FACT SHEET: OIL SHALE LITIGATION SETTLEMENT AGREEMENTS FILED FEBRUARY 15, 2011

What actions did the two lawsuits challenge?
In the waning days of the Bush Administration, the Department of the Interior (DOI) made two pivotal decisions seeking to open million of acres of western public lands to commercial oil shale leasing.

First, the agency amended 12 Bureau of Land Management (BLM) land use plans, opening approximately 2 million acres of land in Colorado, Utah, and Wyoming to applications for commercial oil shale leasing (and opened a smaller area to tar sands leasing).

Second, the agency approved commercial oil shale regulations that set bargain-basement royalty rates – the amount U.S. taxpayers get in return for development companies' use of public lands and minerals – and ignored environmental considerations.

In January 2009, 13 conservation organizations filed two lawsuits, separately challenging each of DOI's decisions. The suits were filed in U.S. District Court in Colorado.

What conservation groups sued the BLM?
Colorado Environmental Coalition, Western Colorado Congress, Wilderness Workshop, Biodiversity Conservation Alliance, Southern Utah Wilderness Alliance, Red Rock Forests, Western Resource Advocates, National Wildlife Federation, Center for Biological Diversity, The Wilderness Society, Natural Resources Defense Council, Defenders of Wildlife, and Sierra Club

What legal violations do the lawsuits challenge?
Lawsuit #1: 2008 Land Use Plan Amendments
The 2005 Energy Policy Act (EPAct) mandated that the BLM prepare a Programmatic Environmental Impact Statement (PEIS) for oil shale and tar sands, with "an emphasis on the most geologically prospective lands." BLM interpreted this direction to mean it should open the most lands possible to commercial leasing.

While the legislation did not require any particular action to follow the PEIS, BLM used the document to support a decision to amend 12 BLM land use plans to allow for development of oil shale and tar sands on more than 2 million acres of public land in Colorado, Utah, and Wyoming.

In this lawsuit, the plaintiffs charged that the Bush Administration Interior Department violated the law by, among other things:

- failing to consider an alternative that protected public lands, including wilderness-quality lands, and habitat important for the survival of the sage grouse; and
- failing to adequately consider the impacts of oil shale on air quality and climate change.

Lawsuit #2: 2008 Oil Shale Commercial Leasing Regulations
EPAct mandated that the BLM issue commercial oil shale leasing regulations no later than six months after completion of the PEIS. BLM adopted these regulations in November 2008. (Tar sands leasing regulations were approved in 1987 and modified in 1992.)

The leasing regulations set the royalty rate – an initial rate of 5 percent through the first five years of commercial production, increasing by 1 percent annually beginning in the sixth year of production until a maximum rate of 12.5 percent is reached in the 13th year. This rate represents a subsidy to industry since it is far lower than the current royalty rate for either conventional oil and gas or tar sands, which is set at 12.5 percent. The regulations also established the policies and procedures for the implementation of a commercial leasing program, including lease size, acreage limitations, rental rates, and diligence.

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In this lawsuit, the plaintiffs charged that the Bush Administration Interior Department violated the law by, among other things:

- failing to ensure the United States receives a "fair return" on or "fair market value" for production on federal oil shale leases; and
- failing to consider the environmental consequences of such a low rate, which would encourage development of marginal oil shale leases.

What do the lawsuits ask the Court to do?

BLM land use plan amendments: Plaintiffs ask the Court to throw out the 2008 decision opening 2 million acres of public lands for oil shale commercial leasing.

Oil shale regulations: Plaintiffs asked the Court to throw out the 2008 commercial leasing regulations.

What exactly was filed with the Court on February 15?

In legal terms, the conservation groups and DOI asked the Court to temporarily "close" the cases while DOI reviews and revises the land use plan decisions and the oil shale regulations. The settlement agreements provides some deadlines for those reviews, and some alternative courses of action for DOI to review. Once DOI complies with the settlements, the cases will be dismissed.

What do the two settlements propose?

