

# Daily Journal

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## Environmentalists want court to order more studies of fracking

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SAN JOSE - The potentially explosive growth of fracking in California sparked a sharp debate during a hearing Tuesday, pitting environmentalists against federal regulators who say their concerns are overblown.

U.S. Magistrate Judge Paul S. Grewal in San Jose did not rule on the motions for summary judgment. The plaintiffs want to force the federal government to do more environmental review of the impact of fracking.

The Center for Biological Diversity and the Sierra Club sued government regulators in 2011, claiming they ignored the potential for fracking when they leased 2,500 acres of land in Monterey and Fresno Counties to oil companies.

Lawyers for the federal Bureau of Land Management said the environmental review of the lease sale was adequate and argued there is little likelihood much drilling will ever take place on the land. Center for Biological Diversity v. Bureau of Land Management, 11-6174 (N.D. Cal., filed Dec. 8, 2011).

Brendan Cummings, an attorney with the Center for Biological Diversity, told Grewal the Bureau of Land Management, or BLM,

violated a requirement of the National Environmental Policy Act, or NEPA, to do a thorough environmental review before holding the lease sale.

While there may have historically been little oil drilling in the lease area, the government should have addressed the fact that new technology could bring an oil boom to California as it has in other parts of the country, Cummings said. Instead, BLM downplayed fracking because it was “politically inconvenient” despite the fact that NEPA requires the agency to look at all reasonably foreseeable impacts, Cummings said.

The agency’s forecast is “exactly the type of predictive judgment where government agencies should be granted deference,” argued Romney Philpott, with the U.S. Department of Justice.

Fracking, short for hydraulic fracturing, has been done in California for decades, and involves injecting a high-pressure mix of water, sand and chemicals into a well to crack rocks and remove oil or gas. But the advent of new horizontal drilling technology combined with fracking has allowed companies to extract previously out-of-reach reserves. Oil and gas production has shot up in states such as Pennsylvania, Texas and

North Dakota, and several states have moved to regulate fracking.

Environmentalists are concerned that fracking fluid could contaminate groundwater and that a fracking-generated oil rush will add to air pollution, harm wildlife and cause spills and other accidents.

In response to public pressure, both California’s Department of Conservation and the BLM are drafting fracking regulations. BLM’s proposal would require companies to give advance notice of fracking and to disclose the chemicals used in fracking among other things.

Those moves comes as the oil industry shows a growing interest in tapping the shale oil in California’s vast Monterey Shale, which runs from Orange County to Monterey County. The formation holds an estimated 15 billion barrels of shale oil, or 64 percent of the continental United States’ total shale oil reserves, according to the U.S. Department of Energy.

BLM holds quarterly oil and gas lease sales for parcels that the energy industry requests for auction. A Daily Journal analysis of BLM leasing data in California over the past five years shows the number of acres the federal government leased in 2012, 22,900 acres, was dramatically higher than any lease

sale of the last five years and almost double the roughly 11,500 acres leased in both 2011 and 2010.

The California Independent Petroleum Association has filed a brief in support of the government, accusing environmentalists of using scare tactics to impugn fracking, which they claim has been done safely in the state for the last 50 years.

Cummings argued the government relied on outdated analyses to conclude the lease would have little impact because only about one well would be drilled and one acre of land disturbed in the 2,500 acre area, Cummings said.

The agency analysis was 123 pages long, Philpott countered, “it’s not some two-paragraph assessment by BLM, ‘Oh, there’s no problem.’... BLM did the best it could under the circumstances.”

Neither the petroleum association nor its lawyers responded to requests for comment, and the association did not make an appearance in court Tuesday.

In its court filing, the trade group wrote that plaintiffs are “attempt[ing] to substitute fear, hype, and hyperbole regarding ... fracking for the BLM’s reasoned analysis and expert opinions.”

The suit is one of a handful that the Center for Biological Diversity and others have filed to force more regulation of fracking in California.

Environmental groups are using these laws to attack fracking at a global level before individual oil leases get developed, said K. Eric Adair, an attorney with Hinson Gravelle & Adair LLP who has represented the oil industry and who follows fracking issues.

“Attacking [leases] one at a time would be a longer, more costly effort,” Adair said. “If they can require a much more comprehensive environmental review at the outset before oil and gas development begins, then they’ve accomplished one of their primary goals,” Adair said.

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