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Federal Judge Enjoins Implementation of BLM Hydraulic Fracturing Rule

On September 30, 2015, a federal judge issued an order granting a preliminary injunction enjoining implementation of the U.S. Bureau of Land Management (BLM) hydraulic fracturing (fracking) rule. Multiple parties, including the states of Wyoming, North Dakota, Utah, and Colorado, the energy groups Western Energy Alliance and the Independent Petroleum Association of America, and the Ute Indian Tribe, initiated litigation seeking judicial review of the BLM fracking rule, claiming that the BLM lacks authority to regulate fracking on federal and Indian lands. This order enjoins the BLM from implementing and enforcing its fracking rule pending resolution of the ongoing litigation.

In the order, the Judge Skavdahl found it likely that the BLM lacks Congressional authority to regulate fracking on federal and Indian lands. Judge Skavdahl reasoned that when the Energy Policy Act of 2005 terminated the authority of the Environmental Protection Agency to regulate fracking under the Safe Water Drinking Act, it likewise precluded the BLM from regulating fracking activity, given that no statute specifically grants the BLM authority to regulate fracking activity on federal and Indian Lands. Additionally, Judge Skavdahl found that implementation of the fracking rule would irreparably harm the petitioners by causing economic losses in the form of decreased royalty and tax revenue, increased compliance costs, and by mandating disclosure to the BLM of trade secrets and confidential information not protected by the Freedom of Information Act.

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