

Nomination of Patrick Robert Wyrick
United States District Court
For the Western District of Oklahoma
Questions for the Record
Submitted May 30, 2018

QUESTIONS FROM SENATOR WHITEHOUSE

1. During his confirmation hearing, Chief Justice Roberts likened the judicial role to that of a baseball umpire, saying “[m]y job is to call balls and strikes and not to pitch or bat.”
 - a. Do you agree with Justice Roberts’ metaphor? Why or why not?
 - b. What role, if any, should the practical consequences of a particular ruling play in a judge’s rendering of a decision?
2. During Justice Sotomayor’s confirmation proceedings, President Obama expressed his view that a judge benefits from having a sense of empathy, for instance “to recognize what it’s like to be a young teenage mom, the empathy to understand what it’s like to be poor or African-American or gay or disabled or old.”
 - a. What role, if any, should empathy play in a judge’s decision-making process?
 - b. What role, if any, should a judge’s personal life experience play in his or her decision-making process?
3. In your view, is it ever appropriate for a judge to ignore, disregard, refuse to implement, or issue an order that is contrary to an order from a superior court?
4. What assurance can you provide this committee and the American people that you would, as a federal judge, equally uphold the interests of the “little guy,” specifically litigants who do not have the same kind of resources to spend on their legal representation as large corporations?
 - a. In civil litigation, well-resourced parties commonly employ “paper blizzard” tactics to overwhelm their adversaries or force settlements through burdensome discovery demands, pretrial motions, and the like. Do you believe these tactics are acceptable? Or are they problematic? If they are problematic, what can and should a judge do to prevent them?
5. Do you believe that discrimination (in voting access, housing, employment etc.) against minorities—including racial, religious, and LGBT minorities—exists today? If so, what role would its existence play in your job as a federal judge?
6. On September 16, 2016, during a panel at Antonin Scalia Law School, you said, “I think at this point I’m in the Phil Hamburger school of the entire administrative state is unlawful I think we have all sorts of basic, fundamental, Constitutional problems with the nature of the current administrative state.” During your confirmation hearing, in reference to these comments, you said you were talking as “an advocate litigating on behalf of the State of Oklahoma,” and that “I don’t believe the entire administrative state is unlawful.”

- a. Your 2016 statements were in the first person (“I think . . .,” “I’m in the Phil Hamburger school . . .,” “I think we have all sorts of . . . problems”), which indicates you were speaking about your personal beliefs not the positions of your client. Did you at any time in your 2016 remarks state that the views you were discussing were not your own, but instead the positions of your client?
 - b. Do you still consider yourself in the “Phil Hamburger school,” and do you still believe in Professor Hamburger’s critique of the administrative state as unconstitutional? If yes, how do you expect federal agencies to have a fair shake in your courtroom? If no, what changed your view?
 - c. What are the “basic, fundamental, Constitutional problems with the nature of the current administrative state” of which you spoke?
7. You gave 16 speeches (9 out-of-state) to conservative advocacy groups – 14 to the Federalist Society and 2 to the Rule of Law Defense Fund.
 - a. In each of those speeches, were you advocating on behalf of a client, or were the views you presented your own?
 - b. What compensation did you receive, including but not limited to speaker’s fees, food, travel, and lodging?
 - c. What entity paid for your food, travel, lodging, and other expenses? If the answer to this question is an entity other than the state of Oklahoma, please provide copies of all paperwork you filed with the Oklahoma Ethics Commission regarding your compensation and reimbursement for those events.
 - d. If the state of Oklahoma paid for your expenses to any of these speeches, please provide the Committee with a copy of your Requisition for Travel form and its approval by the appropriate state agencies.
 - e. Please explain why you do not have notes, transcripts, or recordings for 15 of these 16 speeches.
8. In response to my questions about your role in the coordination efforts between Devon Energy and Attorney General Pruitt’s office, you testified:

“I didn’t recall the particular email you are referencing until it was brought to my attention a couple of days ago. As best I can recall someone emailed me a draft letter. I would have – I’m a litigator. I handle litigation issues. I would have passed it on to the appropriate person in the office who would have reviewed it and then action on that letter would have been taken by those people in the office.”

Attached are eleven email exchanges between you, your subordinates, others in the Oklahoma Attorney General’s Office, and Bill Whitsitt, Devon Energy’s Executive Vice President of Public Affairs.

- September 2, 2011
 - o Whitsitt emailed you to pass along an attached draft letter to the EPA about methane estimates.
- October 19, 2011

