

Legal Challenges to Leasing on Federal Lands

Kathleen Schroder

BJORK LINDLEY LITTLE PC

- *Southern Utah Wilderness Alliance v. Allred*
- *Colorado Environmental Coalition v. Salazar*

Southern Utah Wilderness Alliance v. Allred

- Originally a challenge to BLM's December 2008 lease sale in Vernal, Moab and Price Field Offices
- Brought in U.S. District Court in D.C.
- Plaintiffs sought to prevent BLM from issuing 77 leases sold at December 2008 Utah lease sale

SUWA v. Allred

- Plaintiffs argued that the National Environmental Policy Act (NEPA) and the Federal Land Policy and Management Act (FLPMA) required BLM to model potential impacts to air quality

SUWA v. Allred

- NEPA and an Order of the Secretary of the Interior required BLM to analyze potential impacts to climate change
- BLM failed to comply with the National Historic Preservation Act (NHPA) prior to leasing

SUWA v. Allred

- Court issued a temporary restraining order (TRO) enjoining BLM from issuing 77 leases
- Basis for TRO was analysis of impacts to air quality from leasing:
 - “BLM cannot rely on EISs that lack air pollution and ozone level statistics” when leasing.
 - The NHPA and FLPMA required BLM to consider impacts from air pollution on historic resources prior to leasing.

S. Utah Wilderness Alliance v. Allred, No. 08cv287 (D. D.C. Jan. 17, 2009) (order granting TRO).

SUWA v. Allred

- Modeling will predict a numerical amount of air pollution that is expected to result from leasing and development
- Vernal RMPs modeled impacts for some pollutants but not ozone
- Price and Moab RMPs conducted no modeling

SUWA v. Allred

- Significance of TRO order unclear
- BLM has not modeled impacts to any pollutants for many RMPs
- BLM has not finalized any RMP with ozone modeling
- Since the TRO order, the Department of the Interior has committed to undertake NEPA analysis of air quality impacts in the Vernal, Price and Moab resource areas

SUWA v. Allred

- Since TRO issued, Plaintiffs amended complaint to challenge Vernal, Moab and Price RMPs
- Pending motions to transfer the case to U.S. District Court in Utah
- Merits briefing scheduled for late 2009 and early 2010

Colorado Environmental Coalition v. Salazar

- Challenge to leases issued on Colorado's Roan Plateau
- Leases authorized under amendment to the Glenwood Springs and White River RMPs for the Roan Plateau Planning Area (released in 2006)
- Challenge brought in U.S. District Court in Colorado

CEC v. Salazar

- Roan Plateau formerly a Naval Oil Shale Reserve managed by Department of Energy
- Transferred by Congress to BLM in 1997 with directive to “enter into leases with one or more private entities for the purpose of exploration for, and development and production of, petroleum “

CEC v. Salazar

Grounds for challenge include:

- The range of alternatives analyzed
- Analysis of reasonably foreseeable impacts from development of the leases
- Analysis of cumulative impacts to air quality and wildlife
- Analysis of air quality impacts, including the lack of ozone modeling

CEC v. Salazar

- Primary issue is the range of alternatives analyzed, but issue could be resolved narrowly based on legislation specific to Roan Plateau
- One of first cases decided after Otero Mesa decision
- Tests BLM's Reasonably Foreseeable Development Scenario policy
- First case to address issue of amount of analysis of ozone required prior to leasing since TRO in *Southern Utah Wilderness Alliance v. Allred*

CEC v. Salazar

- Case fully briefed
- Decision possible this summer or early fall

Looking Ahead

- Common issue in *SUWA* and *CEC* cases is the amount and type of analysis of air quality required prior to leasing
- EPA, BLM, and the U.S. Forest Service share different views on the amount of analysis required prior to leasing
- Whether modeling is required may depend on whether impacts to air quality are “reasonably foreseeable” when leasing

Looking Ahead

- As BLM models impacts to air quality, FLPMA issues may arise
- FLPMA requires BLM to “provide for compliance” with state and federal air pollution standards when developing RMPs
- Does FLPMA prohibit BLM from leasing when modeling indicates that it may lead to an exceedance of a National Ambient Air Quality Standard under the Clean Air Act?