



## California court ruling gives hope to foes of fracking

Rory Carroll and Braden Reddall/Reuters  
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SAN FRANCISCO (Reuters) - A court ruling that the U.S. government must consider the environmental impact of "fracking" on federal lands leased to oil companies offers opponents of the technique a useful weapon in the fierce public debate in California and other parts of the country.

In a regulatory setback for hydraulic fracturing on public lands, a federal magistrate judge in San Jose, California, on Monday ruled that the Bureau of Land Management (BLM) failed to analyze its impact on 2,500 acres in Monterey County.

While energy lawyers were skeptical about the ruling's long-term impact, it was hailed as a victory for environmentalists trying to stop fracking in the state due to concerns about its groundwater impact and the potential for increased fossil fuels output contributing to climate change.

The ruling could even inspire environmental groups to sue the BLM in other states as oil companies accelerate their leasing of federal lands for fracking, said Brendan Cummings, a lawyer for the Center for Biological Diversity.

"While the ruling has most direct impact on public lands in California, it also sets an important legal and policy precedent that federal and state agencies around the country would be wise to heed," said Cummings, whose group brought the suit with the Sierra Club.

Celia Boddington, a spokeswoman for the BLM, said: "We are evaluating the ruling."

Monterey county captures just part of the vast Monterey shale formation, estimated by the U.S. Energy Information Administration to hold 15 billion barrels of technically recoverable oil, or four times that of the Bakken formation centered on North Dakota.

Most of that oil is not economically retrievable except by hydraulic fracturing, or fracking, a production-boosting technique in which large amounts of water, sand and chemicals are injected into shale formations to force hydrocarbon fuels to the surface.

Cummings believed the San Jose ruling would likely have implications for a more recent and much larger lease sale of 18,000 acres for oil and gas development in the same general region.

Judge Paul Grewal did not hand down a remedy, instead asking the BLM and the environmental groups to confer and submit an agreed upon path forward by next week.

Jack Luellen, a Denver-based managing partner at energy law firm Burleson LLP, said the potential for a time-consuming BLM environmental impact statement would put the burden on the BLM to "prove a negative," or that fracking would not cause damage.

"If you're anti-fracking, delaying is almost as good as barring it," Luellen said.

But James Pardo, a partner at the law firm of McDermott Will & