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California v. U.S. Bureau of Land Management

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***California v. U.S. Bureau of Land Management*, ___F.Supp.3d___,
2018 WL 1014644 (N.D. Cal. Feb. 22, 2018)**

Oliver Wood

The United States District Court for the Northern District of California granted a preliminary injunction against the Bureau of Land Management from implementing the Suspension Rule, which would delay the requirements of the Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule. Additionally, the court denied the BLM and intervening third parties' motion to transfer venue to the District of Wyoming. The court held the plaintiffs were entitled to a preliminary injunction because the BLM did not provide a reasoned analysis for the Suspension Rule. This failure to provide meaningful notice and comment was an arbitrary and capricious abuse of discretion. *California v. U.S. Bureau of Land Management* provides yet another example of the Trump Administration's attempts to circumvent Obama-era regulations by expediting rulemaking process in violation of the Administrative Procedures Act.

I. INTRODUCTION

In *California v. Bureau of Land Management*, the United States District Court for the Northern District of California granted the State of California, joined by the State of New Mexico (collectively, "Petitioners"), a preliminary injunction against the United States Bureau of Land Management ("BLM") from implementation of the BLM's Suspension Rule.¹ The Petitioners moved for a preliminary injunction to enjoin the BLM from enforcing the Suspension Rule, an injunction which, if granted, would effectively reinstate the Obama-era Waste Prevention, Production Subject to Royalties, and Resource Conservation: Final Rule ("Waste Prevention Rule") and require compliance with its provisions.² The Waste Prevention Rule required natural gas developers to reduce "venting, flaring, and leaks [...] on onshore Federal and Indian . . . leases."³ The court agreed with the Petitioners, determining that the Suspension Rule was "untethered to evidence contradicting the reasons for implementing the Waste Prevention Rule."⁴ Additionally, the court concluded the Petitioners showed that irreparable harm would occur if the BLM were permitted to implement the Suspension Rule, so a preliminary injunction was proper.⁵ The court also denied the BLM's, and the intervening states of Texas and North Dakota's, motion to change the

1. ___F.Supp.3d___ 2018 WL 1014644 (N.D. Cal. Feb. 22, 2018).

2. *Id.*

3. *Id.* (quoting Waste Prevention, Production Subject to Royalties, and Resource Conservation: Final Rule, 81 Fed. Reg. 83,008 (Nov. 18, 2016) [hereinafter Waste Prevention Rule]).

4. *Id.*

5. *Id.*

venue from the Northern District of California to the District of Wyoming, where pending challenges to the underlying Waste Prevention Rule were previously filed.⁶

II. FACTUAL AND PROCEDURAL BACKGROUND

On November 18, 2016, the BLM issued its final rule, implementing the Waste Prevention Rule. The Waste Prevention Rule went into effect on January 17, 2017, with all phases of compliance completed by January 17, 2018.⁷ On March 28, 2017, President Trump issued an Executive Order that required the Secretary of Interior to review the Waste Prevention Rule,⁸ which led to a proposed Revision Rule, effectively removing substantial provisions from the original Waste Prevention Rule.⁹

In the meantime, the BLM developed the Suspension Rule, in order to suspend the provisions of the Waste Prevention Rule that had not yet become active.¹⁰ The BLM published the final Suspension Rule on December 8, 2017, and it went into effect on January, 8, 2018.¹¹

The Petitioners brought suit in the Northern District for the District of California on December 18, 2017, to challenge the Suspension Rule and move for a preliminary injunction.¹² On December 29, 2017, the District of Wyoming stayed its pending litigation around the Waste Prevention Rule, awaiting the outcome of procedural challenges to the Suspension Rule, which would determine compliance with the Waste Prevention Rule.¹³

Accordingly, the Petitioners argued the Suspension Rule was arbitrary and capricious for three reasons.¹⁴ First, the Petitioners asserted that the BLM's justifications for the Suspension Rule were inconsistent and unsupported by the evidentiary record.¹⁵ Second, the Petitioners' critiqued the substance of the BLM's 2017 Regulatory Impact Analysis ("RIA"), including the basis of the BLM's cost-benefit analysis of the effect of the Waste Prevention Rule on royalties to tribes.¹⁶ Third, the Petitioners argued the BLM failed to provide meaningful notice and comment on its

6. *Id.* at *1.

7. *Id.*

8. *Id.* at *2 (citing Promoting Energy Independence and Economic Growth, Exec. Order No. 13,783, 82 Fed. Reg. 16,093 (March 28, 2017)).

