The Override

Every Landman Wants One!

Volume VIII , Issue II | November, 2013

Los Angeles Association of Professional Landmen

Presidents Message

Paul Langland, Esq., President
Independent

"Perception is reality" is an expression that one of my old ARCO bosses' seared into my PR brain, although it's applicable in everyday life. The perception that fracking is dangerous to [insert any of the following: the community, the ground water, the faults, the environment, ad naseum] has left us with the reality of Senate Bill 4 that will be implemented over the next couple of years.

Not only does SB 4 apply to hydraulic fracking, but more importantly, it is also applicable to all acid well stimulations. SB 4 will require additional permitting requirements, more water testing, and there are important notification provisions that will probably fall into our land responsibilities. The applicable notification provision is stated as follows:

3160. (6) (A) It is the policy of the state that a copy of the approved well stimulation treatment permit and information on the available water sampling and testing be provided to every tenant of the surface property and every surface property owner or authorized agent of that owner whose property line location is one of the following:

(i) Within a 1,500 foot radius of the wellhead.

(ii) Within 500 feet from the horizontal projection of all subsurface portions of the designated well to the surface.

(B) (i) The well owner or operator shall identify the area requiring notification and shall contract with an independent entity or person who is responsible for, and shall perform, the notification required pursuant to subparagraph (A).

(ii) The independent entity or person shall identify the individuals notified, the method of notification, the date of the notification, a list of those notified, and shall provide a list of this information to the division.

(iii) The performance of the independent entity or persons shall be subject to review and audit by the division.

Although problematic for our San Joaquin Valley counterparts who operate in mostly rural areas, this notice provisions will require potentially hundreds, maybe thousands, of notifications to tenants and surface owners in the LA Basin urban oil and gas fields, a very onerous task.

I've chosen this topic to not only begin the education of SB 4, but also to highlight the importance of changing

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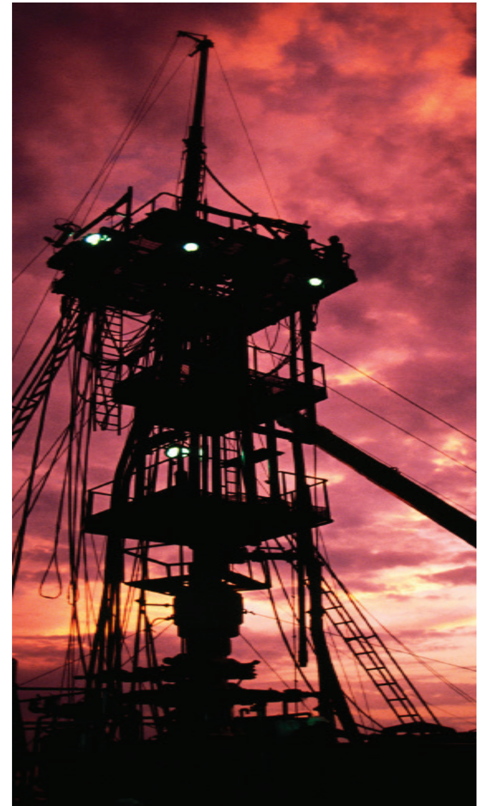

Meeting Luncheon Speaker

David A. Ossentjuk is a partner in the Westlake Village offices of Ossentjuk & Botti LLP. He specializes in business, energy and environmental litigation, oil and gas transactional matters, and environmental aspects of real estate transactions. Mr. Ossentjuk has successfully litigated numerous general business disputes involving claims for breach of contract, trespass, nuisance, fraud, breach of fiduciary duty, business torts, corporate and partnership dissolution, and insurance coverage. He regularly advises clients regarding oil and gas matters, including conveyance, leasing, operational and title issues, compliance with federal, state and local oil and gas regulation, and related litigation and administrative proceedings.

Opinionated Corner

Joe Munsey, RPL
Newsletter Chair
Southern California Gas Company

Important matters first, we extend blessings to all for a wonderful and safe Thanksgiving holiday with family and friends; then, as a reminder, as of the date we wrote this column, you have 48 days left to shop for Christmas; or 21 days left to dust off the Chanukah recipes for latkes and sufaniots.

Now to some trivial comments, but an important discovery as it concerns the shale resource plays. The "discovery"…..it appears the only methane gas emitting from the civilized world in harmful quantities are from the Progressives within the so-called hallowed halls of Cornell University and not the miniscule quantities from drilling wells in the shale resource plays. Who would have ever thought that? The blowhards at Cornell claimed "in theory only" that excess methane was being leaked during drilling operations. What – they did not do any scientific testing to support their report before exhaling large quantities of carbon dioxide to discuss their flawed report? I say we test the carbon monoxide in and around Ithaca – without doubt it would greatly exceed whatever testing "they" found in theoretical research. Still not sure if Governor Cuomo will lift the moratorium on Marcellus drilling in New York since he is always in need of more science.

So what happens now to the triumvirate of Josh Fox, Sean Lennon and Mama Lennon who bought the Cornell report hook line and sinker? [Bear in mind, the report was in theory only.] Well, probably nothing we suspect. Josh will continue his diatribe, who better than Josh to give us more Joshism; Sean Lennon will try to get another record contract, in the meantime he will continue to live off of Papa Lennons' royalty checks - which isn't such a bad living, if you think about it; and Mama Lennon will continue to manage the family's fortunes as she did when the champion of peace was living. Before meeting Dad Lennon, Ono was not a poor starving artist per se; she came from a wealthy aristocratic family whose father was in the banking business. Apparently, handling financial matters is a family trait and pays better than being artistic.

Although the song "Imagine" has some good hooks and at the time the message seemed cool to the hipsters, we personally cannot imagine eliminating Christmas or Chanukah at this time of the year; if we stick to the real meaning of Christmas or the miracle of Chanukah. Perhaps Lennon Junior should change the lyrics and ask us to imagine the world without fossil fuels – but then he would have to live in the tony Dakota Co-op across from Central Park without the modern convenience of electricity [lights and air conditioning] and natural gas [hot water and heat]; and all the modern conveniences brought about by exploration of hydrocarbons. Gee whiz, if it was not for the commercial exploitation of oil and gas the whales would have gone the way of the flightless dodo bird.

Well, there is a new law firm in town albeit the partners are "ole hands" in the California oil patch. Join me, along with your fellow land professionals, at the Long Beach Petroleum Club and hear David A. Ossentjuk, Esq., discuss the timely topic, "Arbitration Issues."

Before I leave you for the remainder of the year, and we often repeat this, support our troops and keep them in your prayers. Enjoy your Thanksgiving and be thankful for this year's blessings. Bask in the joy of Christmas, or Chanukah, and spread peace on earth towards all. God Bless America!

President's Message
continued from page 1

perceptions early to avoid the reality of legislation/regulation later. As I relayed in the last LAAPL newsletter, we all need to be involved in ensuring that our story of safe, secure and sensitive, upstream exploration and production, downstream refining and marketing, or midstream transportation operations get out to our stakeholders and the public at large.

To end on a more positive note, I hope to see you at our Holiday party to be held in beautiful Hermosa Beach on Saturday evening, December 14th (details are to be found in this newsletter). Impress your significant other and spend the night in the South Bay. This is the time of the year to take a walk or a bike ride on the Strand and make an enjoyable weekend out of it

Happy Holidays!

Paul

Scheduled LAAPL Luncheon Topics and Dates

November 21st

"Arbitration Issues"

David A. Ossentjuk, Esq.

January 23th

[4TH Thursday]

Annual Joint Meeting with Los Angeles Basin Geological Society

"History of the California Oil Patch – From the Land Side"

Edward Renwick, Esq.

December 14th

LAAPL Christmas Party

March 20th

TBD

May 15th

TBD

Officer Elections

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Rae Connet, Esq.
Past President
PetroLand Services
310-349-0051

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Vice President
Breitburn Managemt Company LLC
213-225-5900

Cliff Moore
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Independent
818-588-9020

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Treasurer
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Randall Taylor, RPL
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949-495-4372

Joe Munsey, RPL
Director
Southern California Gas Company
562-624-3241

Mike Flores
Region VIII AAPL Director
Luna Glushon
310-556-1444

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Communications/Website Chair
Odysseus Chairetakis
PetroLand Services
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Membership Chair
Cambria Henderson
OXY USA Inc., LA Basin Asset
562-495-9373

Education Chair
TBD

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Mike Flores, Co-Chair
Luna & Glushon
310-556-1444

Golf Chair
Diane Ripley
Kirste Ripley Public Relations
562-883-3001

Nominations Chain
Scott Manning, CPL
Breitburn Managemt Company LLC
213-225-5900

LAAPL and LABGS Hold Annual Joint Luncheon

The Los Angeles Association of Professional Landmen and the Los Angeles Basin Geological Society will hold its joint luncheon in January 2014. Please note the date of the luncheon is the fourth Thursday of January and the location is at the Grand at Willow Street Conference Center.

The feature speaker is the venerable Attorney Edward Renwick who is a Member of Hanna and Morton, LLP, here in Los Angeles, California. Ed will discuss California oil and gas history from our side of isle – the "land biz." Prior to Ed taking center stage THE Steve Harris, CPL, Independent, will munificently explain to our skilled "rock heads" and their younger protégés what is a professional landman; and how we make geologists look good prior to that barn-burning well comes in gushing oil/gas. Allow time for Steve to pontificate endlessly before giving up the lectern to Ed who will be waning in the wings.

When: Thursday, Jan 23rd

Time: 11:30am

Meeting Place: The Grand at Willow Street Conference Center
4101 East Willow Street
Long Beach, CA

Randall Taylor, RPL
Petroleum Landman

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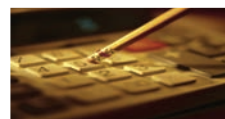

Treasurer's Report

As of 11/1/2013, the LAAPL account showed a balance of	**$ 21,906.60**
Deposits	**$ 1,620.00**
Total Checks, Withdrawals, Transfers	**$ 453.34**
Balance as of 9/17/2013	**$ 20,739.94**
Merrill Lynch Money Account shows a total	**$ 11,096.90**

Chapter Board Meeting

Cliff Moore, Independent
Chapter Secretary

The Board of Directors/Committee Chairs regularly holds its meetings on the third Thursday of the month after the Chapter meetings. Board meeting dates coincide with the LAAPL's luncheons.

New Chapter President Paul Langland, Esq. took the reins of the September 2013 LAAPL board meeting and hit the ground running. The matters discussed this meeting were:

- New member apps and qualifications
- Success of the Michelson Classic. [Thanks to all the duffers who came out.]
- Filling committee chairs; three filled at this meeting alone
- The WCLI turnout reflects the health of the business
- Treasury matters
- And other business

Because the Board of Directors and Committee Chairs hold their meetings in the same room as the luncheon, and right after the guest speaker has wowed us, we encourage members to attend so you can see your Board in action.

Lawyers' Joke of the Month

Jack Quirk, Esq.
Bright and Brown

Subject: Pope vs Rabbi Debate

Several centuries ago, the pope decreed that all the Jews had to convert to Catholicism or leave Italy. There was a huge outcry from the Jewish community, so the pope offered a deal. He'd have a religious debate with the leader of the Jewish community. If the Jews won, they could stay in Italy; if the pope won, they'd have to convert or leave.

The Jewish people met & picked an aged, wise rabbi to represent them in the debate. However, as the rabbi spoke no Italian, & the pope spoke no Yiddish, they agreed that it would be a "silent" debate.

On the chosen day the pope and the rabbi sat opposite each other.

The pope raised his hand & showed three fingers.

The rabbi looked back & raised one finger.

Next, the pope waved his finger around his head.

The rabbi pointed to the ground where he sat.

The pope brought out a communion wafer & a chalice of wine.

The rabbi pulled out an apple.

With that, the pope stood up, declared himself beaten & said that the rabbi was too clever. The Jews could stay in Italy.

Later the cardinals met with the pope & asked him what had happened.

The pope said, "First, I held up three fingers to represent the Trinity.

He responded by holding up a single finger to remind me there's still only one God common to both our faiths."

"Then, I waved my finger around my head to show him that God was all around us. The rabbi responded by pointing to the ground to show that God was also right here with us.

"I pulled out the wine & host to show that through the perfect sacrifice Jesus has atoned for our sins, but the rabbi pulled out an apple to remind me of the original sin. He bested me at every move & I could not continue."

Meanwhile, the Jewish community gathered to ask the rabbi how he'd won.

"I haven't a clue", said the rabbi. "First, he told me that we had three days to get out of Italy, so I gave him the finger."

"Then he tells me that the whole country would be cleared of Jews, but I told him emphatically that we were staying right here."

"And then what?" asked a woman.

"Who knows?" said the rabbi. "He took out his lunch, so I took out mine."

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Our Honorable Guests

September's luncheon was another successful LAAPL Chapter luncheon meeting held at the Long Beach Petroleum Club. Our guest of honor who attended:

Michel Chaghouri

T. Hall

Ned Parsons

S. Anderson

M. Pehlivan

Doug Pelu

J. Randall

JAMES C'KARO
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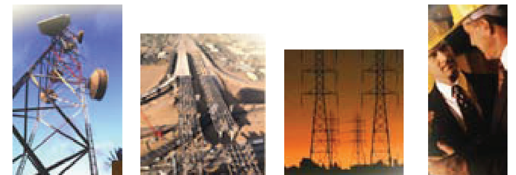

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New Members and Transfers

Cambria Henderson
Membership Chair
Oxy USA Inc.

Welcome! As a Los Angeles Association of Professional Landmen member, you serve to further the education and broaden the scope of the petroleum landman and to promote effective communication between its members, government, community and industry on energy-related issues.

New Members	Transfers
None to Report	None to Report

New Member Requests

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Independent Landman
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Burbank, CA 91501
englishlandman@gmail.com
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EDUCATIONAL CORNER

Education Chair - Vacant

Need continuing education credit? The American Association of Professional Landmen (AAPL) is committed to providing education seminars and events that support our membership base. Listed below are continuous courses available for the upcoming months. You can also earn credits by attending our luncheons based upon speaker and subject matter. Please visit www.landman.org to browse all of the upcoming nationwide events.

December 2013

Pooling Seminar
When: December 2, 2013
Where: Fort Worth, TX
Continuing Education Credits: 5.0
CPL Ethics Credits: 0.0

Halfmoon Seminar – Oil and Gas Litigation Landman Seminar
When: December 11, 2013
Where: Bakersfield, CA
Continuing Education Credits: 6.0
Ethics Credits: 0.0

WI/NRI Workshop
When: December 13, 2013
Where: Fort Worth, TX
Continuing Education Credits: 6.0
Ethics Credits: 0.0

Fundamentals of Land Practices & Optional RPL Exam
When: December 6 – 7, 2013
Where: Pittsburgh, PA
Continuing Education Credits: 7.0
Ethics Credits: 1.0

JOA Workshop
When: December 11 - 12, 2013
Where: Denver, CO
Continuing Education Credits: 14.0
Ethics Credits: 0.0

Landman 411 Series: Putting It All Together
When: December 16, 2013
Where: Fort Worth,TX
Continuing Education Credits: 3.0
Ethics Credits: 0.0

January 2014

Fundamentals of Land Practices & Optional RPL Exam
When: January 9 - 10, 2014
Where: Pittsburgh, PA
Continuing Education Credits: 7.0
Ethics Credits: 1.0

JOA Workshop
When: January 14 - 15, 2014
Where: Midland, TX
Continuing Education Credits: 14.0
Ethics Credits: 0.0

Due Diligence Seminar
When: January 27, 2014
Where: San Antonio, TX
Continuing Education Credits: 5.0
CPL Ethics Credits: 0.0

WI/NRI Workshop
When: January 10, 2014
Where: Denver, CO
Continuing Education Credits: 6.0
Ethics Credits: 0.0

Oil and Gas Land Review, CPL/RPL Exam
When: January 21 - 24, 2014
Where: Midland, TX
Continuing Education Credits: 18.0
Ethics Credits: 1.0

APPL Home Study Program

AAPL's Home Study program allows members to earn continuing education credits at their own convenience and schedule. The courses cover the issues most relevant to today's Landman and cost between $30 and $75 to complete. To receive continuing education credits via a home study course:

- Download or print out the course (PDF format)
- Answer all questions completely
- Submit the answers as instructed along with the appropriate fee

If you have questions or would like more information, please contact AAPL's Director of Education Christopher Halaszynski at (817) 231-4557 or chalaszynski@landman.org.