- o The AG's Chief of Staff Drwenski emailed Whitsitt to let him know that the AG office had submitted his draft letter to the EPA. She copied you on her email.
 - o Whitsitt responded to Drwenski's email with enthusiastic thanks. He too copied you on his email.
- January 18, 2013
 - o Whitsitt emailed you to thank you for your help with a BLM rule making about hydraulic fracturing. He also attached a notice that expressed the intent of Northeastern states to sue for more methane regulation. Whitsitt mentioned that you and he had discussed the notice and promised to be in touch about next steps.
 - o You replied to Whitsitt and asked whether any immediate action was necessary.
- January 19, 2013
 - o Whitsitt responded that the next step would be to draft a warning to EPA and OMB.
- March 12, 2013
 - o Whitsitt emailed you to thank you for a conversation he had had with you. He also attached again the Northeastern states' notice of intent to sue.
 - o Whitsitt's assistant Sheila Harder then sent you instructions on how to submit the letter about hydraulic fracturing to OMB.
- March 21, 2013
 - o Whitsitt emailed you a draft letter in response to the Northeastern states' notice of intent to sue over methane. He also made reference to a discussion he and you had had.
- March 28, 2013
 - o Deputy Solicitor General Eubanks emailed Whitsitt and reported that AG Pruitt had submitted the letter about hydraulic fracturing to OMB on March 12, and they discussed a follow-up call to OMB.
- May 1, 2013
 - o Eubanks sent Whitsitt a final draft of the letter responding to the Northeastern states' notice and asked Whitsitt for further suggestions.
 - o Whitsitt provided Eubanks with line edits and improvements on the draft.
- May 2, 2013
 - o Eubanks notified Whitsitt that he had submitted the letter responding to the Northeastern states' notice to the EPA.
- July 18, 2013
 - o Eubanks sent a group of state attorneys general, copying you, a sign-on letter to the Department of Interior about the BLM hydraulic fracturing rule.
- August 26, 2013
 - o Eubanks notified the co-signing AGs that he was going to submit the letter about the BLM hydraulic fracturing rule to the agency that day. He again copied you on his email.

Regarding these emails I have the following questions:

- a. You testified about the 2011 draft letter: “I would have passed it on to the appropriate person in the office who would have reviewed it and then action on that letter would have been taken by those people in the office.” Between September 2 and October 19, 2011 did you communicate with Chief of Staff Drwenski about Whitsitt’s draft letter? What was the content of these communications? Did you know that Attorney General Pruitt and/or others on his staff, were working with Devon Energy on this issue? Were you aware that the Attorney General submitted the Whitsitt letter as a comment to EPA?
 - b. Whitsitt wrote to you on January 18, 2013: “thanks for the help on this!”, referring to a letter to BLM. What help did you provide?
 - c. In the same email from January 18, 2013 Whittsit wrote: “I’ve attached a copy of the notice we discussed.” When and in what setting did you and Whittsit have this discussion? What was the content of the discussion?
 - d. On March 12, 2013, Whitsitt thanked you for a follow up conversation. When and in what setting did you and Whittsit have this conversation? What was the content of the conversation?
 - e. On March 21, 2013 Whitsitt sent you a draft letter to be sent to the EPA Administrator and referenced running it through “the clearinghouse we discussed.” What was the “clearinghouse” you and Whitsitt discussed? When and in what setting did you have this discussion?
 - f. Did you supervise Deputy Solicitor General Eubanks in the spring and summer of 2013?
 - g. Eubanks assured Whitsitt on March 28, 2013: “we are trying to get a call with OMB set up.” Were you involved in this effort to get a call with OMB? Did you approve or otherwise advise Eubanks on this course of action? Did Eubanks consult with you about his interactions with Devon Energy?
 - h. On March 31, 2013, Devon Energy donated \$125,000 to the Republican Attorneys General Association. AG Pruitt served as Chairman of this Association from November 2011 to November 2013 and was a member of its Executive Committee from November 2013 to November 2015. Were you aware of Pruitt’s role at RAGA during this period? Were you aware of this donation?
 - i. Did Whitsitt and you have any other discussions about Devon Energy’s interests before EPA or the Department of Interior beyond the ones to which he explicitly refers in the cited emails? If so, when and in what setting did you have these discussions and conversations? And what was their content?
 - j. These emails suggest that you were actively involved in the coordination efforts between Devon Energy and the Attorney General’s office in regard to agency rule making. Yet, you appeared to deny such active involvement during the hearing. How do you resolve this contradiction?
9. You testified “I’ve held shares at Devon at times.” You also testified that as a judge you “have divested [your]self of shares of individual companies.”
 - a. What has your role in the Wyrick Lumber Company been up to the present?
 - b. What has your role in B2LPT, LLC been up to the present?

