

Industry battles Interior, enviros over fracking rule freeze

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Legal wrangling over the ongoing injunction of the Obama administration's hydraulic fracturing rule heated up last week when each side volleyed arguments over whether a federal appeals court should even consider the case.

Oil and gas industry groups stirred up debate two weeks ago when they urged the 10th U.S. Circuit Court of Appeals to dismiss the Department of the Interior's attempts to unfreeze the fracking rule. While state challengers last week gave their blessing to industry's request, Interior and environmental allies fired back that the argument "borders on frivolous."

At stake is implementation of the fracking rule, released by Interior's Bureau of Land Management almost a year ago to tighten oversight of the controversial production method on public and tribal lands. In September, a federal district court in Wyoming froze the rule while the litigation plays out. Interior and environmental groups then appealed to the 10th Circuit and recently asked the appeals court to expedite its review.

But the Independent Petroleum Association of America and Western Energy Alliance argue that the 10th Circuit should toss the case because by the time it can consider unfreezing the rule, the district court may have already reached a decision on the broader question of whether the regulation is legal -- rendering the injunction appeal moot ([EnergyWire](#), Feb. 11).

In a Friday response, Interior assailed industry's logic, saying there's no way of knowing exactly when the district court will issue a decision in the case, and it would be unfair to stall consideration of the injunction appeal based on "anticipatory mootness."

"Industry petitioners fail to cite any case supporting the novel theory of anticipatory mootness," the agency's lawyers wrote. "Moreover, the factual premise for Industry Petitioners' theory is incorrect. Industry Petitioners do not and cannot show that the district court will, in fact render a final judgment before this Court rules on the preliminary injunction."

Environmental intervenors also responded to industry's move, saying it was based on speculation. They added that the 10th Circuit review was crucial to reversing the "far-reaching ramifications" of the district court's ruling, which not only halted the fracking rule but also questioned whether BLM had authority to regulate fracking at all.

"The district court's holding that BLM lacks the legal authority to address that practice prevents BLM from adequately managing oil and gas development on public lands," Earthjustice attorney Michael Freeman wrote in the environmental response. "By doing so, the Injunction Order impairs BLM's ability to fulfill its statutory mandate to ensure the proper conduct of oil and gas operations on the 756 million acres of federal and Indian lands that it manages."

The industry groups responded to the criticism yesterday, reiterating their argument that Interior delayed the litigation by failing to submit the complete administrative record in a timely manner. That delay and others, they argue, undermines the agency's current contention that the injunction must be lifted swiftly to allow for fracking regulation.

"Had BLM believed that the interests of the government or the public were likely to suffer imminent harm or that this case otherwise merited expedited treatment, the Department of Justice was capable of seeking urgent relief," BakerHostetler attorney Mark Barron wrote for the industry groups.