General Credit Courses

#100 Environmental Awareness for Today's Land Professional
Credits approved: 10 CPL/ESA/RPL
$75.00

#101 Due Diligence for Oil and Gas Properties
Credits approved: 10 CPL/RPL
$75.00

#102 The Outer Continental Shelf
Credits approved: 5 CPL/RPL
$37.50

#104 Of Teapot Dome, Wind River and Fort Chaffee: Federal Oil and Gas Resources
Credits approved: 5 CPL/RPL
$37.50

#105 Historic Origins of the U.S. Mining Laws and Proposals for Change
Credits approved: 4 CPL/RPL
$30.00

#106 Going Overseas: A Guide to Negotiating Energy Transactions with a Sovereign
Credits approved: 4 CPL/RPL
$30.00

#108 Water Quality Issues: Safe Drinking Water Act
(SDWA)/Clean Water Act (CWA)/Oil Pollution Act (OPA)
Credits approved: 4 CPL/ESA/RPL
$30.00

#109 Common Law Environmental Issues and Liability for Unplugged Wells
Credits approved: 4 CPL/ESA/RPL
$30.00

Ethics Credit Courses

Two ethics courses are available. Each course contains two essay questions. You may complete one or both of the questions per course depending on your ethics credits needs. Each question answered is worth one ethics continuing education credit.

#103 Ethics Home Study (van Loon) – 1 or 2 questions
Credits approved: 2 CPL/RPL & 2 Ethics
$15.00 per question

#107 Ethics Home Study (Sinex) – 1 or 2 questions
Credits approved: 2 CPL/RPL & 2 Ethics
$15.00 per question

LAAPL Holiday Party 2013

LAAPL Resumes Christmas Cheer in the LA Basin

Paul Langland, Esq, our esteemed LAAPL Chapter President, along with Aurea Reynolds, have taken on the monumental task to once again bring the lost tradition of bringing Christmas cheer back in vogue for LAAPL members and their guest(s). They have diligently searched high and low for a venue, including entertainment, which will please all; considering the chore to assemble landmen during holidays or any other time is much like herding cats.

Saturday, December 14, 2013

5:30 – 8:30 pm

Offices of E&B Natural Resources Management Corp.

205 Pier Avenue

Hermosa Beach, California

RSVP: amy@ebnr-hemosa.com

Cost for Members: $25 per person

$30 per couple

Designate a Driver. Don't Drink and Drive this Holiday Season. We want to see your smiling faces in 2014!

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GRATEFULLY ACKNOWLEDGES THE CONTINUING SUPPORT OF OUR FRIENDS AND CLIENTS IN THE OIL AND GAS INDUSTRY AS WE CONTINUE A TRADITION OF PRACTICE IN THE AREAS OF BUSINESS, REAL PROPERTY AND ENVIRONMENTAL LITIGATION; EXPLORATION AND PRODUCTION TRANSACTIONS; MINERAL TITLE REVIEW AND OPINIONS; LAND USE, ZONING, ENVIRONMENTAL AND OTHER PERMITTING AND ADMINISTRATIVE MATTERS.

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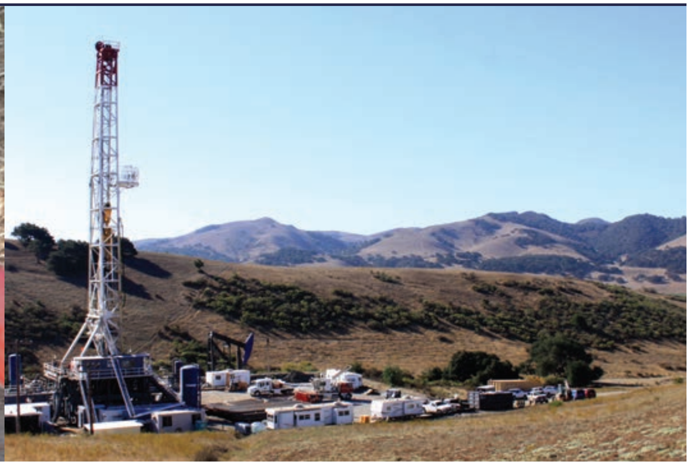

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Patrick T. Moran: RPL, Senior Land Negotiator

Wes Marshall: CPL, Land Manager Unconventional Resources

Sharon Logan: CPL, Senior Landman

Jennifer Ott: RL, Landman

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EPA Will Continue to Apply the "Functional Interdependence" Test for Air Quality Source Determinations Outside of the Sixth Circuit

By
Tad J. Macfarlan, Esq., Associate
David R. Overstreet, Esq., Partner
Bryan D. Rohm, Esq., Associate
and Craig P. Wilson, Esq., Partner
Law Firm of K & L Gates, LLP

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EPA Issues Single Source Determination Guidance in the Wake of Summit Petroleum Corp. v. EPA, Refusing to Adhere to Summit Outside the Sixth Circuit

Introduction

On December 21, 2012, the U.S. Environmental Protection Agency ("EPA") issued a new guidance memorandum (the "Page Memorandum") [1] on single source determinations for the oil and gas industry under the Clean Air Act ("CAA"), indicating that it will not adhere to the Sixth Circuit's August 2012 decision in Summit Petroleum Corp. v. EPA [2] outside the Sixth Circuit's jurisdiction. In a prior alert, the authors described the Summit decision and its significance in light of EPA's ever-evolving interpretation of what constitutes a single "source" of emissions under the CAA. Summit rejected EPA's current position that "functional interdependence" should be a consideration in determining whether to combine the air emissions of two or more physically distant facilities. In rejecting EPA's "functional interdependence" test, the Sixth Circuit directed EPA to limit its evaluation of "adjacency" to whether activities are located on physically proximate properties in accordance with the "ordinary, i.e., physical and geographical, meaning of that requirement."

Despite the Sixth Circuit's decision in Summit, the Page Memorandum indicates that, outside the Sixth Circuit, EPA will continue to interpret "adjacent" to include the "functional interrelatedness" of two emission units when making single source determinations under the Title V, prevention of significant deterioration ("PSD") and new source review ("NSR") permit programs. The position articulated by EPA in the Page Memorandum undoubtedly will lead to additional disputes with industry regarding source determination decisions outside the Sixth Circuit.

Background

Generally, the CAA subjects only "major sources" of air emissions to the stringent requirements of the PSD, NSR, and Title V programs. [3] Whether a source qualifies as "major" is based upon the quantity of pollutants that a source emits or has the potential to emit (the specific threshold can differ depending on the pollutant, the regulatory program, attainment status of the area, and type of facility at issue). Most individual facilities related to oil and gas development emit pollutants in quantities well below the major source thresholds, but if the emissions from multiple distant, related facilities are combined, the overall "source" would often trigger the onerous major source requirements.

EPA's regulations provide three criteria that must each be satisfied for the emissions from multiple pollutant emitting activities to be combined:

(1) The sources must belong to the same industrial grouping, which is determined with reference to whether they have the **same primary SIC code;**

(2) The sources must be located on one or more **contiguous or adjacent properties**; and

(3) The sources must be under **common control** of the same person or corporate entity. [4]

With regard to the second prong, EPA has advanced the interpretative position that "functional interrelatedness" should be considered in determining adjacency since September 2009, when it issued the "McCarthy Memorandum," [5] and sporadically prior to its January 2007 issuance of the "Wehrum Memorandum." [6] From January 2007 to September 2009, the Wehrum Memorandum directed the EPA regions to focus on physical proximity in determining adjacency, and concluded that it was generally inappropriate to combine geographically distant oil and gas activities as a single source. The McCarthy Memorandum expressly withdrew the Wehrum Memorandum, and instead emphasized the importance

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of the three regulatory criteria, as demonstrated through EPA's historical case-by-case determinations. In practice, EPA once again began considering the functional interrelatedness of facilities in determining adjacency upon issuance of the McCarthy Memorandum.

In Summit the Sixth Circuit squarely rejected EPA's position that interrelatedness should be considered in determining adjacency. Until last month's issuance of the Page Memorandum, however, it remained unclear how EPA would react to the Sixth Circuit's decision. EPA had the option of (1) rejecting Summit outside the Sixth Circuit, or (2) adopting a new nationwide interpretive policy heeding the Sixth Circuit's guidance, which would have provided a uniform application of the CAA. Additionally, the Summit decision left substantial room for EPA to decide how to determine whether activities are located on physically proximate properties in accordance with the "ordinary, i.e., physical and geographical, meaning of that requirement."

The Page Memorandum

The Page Memorandum is less than two pages long and indicates that EPA will take one of two approaches depending on whether the permit sought is within the jurisdiction of the Sixth Circuit:

EPA Will Adhere to Summit in the Sixth Circuit: EPA will no longer consider interrelatedness in determining adjacency in Title V and NSR Source Determinations in Michigan, Ohio, Kentucky and Tennessee. This is the absolute minimum required of EPA to comply with the binding decision in Summit. However, the Page Memorandum does not indicate how the Summit decision will be implemented, stating "EPA is still assessing how to implement [Summit] in its permitting actions in the [Sixth] Circuit." The Page Memorandum also indicates that "EPA is assessing what additional actions may be necessary to respond to the Court's decision." Thus, it remains unclear how close two facilities must be in order for EPA to treat them as a single source, and what other considerations (if any) EPA might take into account in making such a determination.

Jurisdictions Outside the Sixth Circuit: EPA will not "change its longstanding practice of considering interrelatedness in the EPA permitting actions in other jurisdictions." With this statement, the Page Memorandum forcefully endorses the functional interrelatedness test than previously provided in the McCarthy Memorandum. Thus, outside the Sixth Circuit, EPA will continue to apply the approach that was squarely rejected in Summit.

Conclusion

Moving forward, industry should closely monitor agency and court actions involving single source determinations, both within and outside the Sixth Circuit. Several such actions are currently pending, including the remand to EPA in Summit. Given EPA's differing application of its own regulations within and outside the Sixth Circuit, there is now a possibility that a split among the Circuit Courts of Appeals will develop, which could eventually lead to final resolution by the United States Supreme Court.

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Notes:

[1] *Memorandum from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards, to Regional Air Division Directors, re: Applicability of the Summit Decision to EPA Title V and NSR Source Determinations (Dec. 21, 2012).*

[2] *690 F.3d 733 (6th Cir. 2012).*

[3] *See CAA §§ 165(a), 169(1), 42 U.S.C. §§ 7475, 7479(1); CAA § 172(c)(5), 42 U.S.C. § 7502(c)(5); CAA § 502(a), 42 U.S.C. § 7661a(a).*

[4] *See, e.g., 40 C.F.R. § 51.166(b)(6).*

[5] *Memorandum from Gina McCarthy, EPA Assistant Administrator, to Regional Administrators, re: Withdrawal of Source Determinations for Oil and Gas Industries (Sept. 22, 2009).*

[6] *Memorandum from William L. Wehrum, EPA Acting Assistant Administrator, to Regional Administrators, re: Source Determinations for the Oil and Gas Industries (Jan. 12, 2007).*

Precondemnation Vs. De Facto: A Cautionary Tale

By Bradford B. Kuhn, Esq, & Bernadette M. Duran-Brown, Esq.
Law Firm of Nossaman LLP
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Eminent domain cases typically revolve around a "date of value" — the date on which property is valued in determining the amount of just compensation the condemning agency must pay. That date is set by statute; typically, it is the date on which the agency deposits the amount of "probable compensation" to be awarded.

But sometimes, the agency's activities, such as project planning and acquisition efforts, negatively affect the value of the property. In such circumstances, property owners may attempt to hold the agency responsible for such declines in value by claiming (1) precondemnation damages or (2) a de facto taking.

While both claims are similar in that they involve holding the condemning agency accountable for damages caused by its precondemnation conduct, the difference in assessing damages is significant.

A recent California state appeals court decision, People v. McNamara, addressed the differences between the two claims, clarifying that for de facto-taking claims, the date of value shifts to an earlier date in time, as the "taking" occurred before the formal condemnation action was filed.

Conversely, for precondemnation damages claims, the date of value does not move, but damages are recoverable between the date on which the agency commenced the "wrongful" conduct and the date of value. The court in McNamara chronicled the key differences between these two related claims, providing some crucial lessons for those involved with eminent domain and inverse condemnation actions.

Background

The McNamaras owned a 1.24-acre lot in Prunedale, Calif., near U.S. Highway 101. While they had long planned to build a home on the property, the McNamaras became concerned when they learned of a potential freeway bypass project in the area that could impact their property. After being assured by the California Department of Transportation that the potential project lacked funding, the McNamaras broke ground and ultimately moved into the home in 2004.

Meanwhile, Caltrans was taking steps to build its bypass project. After initially designating the McNamaras' property as a "full take," Caltrans redesigned the project to save the home.

But the impacts were still severe: no front-door access during four years of construction, an unusable driveway, a destroyed septic system, no access to a well — which was the property's sole source of water — and a highway less than 50 feet from the residence.

The McNamaras were not provided with the details of the impacts until 2007; had they known about them, they would have never built their home. While they started looking for a new home, the McNamaras did not have the financial ability to purchase a replacement property until they received the purchase proceeds from Caltrans.

Caltrans did not file its eminent domain action until 2008. Using the deposit proceeds, the McNamaras were finally able to purchase a replacement property in 2009. As trial approached in the condemnation action, the parties exchanged expert appraisal reports.

The McNamaras' appraiser valued the take at $1.55 million, and he also concluded the property should have been acquired in 2006, at which time it would have been worth an additional $400,000. Caltrans' appraiser valued the take at just over $1 million, with no amount for precondemnation damages.

The trial court found Caltrans liable for precondemnation damages beginning in 2006. The jury then awarded the McNamaras $1.2 million for the property, plus $175,000 for precondemnation damages. The trial court then issued a judgment notwithstanding the verdict, finding the McNamaras were entitled to $400,000 for precondemnation damages since that was the only opinion of value offered on the issue. Caltrans appealed.

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Appellate Court

On appeal, Caltrans argued that the McNamaras had not proven that Caltrans' pre-acquisition conduct caused any diminution of value to their property and, therefore, they were not entitled to recover any precondemnation damages. The appeals court agreed.

The court first started by distinguishing a claim for precondemnation damages as opposed to one for a "de facto taking." Specifically:

De Facto Taking: A de facto taking occurs when there is a physical invasion or direct legal restraint prior to the date of value. Examples include a government agency's denying development permits on the basis that the government may want to acquire the property and refusing to acquire the property unless the owner would sell at an agreeable price, or enacting a particularly harsh zoning regulation designed to decrease any future condemnation award.

