



Written by [William F. Jasper](#) on June 24, 2010

Judge Smacks Down Obama Oil Ban as “Misleading,” “Confused,” “Capricious.”

Federal Judge Martin Feldman issued an injunction on June 22 ordering Interior Secretary Ken Salazar and the Obama administration not to enforce a federal moratorium on all drilling on the Outer Continental Shelf in water at depths greater than 500 feet.

In a scathing [22-page ruling](#) accompanying the injunction order, U.S. District Judge Feldman referred to the oil drilling ban as "overbearing," "heavy handed," "misleading," "confused," as well as "arbitrary and capricious." The drilling moratorium was declared May 6 in response to the massive BP oil spill and originally was to last only through the month, but on May 27 President Obama announced that he was extending it for six months.



A lawsuit filed by Hornbeck Offshore Services of Covington, Louisiana, and a coalition of Gulf Coast companies sought the injunction, arguing that the federal moratorium violates the Administrative Procedure Act and the Outer Continental Shelf Lands Act and is inflicting "irreparable harm" upon them and others in the region.

Louisiana's Gov. Bobby Jindal and state Attorney General Buddy Caldwell also jumped into the fray, filing a brief in support of Hornbeck suit to lift the ban. The Jindal/Caldwell brief [claims](#) the moratorium is "effectively turning an environmental disaster into an economic catastrophe for the state." The brief asserts that Louisiana will suffer even greater distress than it has already if deepwater rigs and crews leave the coast to work in foreign venues, since once they leave they will become tied up in long-term contracts that may translate into a permanent loss for Louisiana and the region. "Having to wait an additional year or more for available rigs will turn the short-term adverse effects of the moratorium into a long-term economic disaster for Louisiana," the brief argues.

Court Stops Short of Claiming Moratorium Is Based on Lies

In his ruling against the Obama administration, Judge Feldman took strong issue with claims of alleged scientific and engineering consensus cited in Secretary Salazar's report to justify the shutdown of drilling in the Gulf.

"Much to the government's discomfort and this Court's uneasiness," Judge Feldman wrote, "the [Salazar report] Summary also states that 'the recommendations contained in this report have been peer-reviewed by seven experts identified by the National Academy of Engineering.'" That claim has proven to be untrue. In fact, a supermajority of the experts involved reportedly oppose the moratorium and have denounced the report's claim as a "misrepresentation." As Judge Feldman noted, this "misleading"



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claim by the government is cause for "apprehension about the probity of the process that led to the Report."

According to Judge Feldman's ruling:

As the plaintiffs, and the experts themselves, pointedly observe, this statement was misleading. The experts charge it was a "misrepresentation." It was factually incorrect. Although the experts agreed with the safety recommendations contained in the body of the main Report, five of the National Academy experts and three of the other experts have publicly stated that they "do not agree with the six month blanket moratorium" on floating drilling. They envisioned a more limited kind of moratorium, but a blanket moratorium was added after their final review, they complain, and was never agreed to by them, a factor that might cause some apprehension about the probity of the process that led to the Report.

Another Climategate Deception?

The Interior Department's apparent fraudulent claims of expert consensus and peer review as the basis for its draconian measures may sound uncomfortably familiar. The "Climategate" scandal, which broke last November and that has continued to snowball into a succession of scandals, has demonstrated that the United Nations Intergovernmental Panel on Climate Change (IPCC), along with well-known affiliated climate-alarmist institutions around the world, has engaged in numerous fraudulent claims of scientific consensus concerning global warming. Over the years, many of the IPCC scientists have condemned the IPCC's corrupt process and have charged the IPCC with falsifying, misrepresenting, exaggerating, sensationalizing, and/or politicizing their scientific research. (See [here](#), [here](#), [here](#), and [here](#).)

The IPCC and its accomplices in national governments, academia, and the environmentalist lobby have hyped the bogus IPCC claims and exploited the fears generated by that hype to push for carbon taxes, cap and trade policies, massive regulation of all human activity, and huge subsidies for alternative energy sources. The Obama administration now has been caught employing the same corrupt process in dealing with the BP oil spill disaster. Not surprisingly, the Obama administration has also exploited the disaster as an opportunity for promoting IPCC-favored "climate change" legislation and "alternative" energy.

Fedgov Definition of "Deepwater" Is "Confused" and "Politically Driven"

Judge Feldman's June 22 ruling tellingly notes that Secretary Salazar's report proposing the moratorium has arbitrarily defined "deepwater" drilling as more than 500 feet. He writes:

While the Report notes the increase in deepwater drilling over the past ten years and the increased safety risk associated with deepwater drilling, the parameters of "deepwater" remain confused. And drilling elsewhere simply seems driven by political or social agendas on all sides. The Report seems to define "deepwater" as drilling beyond a depth of 1000 feet by referencing the increased difficulty of drilling beyond this depth; similarly, the shallowest depth referenced in the maps and facts included in the Report is "less than 1000 feet." But while there is no mention of the 500 feet depth anywhere in the Report itself, the Notice to Lessees suddenly defines "deepwater" as more than 500 feet.

The Feldman ruling notes that without providing a rationale for its sweeping prohibitions the moratorium adversely affects many rigs and oil companies that have a proven record of safely extracting oil. He compares it to stopping all train or plane travel because of a single crash: "If some



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drilling equipment parts are flawed, is it rational to say all are? Are all airplanes a danger because one was? All oil tankers like Exxon Valdez? All trains? All mines? That sort of thinking seems heavy-handed, and rather overbearing."

The Feldman ruling criticizes the federal government for trivializing the losses suffered by businesses and workers already affected, as well as those likely to be affected by the "heavy-handed" moratorium. It states "the Court is persuaded that it is only a matter of time before more business and jobs and livelihoods will be lost. The defendants trivialize such losses by characterizing them as merely a small percentage of the drilling rigs affected, but it does not follow that this will somehow reduce the convincing harm suffered."

Feldman continues: "The effect on employment, jobs, loss of domestic energy supplies caused by the moratorium as the plaintiffs (and other suppliers, and the rigs themselves) lose business, and the movement of the rigs to other sites around the world will clearly ripple throughout the economy in this region."

In a report released on June 21, Raymond James & Associates, a securities firm, estimated that the moratorium could directly jeopardize 50,000 jobs, with a ripple effect that would impact many times that number. "Just as the demise of auto plants and steel mills in the Upper Midwest devastated entire towns, an extended drilling ban could eventually have a similar effect in the Gulf Coast," the report bleakly forecast.

The Obama administration, said the Court ruling, "failed to cogently reflect the decision to issue a blanket, generic, indeed punitive, moratorium with the facts developed during the thirty-day review." The plaintiffs, said the Court, "have established a likelihood of successfully showing that the Administration acted arbitrarily and capriciously" in issuing the moratorium. "The plaintiffs assert that they have suffered and will continue to suffer irreparable harm as a result of the moratorium," said Feldman. "The Court agrees," he concluded.

The Obama administration [appealed](#) Judge Feldman's decision on June 23 and also asked the judge to put his injunction on hold while the appeal is pending. On the same day Interior Secretary Salazar [told a Senate subcommittee](#) that a new moratorium order is being developed that "might be refined" to address some of the concerns expressed in Judge Feldman's ruling.

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