

Courts Block Deepwater Drilling Moratorium, Salazar Issues Revisions in Response

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On July 8, the Fifth Circuit Court of Appeals rejected the Obama administration's attempt to block deepwater oil drilling in the Gulf of Mexico. In a three-paragraph ruling, the court denied by a 2-1 vote the administration's request to stay an earlier ruling by a federal district court that struck down the moratorium. In response, Interior Secretary Ken Salazar has revised the moratorium.



The panel's majority [held](#) July 8 that the administration failed to demonstrate the likelihood that the district court's ruling would cause irreparable injury during the time that the administration's appeal is pending. One judge dissented, saying that he would have granted the administration's request to leave the moratorium in place until the court could hear arguments on the merits of the case, scheduled for the week of August 30.

In response to the April explosion of BP's Deepwater Horizon oil rig that caused the deaths of 11 workers and the biggest oil spill in U.S. history, the Obama administration imposed a six-month [moratorium](#) on "all pending, current, or approved offshore drilling operations of new deepwater wells in the Gulf of Mexico and the Pacific regions" in order to evaluate and improve safety equipment, practices, and procedures.

The oil industry opposed the moratorium, arguing that it would cause economic harm to their businesses. Hornbeck Offshore Services, joined by other members of the oil industry, brought a suit against the Department of the Interior, challenging the legality of the moratorium and asking for an immediate injunction. In a June 22 ruling, Judge Martin Feldman of United States District Court in New Orleans [granted the injunction](#), agreeing with Hornbeck's argument that the policy was too broad. To justify his ruling, Feldman cited a lack of information regarding the specific cause of the explosion, as well as insufficient evidence that similar oil rigs could pose the same risk of harm as the Deepwater Horizon.

Feldman's decision has been criticized due to his financial ties to the oil industry. According to his most recent [financial disclosure documents](#), Feldman owns or has owned interests in numerous energy, drilling, and exploration companies, including ExxonMobil and Transocean, the company that owns the Deepwater Horizon oil rig. During his career on the district court, the judge has also taken all-expense paid trips to attend conferences on energy issues, funded entirely by the Liberty Fund, a foundation which gives money to conservative groups like the Cato Institute and the Center for the Study of Federalism.

Following Feldman's injunction, a coalition of environmental groups filed a [motion for disqualification](#), calling on Feldman to recuse himself due to his financial ties to the oil industry. Although Feldman claims to have sold some of his controversial stock on the day of his ruling, the coalition argued that a judge must recuse himself if he has a financial interest in a case on the filing date. When the case was filed on June 7, Feldman still owned stock in both ExxonMobil and Transocean. The coalition filed a separate motion calling for the judge to withdraw his earlier ruling to enjoin the moratorium. If the coalition is successful in its bid to have Feldman removed, the Fifth Circuit's decision would be voided, and the case would move back to the district court to be heard by a different judge.

Under federal law, a judge must recuse himself either when he could gain financially from his own ruling or when his personal or financial interests could merely give the appearance of bias. For example, in the U.S. Supreme Court's most recent term, Justice John Paul Stevens recused himself from a case brought by an association of Florida beachfront property owners. While not a member of the association, Stevens cited his ownership of beachfront property in Florida as a personal conflict of interest that could create the appearance of bias. Judges are generally given broad discretion when it comes to determining whether or not their financial or personal interest in a case gives cause for recusal.

The Alliance for Justice (AFJ) has also criticized the two judges on the Fifth Circuit panel that issued the July 8 majority ruling because of their ties to the oil industry. Judge W. Eugene Davis was twice treated to an "environmental seminar" at a resort ranch in Montana by the Foundation for Research on Economics and the Environment (FREE), a think tank that is funded in part by ExxonMobil, according to an [AFJ report](#). Davis also holds stock in various energy companies. Judge Jerry E. Smith attended seminars in Key

West and San Diego paid for by the Liberty Fund, as well as two trips to Montana resorts funded by FREE, AFJ found. No legal objections to either judge's presence on the case have been raised at this stage in the appeal.

The implications of the Fifth Circuit's ruling are not entirely certain. The main basis for the court's decision to leave the district court's injunction in place was that there were currently no plans by the oil industry to commence the type of deepwater drilling operations barred by the moratorium. If there were plans for such operations to move forward before the late-August hearing, the administration would be permitted to file an emergency injunction to halt drilling. It appears as though, for now, operations barred by the moratorium will not take place, despite the current injunction against the moratorium.

Another possibility is that the August appeal will not take place at all. On July 12, Interior Secretary Ken Salazar released a [revised moratorium](#) aimed at addressing the district court's concerns by narrowing the scope of prohibited drilling and providing further justification for halting some drilling operations until the end of November. "The May 28 moratorium proscribed drilling based on specific water depths; the new decision does not suspend activities based on water depth, but on the basis of the drilling configurations and technologies," the Interior Department said in a [statement](#).

Hornbeck Offshore Services, the named plaintiff in the case before the Fifth Circuit, [announced](#) July 13 that it would review the revised moratorium to determine if it is consistent with the district court's ruling. If oil industry representatives believe that the revised moratorium is inconsistent with the ruling, the industry will have to file a new suit in district court.

Photo in teaser by [the U.S. Coast Guard](#).