- Precondemnation Damages: Precondemnation damages liability occurs where a government agency acts improperly either by unreasonably delaying an eminent domain action following an announcement of intent to condemn or by other unreasonable conduct prior to condemnation, and as a result of such action, the property in question suffered a diminution in market value.

While both claims involve liability for pre-acquisition conduct by the agency, the difference in assessing damages can be significant. Where there has been a de facto taking, the date of value shifts to the date of the "taking," and all decline in value after that date is chargeable to the condemning agency, including damages wholly unrelated to the precondemnation activity of the public agency, such as a general decline in market value in the area.

In contrast, where an agency is liable for precondemnation damages, the date of value does not shift, and the agency is only liable for damages specifically caused by its activities. In other words, there is no liability for any decline in the market value of the property caused by general conditions unrelated to the activities of the agency.

Here, the McNamaras' damages calculation was solely based on a general decline in market value: what their property would have been worth if valued in 2006 instead of in 2008.

While this may have been appropriate if the McNamaras were alleging a de facto taking, they were not. They were only seeking precondemnation damages, and therefore, could only recover for declines in value directly attributable to Caltrans' conduct. There was no evidence that Caltrans' conduct affected the value of the property as the McNamaras continued to live on the property, and they offered no evidence that the property's value was reduced during that period.

Because the McNamaras could not prove precondemnation damages, the court reduced their damages award by $400,000.

Conclusion

De facto takings unquestionably have a much higher threshold of liability as compared to the activities that may give rise to precondemnation damages. However, in seeking compensation, a property owner must thoroughly understand the differences between the two related claims as the recovery may be significantly different in a rapidly changing real estate market (such as the one experienced in McNamara between 2006 and 2008).

In a declining real estate market, a property owner would much rather succeed with a de facto-takings claim, shifting the date of value to an earlier date to avoid the market downturn. On the other hand, in an increasing real estate market, a property owner would be better off with a precondemnation damages claim, saving the date of value for as late as possible while still seeking to recover for damages (such as lost rents) that may have occurred beforehand.

McNamara serves as a good reminder that public agencies need to be aware of the distinction between a de facto taking and precondemnation damages because it could have a dramatic impact on the assessment of the just compensation to be paid. It could also impact the legal instructions given to experts, and particularly, instructions related to the date of value.

McNamara also reminds public agencies to tread carefully in their pre-acquisition efforts to avoid additional liability. It is a fine line to walk between conducting reasonable planning activities (which are unquestionably required for large public projects, even if they impact overall property values), and engaging in drawn-out acquisition efforts that begin to cause unreasonable, specific and direct injury to property owners.

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Kern Supervisors Pushes Back on Marin County Hydraulic Frac'ing Moratorium

By Zack Scrivner,
Second District Supervisor,
Kern County Board of Supervisors
State of California

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Ed Comments: Letter from Supervisor Scrivner to Marin County Board of Supervisors was originally published by California Independent PetroleumAssociation. Supervisor Scrivner granted "The Override" permission to re-publish.

The Marin County Board of Supervisors recently approved a resolution calling for a statewide ban on hydraulic fracturing. Kern County 2nd District Supervisor Zack Scrivner took exception to the ban and the potential effects on the Kern economy where approximately 90% of the hydraulic fracturing occurs within the state.

The Marin County board resolution says a moratorium on the process should remain in effect "until state and federal legislation and regulations are put in place that repeal exceptions to the state Safe Drinking Water Act, guarantee public health and safety, mitigate the effects on climate change, protect the environment, allow government access and testing of chemicals used, anticipate merging extraction technologies and require full disclosure and testing of sites, with adequate time for public input."

Supervisor Scrivner responded with the following letter:

Marin County Board of Supervisors
3501 Civic Center Drive, Room 329
San Rafael, CA 94903

Dear Marin County Board of Supervisors,

I noted with interest the Marin County Board of Supervisors' recent vote calling for a moratorium on hydraulic fracturing, or "fracking."

You may be aware that no hydraulic fracturing for oil actually takes place in Marin County. Indeed, the vast majority of the hydraulic fracturing occurring in California occurs in Kern County, where I live and am privileged to serve on the Board of Supervisors. Based on our experience, living near actual oil and natural gas production activities, I wanted to take this opportunity to provide some valuable information. I make the assumption that you were unaware of the following facts because the language of your resolution shows it was based on talking points culled from anti-energy activists, not the practical experience that decades of development has given us in Kern County.

Contrary to the claims made in your resolution, hydraulic fracturing is a proven and well-understood technology that has been used more than 1.2 million times since the 1940's, including here in California.

The fundamental safety of "fracking" is a matter of extensive public record, and it is well accepted by scientists, responsible environmentalists, the industry, regulators, and policymakers from both parties. Indeed, President Obama, federal officials (including current and past Secretaries of Energy and the Interior), Governor Brown, and state regulators across the country have observed that this is a safe process that is vital for our future, for economic as well as environmental reasons.

The regulation of hydraulic fracturing is under the purview of the states, a system that the federal EPA has praised as effective. The Safe Drinking Water Act (SDWA) was passed in 1974 and did not cover hydraulic fracturing because it was not designed to cover hydraulic fracturing. Claiming this process was "exempted" from SDWA begs the question: Can you be "exempt" from something that never covered you in the first place?

In addition to a variety of state and local regulations, the U.S. Government Accountability Office has also explained how shale development is covered under no fewer than eight separate federal laws, including the Clean Water Act, the Clean Air Act, and – with regard to the management and disposal of wastewater – the Safe Drinking Water Act.

Here locally in Kern County, our Planning and Community Development Department is hard at work on an environmental impact report on the local oil industry's use of fracking. This EIR has been recognized by a "carve-out" provision from the California State Legislature in SB 4 (Pavley-Leno). Even the State of California has deferred to Kern County's oil industry's

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expertise in regards to the use of this technique. Because I have the utmost respect and confidence in the thoroughness and professionalism of the Kern County Planning and Community Development Department's ability to produce a facts-based EIR, I am willing to keep an open mind on this entire fracking debate before any reactionary government regulation, or moratorium occurs. As elected leaders that make decisions based on facts that have been discovered through due process and investigation by knowledgeable professionals, it would be my hope that your Board of Supervisors would likewise keep an open mind on such an important issue.

As you most likely know, the combination of hydraulic fracturing with horizontal drilling, which has been widely used for decades, has spurred a renaissance in domestic energy production that supports more than 1.7 million jobs nationwide. Here in California, where horizontal drilling is rare due to our unique geology, a recent study from the University of Southern California estimated that the development of the Monterey Shale (which lies under a broad swath of the Central Valley) could create as many as three million jobs in the next decade. If even a fraction of these jobs materialize, it would be a godsend for our struggling region, where unemployment has remained in double digits.

My colleagues and I recognize that Marin County has enjoyed an unemployment rate of only 5.3 percent, but that is no reason to deny others the opportunity for new jobs in this sluggish economy, especially considering how political statements (such as a moratorium on hydraulic fracturing) in one region can impact policy decisions across the entire state.

Because your resolution mentioned it, I should also note that increased home-grown energy using hydraulic fracturing is an environmental success story as well. More California-produced energy means less dependence on foreign oil, much of which comes from regimes with far fewer environmental standards than we enjoy here. In addition, the renaissance in natural gas from shale in other parts of the country has opened new possibilities for the expansion of the use of CNG vehicles, such as the type that are essential to helping improve air quality throughout California. In fact, it is because of the transition from coal to affordable natural gas (the development of which requires hydraulic fracturing) in our nation's power plants that the U.S. leads the world in greenhouse gas emission reductions, bringing us to levels not seen since the 1990s. This is quite an achievement, especially considering the fact that California's AB 32 law requires a comparable reduction in emissions.

It's also worth highlighting that Marin County gets significant base load power from geothermal geysers to its north. Geothermal energy is an important and valuable part of California's energy mix, although this type of energy production is also associated with hundreds of seismic events every year. I should stress that these earthquakes do no damage, but are actually felt on the surface. This is in contrast to any seismic activity caused by hydraulic fracturing, which Stanford geophysicist (and member of President Obama's Natural Gas Subcommittee) Mark Zoback has said is "equivalent to the energy of a gallon of milk hitting the floor after falling off a kitchen counter."

Most importantly, geothermal energy production requires hydraulic fracturing, which you just voted to ban. [Emphasis added] This, coupled with the fact that the citizens of Marin County rely on oil produced in California to support their way of life (Marin County's per capita income is more than 2.5 times that of Kern County), should make you think twice about your resolution. I would strongly suggest that you familiarize yourself with the science behind the misinformed claims made by those who wrote your measure, and that you remove your opposition to hydraulic fracturing so that Californians from both our counties can enjoy the economic and environmental benefits that home-grown energy brings.

I hope this has been helpful. After all, if the Kern County Board of Supervisors passed a moratorium on Golden Gate Bridge crossings because activists opposed to motor vehicle usage gave us (false) information that the bridge was structurally unsound, you would want to correct the record in a hurry, right?

Best Regards.

LAAPL Legislative Report

By Mike Flores & Olman Valverde, Esq., Co-chairs, Legislative Affairs Committe
Law Offices of Luna & Glushon

Only One Left Standing

Senate Bill 4 (Pavley - Moorpark), the only hydraulic fracturing bill left standing, after multiple amendments, was passed by both Houses and was signed by Governor Brown. The bill becomes law on January 1, 2014.

At one time there were 11 bills dealing with hydraulic fracturing in front of the California Senate and Assembly. The only bill left standing, SB 4, was signed into law by Governor Brown after much behind the scenes negotiations. The bill gives the Division of Oil, Gas and Geothermal Resources (DOGGR) the ability to:

define "well stimulation" rather than being explicit in the bill. The definition will be included in the draft regulations.

- The bill also calls on DOGGR to do a statewide EIR for well stimulation/HF similar to what Kern County is currently doing so that companies are not forced to do separate environmental documents every time they stimulate a well.
- The bill recognizes Kern County's EIR so that when it is completed, it will suffice as the environmental review for well stimulation in Kern County.
- SB 4 also provides protection against CEQA lawsuits between now and January 1, 2015 for well stimulation while DOGGR is drafting their regulations and conducting their EIR.

The Governor called representatives from CIPA, WSPA and several large operators into his office the day before the vote. Brown personally met with industry for more than two hours. He reiterated his desire to want to harness the potential of the Monterey Shale through well stimulation. The Governor gave assurances that DOGGR will complete the regulations and EIR under the schedule of the bill, which will limit the ability to bring CEQA suits.

In a signing message, Governor Brown said he would seek additional "clarifying amendments" to the legislation and would direct the California Department of Conservation "to develop an efficient permitting program for well stimulation activities that groups permits together based on factors such as known geologic conditions and environmental impacts, while providing for more particularized review in other situations when necessary." According to some experts, California now has the most stringent and farthest reaching regulations of hydraulic fracturing and other oil and natural gas production technologies anywhere in the country and probably the world. It should be noted that oil and gas industry advocacy groups, WSPA and CIPA, were major players behind the scenes and did a great job of representing the interests of our industry.

To see the bill in its entirety and the analysis by the Senate and the Assembly, please go to www.leginfo.legislature.ca.gov.

SB 665 Changes Bonding Requirement for Onshore Wells

The California legislature voted to approve Senate Bill 665 by Senator Lois Wolk. SB 665 is legislation to update bonding requirements that have not been changed since 1998. Originally, Wolk pursued increases of 500-600%. CIPA opposed the bill and it died on the Assembly floor. Wolk then negotiated with CIPA and agreed to take amendments that limited the increases to slightly more than the consumer price index. The new levels will not be increased until the legislature acts on the specific amounts again through new legislation.

SB 665 increases the statutory minimum amount for indemnity bonds that companies engaged in oil and gas drilling in California are required to file with DOGGR. The increases include:

- An increase to $2,000,000 (from $1,000,000) on blanket bonds for onshore wells with coverage for idle wells.
- The bill would also increase bonds for individual oil and gas wells less than 10,000 feet deep from $15,000-$20,000 to $25,000 -- and would raise the bond for individual oil and gas wells 10,000 or more feet deep from $30,000 to $40,000.
- An increase to $1,000,000 (from $250,000) on blanket bonds for offshore wells.

Two Los Angeles City Council Members Propose Fracking Moratorium

LA City Councilmembers Paul Koretz and Mike Bonin on Wednesday, September 4 called for a fracking moratorium in Los Angeles at a press conference on the steps of City Hall.

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"Oil companies have already begun fracking in the Los Angeles region, and residents near confirmed activity have experienced severe property damage and a spike in serious health concerns," according to a statement from the Councilmembers and environmental and consumer groups. "Oil companies have targeted the LA region for expanded fracking - a major threat to L.A.'s water supply, air quality, and private property."

Councilmembers Koretz and Bonin discussed a proposed moratorium on fracking within the City of Los Angeles and along the City's water supply route.

The Councilmembers also called on Governor Jerry Brown to listen to the majority of Californians who oppose the inherently dangerous process of fracking and impose an immediate statewide moratorium on fracking.

DOGGR Release Statement on SB 4

In the first week of October, California Division of Oil, Gas and Geothermal Resources (DOGGR) released the following statement regarding the passage of SB 4 and the implementation of regulations for well stimulation:

DOC Working on Hydraulic Fracturing/Well Stimulation Draft Regulations After Passage of Legislation (Posted 10/10/2013)

On September 20, Governor Brown signed Senate Bill 4, authored by Senator Pavley The California Department of Conservation and its Division of Oil, Gas, and Geothermal Resources have begun the process of implementing those portions of the bill directed to the Department and Division. The draft regulations will benefit from regulatory development that has been in progress at the Department for the last 12 months. In addition to provisions for well integrity testing and monitoring, the regulations will address public disclosure and the other provisions of SB 4. That bill sets a deadline of January 1, 2015 for completion of the regulations, which the Department is well prepared to meet. The new regulations will complement existing rules that require some of the strongest well construction and operation standards in the nation.

Release of the official draft regulations is likely to occur before the end of the year, and the public will have the opportunity to comment. A notice of proposed rulemaking action will be emailed to everyone who has subscribed to the Listserv (see below), emailed to everyone who has requested paper notice, and will be posted on the Department and Division of Oil, Gas, and Geothermal Resources Web sites. There will also be a notice published in the California Regulatory Notice Register. The notice of proposed rulemaking action will specify the length of the public comment period, where to mail/email comments, when and where public comment hearings will be conducted, and who to contact for questions about the rulemaking.

SB 4 also requires an independent scientific study of well stimulation techniques, including hydraulic fracturing and acid matrix stimulation. The Department is proceeding with scoping and developing the study to raise the level of information available about well stimulation techniques. Additionally, the Department is also beginning the process of conducting the environmental review directed by SB 4. That environmental review will comply with the noticing and comment periods established by the California Environmental Quality Act.

In addition to provisions for public disclosure and well integrity testing and monitoring, the regulations will address trade secrecy, interagency coordination and the other provisions of SB 4.

In a separate action, the California State Water Resources Control Board is developing criteria for regional groundwater quality testing and will adopt regulations to ensure groundwater protection in accordance with SB 4.

BLM Activity Update

BLM had originally postponed lease sales until October, but because of the government shutdown, the lease sales are on hold. They were originally postponed as a result of a suit filed by the Center for Biological Diversity and the Sierra Club. That suit has tentatively been settled and when the dust settles, the lease sales should be going forward.

