



United States Department of the Interior BUREAU OF LAND MANAGEMENT

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In Reply Refer To:
3100 (920) P

October 26, 2012

Sarah Uhlemann
Staff Attorney
Center for Biological Diversity
2400 NW 80th Street, Suite 146
Seattle, Washington 98117

Subject: In Response to your 60-Day Notice of Intent to Sue under the Endangered Species Act

Dear Ms. Uhlemann:

This letter responds to your 60-Day Notice of Intent to Sue under the Endangered Species Act, dated August 29, 2012. This Notice was sent by you on behalf of and as legal counsel for the Center for Biological Diversity. This Notice alleges the Bureau of Land Management (BLM) violated the Endangered Species Act (ESA) by failing to reinstate consultation regarding its oil and gas activities in California.

Hydraulic Fracturing on Public Lands in California

Hydraulic fracturing has been occurring under existing regulations on public lands in California for decades. However, hydraulic fracturing in California fundamentally differs from hydraulic fracturing in the rest of the nation because of the context of California's specific geology.

Nearly all of the hydraulic fracturing in California has been in areas that are primarily for oil, rather than natural gas. This is different from cases of hydraulic fracturing in other parts of the nation, such as the Marcellus Shale in Pennsylvania where gas production is the primary resource. This emphasis on oil is particularly true for Federal lands in California, nearly all of which are under the jurisdiction of the BLM Bakersfield Field Office.

In response to a 2011 inquiry from the Ranking Member of the House of Representatives Committee on Natural Resources regarding the use of hydraulic fracturing on public lands, the BLM's Bakersfield Field Office determined that virtually all of the hydraulic fracturing on Federal mineral estate in California from 2000-2010 was for oil development. During those 10 years, a total of 355 wells were fractured out of 2,056 drilled on Federal mineral estate. During this same timeframe, no wells have been drilled in Federal mineral estate within the boundaries of the Hollister Field Office.

The impacts to endangered species and critical habitat from hydraulic fracturing are lower in California than in other areas of the country. Firstly, California has not seen a significant increase in drilling activity due to advances in hydraulic fracturing technology, and levels of

surface disturbance have remained under the levels predicted by our plans' Reasonably Foreseeable Development Scenarios and environmental review. Hydraulic fracturing on public lands in California typically occurs in much shorter, vertically drilled wells. In comparison, multi-stage fracturing and horizontal drilling for natural gas in other parts of the country require much more water than in California. Impacts to air and water quality also are reduced by oil and gas operations' compliance with the State of California's stringent air and water quality regulations. Finally, the vast majority of oil development on public lands is concentrated within the BLM's Bakersfield Field Office boundaries, and occurs on already developed lands. Because development is concentrated on previously disturbed landscapes, this greatly limits disturbance of habitat on previously-undisturbed landscapes.

The BLM is complying with existing Federal regulations at 43 CFR 3162.3-2 that consider routine fracturing part of normal well operations. Hydraulic fracturing is not emphasized as a special technique in regulation or in previous BLM documentation. The level of environmental effects that have occurred, and are expected to occur, due to hydraulic fracturing on public lands in California have already been analyzed and disclosed during environmental review and consultation under Section 7 of the ESA.

The Monterey Formation has been identified as an area for possible future oil development. Based upon preliminary drilling results to date, economic feasibility of employing new hydraulic fracturing techniques in the Monterey Formation remains undetermined. As of late 2012, the large increase in horizontal drilling and hydraulic fracturing occurring elsewhere in the country has largely bypassed California.

BLM California: Compliance with the Endangered Species Act

Oil and gas leasing and development activities on Federal mineral estate in California, including hydraulic fracturing, fully comply with the Endangered Species Act and the existing regulations on hydraulic fracturing.

Resource Management Plans (RMPs) for public lands in California lay the foundation for any potential oil and gas development. Reasonably Foreseeable Development Scenarios (RFDs) are developed to estimate the amount of future surface disturbance that will be analyzed for environmental effects during development of the RMP and associated review documents. Regarding your concerns about the adequacy of the BLM's existing Reasonable Foreseeable Development Scenarios since the advent of hydraulic fracturing and the associated natural gas boom in other parts of the nation, California has not experienced similar increases in the level of drilling activity due to advances in hydraulic fracturing technology. Levels of surface disturbance in BLM Field Offices have not exceeded those predicted by the RFDs. Specific levels of surface disturbance for each Field Office are described in the sections below.

