengthier waits have been caused by the

Resource Management Plan Amendment process, which has delayed the working of the APDs for years and it appears it will result in projects so restricted that they may not be viable.

The Buffalo BLM office was funded with additional monies by Congress to be capable of approving 3000 APDs per year. I have included in your packet a BLM spreadsheet of their APD approvals to date this fiscal year. They have approved only 80 wells since October 1, 2011 and approved no APDs from December 7, 2011 until February 29, 2012 though over 940 drilling applications are awaiting their approval.

Included in the handout information is an overview of the timelines in the actual regulation for your review.

- b. When an affected Party has a concern with a Decision reached by BLM the only appeal path available is to pursue a “State Director Review” as provided for in Onshore Order #1. State Director Review appeal decisions are required by regulation to be provided to the appealing party in 10 days. In Wyoming these appeal Decisions are taking 9 months or more – and justification for the failure to meet the timelines is that they are working on building and complying with the things I discussed in number 1.
- c. BLM’s duplicated and conflicting efforts are very concerning.
  1. BLM is currently working on a policy for Hydraulic Fracturing for federal mineral wells. States (like Wyoming) already have an agency that regulates all wells, with current regulations in place. There is no need for BLM to embark on this effort.
  2. In Wyoming, BLM has recently come up with an Instructional Memorandum on the use of Drilling Pits for Federal Mineral wells. BLM already has actual foundational regulation that covers the use of Drilling Pits and the State of Wyoming (like other producing states) already has regulation in place that covers all wells. There is no need for BLM to add another layer of regulation.

3. On a local level, BLM offices are coming up with their own preferences on things like road building, reclamation of closed locations, equipment requirements for well control and even on how to apply for a drilling permit even though actual regulation already exists covering each of these.

The net effect of these non-rule regulations is that the Agency accomplishes less at a higher cost both to the Agency, the taxpayers and the regulated community. Longer APD processing times, arbitrary decisions not based on actual regulation, less viable oil and gas projects and less drilling and production potential are the clear results.

It is my opinion that there are at least two primary paths forward to solution here.

- a. Congress should strongly consider conducting an audit of BLM offices, like Buffalo , to find out what has been accomplished with the additional budget resources provided to them ( I don't think you will like what you will see). This audit process should be ongoing, with weekly or monthly updates provided as to things like APD processing. The privilege of increased budget should come with the responsibility of demonstrating that the increased budget bore the desired fruit.
- b. Congress may want to consider providing direction to the Agency, its Director and Interior regarding what I have called "entrepreneurial regulation". This direction can come in several forms, including de-funding the agency when it heads in the wrong direction, and tying funding to results such as APD approvals. BLM's resources and strength is best focused on managing lands for multiple use, not building layers of personal interpretation dressed up to look like actual regulation.

I wish to thank each of you for your time and attention, and would consider it a great opportunity to answer any questions you may have for me.