Additionally, the BLM announced that they would be preparing and EIS and possibly a new Resource Management Plan for lands available for leasing in central California. Also the BLM will participate in a science review undertaken as part of a third party independent assessment of industry practices and the geology of oil and gas basins in California.

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Whittier Oil Drilling dispute Unresolved for Now

The fate of plans to drill for oil on 30 acres of conservation land in Whittier remained uncertain on October 1st after a court proceeding ended without a final ruling.

The parties in the case had anticipated a final ruling. Whatever the court decides, lawyers for all sides say appeals are likely. The question of whether drilling can go forward on designated open space won't be decided any time soon.

The conservation land was paid for with money raised by a property tax Los Angeles County voters approved 20 years ago. Under an agreement with the County's open space district, the city of Whittier promised not to sell the land or change how it was used, without the county's consent.

Whittier later leased drillings rights for the land to Santa Barbara based Matrix Oil Company. Last year, the County sued to block the plan.

In June, Superior Court Judge James Chalfant issued a tentative ruling finding that Whittier had violated the terms of its agreement concerning the land. Chalfant said Whittier must get county approval to move forward with the deal.

Los Angeles County leaders voted unanimously in October to oppose a plan to drill for oil in publicly owned parkland in the Whittier hills, saying the proposal would undermine open space protection throughout the county.

The vote, which came after an hours-long hearing, will not be the last word on the proposal by Matrix Oil Company. Neither the Santa Barbara company nor the city of Whittier, which approved the agreement, recognizes the County's authority, and litigation is underway.

Job Search

We are currently seeking a Land Manager or Land VP for a startup Operator located in Santa Maria (near the Arroyo Grande/Nipomo area). The organization is significantly funded. The company will be operating in the Monterrey Shale and already has some producing property in the area. Requirements and Duties include:
Bachelor's Degree, preferably in Land Management

- Primarily current In-House experience is preferred
- Prefer Extensive California experience that includes permitting
- Prefer experience including building a land department, budgeting and everything that goes with building a team
- JOA/Farm Ins, Farm outs/ AMI/Pooling/ experience with negotiating oil and gas leases, various land related agreements (Surface Use & Right-of-Way Agreements)
- A&D experience preferred
- Experience with Vendor MSA's and oil and gas marketing a plus
- Strong technically, good attitude and work ethic

We are happy to share additional details with anyone who is potentially interested and qualified. We can be reached at clark@energysearchassociates.com or 972.628.6432.

Guest Article

Sempra U.S. Gas & Power Announces the Acquisition of Nebraska Wind Farm

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September 26, 2013
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Earlier today, Sempra U.S. Gas & Power announced that it has acquired and will develop the Broken Bow 2 wind project in Nebraska.

Tracking turbines: When Broken Bow 2 is completed, Sempra U.S. Gas & Power will have joint-venture projects totaling more than 1,000 megawatts (MW) of wind generating capacity.

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Investing in renewable energy infrastructure

"We are pleased to have the opportunity to acquire, build and operate the Broken Bow 2 wind project and work with the state of Nebraska as it continues to establish itself as a renewable energy leader," said Kevin Sagara, vice president of renewables for Sempra U.S. Gas & Power.

"Our company continues to invest in the development, construction and operation of renewable energy infrastructure. We look forward to providing a stable supply of clean power to the region and becoming a long-term partner with the local community."

Powering homes and creating jobs

Sempra U.S. Gas & Power also announced it has executed an agreement to purchase forty-three 1.7-MW General Electric wind turbines to power the 75-MW wind farm. Located in Custer County, Neb., the wind farm will generate enough renewable power for about 30,000 Nebraska homes with construction slated to begin in December 2013.

"Sempra U.S. Gas & Power's Broken Bow 2 wind project will create hundreds of construction jobs and provide a substantial economic boost to the local economy," said Melissa Garcia, President and CEO of Custer Economic Development Corporation. "Wind energy development compliments Custer County's business landscape and we look forward to seeing the project break ground later this year."

The project is expected to employ about 300 workers during peak construction and to be in commercial operation by late 2014. The entire power output from the wind farm has been sold to the Nebraska Public Power District under a 25-year contract.

Guest Article

SoCalGas Unveils 4 Prototype Vehicles Powered by Natural Gas

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October 1, 2013
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Consumers Get First Look During Altcar Expo

Southern California Gas Co. (SoCalGas) recently introduced four bi-fuel prototype natural gas vehicles (NGVs) to the California public at the Santa Monica AltCar Expo, which took place on September 20-21.

The BMW X3, Chrysler 300C, Honda CR-V and Hyundai Sonata are among six vehicles engineered to run on natural gas or gasoline as part of natural gas industry collaboration.

"We hope these groundbreaking NGVs will excite consumers and create meaningful discussion among energy policymakers and auto manufacturers about the economic and environmental benefits of clean natural gas as a fuel for consumer vehicles," said Dennis Arriola, president and chief operating officer for SoCalGas.

SoCalGas NGV prototypes unveiled at AltCar Expo 2013 – The Los Angeles County Board of Supervisors praised SoCalGas as a pioneer in developing alternative fuel transportation and issued a proclamation recognizing September 19, 2013 as Natural Gas Vehicles Day in Los Angeles County.

(L-R) Ed Harte, Low Emission Vehicle Manager; Chuck Haas, NGV Senior Market Advisor; Dennis Arriola, SoCalGas president and COO and Rodger Schwecke, vice president Customer Solutions participated in the media preview event to kick off the 2013 AltCar Fleet Conference and Expo.

"SoCalGas is excited to unveil these vehicles to Southern California consumers. Together with our national partners, we want people to think about a future where not only buses, refuse haulers and trucks are fueled by natural gas, but where individuals can also own a personal NGV that's good for the environment and for their wallet."

SoCalGas NGV account executive Marci LaMantia attended the event Friday and Saturday answering questions from the public about the BMW, Chrysler, Honda and Hyundai demonstration vehicles.

The vehicles represent a diverse group of manufacturers and are part of an array of six bi-fuel NGVs. The vehicles demonstrate how existing automotive technology can economically add low-cost domestic natural gas to power consumer vehicles without compromising convenience or performance. Two other vehicles, a Ford Mustang and GMC Acadia are also planned to be brought to California in the future.

Support from Air Quality Agency & Local Governments

Presented and hosted by the city of Santa Monica, the AltCar Fleet Conference and Expo is recognized as the leading forum for presentations and demonstrations of the latest advancements in alternative technology vehicles and transportation, urban planning, energy efficiency and carbon footprint reduction education in the country.

A proclamation from The Los Angeles County Board of Supervisors recognized September 19, 2013 as Natural Gas Vehicles Day in Los Angeles County, other local agencies supported the efforts.

The Southern California Association of Governments, the nation's largest metropolitan planning organization, also issued a proclamation in support of initiatives to encourage a more sustainable Southern California. Both organizations praised SoCalGas pioneering efforts in developing alternative fuel transportation and infrastructure.

Dr. Joseph Lyou, President and CEO of the Coalition for Clean Air and an SCAQMD board member commented, "Natural gas has a proven track record as a clean fuel in a wide range of vehicle types. These consumer concept vehicles have the potential to accelerate the use of clean alternative fuels, such as natural gas, to help us meet our clean air goals in the Southland."

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Cars Developed for "Add Natural Gas" Campaign

Developed for the Add Natural Gas campaign, a collaboration between America's Natural Gas Alliance (ANGA) and the American Gas Association (AGA), the six vehicles were modified by engineering service providers and natural gas upfitters to run on natural gas or gasoline.

The vehicles employ dual-fuel powertrains that can transition seamlessly between gasoline and natural gas, as demanded by driving conditions and fuel levels.

"We believe consumers will be excited by the possibility of using natural gas to power the vehicles they love," said Marty Durbin, president & CEO of ANGA. "Natural gas is a clean, abundant, and domestic fuel that allows drivers to reduce their fuel costs without sacrificing style or performance."

The Add Natural Gas campaign will also highlight a potential role for natural gas home refueling appliances, which connect to a home's existing natural gas line. Such appliances would make NGV ownership more convenient and reliable for consumers by improving access to refueling infrastructure.

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BLM's Fracking Rule - A Solution Vainly Searching For A Problem

Reprinted from FORBES Magazine
David Blackmon, Contributor
"I write about public policy issues affecting the oil and gas industry"

"Obama's Proposed Fracking Rule Would Lead to Dirty Energy"

A Drilling rig drills for natural gas just west of the Wind River Range in the Wyoming Rockies (Photo credit: Wikipedia)

That was the headline for this post at the Energy Collective by Amy Mall, Senior Policy Analyst for the anti-development group, Natural Resources Defense Council (NRDC). The outlash towards the Administration and the BLM's proposed regulation governing well completions and fracking operations from NRDC was quite predictable, and it was replicated by a raft of similarly-oriented conflict groups whose fundraising efforts rely on the perpetuation of never-ending crisis, real or imagined.

At the same time, the oil and natural gas industry's comments related to the proposed regulation as the comment period closed last Thursday also expressed a high level of discontent, not just with the higher costs the new rules would bring to everyone, but also the apparent lack of a legitimate basis for BLM to pursue the regulation in the first place.

Joint industry comments filed by the Independent Petroleum Association of America (IPAA) and the Western Energy Alliance (WEA) on behalf of themselves and 46 additional state and national oil and gas industry trade associations came quickly to the crux of the matter:

"Sixteen months into the rulemaking process, BLM remains unable to provide a supportable reason to impose its additional layer of regulations on top of those laws States already enforce. For the high cost this rule will impose on the industry – $345 million per year – what benefit will the public receive? For the disincentive this rule will create to invest in federal and tribal oil and gas leases, to whom will the tribes and the taxpayers turn for the lost leasing and royalty revenue? BLM has been unable to answer these questions. BLM should recognize that states are already regulating hydraulic fracturing admirably. The only imperative to adopt this rule is an arbitrary desire "to do something"."

The American Petroleum Institute (API), citing a study it had commissioned, estimated the annual cost of the rule to be somewhere between $30 million and $2.7 billion, a large gap that signified prevailing uncertainties about how the regulations would be applied once they become final.

Wyoming Governor Matt Mead urged Interior Secretary Sally Jewell to reject the proposed regulation, pointing out that his state, like every other oil and gas producing state, already regulates the processes covered by the proposed rule for all wells drilled within its borders. "Wyoming has led the nation in regulating hydraulic fracturing, and the BLM should allow us to continue that leadership," Governor Mead said.

For itself, the BLM estimated the cost of the regulation at between $12 million and $20 million per year, and was unable to quantify any benefit that would accrue as a result of its imposition of the new regulation. Thus, at the end of the day, BLM appears to have created a proposed regulation that no one likes, provides no tangible benefit, and duplicates already-existing state-level regulations.

Lovely.

The joint industry comments hit the nail on the head when they point out that the main reason for implementing this rule is an "arbitrary desire 'to do something'". In other words, the main reason BLM has pursued this regulation is political in nature, which is inevitably a problematic motivation for regulation of any industry. As API spokesman Erik Milito pointed out, "There is still no clear benefit to imposing additional federal rules on top of state environmental stewardship." It's a very good point.

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For example, the BLM rule contains a whole suite of provisions designed to regulate how wells are completed, including new requirements related to casing and cementing. Can the BLM point to a rash of casing or cement job failures on federal lands, or significant failures in state oversight of well completions as a justification for the provisions? If it can, it doesn't do so in the preamble to its proposed rule, nor has any representative of the Administration done so in any public statements. The reason for that, of course, is that no such justifications exist.

The proposed rule also would implement a requirement that oil and gas operators disclose the chemical and other contents in the fluids they use to conduct hydraulic fracturing operations on federal lands. Again, pretty much every state with any significant federal lands in their borders already have their own laws and/or regulations containing similar requirements for all wells drilled within their borders – including those on federal lands – requirements that are already working quite well. So what is the driving need for the federal government to now come in and increase everyone's costs and add time delays with a duplicate set of reporting requirements?

The reality, of course, is that no such driving need exists. The whole "disclosure" issue was a fake controversy to begin with. There never has been any overwhelming outcry from real landowners demanding to know what is in fracking fluids. The issue was invented out of whole cloth by fracktivist groups in the Barnett Shale who convinced a handful of landowners to complain at public hearings. But most landowners have real jobs and occupations, and have neither the time nor the inclination to coordinate efforts with professional protesters.

But because a compliant news media reported on the issue as if there were some great groundswell of concern from real landowners, the states that are home to significant oil and gas development have taken it upon themselves to deal with the matter, and they have done so quite effectively at this point. As a result, there is no real justification for any federal agency – the BLM or otherwise – to be pursuing a duplicative and costly regulatory regime at the federal level.

And yet, here it is.

At the end of the day, BLM's proposed regulation is a solution desperately in search of a problem, a problem which it has found itself painfully unable to quantify or really to even identify. In its overwhelming institutional need "to do something", the BLM proposes to impose a rule that has, by its own admission, no quantifiable benefit and that will only serve to impose new costs on producers and consumers of oil and natural gas from federal lands.

This article is available online at:

http://www.forbes.com/sites/davidblackmon/2013/08/26/blms-fracking-rule-a-solutionvainly- searching-for-a-problem/

Guest Article

Regulating Hydraulic Fracturing and Other Well Stimulation Treatments in California: An Analysis of Senate Bill 4

By: Tracy K. Hunckler, Esq. and E. Ryan Stephensen, Esq.
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Of the multiple bills presented in the California Legislature regarding hydraulic fracturing, there is only one that made it to the finish line. Senate Bill number 4 ("SB 4"), signed into law Friday, September 20, 2013, will have a significant impact on how owners and operators conduct hydraulic fracturing and other well stimulation treatments in the State of California. Below is a summary of the requirements that SB 4 places on owners and operators, suppliers of hydraulic fracturing services and materials, and various government organizations. The text of SB 4 is located at the end of this summary.

I. What Activities are Covered by SB 4?

Perhaps the single greatest impact of SB 4 is the scope of the activities covered by the new statutes. While the draft bill originally regulated only hydraulic fracturing activities, the recently passed bill applies to all "well stimulation treatments" ("WST"), which is defined as any treatment of a well designed to enhance oil and gas production or recovery by increasing the permeability of the formation. (3157(a).)

The relevant statute then indicates that the term well stimulation treatment includes, but is not limited to, "hydraulic fracturing treatments and acid well stimulation treatments." (3157(a).) "Acid well stimulation treatments" refers to any well stimulation treatment that uses, in whole or in part, the application of one or more acids to the well or underground geologic formations. This term includes acid treatments applied at any pressure, including acid treatments used in conjunction with hydraulic fracturing treatments. Thus, any reference to "well stimulation treatments" in the new statutes, at a minimum, includes both hydraulic fracturing and acid treatments. (3158.) This significantly expands the potential impact of the new statutes.

The new statutes require the Division of Oil, Gas, and Geothermal Resources (the "Division") to establish certain thresholds for acid treatments, which thresholds will determine if a given acid treatment is subject to the new statutes. It is therefore anticipated that some acid treatments will not be subject to the new statutes and forthcoming regulations. (3160(b)(1)(C).)