BLM California's compliance with the Endangered Species Act during the leasing stage is governed by the appropriate RMP and Biological Opinion. Furthermore, all oil and gas leases issued in California include an Endangered Species Stipulation, stating the BLM will not approve any ground-disturbing activities that may affect special status species or critical habitat until it completes its obligations under applicable requirements of the Endangered Species Act. For site-specific projects in California, the BLM complies with the Endangered Species Act in

the following primary ways: (1) by development of plan level documents that address the impacts of oil and gas development activities, including effects to species, on a programmatic basis, (2) by consulting with the Fish and Wildlife Service and following the provisions of the applicable Biological Opinions for the planning documents, (3) by development of site-specific environmental review documents to analyze the impacts of oil and gas development activities, including effects to species, and (4) through project-specific consultation, as appropriate. The specifics regarding how each Field Office complies with the Endangered Species Act are described below.

Bakersfield Field Office

On public lands in California, the vast majority of leasing and drilling activity occurs within the Bakersfield Field Office boundaries. BLM California currently issues oil and gas leases under the 1997 Bakersfield Caliente RMP and its associated 1997 Biological Opinion. However, the Bakersfield Field Office is currently in the plan revision process, with a Proposed Resource Management Plan (PRMP) and Final Environmental Impact Statement (FEIS) issued in August 2012. The PRMP includes information regarding hydraulic fracturing in Chapter 3, Section 3.14 – Minerals Management. The Bakersfield Field Office initiated Section 7 consultation with the FWS on the proposed plan in September 2012. The final Record of Decision on the PRMP is planned for March 2013.

Until the plan revision process and associated consultation is complete, the 1997 Caliente RMP and its associated 1997 Biological Opinion remain in effect. Regarding the Caliente RMP, the Bakersfield RFD projected a range of net disturbance between 960 and 3,960 acres of new disturbance associated with Federal oil and gas actions over the life of the plan. To date, the BLM has calculated 838 acres of habitat disturbance as it relates to oil and gas projects. Therefore, the effects of oil and gas activities are below those already addressed in the 1997 Caliente Biological Opinion, and re-initiation of consultation is not warranted.

The 1997 Caliente RMP and its associated 1997 Biological Opinion do not speak specifically to hydraulic fracturing because the BLM is operating under the current regulations which consider fracturing a routine operation. Because hydraulic fracturing is considered routine under current regulations, the impacts to endangered species and critical habitat from hydraulic fracturing were considered along with all other impacts from oil and gas operations, rather than being called out as a special technology with unique impacts.

The Bakersfield Field Office management has taken special steps to minimize impacts to endangered species and critical habitat from oil and gas operations, including hydraulic fracturing. Because additional species have been listed since the 1997 Caliente RMP (including the steelhead, listed in 1998), Bakersfield has followed a policy of deferring parcels for leasing that contain species or critical habitat that are not covered by the 1997 Biological Opinion. Such parcels will not be offered for lease until after the current plan revision is complete and those species and critical habitats are covered by a new Biological Opinion, which would include explanation of impacts from hydraulic fracturing. In this manner, the Bakersfield Field Office ensures that it does not undertake any actions that are outside the scope of the existing Biological Opinion, and potential impacts to endangered species and critical habitat from hydraulic fracturing are correspondingly limited.

Specific to the Bakersfield Field Office, the 2001 Oil and Gas Programmatic Biological Opinion covers many of the common oil and gas operations the BLM authorizes on public lands, and addresses many of the important impacts of those operations, including surface disturbance, vehicle strike, and noise. During the NEPA review process, the BLM examines whether or not the proposed action falls within the scope of the 2001 Programmatic Biological Opinion. For any activities or impacts that are outside the scope of the 2001 Programmatic Biological Opinion and that may affect endangered species, the BLM initiates project-specific consultation with the Fish and Wildlife Service and/or National Marine Fisheries Service, as appropriate.