9. *Id.* (citing Waste Prevention, Production Subject to Royalties, and Resource Conservation: Rescission or Revision of Certain Requirements, 83 Fed. Reg. 7,924 (proposed Feb. 22, 2018) [hereinafter Revision Rule]).

10. *Id.*

11. *Id.* (citing Waste Prevention, Production Subject to Royalties, and Resource Conservation; Delay and Suspension of Certain Requirements, 82 Fed. Reg. 58,050, 85,051 (Dec. 8, 2017) [hereinafter Suspension Rule]).

12. *Id.*

13. *Id.*

14. *Id.* at *7.

15. *Id.*

16. *Id.*

proposed Suspension Rule, and the Suspension Rule is “inconsistent with [the] BLM’s statutory duties.”¹⁷

III. ANALYSIS

The court considered two primary issues: (1) the BLM’s contention that California was an improper venue, despite the fact that California was a party to the suit;¹⁸ (2) the Petitioners’ request for a preliminary injunction against the BLM’s implementation of the Suspension Rule.

A. Choice of Venue

The court denied the BLM’s motion to transfer venue to the District of Wyoming.¹⁹ In order to win on a motion to transfer venue, the BLM, as the party seeking the transfer, had the burden of proving the relevant factors—convenience and interest of justice—to upset the Petitioners’ choice of venue.²⁰

First, the court assessed the convenience of a venue change to the parties and witnesses. The BLM argued transferring the venue would make it easier for the court in the pending litigation in the District of Wyoming to consider the cases “in a coordinated fashion.”²¹ The court dispelled this argument because the cases shared no substantive legal issues and the BLM did not show the requisite convenience in litigating the unrelated claims “in a coordinated fashion.”²² The Waste Prevention Rule cases in Wyoming involved the BLM’s statutory encroachment into the Environmental Protection Agency’s authority to regulate air pollution, whereas the litigation around the Suspension Rule had nothing to do with air pollution and involved a procedural challenge to the arbitrary and capricious nature of the rulemaking.²³

Next, the BLM argued that the interest of justice factors weighed heavily in favor of transferring the venue to Wyoming because the court in Wyoming was familiar with the Waste Prevention Rule.²⁴ Once again, the court discussed the two very distinct legal issues in each separate litigation, and concluded that the current litigation “raise[s] unique legal questions and require[s] the evaluation of two separate rules promulgated for different reasons.”²⁵ Accordingly, the court dismissed the BLM’s concern over conflicting judgments because the current litigation did not concern the substance of the Waste Prevention Rule, except whether any contradictions existed within the Suspension Rule and whether those

17. *Id.*
 18. *Id.* at *5.
 19. *Id.*
 20. *Id.* at *3.
 21. *Id.*
 22. *Id.*
 23. *Id.*
 24. *Id.* at *4.
 25. *Id.*

contradictions were justified.²⁶ Furthermore, the court noted the cases in the District of Wyoming were stayed pending the outcome of the current litigation.

B. Motion for Preliminary Injunction

The court assessed the Petitioners' motion for preliminary injunction by balancing four factors: (1) likelihood of success on the merits; (2) "irreparable harm in the absence of preliminary relief"; (3) balance of equities in favor of the moving party; and (4) whether the injunction would be in the public interest.²⁷

1. Likelihood of Success on the Merits

Because the decision to grant a preliminary injunction is based on the likelihood of success on the merits of the case, the court first determined whether the Suspension Rule violated the Administrative Procedure Act ("APA").²⁸ Pursuant to the APA, agency action is "arbitrary and capricious if the agency has...offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."²⁹

First, the court looked at whether the BLM provided a reasoned analysis for the Suspension Rule within the record.³⁰ After analyzing the record of the Suspension Rule, the Court concluded the BLM's rationale for the Suspension Rule contradicted its original "factual findings underpinning the Waste Prevention Rule."³¹ Furthermore, the BLM failed to provide a "detailed justification" for its contradictory findings in support of the Suspension Rule, which the court concluded meant that the BLM was arbitrary and capricious in failing to conduct a reasoned analysis of its policy changes in the Suspension Rule.³²

Second, the court determined whether the Suspension Rule was based on a flawed RIA.³³ After analyzing the BLM's determinations regarding the benefits and costs of delayed compliance with the Waste Prevention Rule, the court concluded the BLM overinflated its estimates of cost-saving for industry under the Suspension Rule, especially given its year-

26. *Id.*

27. *Id.* at *3 (citing *Winter v. Nat. Res. Def. Council, Inc.*, 129 S.Ct. 365 (2008)).

