

# Environmentalists decry ‘poor’ notification of first Fracking hearing in L.A.

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FEBRUARY 18, 2013

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In a letter to Governor Jerry Brown Jr.’s supervisor of oil and gas at California’s Division of Oil, Gas, and Geothermal Resources (DOGGR), Kassie Siegel, director of the Climate Law Institute protested what she sees as a circumvention of the intent, if not the technical requirement, of California’s transparency rules on public hearings.

Siegel’s organization was just one of a number of environmental groups who were disappointed in the state agency’s efforts to engage the public on the issue of fracking’s impact on California’s groundwater, aquifers, agriculture production and fragile coastline.

The first public hearing on the administration’s hydraulic fracturing, or fracking, regulations in California is scheduled for February 19, 2013 in Los Angeles.

“This is a public hearing, but I’m not sure your agency wants the public to attend,” wrote Siegel to DOGGR’s Tim Kustic. Siegel noted, “The February 19, 2013, public workshop is one of just three you’re holding across the entire state to get feedback on your discussion draft proposed fracking regulations, yet your staff notified the public via an e-mail sent after 4:30 p.m. on Friday afternoon [February 8], less than two weeks before this daytime event in downtown Los Angeles.”

“The California Department of Conservation absolutely wants public participation in creating hydraulic fracturing regulations,” Department of Conservation spokesman, Ed Wilson, responded by email to an inquiry by California Progress Report about Siegel’s concerns.

“We conducted seven listening sessions around the state last summer and will have at least three pre-rulemaking workshops, including next week’s in Los Angeles,” wrote Wilson in an email, adding “none of these things are required, but we are trying to be as transparent and inclusive as possible.”

While Wilson is correct that DOGGR abided by the technical requirements of California’s civil code 11120 regarding public meetings, some question whether or not it adhered to the intent of the Bagley-Keene Act to remain a servant to the people of the state and to keep them adequately informed.

California code 11120 (The open meeting act) stipulates that the people of California do not yield their sovereignty to the agencies which serve them, and reads as follows:

It is the public policy of this state that public agencies exist to aid in the conduct of the people’s business and the proceedings of public agencies be conducted openly so that the public may remain informed.

In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

This article shall be known and may be cited as the Bagley-Keene Open Meeting Act.

Wilson’s contention that the meetings “are not required” left the Center for Biological Diversity spokesman, Patrick Sullivan, perplexed.

“We’re not saying we believe they have violated the law, but there actions indicate they intend to minimize the public’s input into these regulations. “It’s the first meeting, it’s the meeting in the state’s biggest city and it’s also in a hotspot for this issue.”

Sullivan believes that emailing late on a Friday afternoon and timing the 10 day required notice to include two weekends, one of them a three day holiday, shows a willful intent by DOGGR to abide by the letter of the law while failing to honor its intent.

Siegel's letter complained that DOGGR failed to mention anything about the public hearings on its web site.

Wilson, while not addressing the DOGGR home page, which still lacks any notification of the planned hearing, noted that the meeting was posted on the larger Department of Conservation's web site the same day notice was made public to some media and by email.

"In point of fact, notification is on the front page of the department's web site and was posted there on February 8," Wilson stated.

"An email notification was sent to thousands of members of the public who signed up to be on a listserv, and a news release was sent to Los Angeles media outlets and more than 50 reporters elsewhere who have covered hydraulic fracturing-related stories. Future workshops will have more public notice, but it is unlikely to be four weeks in advance."

"The email list he's talking about are people who are already aware of the issue," said Sullivan. "There are many, many people who have no knowledge DOGGR even exists. There are people in LA deeply concerned with environmental issues who simply have not yet been made aware of this threat to the state and who would be engaged if only they knew about it," said Sullivan.

Sullivan also believes DOGGR should investigate the complaints of many who are on the list who have not received notification. "I think that would be a really good idea for them to investigate why we've heard from so many that they have not received the notice," Sullivan told CPR.

"I'm glad to hear him say they will provide more notice in the future, but honestly, I think they are trying to minimize public awareness and public participation and are not terribly interested engaging the public in drafting these regulations. I think that's fairly evident."

Sullivan said that while the Senate Joint hearing on the subject last week was informative, "there are all kinds of numbers out there and no one's really sure what figures are correct."

At last week's hearing DOGGR claimed there were approximately 628 fracking wells out of the approximately 50,000 wells statewide. Sullivan says the industry's own figures indicate as many as one third of the wells in California are being or have been 'fracked.'

Fracking wells experience a "casing" or "pipe" or surface water migration failure of approximately 6-9 percent in other states, even when closely monitored, according to DOGGR representatives at last week's hearing, so the number of wells, which expected to proliferate in the state as out-of-state oil companies attempt to exploit the Monterey Shale deposit's severance tax-free oil from California as quickly as possible, is important.

Environmentalists in Sacramento last week were alarmed to learn that oil companies are not curtailed from using groundwater supplies in the state, even during drought years, speculating out-of-state oil producers are in the position of both depleting, and contaminating, California's local groundwater tables and aquifers.

Some environmental opponents of fracking have questioned coinciding rising gas prices in California just as the first hearing on fracking gets underway. There remain major concerns for California's agriculture and its local groundwater supplies as the state's separation of property rights and mineral rights means that out-of-state mineral rights owners like Shell, Texaco, BP, and Exxon/Mobil have little concern about the long-term effects of 'fracking' failures on California's fertile soil or groundwater supplies.

The daytime meeting will run from 9 a.m. to 4 p.m. at the downtown Doubletree Hotel, 120 South Los Angeles Street, in Los Angeles. DOGGR has not released any information on the other two planned public hearings, one of which will take place in Sacramento and one in the Fresno or Bakersfield area. There is no plan to engage or include the San Francisco Bay Area or San Diego regions