Hollister Field Office

For the Hollister Field Office, BLM California issues oil and gas leases under the 2007 Hollister RMP and its associated 1994 and 2007 Biological Opinions. The 2007 Biological Opinion for the Hollister RMP considers the species of concern communicated by the Center for Biological Diversity; additionally, Hollister has received a concurrence letter from National Marine Fisheries Service based upon a no effect determination for oil and gas activities on the Steelhead. The Hollister RFD predicts up to 15 wells will be drilled over the life of the plan. Since the 2007 RMP was issued, there have been no wells drilled in the area administered by the Hollister Field Office, so there have been no related impacts from hydraulic fracturing under the new RMP.

The Hollister Field Office has a policy of no surface occupancy for oil and gas development within endangered species habitat that falls within Areas of Critical Environmental Concern. Because these areas are closed to surface occupancy for oil and gas operations, impacts to Endangered Species or critical habitat from hydraulic fracturing will be minimized on Federal mineral estate in California.

Hydraulic Fracturing: Regulatory Context and New Proposed Regulations

Hydraulic fracturing is a process that has recently garnered national attention. Well stimulation techniques, such as hydraulic fracturing, are designed to increase the volume of oil and natural gas that can be extracted from wells. New horizontal drilling technology has increased nationwide access to shale oil and gas resources, sometimes in areas that had not previously experienced significant oil and gas development.

Hydraulic fracturing is currently regulated under the BLM's existing hydraulic fracturing regulations, found at 43 CFR 3162.3-2. These regulations were established in 1982 and last revised in 1988, prior to the latest advances in hydraulic fracturing technology. The existing regulations state that BLM approval is required for non-routine fracturing. Under the current regulations, routine fracturing has traditionally been managed as an aspect of normal oil and gas operations. The BLM has established Onshore Order 1 and 2 that prescribe wellbore construction, fluid management, zonal isolation, casing and cementing design as well as other important drilling and surface use plans. These Orders for drilling allow approval prior to wellbore completions or stimulation.

In response to public concerns about the potential impacts of hydraulic fracturing, along with recommendations from the Secretary of Energy's Energy Advisory Board, the BLM is currently in the process of revising the rules governing well stimulation activities, including hydraulic fracturing, for operations on the Federal mineral estate (including split estate where the Federal

Government owns the subsurface mineral estate). On May 11, 2012, the BLM published in the Federal Register a proposed rule that would modify operator requirements for operations involving hydraulic fracturing. In order to facilitate greater input from the public and key stakeholders, the BLM extended the public comment period for the proposed rule by 60 days, with a comment deadline of September 10, 2012.

The proposed hydraulic fracturing regulations require BLM approval prior to all well stimulation activities. The BLM proposed regulations include the following key elements: (1) The public disclosure of chemicals used in hydraulic fracturing operations on Federal lands; (2) confirmation that wells used in fracturing operations meet appropriate construction standards; and (3) a requirement that operators put in place appropriate plans for managing flowback waters. This national level response to advances in hydraulic fracturing technology will provide increased public transparency and consistent oversight of fracturing on public lands. The BLM is currently reviewing comments from the public on the proposed regulations. The final regulations will reflect substantial public input, and are expected to be finalized in early 2013.

When rule-making processes are complete, BLM California will implement any new regulations that may be issued, and those new regulations will be incorporated into our standard Conditions of Approval for new wells and workovers of existing wells. To that end, BLM California will collaborate with the California Division of Oil and Gas and Geothermal Resources (CDOGGR), other Federal and California state agencies, and stakeholders to effectively implement the regulations. Until new regulations take effect, however, the BLM's rules do not provide for pre-drilling notice of routine hydraulic fracturing.

Re-initiation of Consultation is Not Required

In summary, because hydraulic fracturing techniques in California have not changed, and have not increased the level of oil and gas activities on Federal mineral estate in California, and there is no new information on the impacts of hydraulic fracturing specific to California, it follows that:

1. The proposed action has not been modified in a manner that causes an effect to listed species or critical habitat that was not considered in the Caliente RMP Biological Opinion or the Hollister RMP Biological Opinion, as applicable; and
2. There is no new information that reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not considered in the Caliente RMP, the Hollister RMP, or the associated Biological Opinions.

Questions regarding the status of the BLM's compliance with the Endangered Species Act may be directed to Jim Scrivner in the Energy and Minerals Division in our California State Office at (916) 978-4361. I may be reached at (916) 978-4600 if you would like to engage in further discussion of the issues presented in your Notice.

Sincerely,



James G. Kenna
State Director