

Court Rejects Motion by Environmental Groups in BLM Fracking Rule Case

Charlie Passut, *NGI's Shale Daily News*, 12-18-15

A federal judge in Wyoming has denied a motion by a coalition of six environmental groups to expedite the legal proceedings surrounding rules governing hydraulic fracturing (fracking) on public and tribal lands.

On Thursday, U.S. District Court Judge Scott Skavdahl denied a motion by the environmental groups -- specifically, the Sierra Club, Earthworks, the Wilderness Society, Western Resource Advocates, Conservation Colorado Education Fund and the Southern Utah Wilderness Alliance -- to consolidate his order for a preliminary injunction (PI) into a final judgment on the merits of the case, which would have allowed the groups to file a faster appeal to the 10th U.S. Circuit Court of Appeals in Denver.

Skavdahl also denied the groups' request to stay proceedings in Wyoming district court until the 10th Circuit rules on their appeal of his PI, which he issued in September at the request of four states, two industry groups and an Indian tribe (see *Shale Daily*, Sept. 30).

"The court finds a stay of the proceedings here would needlessly delay petitioners' right to pursue all grounds for setting aside the fracking rule based on a complete administrative record," Skavdahl said in his ruling Thursday. "The court is not convinced that finalizing and verifying the administrative record in this Administrative Procedures Act case would be a waste of resources, given the relevance of the record to the challenges being made and the preliminary stage of these proceedings.

"Whatever the 10th Circuit rules in reviewing this court's PI will not control what is or is not a part of the administrative record. Although [the environmental groups] assume the final administrative record may be immaterial to the outcome, this court is not prepared to be so presumptuous."

Skavdahl's ruling comes one week after attorneys for the Interior Department (DOI) asked the 10th Circuit to overturn the PI (see *Shale Daily*, Dec. 11). The fracking rules were developed by DOI's Bureau of Land Management (BLM). The environmental groups filed a separate appeal on Nov. 27.

Mark Barron, an attorney with the law firm Baker & Hostetler LLP -- which is representing the Independent Petroleum Association of America and the Western Energy Alliance (WPA) in their lawsuit against the BLM -- told *NGI's Shale Daily* that motions by the environmental groups and DOI "are really making this case much more complicated than it needs to be."

"All we're asking for is for DOI to go ahead and file a complete administrative record," Barron said Friday. "After that, the parties can immediately move to submitting briefs on all issues on the merits, the [district] court can resolve all issues, and then we can take a complete appeal to the 10th Circuit.

"These procedural motions actually complicate and will delay the end of the case. We think Judge Skavdahl's ruling yesterday actually facilitates the parties' efforts to get to the merits on all issues as soon as possible."

Last July, Skavdahl gave DOI more time to enter the administrative record to explain how the BLM developed the fracking rules (see *Shale Daily*, July 17). Barron said DOI acknowledged in August that the administrative record was incomplete, and would supply supplemental information by Jan. 19, 2016.

"Had that record been filed, we would be in the middle of the merits briefing on all issues. It's possible that the case could have been fully briefed and submitted to the district court in its entirety by now," Barron said. He added that appeals to the 10th Circuit over the PI would probably be rendered moot because the district court could rule on the merits of the case at about the same time, if not sooner.

Skavdahl has not ruled on last month's request by government attorneys to bifurcate the case, under which the district court would focus on whether BLM has regulatory jurisdiction over fracking on public and tribal lands, rather than issues surrounding administrative law.

Last March, Wyoming filed a separate lawsuit challenging the BLM's authority to regulate fracking. The lawsuit was joined by Colorado and North Dakota in April, followed by Utah in early July (see *Shale Daily*, June 18; April 28; April 16; March 26).

Skavdahl blocked the rules from taking effect in June, but he denied the plaintiffs' request for a PI to block the rule outright, saying he didn't have enough information to rule on their request. In July, he gave the Interior Department more time to enter the administrative record, extending the deadline until Aug. 28 (see *Shale Daily*, July 17; June 24).

Western state leaders maintain they can adequately regulate fracking, and that regulatory oversight should be spread over both private and adjoining public lands to avoid duplication and confusion.