



US Ignored Fracking In Granting Calif. Leases, Judge Says

By Keith Goldberg

Law360, New York (April 08, 2013, 5:38 PM ET) -- The U.S. Interior Department has violated the National Environmental Policy Act by failing to assess the risks of fracking before leasing 2,700 acres of California land for oil and gas extraction in 2011, a California magistrate judge said.

U.S. Magistrate Judge Paul S. Grewal said the Bureau of Land Management unreasonably relied on projections that the oil companies would install a single well on 1 acre as proposed and should have studied the potential environmental effects of hydraulic fracturing before leasing the land in Monterey and Fresno counties, granting a summary judgment motion filed by the Center for Biological Diversity and the Sierra Club.

The judge rejected the agency's contention that such studies would be premature and overbroad.

"Ultimately, BLM argues that the effects of fracking on the parcels at issue are largely unknown. The court agrees," Judge Grewal said in a March 31 order that was made public Sunday. "But this is precisely why proper investigation was so crucial in this case. BLM's dismissal of any development scenario involving fracking as 'outside of its jurisdiction' simply did not provide the 'hard look' at the issue that NEPA requires."

The Center for Biological Diversity and the Sierra Club launched their attack on the BLM in California federal court in late 2011, shortly after the California land deal went through. Their lawsuit claimed the BLM violated NEPA and the Mineral Leasing Act by not studying how potential fracking on the contested land could affect local groundwater and endangered species such as the San Joaquin kit fox and the blunt-nosed leopard lizard.

Fracking has been associated with more than 1,000 cases of water contamination, particularly from chemicals used in the practice, such as benzene and toluene, the lawsuit said.

In 2006, when the BLM was beginning to assess proposed fuel development on the California lands, it worked from a guidelines established in the mid-1990s, before fracking was a major method of extracting fuel, CBD attorney Brendan Cummings told Judge Grewal during oral arguments in January.

In the past five years, with the introduction of "slick water" chemicals that enable hydraulic fracking, the practice is booming — and many oil companies are using it to mine the land, even though those plans aren't in their lease agreements, Cummings said.

Romney Philpott, an attorney with the U.S. Department of Justice, pointed out to Judge Grewal that the BLM had performed a trio of environmental studies before the leases were approved. He agreed if there were evidence of a fracking boom in California, that the government should have taken it into account, but argued that the evidence instead suggests oil and gas companies aren't increasing their use of fracking.

The Interior Department declined to comment Monday, and representatives for the environmental groups couldn't immediately be reached for comment.

The environmental groups are represented by Brendan R. Cummings and David Robert Hobstetter, staff attorneys for the CBD, and Nathan Matthews, staff attorney for the Sierra Club.

The case is Center for Biological Diversity and Sierra Club v. the Bureau of Land Management et al., case number 5:11-cv-06174, in the U.S. District Court for the Northern District of California.

--Additional reporting by Beth Winegarner. Editing by Lindsay Naylor.