

California Oil and Gas Update: In-depth look at the California BLM's fracking decision

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Oil and gas lease sales on public lands set to resume in 2015 based upon independent fracking report

On August 28, 2014 the California State Office of the Bureau of Land Management (BLM) signaled its intent to resume oil and gas lease sales on Federal lands in the state beginning next year with its announcement of a "comprehensive strategy for the federal oil and gas program in California." This announcement was issued after an independent study commissioned by the BLM found limited environmental effects from hydraulic fracturing (i.e., "fracking") and other enhanced drilling techniques. The BLM's decision lifts a self-imposed BLM moratorium on oil and gas lease sales in California put in place on May 3, 2013, and marks another chapter in the seesaw debate in California and the nation over the use of well stimulation techniques, and raises some important considerations for the oil and gas industry in the state.

The key points of the BLM's announcement include the following:

1. **Report finds limited environmental risk associated with well stimulation:** The independent report, prepared by the California Council on Science and Technology (CCST), found limited environmental risks associated with well stimulation techniques in the State, including low comparative water usage and low seismic risk. However, at the same time, the report acknowledged a lack of information, the potential for water contamination due to the generally shallow depth of oil petroleum reserves in the State, and the potential for certain fracking chemicals with unknown effects to be toxic.
2. **BLM to encourage increased NEPA scrutiny/public participation:** The BLM will seek to provide for public notification and involvement during the preparation of Environmental Assessments (EAs) under the National Environmental Policy Act (NEPA) for any Applications for Permits to Drill (APDs) and Sundry Notices (SNs);
3. **BLM to promote coordination with State processes:** The BLM will seek to coordinate its processing of APDs and Sundry Notices SNs with State regulation of well stimulation activities under SB 4 which was signed into law on September 20, 2013 by Governor Jerry Brown in an effort to regulate well stimulation activities in the State. Applicants will be required to provide to the BLM Field Offices air emissions inventories and water management plans, and for well stimulation activities, copies of State permit applications and final approvals, as well as copies of any ground water monitoring plans.

Now that the BLM intends to move forward with oil and gas lease sales in California, the question for oil and gas operators is how these sales will play out in light of other developments in the State - including the State's own efforts under SB 4 and various legal challenges. Based upon the acknowledged shortcomings in the CCST Report, and the backlash in the media and from environmental groups following the BLM's announcement that challenge the CCST report,

it is likely that BLM resumption of oil and gas lease sales in California is in for some rough roads ahead.

Background

No oil and gas lease sales have been conducted by California BLM since the moratorium on such sales was announced on May 3, 2013. While the moratorium was purportedly based on budgetary considerations and other priorities, it was issued in the middle of on-going legal challenges to BLM oil and gas leases in the State, and most notably, a March 31, 2013 District Court ruling finding that the BLM violated NEPA by declining to assess the potential contamination from fracking in a 2011 of the sale of oil and gas leases on approximately 2,700 acres of federal land in Monterey and Fresno Counties.

Following the moratorium, in August 2013 the BLM, via its Hollister Field Office, announced that it planned to conduct a "planning and science review" of oil and gas development in the state, resulting in the recently-released CCST report. At that time, the BLM also stated that it could develop an EIS to amend one or more resource management plans (RMPs) for Field Offices relating to oil and gas lease sales.

The BLM's August 28, 2014 Announcement

Following almost one year of study and assessment, the BLM issued its August 28, 2014 decision which included:

1. Announcement of and incorporation of information from an independent scientific review by CCST assessing well stimulation techniques in California;
2. Issuance of internal guidance for the California BLM District and Field offices for processing of oil and gas applications; and
3. Publication of the results of public scoping on oil and gas development on BLM mineral lands within the Hollister Field Office's jurisdiction.

A. The CCST Report Finds Limited Environmental Effects from Well Stimulation Activities in California

The BLM's announcement was issued in conjunction with the release by the California Council on Science and Technology (CCST) of an independent scientific review of well stimulation technologies, *Advanced Well Stimulation Technologies in California: An Independent Review of Scientific and Technical Information*, commissioned by the BLM in September 2013.

The CCST report reached several conclusions:

1. Well stimulation in California differs from that in other states: This is due to differences in the geology of petroleum reserves. In California, fracking tends to be used in shallower wells that are vertical rather than horizontal, and uses "much less water" while at the same time using fluids with "more concentrated chemicals" than fracking in other states.