- c. Why did you not list B2LPT, LLC under “business affiliations” on your Application for Oklahoma Judicial Vacancy?
 - d. Did you list B2LPT, LLC as an asset on your state supreme court financial disclosure? If you did not, please explain your reasons.
 - e. Please provide any financial disclosure forms and financial documents that you submitted as part of your application to the Oklahoma Supreme Court and that you have since provided to the State of Oklahoma.
10. You testified that one example of your independence as a judge was a majority opinion you wrote shortly after your appointment to the Oklahoma Supreme Court striking down an Oklahoma statute as unconstitutional despite the fact that the law was championed by the governor who had just appointed you and was being defended by the AG office for which you had just stopped working.
- a. Which case were you referring to in your testimony?
 - b. On what date did this case come before your court?
 - c. Did you have any involvement in the case prior to your appointment to the Court, while you were in the Attorney General’s office? If so, why did you not recuse yourself?
11. Regarding your residency:
- a. At what address did you live at the time of your birth? For how long was that your residence?
 - b. Please list every city and county in which you have voted from 2000 to the present.
 - c. During your confirmation hearing, you testified that you, your wife, and your children currently live in Cleveland County. Is this true?
 - d. How long has your primary residence been in Cleveland County?
 - e. You testified that your children go to school in Cleveland County. Is this true?
 - f. You and your wife work in the Oklahoma City metropolitan area. Is this true?
 - g. You own a house in Cleveland County. Is this true?
 - h. Your wife continues to be a sworn resident and registered voter of Cleveland County. Is this true?
 - i. Do you currently own property in Atoka County? If so, when did you purchase it? Why did you purchase that property when you did?
 - j. In litigation brought by the Oklahoma ACLU, it was alleged that the deed to a property in Atoka was transferred to you by other members of your family. Is that allegation correct? It was also alleged that the deed stated “the property is not currently a homestead.” Is that allegation correct? In your view, what does it mean that the Atoka property was not “currently a homestead”?
 - k. Since you obtained that property, how many days have you resided there? Does anyone else reside in that property?
12. Under Oklahoma law, a person changes his residency when he abandons his former residence with the intention not to return to it, and otherwise demonstrates an intent to change residency. See *Suglove v. Oklahoma Tax Comm’n*, 605 P.2d 1315, 1317 (Okla. 1979); *Moore v. Hayes*, 744 P.2d 934, 937 (Okla. 1987). You attested to being a resident of Atoka County when you transferred your voter registration to Atoka County in the fall of 2016. What facts demonstrate

that at the time you registered to vote in Atoka County you had abandoned your prior residence in Cleveland County and demonstrated an intent to live in Atoka County?

13. The Oklahoma Constitution requires that a person appointed to the Oklahoma Supreme Court “shall have been a qualified elector in the district for at least one year immediately prior to the date of filing or appointment.” Okla. Const. art. VII, § 2. You were appointed as the Justice representing District 2 on February 10, 2017. Being a qualified elector in District 2 for at least one year prior to the appointment would have required that you were a bona fide resident of District 2 since at least February 10, 2016. See 26 O.S. 4-101 (1981); 1984 OK AG 9, ¶10. You voted in Cleveland County March 1, 2016 and you appear to have maintained your residence in Cleveland County since. In light of these facts, how are you qualified to serve as a Supreme Court Justice representing District 2?
14. Between the fall of 2000 and the spring of 2016, you voted nine times in Cleveland County. To register to vote in Cleveland County, you had to fill out the Oklahoma voter registration form, which states, “You must register to vote at your address of residence” and requires you to attest under penalty of perjury that all the information given on the form, including your residence at the stated address, is true. You also attested under oath in your Application for Oklahoma Judicial Vacancy on October 27, 2016 that you are a resident of District 2 “since birth.” How do you reconcile this apparent contradiction?
15. Regarding your citations in *Glossip v. Gross* and the rebuke you received from Justice Sotomayor, you testified before the Senate Judiciary Committee: “I certainly stand by the citations we made in that brief” However, you sent a letter of apology to the Supreme Court of the United States on May 13, 2015 admitting to a “citation error.” You wrote: “Respondents regret the citation error. Sincerely, Patrick R. Wyrick.” How do you reconcile this contradiction between your statements?
16. In your brief to the Supreme Court in *Glossip v. Gross*, one of your key claims was that pentobarbital had become unavailable to the State of Oklahoma. You supported this claim with the representation that Oklahoma’s supplier sent a letter to the Oklahoma Department of Corrections (ODOC) declining to provide more of the drug. The letter to which you cited for this claim was redacted, hiding all references that would identify the state that received the letter. A copy of that letter that you submitted as evidence is attached. An unredacted version of that letter was later made public by the media. It is also attached.
 - a. The cited letter contained the sentence: “I am the owner and the pharmacist-in-charge of the Woodlands Compounding Pharmacy that has provided TDCJ with vials of compounded pentobarbital.” You redacted the sentence to read: “I am the owner and the pharmacist-in-charge of --- that has provided --- with vials of compounded pentobarbital.” Did you understand “TDCJ” to be a reference to the Texas Department of Criminal Justice? Why did you redact not only the name of the pharmacy, but also the Texas Department of Criminal Justice?
 - b. The letter also contained the phrase: “Based on the phone calls I had with Erica Minor from TDCJ regarding” You redacted this phrase to read: “Based on the phone calls

- I had with --- from --- regarding” Why did you redact not only the name of the employee, but again also the Texas Department of Criminal Justice?
- c. The letter contained the clause: “I never would have agreed to provide the drugs to the TDCJ.” Why did you redact the Texas Department of Criminal Justice?
 - d. The letter also contained the clause: “However, the State of Texas misrepresented this fact” You redacted this clause to read: “However, the State of --- misrepresented this fact” Why did you redact the name of the state at issue?
 - e. Did you ever provide documentary evidence from the compounding pharmacy to the Supreme Court to support your claim in the brief that “Oklahoma’s supplier of compounded pentobarbital . . . declined to continue supplying the drug to Oklahoma”?
 - f. Did you ever provide the Supreme Court with an unredacted version of the letter?