II. What Activities are Not Covered by the Statutes Enacted under SB 4?

The new statutes expressly exclude a variety of activities from regulation under SB 4, including the following (3157(b)):

steam flooding,

- water flooding,
- cyclic steaming,
- routine well cleanout work,
- routine well maintenance,
- routine removal of formation damage due to drilling,
- bottom hole pressure surveys,
- routine activities that do not affect the integrity of the well or the formation,
- gas storage facilities. (3160(o).)

III. Obligations Placed on Various Parties, Agencies and Entities Under the New Statutes

The new statutes place a variety of obligations on both the owners and operators of wells, and various related government organizations. Below is a summary of those obligations.

A. Obligations of Well Owners or Operators

1. WST Permits: General Information Required. Prior to performing WST activities, an operator must now apply for a permit from the Division. The information provided in the permit must include, but is not limited to, the following (3160(d)(1)):

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- The well identification number and location.
- The time period during which the WST activities are planned to occur.
- A water management plan that shall include: (1) an estimate of the amount of water to be used in the treatment, which may include estimates of water to be recycled following the WST; (2) the anticipated source of the water to be used; (3) the disposal method identified for the recovered water in the flowback fluid from the treatment (not including the "produced water" described in the monthly production reports to the Division pursuant to PRC 3227(d)).
- A complete list of the names, Chemical Abstract Service ("CAS") numbers, and estimated concentrations, in percent by mass, of each and every chemical constituent of the WST fluids anticipated to be used in the treatment. If a CAS number does not exist for a chemical constituent, the well owner or operator may provide another unique identifier, if available.
- The planned location of the WST on the well bore, the estimated length, height, and direction of the induced fractures or other planned modification, if any, and the location of existing wells, including plugged and abandoned wells, that may be impacted by these fractures and modifications.
- A groundwater monitoring plan. For regions where groundwater monitoring is required (as determined by the appropriate entity as described in section III.F.2, below), such monitoring requirements can be satisfied by one of the following:
  - the well is located within the boundaries of an existing oil or gas field-specific or regional monitoring program developed pursuant to Section 10783 of the Water Code;
  - the well is located within the boundaries of an existing oil or gas field-specific or regional monitoring program developed and implemented by the well owner or operator meeting the model criteria established pursuant to Section 10783 of the Water Code (for a list of the model criteria, see section III.F.2, below);
  - through a well-specific monitoring plan implemented by the owner or operator meeting the model criteria established pursuant to Section 10783 of the Water Code, and submitted to the appropriate regional water board for review.
- The estimated amount of WST-generated waste materials that are not reported in the groundwater monitoring plan and an identified disposal method for such waste materials.

2. WST Permits: Administrative Details. WST permit applications must be reviewed by the Division supervisor or a district deputy, who may approve the permit if the application is complete. An incomplete application cannot be approved. No WST or repeat WST activities can be performed without an approved permit. WST permits expire one year from the date the permit is issued. Within five (5) business days of issuing a WST permit, the Division must provide a copy of the permit to the appropriate regional water quality control board or boards and to the local planning entity where the well, including its subsurface portion, is located. (3160(d)(3)-(5).)

3. WST Permits: Combined with Notice of Intent Applications & CEQA Compliance. At the Division supervisor's discretion and upon satisfaction of certain conditions, a WST permit and a well drilling and related operation notice of intent application ("NOI Application") may be combined into a "single combined authorization." (3160(d)(2).) If the supervisor creates the combined application, the time period available for the approval of the WST activities will be subject to the terms of the new statutes, not the 10 day period provided for in section 3203(a) that applies to a NOI application. (3160(d)(2)(C).) Where the supervisor determines that the activities proposed in the WST permit or the combined authorization have met all of the requirements of CEQA, and have been fully described, analyzed, evaluated, and mitigated, no additional review or mitigation shall be required.

4. WST Permits: Public Notification. Notably, the Division shall post an approved WST permit on the publicly accessible portion of its website within five (5) business days of issuing a permit. (3160(d)(5).) The new statutes also require the Division to post a variety of other WST activity-related information on its website, as discussed in section III.D., below.

5. **Notification to Tenant and Owner of Surface Property of WST Permit and Available Water Sampling and Testing.**

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A significant new requirement under the recently-passed statutes deals with notice requirements. Thirty (30) calendar days before an operator desires to commence WST activities, the well owner or operator must provide a copy of the WST permit and information on available water sampling and testing to every tenant of the surface property and every surface property owner or authorized agent of that owner. Such notice must be provided to tenants and surface owners whose property line is (1) within a 1,500 foot radius of the wellhead or (2) within 500 feet from the horizontal projection of all subsurface portions of the designated well to the surface. After determining the parties to whom notice must be given, the well owner or operator must contract with an independent entity or person to provide the notice required above. That independent entity or person shall provide to the Division a list of those notified, the method of notification, and the date of the notification. At present there are no limitations on what methods of notification may be used, such as regular mail, certified mail or personal delivery. The regulations to be promulgated before January 1, 2015, may provide further guidance on this question. (3160(d)(6).)

6. Water Quality Sampling and Testing: Surface Property Owners. Surface property owners subject to notice of the WST permit may request water quality sampling and testing from a designated qualified contractor on (1) any water well suitable for drinking or irrigation purposes and (2) on any surface water suitable for drinking or irrigation purposes. The quality of sampling and testing under the new statutes is as follows (1) baseline measurements prior to the commencement of the WST; and (2) follow-up measurements after the WST on the same schedule as the pressure testing of the well casing of the treated well. The State Water Resources Control Board (the “State Board”) is required to designate one or more qualified independent third party contractor or contractors that adhere to board-specified standards and protocols to perform the water sampling and testing. The well owner or operator must pay for the sampling and testing when requested by the surface property owner. (3160(d)(7).)

7. Water Quality Sampling and Testing: Surface Property Tenants. A tenant notified of a WST permit must receive information on the results of the water testing to the extent authorized by his or her lease and, where the tenant has lawful use of the ground or surface water, the tenant may independently contract for similar groundwater or surface water testing.

8. 72 Hour Notice to the Division. The well operator must provide notice to the Division within 72 hours prior to the actual start of the WST activities in order for the Division to witness the treatment. (3160(d)(9).)

9. Disclosure of Composition and Disposition of WST Fluids. The new statutes compel the Division to require the operator to disclose, at a minimum, the following regarding the composition and disposition of WST fluids (3160(b)(2)):

- The date of the WST activities.
- A complete list of the names, CAS numbers, and maximum concentration, in percent by mass, of each and every chemical constituent of the WST fluids used. If a CAS number does not exist for a chemical constituent, the well owner or operator may provide another unique identifier, if available.
- The trade name, the supplier, concentration, and a brief description of the intended purpose of each additive contained in the WST fluid.
- The total volume of base fluid used during the WST activities, and the identification of whether the base fluid is water suitable for irrigation or domestic purposes, water not suitable for irrigation or domestic purposes, or a fluid other than water.
- The source, volume, and specific composition and disposition of all water, including, but not limited to, all water used as base fluid during the WST activities and recovered from the well following the WST activities that is not otherwise reported as produced water in the operator’s monthly production reports to the Division. Any repeated reuse of treated or untreated water for WST activities must be identified.
- The specific composition and disposition of all WST fluids, including waste fluids, other than water.
- Any radiological components or tracers injected into the well as part of, or in order to evaluate, the WST activities, a description of the recovery method, if any, for those components or tracers, the recovery rate, and specific disposal information for recovered components or tracers.
- The radioactivity of the recovered WST fluids.

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- The location of the portion of the well subject to the WST activities and the extent of the fracturing or other modification, if any, surrounding the well induced by the treatment.

Within 60 days following cessation of a WST activities on a well, the operator must post or cause to have posted to a website designated or maintained by the Division (and accessible to the public) all of the WST fluid composition and disposition information described above, and the well identification number and location. The operator must also post the water quality data collected under the operator's groundwater monitoring plan (see section III.A.1., above), which the operator must also report electronically to the State Board. (3160(g).)

10. Identification of Geologic Features. The operator must identify and add to the well history certain geologic features (within a certain distance to be specified in forthcoming regulations) that have the potential to either limit or facilitate the migration of WST fluids outside of the "fracture zone." The term "fracture zone" is defined as the volume surrounding the well bore where fractures are created or enhanced by the WST. These geologic features include seismic faults identified by the California Geologic Survey.

11. Effect of Confidential Status. A well granted confidential status pursuant to PRC section 3234 shall not be required to disclose WST fluid information as required by 3160(g) and described in section III.A.9., above, until the confidential status of the well ceases. Notwithstanding the confidential status of a well, the new statutes expressly state that it is public information that a well will be or has been subject to a WST. (3160)(k).)

12. Well History. All data gathered under the new WST statutes must be recorded in the well history. (3213.)

13. Penalties. Those who violate the new statutes regarding WST activities will be subject to a civil penalty of at least $10,000 and not more than $25,000 per day per violation. (3236.5.) After the supervisor has determined that a violation has occurred, the factors considered by the supervisor in determining the amount of a penalty, in addition to other relevant circumstances, include the following:

- the extent of the harm caused by the violation,
- the persistence of the violation,
- the pervasiveness of the violation,
- and the number of prior violations by the same violator.

B. Conducting WST Activities Between Now and the Promulgation of Division Regulations

The new statutes expressly provide that until new regulations are developed, which will occur on or before January 1, 2015, the Division "shall allow" WST activities provided that certain conditions are met. There are some potential ambiguities in the conditions to be satisfied during this interim period, which are discussed below:

- The owner or operator certifies compliance with certain conditions. There is no indication in the statutes as to whom the certification would be provided, but presumably it would be provided to the Division. The conditions for which certification must be provided are as follows:
  - Compliance with the items listed in section 3160(b), which sets forth requirements placed upon the Division as to the adoption of regulations by January 1, 2015. As a result, it is unclear what the owner or operator would certify here. (3161(b).) This subdivision does require the regulations to include certain disclosure information for WST fluids and as a result, it appears that the owner or operator must certify that it will comply with those disclosure requirements outlined in section III.A.9., above, unless the well has been granted confidential status and excluded as described in III.A.11., above;
  - The owner or operator provides the information listed in section III.A.1., above, (which will ultimately be part of the WST permit requirements after the interim period expires) except that the owner or operator need not provide an estimated amount of WST-generated waste materials and an identified disposal method for such waste materials. (3161(b)(1));
  - The owner or operator provides the notification of WST activities and water quality sampling and testing options for the required surface owners and tenants, as described in sections III.A.5.-7., above. (3161(b)(1));

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- The owner or operator discloses the WST fluid composition and disposition information set forth in section 3160(g), discussed above in section III.A.9., unless the well has been granted confidential status. (3161(b)(1).)

- The owner or operator provides a complete well history, incorporating the information required by the new statutes, to the Division on or before March 1, 2015. (3161(b)(2).)
- The Division "conducts" an environmental impact report (EIR) pursuant to the California Environmental Quality Act, in order to provide the public with detailed information regarding any potential environmental impacts of WST activities in the state. Presumably, and based on a review of the legislative history, this condition merely requires the Division to commence or initiate an EIR during this interim period for it to allow WST activities to occur. If the new statutes required the Division to complete an EIR before WST activities are allowed during the interim period, it is highly improbable that any WST activities would occur before the Division promulgates new regulations on or before January 1, 2015. Notably, there is no requirement that any separate CEQA review be performed on individual WST activities during the interim period. Commentators have therefore described the interim period as requiring no CEQA review on a well-by-well basis, but rather only the conducting of a state-wide EIR. (3161(b)(3).)
- The required environmental review conducted by the Division must fully comply with all of the following requirements (3161(b)(4)):
  - The EIR shall be certified by the Division as the lead agency, no later than July 1, 2015;
  - The EIR shall address the issue of activities that may be conducted as WST activities and that may occur at oil wells in the state existing prior to, and after, the effective date of this section; and
  - The EIR shall not conflict with an EIR conducted by a local lead agency that is certified on or before July 1, 2015. Nothing in this section prohibits a local lead agency from conducting its own EIR. Accordingly, the Division's EIR cannot conflict with the EIR being conducted in Kern County.
- The Division ensures, through a permitting process, that all WST activities fully conform with applicable provisions of law on or before December 31, 2015. It is unclear exactly what was intended by this language as to the owner/operator during the interim period between enactment of the law and the Division's adoption of regulations on or before January 1, 2015. Perhaps the Division will provide direction on this and the other questions posed above under the authority discussed in the next bullet point below. (3161(b)(5).)
- The Division has the emergency regulatory authority to implement the purposes of the new statutes. (3161(b)(6).)

C. Obligations Placed on WST Suppliers

1. Furnishing of WST Fluid Composition and Disposition Information. When a WST is performed, the supplier that performs any part of the stimulation or provides additives directly to the operator for a WST must furnish the operator with information suitable for public disclosure needed for the operator to comply with the WST fluid composition and disposition disclosure requirements. This information shall be provided as soon as possible but no later than 30 days following the conclusion of the WST. (3160(f).)

2. Trade Secrets. Public disclosure of WST fluid information claimed to contain trade secrets is governed by Section 1060 of the Evidence Code, or the Uniform Trade Secrets Act, and the California Public Records Act. The new statues set forth a variety of procedures with which WST fluid suppliers must comply in order to make a trade secret claim. (3160(j).)

The new statutes expressly state that notwithstanding trade secret protections or any other law or regulation, none of the following information is protected as a trade secret (3160(j)(2)):

- The identities of the chemical constituents of additives, including CAS identification numbers.
- The concentrations of the additives in the well stimulation treatment fluids.
- Any air or other pollution monitoring data.
- Health and safety data associated with well stimulation treatment fluids.
- The chemical composition of the flowback fluid.

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If a supplier believes that information regarding a chemical constituent of a WST fluid is a trade secret, the supplier is still required to disclose the information required under section III.A.9., above, to the Division in conjunction with a WST permit application, if not previously disclosed, within 30 days following cessation of well stimulation on a well, and must notify the Division in writing of its claim of trade secret. (3160(j)(4)(A).) A trade secret claim cannot be made after the initial disclosure of the required information to the Division, so suppliers must be certain to include a written claim of trade secret contemporaneously with their submission of the WST fluid information to the Division. (3160(j)(4)(B).)

In order to substantiate a claim of trade secret, the supplier must provide the following information to the Division (3160(j)(5)):

- The extent to which the trade secret information is known by the supplier's employees, others involved in the supplier's business and outside the supplier's business.
- The measures taken by the supplier to guard the secrecy of the trade secret information.
- The value of the trade secret information to the supplier and its competitors.
- The amount of effort or money the supplier expended developing the trade secret information and the ease or difficulty with which the trade secret information could be acquired or duplicated by others.

If the Division determines that trade secret protections do not apply, the supplier has 60 days from the date of mailing of the determination to obtain a court order protecting the information. If the supplier does not do so within 60 days, the Division will release the information to the public. (3160(j)(7).)

If the supplier successfully obtains trade secret protection, in order to comply with the public disclosure requirements of the new statutes, the supplier must indicate where trade secret information has been withheld and provide substitute information for public disclosure. The substitute information shall be a list, in any order, of the chemical constituents of the additive, including CAS identification numbers. (3160(j)(4)(C).)

Upon request, the Division will release trade secret information to the public if the supplier does not take appropriate action. Upon a request to release the information to the public, the Division will send a notice to the supplier. The Division will release the information 60 days from the date of the mailing of that notice unless, prior to the expiration of the 60-day period, the supplier obtains an action in an appropriate court for a declaratory judgment that the information is subject to protection or for a preliminary injunction prohibiting disclosure of the information to the public and provides notice to the Division of that action. (3160(j)(9).)