2. Future fracking in California is likely to focus on expanded production in and near the existing San Joaquin Basin oil fields: The report found that over 85% of well stimulation activities in California take place in four fields of the San Joaquin valley where oil production takes place in near-surface reservoirs (i.e., where oil has migrated into these reservoirs from source rocks). The report estimates that expanded production in similar reservoirs in the San Joaquin Valley would continue to employ fracking. In contrast, the report found that current production in the Los Angeles Basin does not depend heavily on well stimulation and that future production could likely occur without such technologies.
3. Fracking in California requires a small fraction of state-wide water use: The report found that fracking in California consumes between 130,000 to 210,000 gallons of water per well, compared to 4 million gallons per well in Texas' Eagle Ford Formation. With the estimated 100 to 150 well stimulations per month in California, this amount to between 150 to 400 million gallons (or 450-1,200 acre-feet) of water use per year. Even though comprising a comparatively small proportion of state-wide water usage, the report did acknowledge the potential of fracking to contribute to "local constraints on water availability" due to the extreme drought in the state
4. While there are no publicly report instances of potable water contamination from fracking releases in California, the shallow depth of many of the stimulated wells in the state poses the potential risk for groundwater contamination that warrants further evaluation.
5. While most of the chemicals used in fracking fluids are not considered to be highly toxic, the toxicity of a few of these chemicals and the lack of data regarding others warrants mandatory disclosure and further analysis.
6. Fracking as currently practiced in California does not result in a significant increase in seismic hazard because the pressure increases from fracking are too small and too short in duration, though increased disposal of water produced from oil and gas operations into deep injection wells could increase seismic hazards.

Under the BLM's plan, information from the CCST report will be incorporated into future oil and gas lease sales and permitting in California. However, given the acknowledged shortcomings in the data, reliance by the BLM on conclusions in the CCST report may provide fertile ground for environmentalists' challenge to such sales.

B. BLM Issues Internal Guidance Promoting Coordination with California Data Requirements under SB 4

As part of its announcement, the California BLM State Director also issued Instruction Memorandum No. CA-2014-031 to all California BLM District and Field Managers, providing guidance on the processing of Oil and Gas Applications for Permits to Drill (APD) and Sundry Notice (SN) Processing. The BLM's Instruction Memorandum directs that applications should be coordinated with the data requirements of the State of California as required under California SB 4 (signed into law on September 20, 2013).

Specifically, the Instruction Memorandum instructs that the California BLM offices may accept

from applicants copies of information submitted to the Division of Oil, Gas & Geothermal Resources (DOGGR) by operators as part of the permit application process under SB4, in an effort to streamline and coordinate the State and Federal processes in accordance with a 2012 Memorandum of Understanding between California BLM and DOGGR.

The Instruction Memorandum emphasizes the role of public participation, directing that the BLM must provide public notification and involvement during the preparation of Environmental Assessments under the National Environmental Policy Act (NEPA), including possible public scoping, public notification, public meetings, and public review/comment.

The Instruction Memorandum also clarifies information necessary to process APDs and SNs, including the need for applicants to submit cultural and biological surveys, air emissions inventories, water management plans, and copies of various State submittals relating to well stimulation (copy of State permit application and any final State-approved permit, a copy of any ground water monitoring plan, etc.)

C. Hollister BLM Field Office releases Scoping Summary Report

The BLM also announced the results of its public scoping for the Hollister Field Office's contemplated Environmental Impact Statement (EIS) relating to a contemplated Resource Management Plan (RMP) amendment for oil and gas development. The Field Office received over 130 written comments during the public scoping process, and intends to use these comments to help draft the EIS and the RMP amendment.

Looking Ahead

How the BLM's announcement and strategy will play out as a practical matter remain to be seen, particularly in light of ongoing developments in the well stimulation arena.

- For example, the BLM is slogging through the 1.35 million comments that it received on its proposed Hydraulic Fracturing Rule. The proposed rule would set new standards relating to well integrity to ensure isolation of groundwater from fracking fluids and hydrocarbons. It would also require companies to have water management plans for handling liquids that flow back to the surface. However, the rule as proposed would only require drillers to disclose the fracking chemicals used after the work is done, and through the industry-backed website FracFocus, which has been heavily criticized by environmentalists. The current expected publication date for the final rule is sometime in 2015.
- Also, while the BLM State Director's guidance memorandum seeks to coordinate with State processes and documentation relating to well stimulation activities being implemented under SB 4, DOGGR is still in the process of adopting its regulations implementing SB 4. The last version of the proposed regulations was issued on June 13, 2014, and currently operations are regulated under the SB 4 interim well stimulation treatment regulations (readopted on June 27, 2014).

In this context, the BLM's oil and gas lease sales in California will resume in a somewhat uncertain and evolving regulatory climate. It is clear that applicants will be subject to more

rigorous public review under NEPA, and heightened disclosure requirements relating to fracking chemicals. Perhaps more importantly, any lease sale will be subject to intense scrutiny and likely challenge, particularly given some of the shortcomings of the CCST report.