

# Legal Wins, Regulatory Input Uphold Alliance's Goals

By Dan Larson  
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DENVER—Success in the courtroom, persistence on the regulatory front, and effective challenges to anti-industry rhetoric have combined this year to carry the Western Energy Alliance and its members through a difficult market downturn, say the group's leaders.

As they prepare for their annual meeting, scheduled for Aug. 17-18 in Vail, Co., Alliance leaders acknowledge the group's members are enduring a slow market, and in response have reduced the Alliance's operating budget and cut staff. "As the industry continues to face difficult market conditions, Alliance directors and staff have shown they recognize the importance of active participation in policy, regulatory and legal matters," reflects Jay Ottoson, Alliance chairman and president of SM Energy in Denver.

Ottoson, whose term as Alliance chairman concludes with the meeting at the Vail Marriott Mountain Resort, adds, "I am proud of the accomplishments we have made and confident the Alliance will continue to hold a pivotal role in federal lands access and energy issues in the West."

The Alliance continues to champion such issues and adds value for members by finding new ways to reach a wider audience with its insights into energy vitality while it pushes back against regulatory overreach, reflects President Tim Wigley.

According to Wigley, regular e-mails, an engaging social media presence, and participation in the legislative and regulatory processes help the Alliance provide continuing value for its members. Such activities, Wigley notes, inform the energy discussion and influence policy across the West and in Washington.

But the Alliance's charter also includes social activities and networking events, Wigley observes. Among its contributions in that role, the group hosts casual events throughout the year that allow members to relax and stay in touch. Sometimes, he describes, the Alliance's business and social functions come together, as they

did June 23 at the Alliance's second annual car show.

The car show gives Rocky Mountain producers and service companies opportunities to network in an informal setting, he describes. "To maintain the fun atmosphere, we usually don't have any formal announcements," Wigley says.

Despite that, he reflects, it seemed appropriate to discuss some good news at this year's event. "The federal court decision that blocked the Bureau of Land Management's fracturing rule was important for producers everywhere, but especially in the West," Wigley observes. "That is why we took time at the car show to reinforce the story with our members."

## Lack Of Authority

The decision, which comes from U.S. District Judge Scott Skavdahl in Wyoming, blocked BLM's attempt to regulate wellbore construction, fracturing chemical constituent disclosures, and water management on federal and tribal lands. The ruling was handed down June 22.

Following publication in March 2015 of the BLM's final "frac rule," lawsuits seeking to block the ruling were filed separately by Colorado and Wyoming, and by the Alliance along with the Independent Petroleum Association of America against Interior Secretary Sally Jewell. Skavdahl later combined the two suits into a single case. North Dakota, Utah and the Ute Indian Tribe joined the petitioners' case against the rule, while six environmental groups filed as respondents in support of the government, Wigley recalls.

While Skavdahl reviewed the breadth of arguments against and for BLM's regulation, his ruling centered on the lack of a statutory foundation for such a rule, notes Kathleen Sgamma, Alliance vice president of government & public affairs. "The judge's ruling was clear that the BLM does not have the authority," she describes.

According to Skavdahl, the courts must "determine whether Congress has delegated to the Department of Interior legal authority to regulate hydraulic fracturing. It has not." He cited a pair of previous rulings to support his conclusion.

Immediately following the district court ruling, a White House spokesman indicated the government would respond. Less than a week later, the federal government filed its intention to appeal the ruling at the U.S. Court of Appeals for the 10th Circuit in Denver (*AOGR*, July 2016, pg. 38).

"We have a strong argument to make about the important role that the federal government can play in ensuring that hydraulic fracturing doesn't threaten drinking water," stated White House spokesman Josh Earnest. "That is a pretty simple proposition and indicative of the common-sense approach the Obama administration has pursued. That has been our policy approach, but when it comes to legal authority, we will continue to make our case in the courts."

Judge Skavdahl on Sept. 30, 2015, issued an injunction that prevented the BLM rules from taking effect (*AOGR*, October 2015, pg. 18). According to press accounts, the injunction prompted a bureau spokesperson to declare at the time that BLM would "continue to process applications for permits to drill and conduct site inspections under the pre-existing regulations."

The injunction offered an early indication that Skavdahl, appointed by President Obama to the federal bench in 2011, considered BLM's fracturing rule an overstep, Sgamma suggests. "In the 52-page ruling granting our preliminary injunction, the judge agreed with many of the points we argued and then declared the BLM lacked authority," Sgamma notes. "When your preliminary injunction is granted, there is a high likelihood your arguments have merit. And with his strongly-worded ruling, (Skavdahl) indicates he is even more convinced. I believe that bodes well for our chances in the appeals court."

