

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

WESTERN WATERSHEDS PROJECT,
126 S Main Street, Suite B
P.O. Box 1770
Hailey, ID 83333,

Plaintiff,

v.

BUREAU OF LAND MANAGEMENT,
1849 C Street N.W.
Washington, DC 20240,

Defendant.

Case No. 22-cv-2168

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. This case challenges the Bureau of Land Management's (BLM) issuance of Permanent Instruction Memorandum 2018-014 (PIM 2018-014), which pertains to the development of federal oil and gas minerals from "Fee/Fee/Fed" wells.

2. Fee/Fee/Fed wells are those that drill directionally into subsurface federal minerals from adjacent non-federal lands overlying non-federal mineral estate. The use of Fee/Fee/Fed wells has surged over the past decade due to advances in directional drilling technologies. Whereas federal oil and gas leases were traditionally developed from the lease surface itself, directional drilling and the checkerboard ownership pattern of western lands now allows developers to tap federal minerals from adjacent private or state lands. Today, the majority of BLM-permitted wells in top-producing states like Wyoming involve a Fee/Fee/Fed scenario.

3. In 2018, BLM issued PIM 2018-014, entitled “Directional Drilling into Federal Mineral Estate from Well Pads on Non-Federal Locations.” PIM 2018-014 purports to strip BLM officials of the power to regulate surface operations associated with Fee/Fee/Fed wells, claiming it is beyond BLM’s jurisdiction. It also purports to relieve developers of various bonding, reporting, and operating requirements for Fee/Fee/Fed wells.

4. PIM 2018-014 creates an unwarranted loophole in BLM oversight of federal oil and gas development. Since it was issued, BLM has approved the fracking and drilling of hundreds of wells without any restrictions on toxic air emissions, water and soil contamination, wildlife disruptions, noise and visual intrusions, and other impacts. This unchecked extraction of publicly-owned minerals threatens significant public and environmental harm, including to adjacent and downstream public lands and communities.

5. PIM 2018-014 also violates federal law. The Mineral Leasing Act (MLA), Federal Land Policy and Management Act (FLPMA), and their implementing regulations not only authorize but *require* BLM to regulate Fee/Fee/Fed wells and prohibit the exemptions granted by PIM 2018-014. In particular, the MLA requires BLM to “regulate all surface-disturbing activities conducted pursuant to any” federal mineral lease. 30 U.S.C. § 226(g). FLPMA further requires BLM to “regulate . . . [the] development of” federal minerals, 43 U.S.C. §§ 1702(e), 1732(b), and to “take any action necessary to prevent unnecessary or undue degradation of the lands,” *id.* § 1732(b). None of these authorities exempt federal mineral development where surface facilities are located on nonfederal lands.

6. Nor is BLM otherwise prohibited from regulating federal minerals in ways that implicate nonfederal lands. To the contrary, BLM has authority flowing from the Property Clause to “prohibit absolutely or fix the terms on which [federal] property may be used.” *Light v.*

United States, 220 U.S. 523, 536 (1911). Thus, like any other mineral estate owner, BLM has authority to condition the extraction of federal minerals on the developer's agreement to engage in, or refrain from, certain conduct on private lands. Separately, the Property Clause authorizes the regulation of conduct on private lands, such as development of Fee/Fee/Fed wells, so as to protect nearby public lands. *United States v. Alford*, 274 U.S. 264, 267 (1927).

7. In adopting PIM 2018-014, BLM failed to consider these legal authorities, resting instead on an unadorned and untenable disavowal of jurisdiction.

8. Accordingly, Plaintiff Western Watersheds Project seeks an order vacating PIM 2018-014 and declaring that BLM's issuance of PIM 2018-014 was arbitrary, capricious, and not in accordance with law.

JURISDICTION AND VENUE

9. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under federal law.

10. The Court is authorized to award the requested relief under 28 U.S.C. §§ 2201, 2202 and 5 U.S.C. §§ 702, and 706.

11. The challenged agency actions are final and subject to judicial review pursuant to 5 U.S.C. §§ 702, 704, and 706.

12. Venue is proper in this Court under 28 U.S.C. § 1391(e) because Defendant BLM is based in Washington, D.C., BLM adopted PIM 2018-104 in this district, and BLM applies PIM 2018-014 on a nationwide basis in administering its oil and gas program.

PARTIES

13. Plaintiff WESTERN WATERSHEDS PROJECT (WWP) is a non-profit membership organization founded in 1993 with the mission of protecting and restoring public

lands and natural resources of the American West. WWP is actively engaged in efforts to protect and preserve native ecosystems, watersheds, fish and wildlife, and other natural resources and ecological values throughout the West.

14. WWP has over 12,000 members, supporters, staff, and board members throughout the United States, including in Montana, Nevada, New Mexico, Wyoming, Utah, and other states where federal oil and gas leases are being auctioned and developed. Many of these individuals live, work, and recreate in lands impacted or threatened by Fee/Fee/Fed well development, and view wildlife affected by Fee/Fee/Fed well development. They derive recreational, educational, inspirational, scientific, and aesthetic benefit from their activities on these lands, and intend to continue doing so in the future.

15. As a result of PIM 2018-014, the development of Fee/Fee/Fed wells will entail more harmful impacts to the viewsheds, air quality, water, wildlife, native vegetation, and other natural resources that Plaintiffs' staff and members use and enjoy. Accordingly, BLM's issuance of PIM 2018-014 has and will continue to injure the aesthetic, recreational, and other interests of Plaintiff's staff, members, and supporters, if not vacated. The requested relief would remedy those harms. Apart from this action, Plaintiffs and their staff, members, and supporters have no adequate remedy at law to address the foregoing injuries to their interests.

16. Defendant BUREAU OF LAND MANAGEMENT (BLM) is the agency within the U.S. Department of Interior responsible for carrying out the Department's legal obligations and authority as to the development of federal oil and gas resources. BLM is headquartered in Washington, D.C., where it developed and issued PIM 2018-014.

BACKGROUND

A. BLM AUTHORITY OVER THE DEVELOPMENT OF FEDERAL OIL AND GAS RESOURCES

17. BLM oversees more than 245 million acres of land and 700 million subsurface acres of federal mineral estate. Congress has delegated to BLM, through the Secretary of Interior, plenary authority over these resources pursuant to a patchwork of statutes, including the MLA and FLPMA. Congress's authority for these delegations of power, in turn, is the Property Clause of Article IV the U.S. Constitution.

18. These and other authorities vest BLM with considerable power and duties to regulate both the surface and downhole operations associated with Fee/Fee/Fed well development.

i. Property Clause of the U.S. Constitution

19. BLM's authority over Fee/Fee/Fed wells is grounded in the Property Clause of Article IV of the U.S. Constitution, which declares that "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const. art. IV, sec. 3, cl. 2.

20. Federal mineral estate is property belonging to the United States.

21. The Property Clause vests Congress with essentially two kinds of power: "proprietary" and "sovereign." *See Light v. United States*, 220 U.S. 523, 536–38 (1911). The proprietary power encompasses the right to "prohibit absolutely or fix the terms on which [federal] property may be used." *Id.* at 536 This power is "without limitations" and Congress is free to fashion whatever limits it chooses "consistent with its views of public policy[.]" *United States v. City of San Francisco*, 310 U.S. 16, 29–30 (1940). The sovereign power encompasses

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