Lawsuit #1: 2008 BLM Land Use Plan Amendments

Within 120 days of the Court accepting the settlement agreement and temporarily closing the case, BLM will begin a public process to consider changing the 12 affected BLM land use plans. This review does not commit BLM to changing the plans, but provides an opportunity for the agency, with input from the public, oil shale companies, local communities, and others, to review current policies.

BLM will propose to analyze for exclusion from commercial leasing the following areas:

1. All lands that BLM has identified or may identify as containing wilderness characteristics
2. Adobe Town, an area in southern Wyoming that the State of Wyoming has protected from mining (see: http://www.voiceforthewild.org/greatdivide/pubs/adobe_town_brochure_final.pdf)
3. Core or priority habitat for sage grouse habitat, a bird DOI recognizes as warranting protection under the Endangered Species Act
4. All areas of Critical Environmental Concern ("ACEC"), lands recognized and managed to protect special values on BLM land
5. "Alternative C," a protective alternative supported by the U.S Fish and Wildlife Service during development of the PEIS. This alternative would open more than 830,000 acres of public land to commercial oil shale leasing.

The agreement provides that BLM will issue a final decision on the land use plans by January 15, 2013.

Lawsuit #2: 2008 Oil Shale Commercial Leasing Regulations

Within 15 months of the Court accepting the settlement agreement and temporarily closing the case, BLM will begin a formal process to consider amending the oil shale leasing regulations. Re-opening the regulations does not commit DOI to changing them.

BLM will consider:

1. Removing the current royalty rate, but not replacing it with a new rate. (As DOI has acknowledged, because technologies are in their infancy, the agency does not have a god basis for setting oil shale royalty rates.)
2. Acknowledging BLM's authority to deny a commercial lease if the environmental risks of approving the lease are too great.

3. Providing that development plans for oil shale include plans to protect environmental resources such as watersheds, groundwater, and air quality. These types of plans are routinely required for other types of mining operations.

The BLM will publish a final decision by November 18, 2012.

What happens while BLM reviews the land use plans and regulations?
During the review period:

- BLM can continue to lease lands for research and development.
- BLM may approve leases for commercial oil shale production on existing research leases as long as BLM complies with environmental review laws.
- BLM will not initiate a commercial lease sale. However, companies with research leases can apply to convert those leases to commercial leases, per the terms of their leases.

What happens if BLM misses the deadlines or otherwise fails to comply with the settlements?
The plaintiffs can ask the Court to re-open the cases and to have the current oil shale regulations and land use plans thrown out.

Will the settlements slow commercial oil shale development?
No. The existing federal research and development leasing program, administered by the BLM, will continue, and companies with existing research leases can request commercial leases as provided in their current research and development leases. Also, leading companies including Shell and Exxon own or have commercial development rights to hundreds of thousands of acres of non-federal lands harboring oil shale deposits on which to test and develop their technologies. This settlement does not affect those lands.

Finally, Shell, Exxon, AMSO and other industry leaders have repeatedly stated commercial development is years away. The settlement agreements include a timeline that ensures decisions will be finalized no later than January 15, 2013.

Will the settlements close federal lands to oil shale development?
No. The settlements gives DOI a chance to balance oil shale development with other values, including watershed protection, wildlife, and recreation, something the existing policy fails to do.

Will the settlements prevent research and development on federal lands?
No. The existing federal research and development leasing program will continue and is not affected by the settlement agreements.

Will the settlement result in a royalty rate that will stifle development?
No. Federal law requires that the royalty rate must "encourage development of the oil shale and tar sands resources" and "ensure a fair return to the United States." Any rate DOI develops must meet these two goals.

The settlement agreement requires DOI to consider eliminating the current royalty rate. This requirement is based on the Secretary's repeated statements that DOI does not yet have information necessary to establish a royalty rate that meets the "fair market value" requirement. The Secretary of Interior has the authority to set royalty rates on a lease-by-lease basis in the meantime.

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What happens next in the case?

The Court will either temporarily close the case, or require the parties to litigate. Shell Oil and American Petroleum Institute, who have intervened in the cases, can file papers with the Court objecting the settlement.

For questions about the settlement:

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