Finally, these new requirements regarding trade secret claims provide that, even when information is protected as trade secret information, it still must be released in certain circumstances, including emergency situations. (3160(j)(10).)

D. Obligations Placed on the Division of Oil, Gas, and Geothermal Resources

1. Adopt Rules and Regulations. On or before January 1, 2015, the Division must adopt rules and regulations specific to WST activities, in consultation with the Department of Toxic Substances Control, the State Air Resources Board, the State Water Resources Control Board, the Department of Resources Recycling and Recovery, and any local air districts and regional water quality control boards in areas where WST may occur. (3160(b)(1)(A).) The rules and regulations will apply to wells where the Division and the federal government share jurisdiction over a well. (3160(m).) Moreover, the new statutes expressly state that they do not relieve the Division or any other agency from complying with any other provision of existing laws, regulations, and orders. (3160(n).)

2. Delineate Statutory & Regulatory Responsibilities of Various Agencies. The Division, through the consultation process described above, must collaboratively identify and delineate the authority and responsibilities, with regard to WST activities, of the Department of Toxic Substances Control, the State Air Resources Board, any local air districts, the State Water Resources Control Board, the Department of Resources Recycling and Recovery, any regional water quality control board, and other public entities, as applicable. (3160(b).) The Division is required to specify how the authority, responsibility, and notification and reporting requirements associated with WST activities are divided among each public entity, including the following:

- air and water quality monitoring

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the disposal of materials in land fills

- trade secret handling protocols
- providing public access to information regarding WST activities.

3. Notification of WST Permits and Available Water Sampling and Testing. Within five business days of issuing a WST permit, the Division must provide a copy of the permit to the appropriate regional water quality control board or boards and to the local planning entity where the well, including its subsurface portion, is located. (3160(d)(5).) The Division is also required to post the permit on the publicly accessible portion of its website within five business days of issuing a permit. (3160(d)(5).) The Division must review and audit the performance of those independent entities or persons with whom well owners or operators contract to provide the notice of WST permits and available water sampling and testing, as discussed in section III.A.5. through 7., above. (3160(d)(6)(B)(ii-iii).) The Division must also maintain lists of those provided a notice of WST permits and available water sampling and testing. (3160(d)(8).)

4. Threshold Values for Acid Matrix Stimulation Treatments. The Division must determine threshold values for acid volume applied per treated foot for any individual stage of the well, or for total acid volume of the treatment, or both, in order to identify the acid stimulation treatments subject to the new statutes. (3160(b)(1)(C). Only when the Division sets such thresholds will it be clear what acid treatments will be subject to the new regulations.

5. Development of a WST Website. The Division must commence the process to develop a website for operators to disclose the information required under the new statutes, including the information regarding WST fluid disclosures described section III.A.9., above. The web site shall be capable of organizing the reported information in a format, such as a spreadsheet, that allows the public to easily search and aggregate, to the extent practicable, each type of information required to be collected under the new statutes, using search functions on that web site. The statutes require that the website be functional no later than January 1, 2016. (3160(g)(2)(A).) In the meantime, the Division may direct reporting to an alternative website, and make data collected from operators in the interim available in an organized electronic format to the public no later than 15 days after it is reported to the alternative website. (3160(g)(2)(B).) Additional requirements for the website developed by the Division are outlined in section 3215(b).

6. Random Spot Check Inspections. The Division is required to perform random periodic spot check inspections to ensure that the information provided on WST activities is accurately reported, including that the estimates provided prior to the commencement of the WST activities are reasonably consistent with the well history.

7. Annual Reports. On or before January 1, 2016, and annually thereafter, the supervisor is required to prepare and transmit to the legislature a comprehensive report on WST activities in the exploration and production of oil and gas resources in California. The report shall include aggregated data of all of the information required to be reported by the district, county, and operator, along with other specific information. (3215(c).) The Division is required to make this report publically available, and an electronic version must be available on the Division's website. (3125(d).)

E. Secretary of the Natural Resources Agency

Under the new statutes the Secretary of the Natural Resources Agency is charged with conducting and completing, by January 1, 2015, a peer-reviewed, scientific study on WST activities. The statute prescribes a wide variety of issues to be analyzed in the study, from the effects of water transportation to the impact on wildlife, native plants, and habitat. (3160(a).) The Secretary is required to provide certain updates to the legislature, commencing on April 1, 2014, of the status of the study. (3160(e).)

F. State Water Resources Control Board

1. Designation of Water Sampling and Testing Contractors. The State Water Resources Control Board (the "State Board") is required to designate one or more qualified independent third-party contractor or contractors that adhere to board-specified standards and protocols to perform the water sampling and testing described above. The sampling and testing performed pursuant to the new statutes shall be subject to audit and review by the State Board or applicable regional water quality control board, as appropriate. (3160(d)(7)(B).)

2. Development of Model Groundwater Monitoring Criteria. Pursuant to a new code section added to the Water Code

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under SB 4, the State Board is charged with developing, on or before July 1, 2015, model groundwater monitoring criteria in order to assess the potential effects of WST activities. (Water Code § 10783(c).) The State Board must prioritize monitoring of groundwater that is or has the potential to be a source of drinking water, but must protect all waters designated for any beneficial use. In preparing these criteria the State Board must seek the advice of experts and various stakeholders including the oil and gas industry, agriculture, environmental justice, and local government, among others, with regional representation commensurate with the intensity of oil and gas development in that area. (10783(d), (e).)

In developing the groundwater monitoring criteria the State Board must include the determination of the following (10783(f)):

- An assessment of the areas to conduct groundwater quality monitoring and their appropriate boundaries.
- A list of the constituents to measure and assess water quality.
- The location, depth, and number of monitoring wells necessary to detect groundwater contamination at spatial scales ranging from an individual oil and gas well to a regional groundwater basin including one or more oil and gas fields.
- The frequency and duration of the monitoring.
- A threshold criterion indicating a transition from well-by-well monitoring to a regional monitoring program.
- Data collection and reporting protocols.
- Public access to the collected data in the monitoring process.

In considering those factors listed above, the State Board must also consider the following (10783(g)):

- The existing quality and existing and potential use of the groundwater.
- Groundwater that is not a source of drinking water consistent with the United States Environmental Protection Agency's definition of an Underground Source of Drinking Water as containing less than 10,000 milligrams per liter total dissolved solids in groundwater (40 C.F.R. 144.3), including exempt aquifers pursuant to Section 146.4 of Title 40 of the Code of Federal Regulations.
- Proximity to human population, public water service wells, and private groundwater use, if known.
- The presence of existing oil and gas production fields, including the distribution, physical attributes, and operational status of oil and gas wells therein.
- Events, including WST activities and oil and gas well failures, among others, that have the potential to contaminate groundwater, appropriate monitoring to evaluate whether groundwater contamination can be attributable to a particular event, and any monitoring changes necessary if groundwater contamination is observed.

Implementation of the groundwater monitoring programs must begin on or before January 1, 2016. In the event the Board has not implemented a regional groundwater monitoring program, a well owner or operator may develop and implement an area-specific groundwater monitoring program that is based on the criteria listed above. This area-specific program is subject to approval by the state or regional board, if applicable. (10783(h).)

The groundwater data collected under this program is to be submitted to the State Board in electronic format so as to be compatible with the State Board's GeoTracker database. The State Board must also transfer the data to a public, nonprofit doctoral-degree-granting educational institution in order to form the basis of a comprehensive groundwater quality data repository to promote research, foster inter-institutional collaboration, and seek understanding of the numerous factors influencing the state's groundwater. (10783(l).)

Text of SB 4

SECTION 1. The Legislature finds and declares all of the following:

(a) The hydraulic fracturing of oil and gas wells in combination with technological advances in oil and gas well drilling are spurring oil and gas extraction and exploration in California. Other well stimulation treatments, in addition to

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hydraulic fracturing, are also critical to boosting oil and gas production.

(b) Insufficient information is available to fully assess the science of the practice of hydraulic fracturing and other well stimulation treatment technologies in California, including environmental, occupational, and public health hazards and risks.

(c) Providing transparency and accountability to the public regarding well stimulation treatments, including, but not limited to, hydraulic fracturing, associated emissions to the environment, and the handling, processing, and disposal of well stimulation and related wastes, including from hydraulic fracturing, is of paramount concern.

(d) The public disclosure of chemical information required by this act ensures that potential public exposure to, and dose received from, well stimulation treatment fluid chemicals can be reasonably discerned.

(e) The Legislature encourages the use or reuse of treated or untreated water and produced water for well stimulation treatments and well stimulation treatment-related activities.

SEC. 2. Article 3 (commencing with Section 3150) is added to Chapter 1 of Division 3 of the Public Resources Code, to read:

Article 3. Well Stimulation

3150. "Additive" means a substance or combination of substances added to a base fluid for purposes of preparing well stimulation treatment fluid which includes, but is not limited to, an acid stimulation treatment fluid or a hydraulic fracturing fluid. An additive may, but is not required to, serve additional purposes beyond the transmission of hydraulic pressure to the geologic formation. An additive may be of any phase and includes proppants.

3151. "Base fluid" means the continuous phase fluid used in the makeup of a well stimulation treatment fluid, including, but not limited to, an acid stimulation treatment fluid or a hydraulic fracturing fluid. The continuous phase fluid may include, but is not limited to, water, and may be a liquid or a hydrocarbon or nonhydrocarbon gas. A well stimulation treatment may use more than one base fluid.

3152. "Hydraulic fracturing" means a well stimulation treatment that, in whole or in part, includes the pressurized injection of hydraulic fracturing fluid or fluids into an underground geologic formation in order to fracture or with the intent to fracture the formation, thereby causing or enhancing, for the purposes of this division, the production of oil or gas from a well.

3153. "Well stimulation treatment fluid" means a base fluid mixed with physical and chemical additives, which may include acid, for the purpose of a well stimulation treatment. A well stimulation treatment may include more than one well stimulation treatment fluid. Well stimulation treatment fluids include, but are not limited to, hydraulic fracturing fluids and acid stimulation treatment fluids.

3154. "Proppants" means materials inserted or injected into the underground geologic formation that are intended to prevent fractures from closing.

3155. "Supplier" means an entity performing a well stimulation treatment or an entity supplying an additive or proppant directly to the operator for use in a well stimulation treatment.

3156. "Surface property owner" means the owner of real property as shown on the latest equalized assessment roll or, if more recent information than the information contained on the assessment roll is available, the owner of record according to the county assessor or tax collector.

3157. (a) For purposes of this article, "well stimulation treatment" means any treatment of a well designed to enhance oil and gas production or recovery by increasing the permeability of the formation. Well stimulation treatments include, but are not limited to, hydraulic fracturing treatments and acid well stimulation treatments.

(b) Well stimulation treatments do not include steam flooding, water flooding, or cyclic steaming and do not include routine well cleanout work, routine well maintenance, routine removal of formation damage due to drilling, bottom hole pressure surveys, or routine activities that do not affect the integrity of the well or the formation.

3158. "Acid well stimulation treatment" means a well stimulation treatment that uses, in whole or in part, the application

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of one or more acids to the well or underground geologic formation. The acid well stimulation treatment may be at any applied pressure and may be used in combination with hydraulic fracturing treatments or other well stimulation treatments. Acid well stimulation treatments include acid matrix stimulation treatments and acid fracturing treatments. Acid matrix stimulation treatments are acid treatments conducted at pressures lower than the applied pressure necessary to fracture the underground geologic formation.

3159. "Flowback fluid" means the fluid recovered from the treated well before the commencement of oil and gas production from that well following a well stimulation treatment. The flowback fluid may include materials of any phase.

3160. (a) On or before January 1, 2015, the Secretary of the Natural Resources Agency shall cause to be conducted, and completed, an independent scientific study on well stimulation treatments, including, but not limited to, hydraulic fracturing and acid well stimulation treatments. The scientific study shall evaluate the hazards and risks and potential hazards and risks that well stimulation treatments pose to natural resources and public, occupational, and environmental health and safety. The scientific study shall do all of the following:

(1) Follow the well-established standard protocols of the scientific profession, including, but not limited to, the use of recognized experts, peer review, and publication.

(2) Identify areas with existing and potential conventional and unconventional oil and gas reserves where well stimulation treatments are likely to spur or enable oil and gas exploration and production.

(3) (A) Evaluate all aspects and effects of well stimulation treatments, including, but not limited to, the well stimulation treatment, additive and water transportation to and from the well site, mixing and handling of the well stimulation treatment fluids and additives onsite, the use and potential for use of nontoxic additives and the use or reuse of treated or produced water in well stimulation treatment fluids, flowback fluids and handling, treatment, and disposal of flowback fluids and other materials, if any, generated by the treatment. Specifically, the potential for the use of recycled water in well stimulation treatments, including appropriate water quality requirements and available treatment technologies, shall be evaluated. Well stimulation treatments include, but are not limited to, hydraulic fracturing and acid well stimulation treatments.

(B) Review and evaluate acid matrix stimulation treatments, including the range of acid volumes applied per treated foot and total acid volumes used in treatments, types of acids, acid concentration, and other chemicals used in the treatments.

(4) Consider, at a minimum, atmospheric emissions, including potential greenhouse gas emissions, the potential degradation of air quality, potential impacts on wildlife, native plants, and habitat, including habitat fragmentation, potential water and surface contamination, potential noise pollution, induced seismicity, and the ultimate disposition, transport, transformation, and toxicology of well stimulation treatments, including acid well stimulation fluids, hydraulic fracturing fluids, and waste hydraulic fracturing fluids and acid well stimulation in the environment.

(5) Identify and evaluate the geologic features present in the vicinity of a well, including the well bore, that should be taken into consideration in the design of a proposed well stimulation treatment.

(6) Include a hazard assessment and risk analysis addressing occupational and environmental exposures to well stimulation treatments, including hydraulic fracturing treatments, hydraulic fracturing treatment-related processes, acid well stimulation treatments, acid well stimulation treatment-related processes, and the corresponding impacts on public health and safety with the participation of the Office of Environmental Health Hazard Assessment.

(7) Clearly identify where additional information is necessary to inform and improve the analyses.

(b) (1) (A) On or before January 1, 2015, the division, in consultation with the Department of Toxic Substances Control, the State Air Resources Board, the State Water Resources Control Board, the Department of Resources Recycling and Recovery, and any local air districts and regional water quality control boards in areas where well stimulation treatments, including acid well stimulation treatments and hydraulic fracturing treatments may occur, shall adopt rules and

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regulations specific to well stimulation treatments. The rules and regulations shall include, but are not limited to, revisions, as needed, to the rules and regulations governing construction of wells and well casings to ensure integrity of wells, well casings, and the geologic and hydrologic isolation of the oil and gas formation during and following well stimulation treatments, and full disclosure of the composition and disposition of well stimulation fluids, including, but not limited to, hydraulic fracturing fluids, acid well stimulation fluids, and flowback fluids.

(B) The rules and regulations shall additionally include provisions for an independent entity or person to perform the notification requirements pursuant to paragraph (6) of subdivision (d), for the operator to provide for baseline and followup water testing upon request as specified in paragraph (7) of subdivision (d).

(C) (i) In order to identify the acid matrix stimulation treatments that are subject to this section, the rules and regulations shall establish threshold values for acid volume applied per treated foot of any individual stage of the well or for total acid volume of the treatment, or both, based upon a quantitative assessment of the risks posed by acid matrix stimulation treatments that exceed the specified threshold value or values in order to prevent, as far as possible, damage to life, health, property, and natural resources pursuant to Section 3106.

