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Federal Court Strikes Down BLM Hydraulic Fracturing Rules

On June 21, 2016, a Wyoming Federal Court ruled that the Bureau of Land Management lacked Congressional authority to set rules for hydraulic fracturing on federal and Indian lands, invalidating the hydraulic fracturing rules issued by the Bureau of Land Management (“BLM”) on March 26, 2015.

The ruling came before the federal district court in Wyoming upon Petitions for Review of Final Agency Action in a consolidation of cases brought by the State of Wyoming, the State of Colorado, the State of North Dakota, the State of Utah, the Ute Indian Tribe, the Independent Petroleum Association of American and the Western Energy Alliance against Sally Jewell, as Secretary of the United States Department of the Interior, and the BLM. Judge Scott W. Skavdahl ruled that when Congress enacted the Energy Policy Act of 2005, it specifically removed hydraulic fracturing operations (not involving diesel fuels) from Environmental Protection Agency regulation under the Safe Drinking Water Act’s underground injection control programs. Because of this express Congressional intent that hydraulic fracturing is not subject to federal regulation unless it involves the use of diesel fuels, the BLM could not enact rules regulating hydraulic fracturing under more general statutes that do not specifically address hydraulic fracturing, including the Mineral Leasing Act, the Federal Land Policy Management Act of 1976, the Indian Mineral Leasing Act, and the Indian Mineral Development Act.

For any questions, contact the following:

North Dakota:
John W. Morrison, Jr.
(701) 224-7534
jmorrison@crowleyfleck.com

Montana:

John R. Lee

(406) 252-3441

jlee@crowleyfleck.com

Wyoming:

Lori McMullen

(307) 673-3000

lmcmullen@crowleyfleck.com

CROWLEY | FLECK^{PLLP}
ATTORNEYS

Transwestern Plaza II

490 N. 31st Street Suite 500

Billings, MT 59101-2529

P: (406) 252-3441 F: (406) 256-8526

To be added to our mailing list, please email Tiffani Swenson

tswenson@crowleyfleck.com

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