28. *Id.*

29. *Id.* at *6 (quoting *Motor Vehicles Mfrs. Ass'n of United States, Inc.*, 129 S.Ct. 1800 (2009)).

30. *Id.* at *7.

31. *Id.* at *10.

32. *Id.* See *Fed. Commc'n Comm'n v. Fox Television Studios*, 556 U.S. 502, 515 (2009) (stating that an agency must provide a detailed justification when "its new policy rests upon factual findings that contradict those which underlay its prior policy[.]" and that "[i]t would be arbitrary and capricious to ignore such matters.").

33. *Id.*

long timeline.³⁴ Accordingly, the BLM’s flaws in the RIA were yet another reason the court concluded the BLM did not perform a reasoned analysis when changing the underlying policy of the Waste Prevention Rule.³⁵

Third, the court considered the Petitioners’ argument that the Suspension Rule diverged from the BLM’s statutory duty to prevent waste of public natural resources.³⁶ The court was unpersuaded by the “prevention of waste” argument because the BLM has a range of statutory duties, and as an agency it is “best suited to evaluate its competing options and choose a course of action.”³⁷

Fourth, the court determined whether the BLM provided a meaningful notice and comment period on the Suspension Rule, as required by the APA.³⁸ The court found the BLM refused to consider comments in the record for the proposed rule that advocated for the Waste Prevention Rule because, the BLM contended, those comments fell outside the scope of the Suspension Rule; BLM considered negative comments aimed at the Waste Prevention Rule within the scope of the Suspension Rule.³⁹ Accordingly, the court concluded the BLM’s content restrictions on comments to the Suspension Rule prevented meaningful notice and comment in violation of the APA.⁴⁰

2. Irreparable Harm

The Petitioners argued that a preliminary injunction was necessary because the Suspension Rule would cause irreparable harm to air resources waste of publically-owned natural gas, and climate change.⁴¹ To qualify for injunctive relief, the Petitioners “must demonstrate immediate threatened injury.”⁴² The court noted that not all, but most environmental injuries warrant an injunction, as the harm is often permanent.⁴³ Analyzing the record of the Suspension Rule, the court highlighted the Suspension Rule’s potential impacts to the climate: “175,000 additional tons of methane, 250,000 additional tons of volatile organic compounds, and 1,860 additional tons of hazardous air pollutants[.]”⁴⁴ The BLM categorized this damage as incremental, but the court noted that the harm could not be removed from the atmosphere.⁴⁵ Ultimately, the court

34. *Id.* at *11.

35. *Id.*

36. *Id.*

37. *Id.* at *12.

38. *Id.* (citing 5 U.S.C. § 553(c)).

39. *Id.* at *13.

40. *Id.*

41. *Id.* at 14*.

42. *Id.* (quoting *Boardman v. Pac. Seafood Grp.*, 822 F.3d 1011, 1022 (9th Cir. 2016)).

43. *Id.*

44. *Id.* at *14. (quoting Suspension Rule, 82 Fed. Reg. 58,050, 58,056-58,057 (Dec. 8, 2017)).

45. *Id.* at *15.

concluded the Petitioners easily met their burden of showing imminent irreparable harm should the Suspension Rule be upheld.⁴⁶

3. Balance of Equities and Public Interest

The final factors the court considered when deciding whether to issue a preliminary injunction against the Suspension Rule revolved around equities tipping in the favor of the moving party and the public interest.⁴⁷ On one side, the Petitioners argued the loss of public natural resources and their royalties to local, state, and tribal entities; on the other side, the BLM argued the Suspension Rule benefitted industry by conserving their resources.⁴⁸ Once again, the court highlighted flaws in the BLM's argument, noting that the Suspension Rule only delayed the operator's compliance costs with the Waste Prevention Rule.⁴⁹ Furthermore, the court found costs of industry compliance was not as irreparable as gas emissions, public health harms, and pollution.⁵⁰ The court concluded the "balance weighs in favor of granting a preliminary injunction."⁵¹

IV. CONCLUSION

The court's ruling in *California v. Bureau of Land Management* is another example of the Trump Administration attempting to expeditiously change Obama-era regulations, without regard for the APA. While this decision blocks the Suspension Rule, the saga will continue in the District of Wyoming when the court rules on the fate of the reinstated Obama-era Waste Prevention Rule.

46. *Id.*

47. *Id.* at *16.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*