Attorney Mark Barron of Baker & Hostetler LLP, who represented the Alliance and IPAA in the case, concurs about the strength of the industry's case. The limit of BLM authority "is only one problem with the fracturing rule," Barron is quoted in media reports. He adds that BLM's fracturing rule is "substantively

meritless and the product of a procedurally defective rule making.”

The Alliance has engaged in the legal fight because members consider the BLM fracturing rule expensive and unnecessary, given states’ effective regulation of well-bore integrity and other completion issues, Sgamma relates. “The bureau’s rule would unnecessarily add \$113,000 to the cost of each new well,” she estimates. “It has provided no justification for that, nor evidence of contamination.”

### Roan Plateau

In late June, BLM issued a long-delayed decision regarding the Roan Plateau in western Colorado, Sgamma reports. BLM’s final supplemental environmental impact statement and an accompanying proposed plan amendment were published June 29. They cover the plateau’s 73,800 acres in Garfield and Rio Blanco counties.

“In 1997, the Naval Oil Shale Reserves were transferred to BLM for the purpose of developing the gas resource,” Sgamma recounts. “This final SEIS represents a compromise among the companies holding leases, environmental groups, Colorado, and the federal government. We are glad it is done and that responsible development can move forward.”

Under the plan, much of the plateau and the 17 oil and gas leases there that were canceled in 2014 as part of an agreement that settled a lawsuit brought by environmental groups, remain off-limits, she explains. Two leases that remain on the plateau and 12 adjacent ones can be developed, but only under a new set of stipulations in the plan.

Ultimately, the final SEIS includes most of the terms of the 2014 settlement and effectively fences off 63,910 acres of the 115-square-mile Roan Plateau planning area for no ground disturbance or surface occupancy, Sgamma describes.

The money put up for the 17 canceled leases, all held by Bill Barrett Corp., was refunded in January 2015, published reports indicate.

Sgamma notes the Roan Plateau SEIS process has involved controversy, litigation and lease cancellation. Moreover, she observes, getting to a final plan has been “a long road—almost two decades.”

BLM says the final SEIS includes a review of more than 50,000 comments from the public and that “a vast majority” favor the terms of the 2014 settlement. The final plan “protects Colorado’s important fish and wildlife habitat while al-

## WEA Annual Meeting - Vail, Co.

### Wednesday, Aug. 17

**1-4 p.m.** Registration Desk Open, Vail Marriott Mountain Resort

**5 p.m.-8 p.m.** Family Dinner and Reception

Sponsor: SM Energy

Speaker: Heidi Gahnal, Founder, Camp Bow Wow, Candidate for University of Colorado Board of Regents, “Fighting the Divestiture Movement at Major Universities”

**8-10 p.m.** Cigars Under the Stars, Featuring Pete Martinez on Acoustic Guitar

Sponsor: Jacam Chemical Company

### Thursday, Aug. 18

**7:30 a.m.** Family Breakfast, Vail Marriott Mountain Resort

**7:30 a.m.-5 p.m.** Registration Desk Open

**8:30-9 a.m.** Opening Remarks/Welcome

**9 a.m.** Western Energy Alliance Update

**10 a.m.** Break

**10:15 a.m.** Colorado Attorney General Cynthia Coffman, Challenge of the EPA’s Clean Power Plan on Behalf of the State

**11:15 a.m.** Keynote Address: Charlie Kirk, Founder, Turning Point USA, “How to Engage the Millennial Generation and Get It Thinking of the Positives of Oil and Natural Gas Production.”

**12:15 p.m.** Family Lunch

Sponsor: IMA Inc.

**1:30 p.m.** Sean Tonner, Denver President, R&R Partners, “How Industry can Better Market to our Everyday Consumers of Oil and Natural Gas”

**2:15 p.m.** Awards Presentation

**2:30 p.m.** Break

**3 p.m.** Jay Ottoson, “Telling Our Story”

**4 p.m.** Passing of the Chairman’s Gavel from Outgoing Chairman Jay Ottoson to Incoming Chairman Daryll Howard

**4:15 p.m.** Board of Directors and Membership Meetings; Board Elections

**5 p.m.** Adjourn

### Friday, Aug. 19

**9 a.m.** Golf Outing & Lunch, Eagle Vail Golf Club  
Shotgun Start

lowing for the responsible development of oil and gas resources,” characterizes BLM Director Neil Kornze.

### Planning 2.0

BLM’s approach to finalizing the Roan Plateau EIS signals how the government will move forward with resource development projects on public lands, Sgamma suggests.

“It is a change in the way BLM will do resource management,” she maintains. “Bureau staff are adding layers to National Environmental Policy Act reviews, and is working at what is now referred to as ‘landscape level.’ This means pulling more states into the process and stitching together multiple planning areas. At the same time, they are reducing the role of county commissioners, state agencies and governors, while elevating community input and public participation.”

