



No Dismissal or Transfer of Federal Lawsuit Challenging 18 Federal Land Use Plans in 6 Western States; Serious Implications for Conventional and Renewable Energy Development

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On May 7, 2009, Judge Winmill of the U.S. District Court for Idaho issued a Memorandum Decision and Order in *Western Watersheds Project v. Salazar*, Civ. No. 08-0516-E-BLW, denying in part the federal defendants' motion to dismiss or transfer challenges to 15 of 18 Environmental Impact Statements (EISs) prepared to support 15 Bureau of Land Management (BLM) Resource Management Plans (RMPs) in six different states including: Utah (Vernal, Price, Moab, Richfield, Kanab, and Monticello), Wyoming (Kemmerer, Pinedale, Rawlins, and Casper), Idaho; Montana; Nevada; and California.

In ruling that venue was proper in the Idaho District Court, Judge Winmill found that the case is an environmental action, and despite the fact that the Western Watersheds Project (WWP) is seeking review of BLM's management of some 25 million of acres of public lands in 6 western states, no real property is involved, and therefore, venue in the Idaho District Court is proper under 28 U.S.C. § 1391(e). *See Order* at 5.


In addition, the court found venue is also proper under 28 U.S.C. § 1404(a), because "parceling out these cases [would] . . . not bring the dispute[s] any closer to 'home.'" *Order* at 7. The court explained that venue was proper because resolution of the RMP challenges in their home states would also occur long distances from the situs of the lands to-be-managed, and more importantly, because a "key issue in this case is whether the BLM considered the cumulative impact of environmental factors acting in a widespread area stretching beyond RMP boundaries." *Id.* Significantly, in the words of the court, "WWP alleges that all the RMPs failed to address the cumulative impacts of global warming, an impact that may extend beyond the boundaries

of a judicial district." *Id.*

As detailed in our March 2009 newsletter, these challenged RMPs encompass management of more than 25 million acres of federal lands in the West. The lawsuit alleges that energy development activities and livestock grazing have "quickly accelerated the decline of sagebrush habitats and harmed remaining sage-grouse populations, thus contributing to the sage-grouse's slide toward extinction as a viable species." WPP Amended Complaint at ¶ 37.

WPP requests that the court "reverse and remand" each and all of the challenged RMPs and grant "declaratory and/or injunctive relief require[ing] [BLM] to undertake comprehensive and legally valid NEPA analysis and adoption of new RMPs that will conserve sagebrush habitat and sage-grouse populations across the BLM lands within the sage-grouse range." WPP Amended Complaint, Prayer for Relief at ¶ D.

This lawsuit has broad potential ramifications for conventional and renewable energy development in the west. Given the vast expanse of western sagebrush habitat, renewable energy projects, and particularly new electric transmission lines traversing federal lands, could be significantly delayed in the event the court orders the RMPs to be remanded and re-written.



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