
OIL SHALE REGS WILL GO INTO EFFECT BEFORE OBAMA MOVES IN, COURTS WILLING

BLM issued final commercial development oil shale regulations November 18 in time for the rules to go into effect before President-elect Barack Obama takes over on January 20. If the regs are in effect when Obama becomes President, his administration would be hard-pressed to reverse them.

However. A federal court could issue an injunction stopping the rules and directing BLM to begin over. In fact a coalition of six environmental groups virtually promised a lawsuit the day before the rules were published in the *Federal Register.*

"(W)e herby inform you that unless you respond to this letter immediately and inform us that BLM is withdrawing the ROD and reinstating the public protest period, we will have no choice but to consider initiation of litigation in federal court to protect our rights," said the environmentalists, led by Melissa Thrailkill, staff attorney for the Center for Biological Diversity.

The environmentalists share the concern of Sen. Ken Salazar (D-Colo.) that BLM doesn't know what the environmental impacts of commercial shale development will be. They say BLM should review the results of research and development projects before writing regulations. Salazar, who is being mentioned as a candidate for the next Secretary of Interior, said at a November 19 press conference:

"For all the people of Colorado I would simply ask the question: Where are we going to get what could be as much one billion acre-feet of water to move forward with oil shale development? Where are we going to get multiple coal-fired power plants probably that will create the power that makes the technology function if it can be proven technologically feasible? The fact of the matter is there are many unanswered questions, so in my view it is foolhardy to create the regulatory regime for development of oil shale when we don't know the facts."

The lead oil shale development company in the three-state oil shale country (Colorado, Utah and Wyoming), Shell Exploration& Production Co. - Unconventional Oil, has told us the company wants BLM to complete commercial development regs as soon as possible to provide formal guidance.

In January 2007 BLM issued five, 160-acre R&D leases in Colorado (Shell holds three) and in May 2007 issued one R&D lease in Utah. The R&D leases constitute the first step in what could be a major new energy industry in Colorado, Utah and Wyoming. The Green River Formation of Colorado alone could produce an estimated 800 billion barrels of oil, or 100 years worth of the nation's annual consumption of 8 billion barrels.

On its behalf BLM said completion of the regulations (along with a programmatic EIS and record of decision) doesn't automatically commit the bureau to approve any oil shale development project. The bureau said, "Before any oil shale leases are issued, additional site-specific National Environmental Policy Act (NEPA) analysis would be completed on the proposed development. Once a lease is issued, the lessee will also have to obtain all required permits from state and local authorities, under their respective permitting processes, before any operations can begin. Another round of NEPA analysis would be conducted before any site-specific plans of development are approved."

Rep. Don Young (R-Alaska), ranking minority member of the House Natural Resources Committee, said, "With this positive step, Americans have hope for vast supplies of clean synthetic oil and natural gas to fuel our homes and businesses for decades. If American innovation succeeds with the technology to develop this resource, it could supply America's oil needs for more than a century."

BLM chose a sliding scale for royalties that would begin at 5 percent during the first five years of production, and then increase 1 percent each year after that until reaching 12.5 percent. The standard oil and gas royalty is 12.5 percent.

Salazar said the BLM formula could cost taxpayers billions of dollars in lost revenue." "I will study these regulations closely, but I am immediately concerned about the royalty rates that it has established. A royalty rate of 5 percent, of which Colorado would receive half, is a pittance," he said. "The Administration is setting up Colorado to be sold short."

The 160-acre research and development leases entitle a lessee to a preference right (but not a guarantee) to a commercial lease of 4,960 contiguous acres, subject to further environmental analysis. Regular commercial leases would be for 5,760 acres and a company could hold up to 50,000 acres in any one state.