The change in tactic for resource management planning runs parallel to a stubborn lack of consideration of the socioeconomic impacts brought by rules promulgated for RMPs, master leasing plans, and other restrictions on oil and gas development, Sgamma assesses. “We have repeatedly asked for a third-party review independent of BLM or other agencies, of all new land use plans to ensure the public has a good understanding of the full economic impacts of the government’s regulatory actions,” she reveals.

BLM says the initiative, known as Planning 2.0, “aims to increase public involvement and incorporate the most current data and technology into our land use planning.”

The bureau adds that it has released proposed revisions to planning regulations and a preliminary economic analysis for public comment. Referred to by the bureau as regulatory improvements, the changes “enhance the way (BLM) involves the public in its planning efforts, including measures to provide earlier, easier, and more meaningful participation.”

Planning 2.0 “supports BLM’s shift to science-based, landscape-scale approaches to resource management,” the bureau asserts. It adds that a draft handbook providing guidance on implementing the planning process is scheduled for release later this year.

### Taking Notice

As a regional trade association, the Western Energy Alliance sees its role as drawing interest from producers and service providers across the western United States. Wigley says the group’s leaders believe the core of the Alliance’s mission deals with its ability to champion public lands access and push back on what many see as a continuous, gradual constriction of oil and gas development.

“In the past, operators outside the Rockies saw us mostly fighting the federal

government on public lands access issues," says Alliance Vice President of Development and Operations Brian Fakharzadeh. "Lately, we have gained several new members from outside the region with no public lands in their operations. They see our presence at the lease sale protests, our stand against the 'Keep it in the Ground' movement, and our defeat of the BLM fracturing rule in court as representing everybody's best interests."

Despite the industry downturn, Fakharzadeh reports, the Alliance has enrolled 23 new members in 2016. "We knew this year would be challenging for our members," he acknowledges. "When we cut our operating budget 30 percent this year, our members thanked us for paying attention, for being cognizant for how they are impacted, and for being in line with what is happening around the industry."

According to Fakharzadeh, the cutback also led the Alliance to postpone its annual Wildcatter of the Year event that traditionally has been held in September. The event raises money for Alliance activities, but the group's leaders agree the

time is not right to host a formal event at a downtown hotel.

"We are planning to bring the Wildcatter back in 2017," he says. "With the industry still shrinking this year, an event such as that just did not look right, so we thought it better to hold off for a while."

Nevertheless, social gatherings, networking and sporting events remain a very important part of the Alliance's mission, he assures. "We have to provide opportunities for the service providers to network with producers," Fakharzadeh says. "Events such as our wine tasting, golf outing, sporting clays, and the car show are a significant part of our budget."

The Alliance also hosts quarterly socials for little or no admission cost to members, Fakharzadeh notes. "The board agrees these regular, informal gatherings are more important than ever," he relates.

### Annual Meeting

Fakharzadeh indicates that this year's abbreviated annual meeting agenda also has earned the support of the board and membership. With a single day to cover

industry issues and provide informative speakers, Alliance leadership has selected a keynote speaker whom members should find interesting, he says.

Charlie Kirk is founder and executive director of Turning Point USA, "a national student movement dedicated to identifying, organizing, and empowering young people to promote the principles of free markets and limited government," the group's website describes.

Fakharzadeh indicates Kirk has been selected for his ability to speak about political issues from the perspective of a young person who often "does not agree with the direction Millennials are taking the conversation."

The theme of this year's Alliance annual meeting, Fakharzadeh describes, is "telling our story to the end-user. That is something we don't do very well. It is something Chairman Ottoson is very passionate about."

The annual meeting's first day, Wednesday, Aug. 17, includes the family dinner and reception, which will feature remarks by Heidi Gahnal, founder of Camp Bow Wow and a candidate for the University of Colorado Board of Regents, who will discuss efforts to fight the fossil fuel divestiture movement at major universities.

Along with Kirk's remarks, speakers on Thursday, Aug. 18, include Colorado Attorney General Cynthia Coffman, who will discuss the state's challenge of the Environmental Protection Agency's Clean Power Plan, and Sean Tonner, R&R Partners' Denver president, who will discuss how the industry can improve how it markets to its everyday customers. Other highlights include membership and Board of Directors meetings, and a passing of the chairman's gavel from Ottoson to incoming Chairman Daryl Howard of Fuse Energy.

Over the past year, Wigley says, special programs such as last autumn's weeklong Fossil Free Challenge event, active engagement in the political process, and a responsive calendar of social networking have positioned the Alliance to endure the market slump, retain an engaged membership, and continue its work once the market recovers.

Politics will continue to play a featured role as the Alliance prepares for the future. "This year's election is unlike anything I have seen before," Wigley muses. "Our transition planning is already under way, and we hope to be ready for whatever comes our way." □