Feds Appeal Decision Striking Down Hydraulic Fracturing Regulations

By Chris Reagen | June 28, 2016

RELATED PRACTICES Indian Law, Energy, Power and Natural Resources, Environmental

The federal government did not delay in appealing a Wyoming federal judge's decision to set aside the Bureau of Land Management's ("**BLM**") Final Rule implementing its regulations that sought to impose new standards and obligations on hydraulic fracturing, or fracking, on federal and Indian lands ("**Fracking Rule**"). Filed on Friday, June 24, the appeal comes just three days after U.S. District Judge Scott Skavdahl found that BLM lacked the statutory authority to promulgate the Fracking Rule, handing a significant victory to energy industry groups, states, and an Indian tribe opposed to the rule. On the same day as the appeal, states and industry groups that challenged the regulations urged the Tenth Circuit to dismiss the BLM's interlocutory appeal of the September stay that blocked implementation of the Fracking Rule pending its litigation. The states and industry groups argued that any decision on the injunction will have no practical effect now that the Fracking Rule has been struck down.

On appeal will be the issue of whether, as the BLM argued to Judge Skavdahl, the broad delegations in several mineral-leasing and public-lands statutes provide BLM with the authority to regulate hydraulic fracturing on federal and Indian lands. It is expected that the court will examine whether BLM's interpretation of its statutory authority under this panoply of statutes deserves deference under the framework created by *Chevron U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984). In its order now on appeal, the district court rejected BLM's reliance on broad delegations as providing regulatory authority and found that Congress had not expressly granted BLM the regulatory authority over hydraulic fracturing in the first place. Instead, Judge Skavdahl had determined that an exemption found in the Energy Policy Act of 2005 ("**EPAct 2005**"), eliminating fluids or propping agents (other than diesel fuels) used in hydraulic fracturing from EPA's jurisdiction under the Safe Drinking Water Act ("**SDWA**"), also eliminated the BLM's jurisdiction over hydraulic fracturing.

This appeal will set before the Tenth Circuit the issue of the existence and extent of federal regulatory authority over hydraulic fracturing and its relationship with state regulators. Those challenging the Fracking Rule praised the ruling as an affirmation that states and Indian tribes should be the sole regulators of fracking.

View a copy of the Appeal.

View a copy of the Motion to Dismiss.

For additional information contact one of the lawyers listed below.

© 2026 Haynes and Boone, LLP