The Next Pages Contain the Attachments to Question 8:

**Emails Between You, Your Subordinates, Others in the Oklahoma Attorney General's
Office, and Bill Whitsitt from Devon Energy**



EPA letter Draft

Whitsitt, Bill

to:

patrick.wyrick@oag.ok.gov

09/02/2011 02:55 PM

Cc:

"Crystal Drwenski (Crystal.Drwenski@oag.ok.gov)", "Ferate, AJ"

Hide Details

From: "Whitsitt, Bill" <Bill.Whitsitt@dvn.com>

To: "patrick.wyrick@oag.ok.gov" <patrick.wyrick@oag.ok.gov>,

Cc: "Crystal Drwenski (Crystal.Drwenski@oag.ok.gov)" <Crystal.Drwenski@oag.ok.gov>,
"Ferate, AJ" <AJ.Ferate@dvn.com>

2 Attachments



ENV - GHG - AG letter to EPA Administrator Jackson on methane estimates (Draft 9-2-2011).docx

Patrick –

Just a note to pass along the electronic version of the draft letter to Lisa Jackson at EPA. You'll note that this version has some suggested cc recipients.

We have no pride of authorship, so whatever you decide to do on this is fine. We're just glad to provide some ideas.

If you have any questions, technical or otherwise, feel free to contact AJ Ferate or me. We'll be sure you have the right people to talk with.

Have a nice holiday weekend.

Bill

William F. Whitsitt, Ph.D.
Executive Vice President
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Bill.Whitsitt@dvn.com

From: Crystal.Drwenski@oag.ok.gov [mailto:Crystal.Drwenski@oag.ok.gov]
Sent: Wednesday, October 19, 2011 1:49 PM
To: Whitsitt, Bill
Cc: Patrick.Wyrick@oag.ok.gov; ajferate@ryangloverllp.com
Subject: Letter - Lisa Jackson - EPA - methane emissions

Hi Bill,

Thank you again for your kind assistance with General Bruning while he was in town. Scott mentioned to Larry yesterday how much help you all provided.

I have an update for you on the methane emissions letter to Administrator Jackson. Great news - It was in fact sent to Jackson on Oct. 12. We are, however, still drafting the "dear colleague" letter advising states what we sent, why we sent it and encouraging them to do so as well. We will get that letter out this week.

As you recall, the letter mentions incorrect assumptions the EPA makes about Oklahoma producers and their procedures during "flowback." Because of these state-specific references, after discussing it, we felt it was better to encourage other states to look into the matter and send their own, similar letter.

I hope this is helpful. Please feel free to broadly circulate and reference Attorney General Pruitt's letter. Please also do not hesitate to let us know how we can be of further assistance.

Thank you again!
Crystal Drwenski
Chief of Staff
Oklahoma Office of the Attorney General
Crystal.Drwenski@oag.ok.gov
Office: 405.521.3921
Cell: 405.568.0662
313 NE 21st Street, Oklahoma City, OK 73105



RE: Letter - Lisa Jackson - EPA - methane emissions
Whitsitt, Bill to: Crystal.Drwenski@oag.ok.gov
Cc: "Patrick.Wyrick@oag.ok.gov", "ajferate@ryangloverllp.com"

10/19/2011 02:04 PM

Crystal –

Outstanding!

The timing of the letter is great, given our meeting this Friday with both EPA and the White House OMB OIRA staff.

We also appreciate the flagging of the issue for other AGs.

Please pass Devon's thanks to Attorney General Pruitt.

And it was our pleasure to help Jon.

Bill

William F. Whitsitt, Ph.D.
Executive Vice President
Public Affairs

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Oklahoma City, OK 73102-8260
405 552 3556 Direct
405 552 1484 Fax
405 830 3556 Mobile
Bill.Whitsitt@devon.com



From: [Whitsitt, Bill](#)
To: Patrick.Wyrick@oag.ok.gov
Cc: [Wright, Allen](#); [Rockwood, Brent](#); [Smith, Darren](#); [Luedecke, Richard](#)
Subject: RE: Notice of Intent to Sue
Date: 01/19/2013 12:57 PM

I'm not sure. Let's think about some input to EPA and OMB that might warn them that AGs from producing states will be ready to engage – and that EPA should immediately acknowledge that its methane emission estimates, that the states use as part of the suit justification, are erroneous.

Let us see what that might look like and then we'll be back in touch.

Bill

William F. Whitsitt, Ph.D.
Executive Vice President
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405 552 1484 Fax
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Bill.Whitsitt@devon.com



From: Patrick.Wyrick@oag.ok.gov [mailto:Patrick.Wyrick@oag.ok.gov]
Sent: Friday, January 18, 2013 9:01 PM
To: Whitsitt, Bill
Subject: Re: Notice of Intent to Sue

Thanks, Bill. Does mean there's now no action item for us to consider?

Patrick R. Wyrick
Solicitor General
Oklahoma Office of the Attorney General
patrick.wyrick@oag.ok.gov
Office: 405.522.4448
Cell: 405.821.4062
313 NE 21st Street, Oklahoma City, OK 73105

-----"Whitsitt, Bill" <Bill.Whitsitt@devon.com> wrote: -----

To: "patrick.wyrick@oag.ok.gov" <patrick.wyrick@oag.ok.gov>
From: "Whitsitt, Bill" <Bill.Whitsitt@devon.com>
Date: 01/18/2013 05:46PM
Subject: Notice of Intent to Sue

Hi, Patrick.