(ii) On or before January 1, 2020, the division shall review and evaluate the threshold values for acid volume applied per treated foot and total acid volume of the treatment, based upon data collected in the state, for acid matrix stimulation treatments. The division shall revise the values through the regulatory process, if necessary, based upon the best available scientific information, including the results of the independent scientific study pursuant to subparagraph (B) of paragraph (3) of subdivision (a).

(2) Full disclosure of the composition and disposition of well stimulation fluids, including, but not limited to, hydraulic fracturing fluids and acid stimulation treatment fluids, shall, at a minimum, include:

(A) The date of the well stimulation treatment.

(B) A complete list of the names, Chemical Abstract Service (CAS) numbers, and maximum concentration, in percent by mass, of each and every chemical constituent of the well stimulation treatment fluids used. If a CAS number does not exist for a chemical constituent, the well owner or operator may provide another unique identifier, if available.

(C) The trade name, the supplier, concentration, and a brief description of the intended purpose of each additive contained in the well stimulation treatment fluid.

(D) The total volume of base fluid used during the well stimulation treatment, and the identification of whether the base fluid is water suitable for irrigation or domestic purposes, water not suitable for irrigation or domestic purposes, or a fluid other than water.

(E) The source, volume, and specific composition and disposition of all water, including, but not limited to, all water used as base fluid during the well stimulation treatment and recovered from the well following the well stimulation treatment that is not otherwise reported as produced water pursuant to Section 3227. Any repeated reuse of treated or untreated water for well stimulation treatments and well stimulation treatment-related activities shall be identified.

(F) The specific composition and disposition of all well stimulation treatment fluids, including waste fluids, other than water.

(G) Any radiological components or tracers injected into the well as part of, or in order to evaluate, the well stimulation treatment, a description of the recovery method, if any, for those components or tracers, the recovery rate, and specific disposal information for recovered components or tracers.

(H) The radioactivity of the recovered well stimulation fluids.

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(I) The location of the portion of the well subject to the well stimulation treatment and the extent of the fracturing or other modification, if any, surrounding the well induced by the treatment.

(c) (1) Through the consultation process described in paragraph (1) of subdivision (b), the division shall collaboratively identify and delineate the existing statutory authority and regulatory responsibility relating to well stimulation treatments and well stimulation treatment-related activities of the Department of Toxic Substances Control, the State Air Resources Board, any local air districts, the State Water Resources Control Board, the Department of Resources Recycling and Recovery, any regional water quality control board, and other public entities, as applicable. This shall specify how the respective authority, responsibility, and notification and reporting requirements associated with well stimulation treatments and well stimulation treatment-related activities are divided among each public entity.

(2) On or before January 1, 2015, the division shall enter into formal agreements with the Department of Toxic Substances Control, the State Air Resources Board, any local air districts where well stimulation treatments may occur, the State Water Resources Control Board, the Department of Resources Recycling and Recovery, and any regional water quality control board where well stimulation treatments may occur, clearly delineating respective authority, responsibility, and notification and reporting requirements associated with well stimulation treatments and well stimulation treatment-related activities, including air and water quality monitoring, in order to promote regulatory transparency and accountability.

(3) The agreements under paragraph (2) shall specify the appropriate public entity responsible for air and water quality monitoring and the safe and lawful disposal of materials in landfills, include trade secret handling protocols, if necessary, and provide for ready public access to information related to well stimulation treatments and related activities.

(4) Regulations, if necessary, shall be revised appropriately to incorporate the agreements under paragraph (2).

(d) (1) Notwithstanding any other law or regulation, prior to performing a well stimulation treatment on a well, the operator shall apply for a permit to perform a well stimulation treatment with the supervisor or district deputy. The well stimulation treatment permit application shall contain the pertinent data the supervisor requires on printed forms supplied by the division or on other forms acceptable to the supervisor. The information provided in the well stimulation treatment permit application shall include, but is not limited to, the following:

(A) The well identification number and location.

(B) The time period during which the well stimulation treatment is planned to occur.

(C) A water management plan that shall include all of the following:

(i) An estimate of the amount of water to be used in the treatment. Estimates of water to be recycled following the well stimulation treatment may be included.

(ii) The anticipated source of the water to be used in the treatment.

(iii) The disposal method identified for the recovered water in the flowback fluid from the treatment that is not produced water included in the statement pursuant to Section 3227.

(D) A complete list of the names, Chemical Abstract Service (CAS) numbers, and estimated concentrations, in percent by mass, of each and every chemical constituent of the well stimulation fluids anticipated to be used in the treatment. If a CAS number does not exist for a chemical constituent, the well owner or operator may provide another unique identifier, if available.

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(E) The planned location of the well stimulation treatment on the well bore, the estimated length, height, and direction of the induced fractures or other planned modification, if any, and the location of existing wells, including plugged and abandoned wells, that may be impacted by these fractures and modifications.

(F) A groundwater monitoring plan. Required groundwater monitoring in the vicinity of the well subject to the well stimulation treatment shall be satisfied by one of the following:

(i) The well is located within the boundaries of an existing oil or gas field-specific or regional monitoring program developed pursuant to Section 10783 of the Water Code.

(ii) The well is located within the boundaries of an existing oil or gas field-specific or regional monitoring program developed and implemented by the well owner or operator meeting the model criteria established pursuant to Section 10783 of the Water Code.

(iii) Through a well-specific monitoring plan implemented by the owner or operator meeting the model criteria established pursuant to Section 10783 of the Water Code, and submitted to the appropriate regional water board for review.

(G) The estimated amount of treatment-generated waste materials that are not reported in subparagraph (C) and an identified disposal method for the waste materials.

(2) (A) At the supervisor's discretion, and if applied for concurrently, the well stimulation treatment permit described in this section may be combined with the well drilling and related operation notice of intent required pursuant to Section 3203 into a single combined authorization. The portion of the combined authorization applicable to well stimulation shall meet all of the requirements of a well stimulation treatment permit pursuant to this section.

(B) Where the supervisor determines that the activities proposed in the well stimulation treatment permit or the combined authorization have met all of the requirements of Division 13 (commencing with Section 21000), and have been fully described, analyzed, evaluated, and mitigated, no additional review or mitigation shall be required.

(C) The time period available for approval of the portion of the combined authorization applicable to well stimulation is subject to the terms of this section, and not Section 3203.

(3) (A) The supervisor or district deputy shall review the well stimulation treatment permit application and may approve the permit if the application is complete. An incomplete application shall not be approved.

(B) A well stimulation treatment or repeat well stimulation treatment shall not be performed on any well without a valid permit that the supervisor or district deputy has approved.

(C) In considering the permit application, the supervisor shall evaluate the quantifiable risk of the well stimulation treatment.

(4) The well stimulation treatment permit shall expire one year from the date that the permit is issued.

(5) Within five business days of issuing a permit to perform a well stimulation treatment, the division shall provide a copy of the permit to the appropriate regional water quality control board or boards and to the local planning entity where the well, including its subsurface portion, is located. The division shall also post the permit on the publicly accessible portion of its Internet Web site within five business days of issuing a permit.

(6) (A) It is the policy of the state that a copy of the approved well stimulation treatment permit and information on the available water sampling and testing be provided to every tenant of the surface property and every surface property owner or authorized agent of that owner whose property line location is one of the following:

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(i) Within a 1,500 foot radius of the wellhead.

(ii) Within 500 feet from the horizontal projection of all subsurface portions of the designated well to the surface.

(B) (i) The well owner or operator shall identify the area requiring notification and shall contract with an independent entity or person who is responsible for, and shall perform, the notification required pursuant to subparagraph (A).

(ii) The independent entity or person shall identify the individuals notified, the method of notification, the date of the notification, a list of those notified, and shall provide a list of this information to the division.

(iii) The performance of the independent entity or persons shall be subject to review and audit by the division.

(C) A well stimulation treatment shall not commence before 30 calendar days after the permit copies pursuant to subparagraph (A) are provided.

(7) (A) A property owner notified pursuant to paragraph (6) may request water quality sampling and testing from a designated qualified contractor on any water well suitable for drinking or irrigation purposes and on any surface water suitable for drinking or irrigation purposes as follows:

(i) Baseline measurements prior to the commencement of the well stimulation treatment.

(ii) Followup measurements after the well stimulation treatment on the same schedule as the pressure testing of the well casing of the treated well.

(B) The State Water Resources Control Board shall designate one or more qualified independent third-party contractor or contractors that adhere to board-specified standards and protocols to perform the water sampling and testing. The well owner or operator shall pay for the sampling and testing. The sampling and testing performed shall be subject to audit and review by the State Water Resources Control Board or applicable regional water quality control board, as appropriate.

(C) The results of the water testing shall be provided to the division, appropriate regional water board, and the property owner or authorized agent. A tenant notified pursuant to paragraph (6) shall receive information on the results of the water testing to the extent authorized by his or her lease and, where the tenant has lawful use of the ground or surface water identified in subparagraph (A), the tenant may independently contract for similar groundwater or surface water testing.

(8) The division shall retain a list of the entities and property owners notified pursuant to paragraphs (5) and (6).

(9) The operator shall provide notice to the division at least 72 hours prior to the actual start of the well stimulation treatment in order for the division to witness the treatment.

(e) The Secretary of the Natural Resources Agency shall notify the Joint Legislative Budget Committee and the chairs of the Assembly Natural Resources, Senate Environmental Quality, and Senate Natural Resources and Water Committees on the progress of the independent scientific study on well stimulation and related activities. The first progress report shall be provided to the Legislature on or before April 1, 2014, and progress reports shall continue every four months thereafter until the independent study is completed, including a peer review of the study by independent scientific experts.

(f) If a well stimulation treatment is performed on a well, a supplier that performs any part of the stimulation or provides additives directly to the operator for a well stimulation treatment shall furnish the operator with information suitable for public disclosure needed for the operator to comply with subdivision (g). This information shall be provided as soon as possible but no later than 30 days following the conclusion of the well stimulation treatment.

(g) (1) Within 60 days following cessation of a well stimulation treatment on a well, the operator shall post or cause to have posted to an Internet Web site designated or maintained by the division and accessible to the

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public, all of the well stimulation fluid composition and disposition information required to be collected pursuant to rules and regulations adopted under subdivision (b), including well identification number and location. This shall include the collected water quality data, which the operator shall report electronically to the State Water Resources Control Board.

(2) (A) The division shall commence the process to develop an Internet Web site for operators to report the information required under this section. The Internet Web site shall be capable of organizing the reported information in a format, such as a spreadsheet, that allows the public to easily search and aggregate, to the extent practicable, each type of information required to be collected pursuant to subdivision (b) using search functions on that Internet Web site. The Internet Web site shall be functional within two years of the Department of Technology's approval of a Feasibility Study Report or appropriation authority to fund the development of the Internet Web site, whichever occurs latest, but no later than January 1, 2016.

(B) The division may direct reporting to an alternative Internet Web site developed by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission in the interim until such time as approval or appropriation authority pursuant to subparagraph (A) occur. Prior to the implementation of the division's Internet Web site, the division shall obtain the data reported by operators to the alternative Internet Web site and make it available in an organized electronic format to the public no later than 15 days after it is reported to the alternative Web site.

(h) The operator is responsible for compliance with this section.

(i) (1) All geologic features within a distance reflecting an appropriate safety factor of the fracture zone for well stimulation treatments that fracture the formation and that have the potential to either limit or facilitate the migration of fluids outside of the fracture zone shall be identified and added to the well history. Geologic features include seismic faults identified by the California Geologic Survey.

(2) For the purposes of this section, the "fracture zone" is defined as the volume surrounding the well bore where fractures were created or enhanced by the well stimulation treatment. The safety factor shall be at least five and may vary depending upon geologic knowledge.

(3) The division shall review the geologic features important to assessing well stimulation treatments identified in the independent study pursuant to paragraph (5) of subdivision (a). Upon completion of the review, the division shall revise the regulations governing the reporting of geologic features pursuant to this subdivision accordingly.

(j) (1) Public disclosure of well stimulation treatment fluid information claimed to contain trade secrets is governed by Section 1060 of the Evidence Code, or the Uniform Trade Secrets Act (Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code), and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(2) Notwithstanding any other law or regulation, none of the following information shall be protected as a trade secret:

(A) The identities of the chemical constituents of additives, including CAS identification numbers.

(B) The concentrations of the additives in the well stimulation treatment fluids.

(C) Any air or other pollution monitoring data.

(D) Health and safety data associated with well stimulation treatment fluids.

(E) The chemical composition of the flowback fluid.

(3) If a trade secret claim is invalid or invalidated, the division shall release the information to the public by revising the information released pursuant to subdivision (g). The supplier shall notify the division of any change in status within 30 days.

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(4) (A) If a supplier believes that information regarding a chemical constituent of a well stimulation fluid is a trade secret, the supplier shall nevertheless disclose the information to the division in conjunction with a well stimulation treatment permit application, if not previously disclosed, within 30 days following cessation of well stimulation on a well, and shall notify the division in writing of that belief.

(B) A trade secret claim shall not be made after initial disclosure of the information to the division.

(C) To comply with the public disclosure requirements of this section, the supplier shall indicate where trade secret information has been withheld and provide substitute information for public disclosure. The substitute information shall be a list, in any order, of the chemical constituents of the additive, including CAS identification numbers. The division shall review and approve the supplied substitute information.

(D) This subdivision does not permit a supplier to refuse to disclose the information required pursuant to this section to the division.

(5) In order to substantiate the trade secret claim, the supplier shall provide information to the division that shows all of the following:

(A) The extent to which the trade secret information is known by the supplier's employees, others involved in the supplier's business and outside the supplier's business.

(B) The measures taken by the supplier to guard the secrecy of the trade secret information.

(C) The value of the trade secret information to the supplier and its competitors.

(D) The amount of effort or money the supplier expended developing the trade secret information and the ease or difficulty with which the trade secret information could be acquired or duplicated by others.

(6) If the division determines that the information provided in support of a request for trade secret protection pursuant to paragraph (5) is incomplete, the division shall notify the supplier and the supplier shall have 30 days to complete the submission. An incomplete submission does not meet the substantive criteria for trade secret designation.

(7) If the division determines that the information provided in support of a request for trade secret protection does not meet the substantive criteria for trade secret designation, the department shall notify the supplier by certified mail of its determination. The division shall release the information to the public, but not earlier than 60 days after the date of mailing the determination, unless, prior to the expiration of the 60-day period, the supplier obtains an action in an appropriate court for a declaratory judgment that the information is subject to protection or for a preliminary injunction prohibiting disclosure of the information to the public and provides notice to the division of the court order.

(8) The supplier is not required to disclose trade secret information to the operator.

(9) Upon receipt of a request for the release of trade secret information to the public, the following procedure applies:

(A) The division shall notify the supplier of the request in writing by certified mail, return receipt requested.

(B) The division shall release the information to the public, but not earlier than 60 days after the date of mailing the notice of the request for information, unless, prior to the expiration of the 60-day period, the supplier obtains an action in an appropriate court for a declaratory judgment that the information is subject to protection or for a preliminary injunction prohibiting disclosure of the information to the public and provides notice to the division of that action.