I just let General Pruitt know that BLM is going to propose a different version of its federal lands hydraulic fracturing rule thanks to input received – thanks for the help on this! We'll see the new proposal sometime next week I believe and we'll be back in touch on potential next steps.

Also, I've attached a copy of the notice we discussed.

Bill

William F. Whitsitt, Ph.D.
Executive Vice President
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[attachment "Env - GHG - Methane Emissions - States Notice of Intent to Sue (12-11-12).pdf" removed by Patrick Wyrick/OAG]

From: [Whitsitt, Bill](#)
To: patrick.wyrick@oag.ok.gov
Cc: Melissa.Houston@oag.ok.gov
Subject: Potential AGs Response to NE States Notice
Date: 03/21/2013 08:37 AM
Attachments: [Env - GHG - Methane Emissions -Seven States Notice AG Letter \(Draft 3-21-13\).docx](#)
[Env - GHG - Methane Emissions -Seven States Notice AG Letter \(Draft 3-21-13\).docx](#)

Patrick –

Attached is a potential first-cut draft of a letter a (bipartisan if possible?) group of AGs might send to the acting EPA administrator and some others in the Administration in response to the NE states' notice of intent to sue for more E&P emission regulation.

It would be a shot across the bow, warning EPA not to not go down a negotiated-rulemaking or wink-at-a sue-and-settle tee-up process. If sent, I'd suggest that it be made public, at least to the Hill and to policy community publications.

It seems to me this would also be a logical outgrowth of the fossil energy AGs meeting and could be powerful with a number of signers. It is also the kind of thing that in the future could be run through the clearinghouse we discussed.

Please let me know what you and General Pruitt think, or if we can help further.

Bill

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From: [Harder, Sheila](#)
To: patrick.wyrick@oag.ok.gov
Subject: Contact person for a letter sent to the Office of Management and Budget
Date: 03/12/2013 01:56 PM

Hi Patrick!

I hope you are doing well!

I sent the information below to Melissa and Sarah Lenti and then Bill requested that I send it to you as well.

Please see the following contact information for sending a letter to Jeffrey D. Zients, Acting Director of the Office of Management and Budget. Please copy Mr. Boris Bershteyn on this letter. You cannot hand-deliver a letter to Mr. Zients' office and sending it by mail is a lengthy process. I called their office and was directed to also send the letter by email to Mr. Zients' Confidential Assistant, Roxana Moussavian, at rmoussavian@omb.eop.gov.

If you would like to speak with Mr. Zients, please call 202-395-3080 and ask for Roxana.

Mr. Jeffrey D. Zients, Acting Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

cc: Mr. Boris Bershteyn
Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

If you have any questions or concerns please don't hesitate to contact me.

Kind regards,

Sheila Harder
Executive Assistant to William F. Whitsitt, Ph.D.

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333 West Sheridan Avenue
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405 228 8482 Direct
Sheila.harder@dvn.com

From: [Whitsitt, Bill](#)
To: patrick.wyrick@oag.ok.gov
Cc: [Rockwood, Brent](#); [Rosen, Rebecca](#)
Subject: States' Intent To Sue on E&P Methane Emissions
Date: 03/12/2013 01:50 PM
Attachments: [Env - GHG - Methane Emissions - States Notice of Intent to Sue \(12-11-12\).pdf](#)
[Env - GHG - Methane Emissions - States Notice of Intent to Sue \(12-11-12\).pdf](#)

Thanks for the conversation...and here is the states' letter to EPA.

Bill

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Clayton –

The re-proposed rule is actually in the review stage at OIRA (OMB's Office of Information and regulatory Analysis) prior to a version being approved for a second round of public comment.

Our goal is to have input to OIRA with a goal of its directing BLM to completely do away with the present thrust.

It is possible that OIRA will conclude its review very soon, hence our asks that calls be made to the head of OMB and/or OIRA pretty quickly. Hope this helps.

I've attached the leaked version of the re-proposal that we're working from.

Bill

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From: Clayton.Eubanks@oag.ok.gov [<mailto:Clayton.Eubanks@oag.ok.gov>]

Sent: Thursday, March 28, 2013 11:37 AM

To: Whitsitt, Bill

Subject: Re-proposed BLM Hydraulic Fracturing Rule

Mr. Whitsitt,

Sorry to bother you but I have been unable to locate a Federal Register notice for the re-proposed BLM rule on Hydraulic fracturing on public lands. I know AG Pruitt sent a letter to OMB on the rule on March 12, 2013 but I have been unable to determine when the comment period deadline is for the re-proposed rule.

Do you know whether the re-proposed rule has been published in the Federal Register and if so, when the public comment period ends?

Thank you in advance for any assistance.

P. Clayton Eubanks
Deputy Solicitor General
Office of the Attorney General of Oklahoma
313 N.E. 21st Street
Oklahoma City, OK 73105
Tel: (405) 522-8992
Fax: (405) 522-0085
clayton.eubanks@oag.ok.gov

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[attachment "Env - HF BLM Reproposed Rule Draft to OIRA (1-18-13) .docx" deleted by Clayton Eubanks/OAG]

From: [Clayton Eubanks](#)
To: [Whitsitt, Bill](#)
Subject: RE: Re-proposed BLM Hydraulic Fracturing Rule
Date: 03/28/2013 01:24 PM

Thank you Bill, this helps! As you know, in addition to the letter we are trying to get a call with OMB set up.

P. Clayton Eubanks
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Tel: (405) 522-8992
Fax: (405) 522-0085
clayton.eubanks@oag.ok.gov

From: "Whitsitt, Bill" <Bill.Whitsitt@dnv.com>
To: "Clayton.Eubanks@oag.ok.gov" <Clayton.Eubanks@oag.ok.gov>,
Date: 03/28/2013 01:18 PM
Subject: RE: Re-proposed BLM Hydraulic Fracturing Rule

Clayton –

The re-proposed rule is actually in the review stage at OIRA (OMB's Office of Information and regulatory Analysis) prior to a version being approved for a second round of public comment.

Our goal is to have input to OIRA with a goal of its directing BLM to completely do away with the present thrust.

It is possible that OIRA will conclude its review very soon, hence our asks that calls be made to the head of OMB and/or OIRA pretty quickly. Hope this helps.

I've attached the leaked version of the re-proposal that we're working from.

Bill

William F. Whitsitt, Ph.D.
Executive Vice President
Public Affairs

Devon Energy Corporation
333 West Sheridan Avenue Suite 900
Oklahoma City, OK 73102
405 552 3556 Direct
405 552 1484 Fax

From: [Clayton Eubanks](#)
To: Bill.Whitsitt@dnv.com
Subject: EPA Methane letter-7 States NOI
Date: 05/01/2013 10:42 AM
Attachments: [FINAL EPA Methane Letter without signature pages.docx](#)

Mr. Whitsitt,

Attached is the final draft of the methane letter to EPA regarding the 7 NE States NOI to sue over the regulation of methane emissions.

We have received good support on this and I would like to get the letter out in the morning. I thought we should insert a sentence or two regarding the recent EPA report indicating their initial estimates on methane emissions for two categories were too high.

Any suggestions?

Thank you.

P. Clayton Eubanks
Deputy Solicitor General
Office of the Attorney General of Oklahoma
313 N.E. 21st Street
Oklahoma City, OK 73105
Tel: (405) 522-8992
Fax:(405) 522-0085
clayton.eubanks@oag.ok.gov

From: [Rockwood, Brent](#)
To: Clayton.Eubanks@oag.ok.gov
Cc: [Whitsitt, Bill](#)
Subject: RE: EPA Methane letter-7 States NOI
Date: 05/02/2013 04:55 PM
Attachments: [EPAMethane050213.pdf](#)

Clayton: I'm glad the Devon team could help, and thanks for all of your work on this.

Best regards,

Brent Rockwood

Director, Public Policy & Government Affairs

Devon Energy Corporation

333 West Sheridan Avenue

Oklahoma City, OK 73102

405 228 8416 Direct

405 208 9259 Mobile

Brent.Rockwood@devon.com



From: Clayton.Eubanks@oag.ok.gov [mailto:Clayton.Eubanks@oag.ok.gov]
Sent: Thursday, May 02, 2013 4:51 PM
To: Rockwood, Brent
Cc: Whitsitt, Bill
Subject: RE: EPA Methane letter-7 States NOI

I sent the letter today. The final version is attached.

Thanks for all your help on this.

P. Clayton Eubanks
Deputy Solicitor General
Office of the Attorney General of Oklahoma
313 N.E. 21st Street
Oklahoma City, OK 73105
Tel: (405) 522-8992
Fax: (405) 522-0085
clayton.eubanks@oag.ok.gov

From: "Rockwood, Brent" <Brent.Rockwood@devon.com>
To: "Clayton.Eubanks@oag.ok.gov" <Clayton.Eubanks@oag.ok.gov>,
Date: 05/02/2013 04:27 PM

Clayton: I just wanted to follow up to see if you needed anything else from the Devon team. Also, when is AG Pruitt planning to send the letter?

Best regards,

Brent Rockwood

Director, Public Policy & Government Affairs

Devon Energy Corporation

333 West Sheridan Avenue

Oklahoma City, OK 73102

405 228 8416 Direct

405 208 9259 Mobile

Brent.Rockwood@devon.com



From: Whitsitt, Bill

Sent: Wednesday, May 01, 2013 1:29 PM

To: Clayton.Eubanks@oag.ok.gov

Cc: Wright, Allen; Rockwood, Brent; Smith, Darren; Sandlin, Jesse

Subject: FW: EPA Methane letter-7 States NOI

Clayton –

Here you go. Please note that you could use just the red changes, or both red and blue (the latter being some further improvements from one of our experts) or none.

Hope this helps.

Thanks for all your work on this!

Bill

William F. Whitsitt, Ph.D.