(10) The division shall develop a timely procedure to provide trade secret information in the following

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circumstances:

(A) To an officer or employee of the division, the state, local governments, including, but not limited to, local air districts, or the United States, in connection with the official duties of that officer or employee, to a health professional under any law for the protection of health, or to contractors with the division or other government entities and their employees if, in the opinion of the division, disclosure is necessary and required for the satisfactory performance of a contract, for performance of work, or to protect health and safety.

(B) To a health professional in the event of an emergency or to diagnose or treat a patient.

(C) In order to protect public health, to any health professional, toxicologist, or epidemiologist who is employed in the field of public health and who provides a written statement of need. The written statement of need shall include the public health purposes of the disclosure and shall explain the reason the disclosure of the specific chemical and its concentration is required.

(D) A health professional may share trade secret information with other persons as may be professionally necessary, in order to diagnose or treat a patient, including, but not limited to, the patient and other health professionals, subject to state and federal laws restricting disclosure of medical records including, but not limited to, Chapter 2 (commencing with Section 56.10) of Part 2.6 of Division 1 of the Civil Code.

(E) For purposes of this paragraph, "health professional" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act, the Chiropractic Initiative Act, or the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act (Division 2.5 (commencing with Section 1797) of the Health and Safety Code).

(F) A person in possession of, or access to, confidential trade secret information pursuant to the provisions of this subdivision may disclose this information to any person who is authorized to receive it. A written confidentiality agreement shall not be required.

(k) A well granted confidential status pursuant to Section 3234 shall not be required to disclose well stimulation treatment fluid information pursuant to subdivision (g) until the confidential status of the well ceases. Notwithstanding the confidential status of a well, it is public information that a well will be or has been subject to a well stimulation treatment.

(l) The division shall perform random periodic spot check inspections to ensure that the information provided on well stimulation treatments is accurately reported, including that the estimates provided prior to the commencement of the well stimulation treatment are reasonably consistent with the well history.

(m) Where the division shares jurisdiction over a well or the well stimulation treatment on a well with a federal entity, the division's rules and regulations shall apply in addition to all applicable federal laws and regulations.

(n) This article does not relieve the division or any other agency from complying with any other provision of existing laws, regulations, and orders.

(o) Well stimulation treatments used for routine maintenance of wells associated with underground storage facilities where natural gas is injected into and withdrawn from depleted or partially depleted oil or gas reservoirs pursuant to subdivision (a) of Section 3403.5 are not subject to this section.

3161. (a) The division shall finalize and implement the regulations governing this article on or before January 1, 2015.

(b) The division shall allow, until regulations governing this article are finalized and implemented, and upon written notification by an operator, all of the activities defined in Section 3157, provided all of the following conditions are met:

(1) The owner or operator certifies compliance with subdivision (b) of, subparagraphs (A) to (F), inclusive, of paragraph (1) and paragraphs (6) and (7) of subdivision (d) of, and subdivision (g) of, Section 3160.

(2) The owner or operator provides a complete well history, incorporating the information required by

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section 3160, to the division on or before March 1, 2015.

(3) The division conducts an environmental impact report (EIR) pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)), in order to provide the public with detailed information regarding any potential environmental impacts of well stimulation in the state.

(4) Any environmental review conducted by the division shall fully comply with all of the following requirements:

(A) The EIR shall be certified by the division as the lead agency, no later than July 1, 2015.

(B) The EIR shall address the issue of activities that may be conducted as defined in Section 3157 and that may occur at oil wells in the state existing prior to, and after, the effective date of this section.

(C) The EIR shall not conflict with an EIR conducted by a local lead agency that is certified on or before July 1, 2015. Nothing in this section prohibits a local lead agency from conducting its own EIR.

(5) The division ensures that all activities pursuant to this section fully conform with this article and other applicable provisions of law on or before December 31, 2015, through a permitting process.

(6) The division has the emergency regulatory authority to implement the purposes of this section.

SEC. 3. Section 3213 of the Public Resources Code is amended to read:

3213. The history shall show the location and amount of sidetracked casings, tools, or other material, the depth and quantity of cement in cement plugs, the shots of dynamite or other explosives, acid treatment data, and the results of production and other tests during drilling operations. All data on well stimulation treatments pursuant to Section 3160 shall be recorded in the history.

SEC. 4. Section 3215 of the Public Resources Code is amended to read:

3215. (a) Within 60 days after the date of cessation of drilling, rework, well stimulation treatment, or abandonment operations, or the date of suspension of operations, the operator shall file with the district deputy, in a form approved by the supervisor, true copies of the log, core record, and history of work performed, and, if made, true and reproducible copies of all electrical, physical, or chemical logs, tests, or surveys in such form as the supervisor may approve shall be filed with the district deputy. surveys. Upon a showing of hardship, the supervisor may extend the time within which to comply with the provisions of this section for a period not to exceed 60 additional days.

(b) The supervisor shall include information or electronic links to information provided pursuant to subdivision (g) of Section 3160 on existing publicly accessible maps on the division's Internet Web site, and make the information available such that well stimulation treatment and related information are associated with each specific well. If data is reported on an Internet Web site not maintained by the division pursuant to paragraph (2) of subdivision (g) of Section 3160, the division shall provide electronic links to that Internet Web site. The public shall be able to search and sort the hydraulic well stimulation and related information by at least the following criteria:

(1) Geographic area.

(2) Additive.

(3) Chemical constituent.

(4) Chemical Abstract Service number.

(5) Time period.

(6) Operator.

(c) Notwithstanding Section 10231.5 of the Government Code, on or before January 1, 2016, and annually thereafter, the supervisor shall, in compliance with Section 9795 of the Government Code, prepare and transmit to the Legislature a comprehensive report on well stimulation treatments in the exploration and production of oil and gas resources in California.

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The report shall include aggregated data of all of the information required to be reported pursuant to Section 3160 reported by the district, county, and operator. The report also shall include relevant additional information, as necessary, including, but not limited to, all of the following:

(1) Aggregated data detailing the disposition of any produced water from wells that have undergone well stimulation treatments.

(2) Aggregated data describing the formations where wells have received well stimulation treatments including the range of safety factors used and fracture zone lengths.

(3) The number of emergency responses to a spill or release associated with a well stimulation treatment.

(4) Aggregated data detailing the number of times trade secret information was not provided to the public, by county and by each company, in the preceding year.

(5) Data detailing the loss of well and well casing integrity in the preceding year for wells that have undergone well stimulation treatment. For comparative purposes, data detailing the loss of well and well casing integrity in the preceding year for all wells shall also be provided. The cause of each well and well casing failure, if known, shall also be provided.

(6) The number of spot check inspections conducted pursuant to subdivision (l) of Section 3160, including the number of inspections where the composition of well stimulation fluids were verified and the results of those inspections.

(7) The number of well stimulation treatments witnessed by the division.

(8) The number of enforcement actions associated with well stimulation treatments, including, but not limited to, notices of deficiency, notices of violation, civil or criminal enforcement actions, and any penalties assessed.

(d) The report shall be made publicly available and an electronic version shall be available on the division's Internet Web site.

SEC. 5. Section 3236.5 of the Public Resources Code is amended to read:

3236.5. (a) A person who violates this chapter or a regulation implementing this chapter is subject to a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each violation. A person who commits a violation of Article 3 (commencing with Section 3150) is subject to a civil penalty of not less than ten thousand dollars ($10,000) and not to exceed twenty-five thousand dollars ($25,000) per day per violation. An act of God and an act of vandalism beyond the reasonable control of the operator shall not be considered a violation. The civil penalty shall be imposed by an order of the supervisor pursuant to Section 3225 upon a determination that a violation has been committed by the person charged. The imposition of a civil penalty under this section shall be in addition to any other penalty provided by law for the violation. When establishing the amount of the civil penalty pursuant to this section, the supervisor shall consider, in addition to other relevant circumstances, all of the following:

(1) The extent of harm caused by the violation.

(2) The persistence of the violation.

(3) The pervasiveness of the violation.

(4) The number of prior violations by the same violator.

(b) An order of the supervisor imposing a civil penalty shall be reviewable pursuant to Article 6 (commencing with Section 3350). When the order of the supervisor has become final and the penalty has not been paid, the supervisor may apply to the appropriate superior court for an order directing payment of the civil penalty. The supervisor may also seek from the court an order directing that production from the well or use of the production facility that is the subject of the civil penalty order be discontinued until the violation has been remedied to the satisfaction of the supervisor and the civil penalty has been paid.

(c) Any amount collected under this section shall be deposited in the Oil, Gas, and Geothermal Administrative

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Fund.

SEC. 6. Section 3401 of the Public Resources Code is amended to read:

3401. (a) The proceeds of charges levied, assessed, and collected pursuant to this article upon the properties of every person operating or owning an interest in the production of a well shall be used exclusively for the support and maintenance of the department charged with the supervision of oil and gas operations.

(b) Notwithstanding subdivision (a), the proceeds of charges levied, assessed, and collected pursuant to this article upon the properties of every person operating or owning an interest in the production of a well undergoing a well stimulation treatment, may be used by public entities, subject to appropriation by the Legislature, for all costs associated with both of the following:

(1) Well stimulation treatments, including rulemaking and scientific studies required to evaluate the treatment, inspections, any air and water quality sampling, monitoring, and testing performed by public entities.

(2) The costs of the State Water Resources Control Board and the regional water quality control boards in carrying out their responsibilities pursuant to Section 3160 and Section 10783 of the Water Code.

SEC. 7. Section 10783 is added to the Water Code, to read:

10783. (a) The Legislature finds and declares that protecting the state's groundwater for beneficial use, particularly sources and potential sources of drinking water, is of paramount concern.

(b) The Legislature further finds and declares that strategic, scientifically based groundwater monitoring of the state's oil and gas fields is critical to allaying the public's concerns regarding well stimulation treatments of oil and gas wells.

(c) On or before July 1, 2015, in order to assess the potential effects of well stimulation treatments, as defined in Article 3 (commencing with Section 3150) of Chapter 1 of Division 3 of the Public Resources Code, on the state's groundwater resources in a systematic way, the state board shall develop model groundwater monitoring criteria to be implemented either on a well-by-well basis for a well subject to well stimulation treatment, or on a regional scale. The model criteria shall address a range of spatial sampling scales from methods for conducting appropriate monitoring on individual oil and gas wells subject to a well stimulation treatment, to methods for conducting a regional groundwater monitoring program. The state board shall take into consideration the recommendations received pursuant to subdivision (d) and shall include in the model criteria, at a minimum, the components identified in subdivision (f). The state board shall prioritize monitoring of groundwater that is or has the potential to be a source of drinking water, but shall protect all waters designated for any beneficial use.

(d) The state board, in consultation with the Department of Conservation, Division of Oil, Gas, and Geothermal Resources, shall seek the advice of experts on the design of the model groundwater monitoring criteria. The experts shall assess and make recommendations to the state board on the model criteria. These recommendations shall prioritize implementation of regional groundwater monitoring programs statewide, as warranted, based upon the prevalence of well stimulation treatments of oil and gas wells and groundwater suitable as a source of drinking water.

(e) The state board shall also seek the advice of stakeholders representing the diverse interests of the oil- and gas-producing areas of the state. The stakeholders shall include the oil and gas industry, agriculture, environmental justice, and local government, among others, with regional representation commensurate with the intensity of oil and gas development in that area. The stakeholders shall also make recommendations to the state board regarding the development and implementation of groundwater monitoring criteria, including priority locations for implementation.

(f) The scope and nature of the model groundwater monitoring criteria shall include the determination of all of the following:

(1) An assessment of the areas to conduct groundwater quality monitoring and their appropriate boundaries.

(2) A list of the constituents to measure and assess water quality.

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(3) The location, depth, and number of monitoring wells necessary to detect groundwater contamination at spatial scales ranging from an individual oil and gas well to a regional groundwater basin including one or more oil and gas fields.

(4) The frequency and duration of the monitoring.

(5) A threshold criteria indicating a transition from well-by-well monitoring to a regional monitoring program.

(6) Data collection and reporting protocols.

(7) Public access to the collected data under paragraph (6).

(g) Factors to consider in addressing subdivision (f) shall include, but are not limited to, all of the following:

(1) The existing quality and existing and potential use of the groundwater.

(2) Groundwater that is not a source of drinking water consistent with the United States Environmental Protection Agency's definition of an Underground Source of Drinking Water as containing less than 10,000 milligrams per liter total dissolved solids in groundwater (40 C.F.R. 144.3), including exempt aquifers pursuant to Section 146.4 of Title 40 of the Code of Federal Regulations.

(3) Proximity to human population, public water service wells, and private groundwater use, if known.

(4) The presence of existing oil and gas production fields, including the distribution, physical attributes, and operational status of oil and gas wells therein.

(5) Events, including well stimulation treatments and oil and gas well failures, among others, that have the potential to contaminate groundwater, appropriate monitoring to evaluate whether groundwater contamination can be attributable to a particular event, and any monitoring changes necessary if groundwater contamination is observed.

(h) (1) On or before January 1, 2016, the state board or appropriate regional board shall begin implementation of the regional groundwater monitoring programs based upon the developed criteria under subdivision (c).

(2) In the absence of state implementation of a regional groundwater monitoring program, a well owner or operator may develop and implement an area-specific groundwater monitoring program based upon the developed criteria under subdivision (c), subject to approval by the state or regional board, if applicable, and that meets the requirements of this section.

(i) The model criteria for either a well-by-well basis for a well subject to well stimulation treatment, or for a regional groundwater monitoring program, shall be used to satisfy the permitting requirements for well stimulation treatments on oil and gas wells pursuant to Section 3160 of the Public Resources Code. The model criteria used on a well-by-well basis for a well subject to a well stimulation treatment shall be used where no regional groundwater monitoring plan approved by the state or regional board, if applicable, exists and has been implemented by either the state or regional board or the well owner or operator.

(j) The model criteria shall accommodate monitoring where surface access is limited. Monitoring is not required for oil and gas wells where the wells do not penetrate groundwater of beneficial use, as determined by a regional water quality control board, or do not penetrate exempt aquifers pursuant to Section 146.4 of Title 40 of the Code of Federal Regulations.

(k) (1) The model criteria and groundwater monitoring programs shall be reviewed and updated periodically, as needed.

(2) The use of the United States Environmental Protection Agency's definition of an Underground Source of Drinking Water as containing less than 10,000 milligrams per liter total dissolved solids in groundwater (40 C.F.R. 144.3) and whether exempt aquifers pursuant to Section 146.4 of Title 40 of the Code of Federal Regulations shall be subject to groundwater monitoring shall be reviewed by the state board through a public process on or before January 1, 2020.

(l) (1) All groundwater quality data collected pursuant to subparagraph (F) of paragraph (1) of subdivision (d)

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of Section 3160 of the Public Resources Code shall be submitted to the state board in an electronic format that is compatible with the state board's GeoTracker database, following the guidelines detailed in Chapter 30 (commencing with Section 3890) of Division 3 of Title 23 of the California Code of Regulations.

(2) A copy of the reported data under paragraph (1) shall be transferred by the state board to a public, nonprofit doctoral-degree-granting educational institution located in the San Joaquin Valley, administered pursuant to Section 9 of Article IX of the California Constitution, in order to form the basis of a comprehensive groundwater quality data repository to promote research, foster interinstitutional collaboration, and seek understanding of the numerous factors influencing the state's groundwater.

(m) The adoption of criteria required pursuant to this section is exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of criteria pursuant to this section shall instead be accomplished by means of a public process reasonably calculated to give those persons interested in their adoption an opportunity to be heard.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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