Executive Vice President

Public Affairs

Devon Energy Corporation

333 West Sheridan Avenue Suite 900

Oklahoma City, OK 73102

405 552 3556 Direct

405 552 1484 Fax

405 830 3556 Mobile

Bill.Whitsitt@devon.com

From: Clayton.Eubanks@oag.ok.gov
Sent: Thursday, July 18, 2013 2:21 PM
To: Johnson, Blake; Tambling, Robert; steve.mulder@alaska.gov; 'Charles Moulton (charles.moulton@arkansasag.gov)' (charles.moulton@arkansasag.gov); Turner, Kevin; Kendra Akin Jones (kendra.jones@arkansasag.gov); 'Bradford Phelps (bradford.phelps@arkansasag.gov)' (bradford.phelps@arkansasag.gov); terri.connell@state.co.us; cate.crutcher@myfloridalegal.com; bgrant@law.ga.gov; solens@law.ga.gov; npeterson@law.go.gov; 'jeff.chanay@ksag.org'; delberta.pfeifer@ksag.org; 'phillipst@ag.state.la.us' (phillipst@ag.state.la.us); 'manningsp@michigan.gov' (manningsp@michigan.gov); sonneveltdtd@michigan.gov; jessica.blome@ago.mo.gov; jeremy.knee@ago.mo.gov; Mary Jo Woods; hurdler.fox@gmail.com; Swanson, Cory; 'maiolson@nd.gov'; masagsve@nd.gov; michael.geraghty@alaska.gov; wstenehjem@nd.gov; frederick.nelson@ohioattorneygeneral.gov; rich.williams@state.sd.us; pmcconkie@utah.gov; saexeter@utah.gov; 'meanssp@doj.state.wi.us' (meanssp@doj.state.wi.us); 'stjohnkm@doj.state.wi.us' (stjohnkm@doj.state.wi.us); doug.nick@azag.gov; dan.domenico@state.co.us; casey.shpall@state.co.us; Valerie.Tachtiris@atg.in.gov; 'Schneider, Staci' (Staci.Schneider@atg.in.gov); 'david.sheridan@iowa.gov'; Bender, Robyn (KYOAG) <Robyn.Bender@ag.ky.gov> (Robyn.Bender@ag.ky.gov) (Robyn.Bender@ag.ky.gov); 'Riley, Sean (KYOAG)' (Sean.Riley@ag.ky.gov); ktorgensen@utah.gov; 'Earle Getchell' (dgetchell@oag.state.va.us); mplowden@scag.gov; Emory Smith (ESmith@scag.gov); 'Charles.McGuigan@state.sd.us'; sherri.wald@state.sd.us; 'Jon Niermann' (jon.niermann@oag.state.tx.us); brooke.paup@oag.state.tx.us; Mattioli, Mark; 'Barry.Turner@ag.tn.gov' (Barry.Turner@ag.tn.gov); 'roxanne.giedd@state.sd.us'; alexandra.schimmer@; 'dvitale@ag.state.oh.us' (dvitale@ag.state.oh.us); 'Reed Clay' (reed.clay@oag.state.tx.us); jonathan.mitchell@oag.state.tx.us; dawsontj@doj.state.wi.us; Bridget Romano (bromano@utah.gov); 'restucciae@michigan.gov' (restucciae@michigan.gov); jeremiah.williamson@wyo.gov; elbert.lin@wvago.gov; kturner@ago.state.al.us; Abrasher@ago.state.al.us; Katie.Spohn@nebraska.gov; james.skardon@azag.gov
Cc: Tom.Bates@oag.ok.gov; Patrick.Wyrick@oag.ok.gov; Melissa.Houston@oag.ok.gov
Subject: Oklahoma - State Sign On -Letter to DOI on BLM Revised Proposed Hydraulic Fracturing Rule
Attachments: Oklahoma - State Sign-on Letter to BLM-Revised Hydraulic Fracturing Rule.pdf
Follow Up Flag: Follow up
Flag Status: Completed

All,

Another sign-on opportunity. Attached is a letter we have prepared to the Department of Interior (BLM) on the Bureau of Land Management's Revised proposed hydraulic fracturing rule to apply on federal and Indian lands under BLM control. I think the letter speaks for itself and the issues involved. For a short synopsis, BLM previously issued a proposed rule to regulate hydraulic fracturing on all federal and Indian lands, after comment and a strong push from several States, Tribes, industry and trade groups, the BLM withdrew the proposed rule for revision. On May 24, 2013 the BLM reissued a revised proposed rule, the revised rule, while incorporating some of the changes suggested in comments, is still an unnecessary and over- burdensome rule that duplicates state efforts at an enormous cost to oil and gas producers.

States have an excellent record of protecting the environment and public health, while simultaneously facilitating oil & natural gas development and promoting economic growth. Rather than force an unnecessary, one-size-fits-all regulatory regime on top of carefully crafted state-specific programs, BLM should instead work with states on how best to address any health, safety or environmental issues arising from hydraulic fracturing and related operations on federal lands by deferring to proven state regulatory and enforcement programs. By focusing too much on achieving "consistent" regulation (that we hear from DOI and BLM as being needed), rather than the best regulation, the BLM's proposal fundamentally ignores local and regional differences among states. The attached letter also focuses on the Clean Water Act issues inherent in the BLM proposed rule and questions whether the BLM has any authority to regulate state water resources.

The comment deadline for the proposed rule is August 23, 2013, if your State is interested in joining this letter please let me know on or before **AUGUST 19, 2013.**

Thank you.

P. Clayton Eubanks
Deputy Solicitor General
Office of the Attorney General of Oklahoma
313 N.E. 21st Street
Oklahoma City, OK 73105
Tel: (405) 522-8992
Fax: (405) 522-0085
clayton.eubanks@oag.ok.gov

Swanson, Cory

From: Clayton.Eubanks@oag.ok.gov
Sent: Friday, August 23, 2013 10:43 AM
To: KTurner@ago.state.al.us; RobertTambling@ago.state.al.us; nancy.korting@alaska.gov; Mattioli, Mark; Fox, Tim; VanDyke, Lawrence; Bennion, Jon; Darkenwald, Scott; Swanson, Cory; jmb@wvago.gov; elbert.lin@wvago.gov
Cc: Tom.Bates@oag.ok.gov; Melissa.Houston@oag.ok.gov; Patrick.Wyrick@oag.ok.gov
Subject: State Comment Letter on BLM Hydraulic Fracturing - Final
Attachments: BLM Hydraulic Fracturing Rule State Sign-on Letter 8-23-2013.pdf

All,

Attached is the final State comment letter to BLM on the proposed hydraulic fracturing rule.

Thank you for supporting the letter, Oklahoma sincerely appreciates it.

Have a great weekend.

P. Clayton Eubanks
Deputy Solicitor General
Office of the Attorney General of Oklahoma
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Oklahoma City, OK 73105
Tel: (405) 522-8992
Fax: (405) 522-0085
clayton.eubanks@oag.ok.gov

From: [Melissa Houston](#)
To: [Allen Wright](#)
Subject: Fwd: State Comment Letter on BLM Hydraulic Fracturing - Revised
Date: 08/23/2013 02:03 PM
Attachments: [State Attorneys General Comment Letter-BLM Hydraulic Fracturing Rule 8-23-2013.pdf](#)
[State Attorneys General Comment Letter-BLM Hydraulic Fracturing Rule 8-23-2013.pdf](#)

Sent from the iPhone of Melissa McLawhorn Houston

Begin forwarded message:

From: "Clayton Eubanks" <Clayton.Eubanks@oag.ok.gov>
To: KTurner@ago.state.al.us, RobertTambling@ago.state.al.us,
nancy.korting@alaska.gov, mmattioli@mt.gov, TimFox@mt.gov,
LVanDyke@mt.gov, JonBennion@mt.gov, SDarkenwald@mt.gov,
CoSwanson@mt.gov, jmb@wvago.gov, elbert.lin@wvago.gov
Cc: "Tom Bates" <Tom.Bates@oag.ok.gov>, "Melissa Houston"
<Melissa.Houston@oag.ok.gov>, "Patrick Wyrick"
<Patrick.Wyrick@oag.ok.gov>
Subject: State Comment Letter on BLM Hydraulic Fracturing - Revised

All,

This is the actual letter that is being mailed today and submitted to [Regulations.gov](#), same letter, same content,

Just on slightly different letterhead.

Thanks again.

P. Clayton Eubanks
Deputy Solicitor General
Office of the Attorney General of Oklahoma
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Fax: (405) 522-0085
clayton.eubanks@oag.ok.gov

The Next Page Contains the Attachment to Question 16:

**Redacted and Unredacted Excerpts from the Letter That Woodlands Compounding
Pharmacy Sent to TDCJ**

Dear Sirs and Madam:

I am the owner and pharmacist-in-charge of the [REDACTED]
the pharmacy that has provided [REDACTED] with vials of compounded pentobarbital.

Based on the phone calls I had with [REDACTED] of [REDACTED] regarding its request for these
drugs, including statements that she made to me, it was my belief that this information

Dear Sirs and Madam:

I am the owner and pharmacist-in-charge of the Woodlands Compounding Pharmacy,
the pharmacy that has provided TDCJ with vials of compounded pentobarbital.

Based on the phone calls I had with Erica Minor of TDCJ regarding its request for these
drugs, including statements that she made to me, it was my belief that this information

[...]

would be kept on the "down low" and that it was unlikely that it would be discovered that
my pharmacy provided these drugs. Based on [REDACTED] requests, I took steps to
ensure it would be private. However, the State of [REDACTED] misrepresented this fact
because my name and the name of my pharmacy are posted all over the internet. Now
that the information has been made public, I find myself in the middle of a firestorm that
I was not advised of and did not bargain for. Had I known that this information would be
made public, which the State implied it would not, I never would have agreed to provide
the drugs to the [REDACTED]

would be kept on the "down low" and that it was unlikely that it would be discovered that
my pharmacy provided these drugs. Based on Ms. Minor's requests, I took steps to
ensure it would be private. However, the State of Texas misrepresented this fact
because my name and the name of my pharmacy are posted all over the internet. Now
that the information has been made public, I find myself in the middle of a firestorm that
I was not advised of and did not bargain for. Had I known that this information would be
made public, which the State implied it would not, I never would have agreed to provide
the drugs to the TDCJ.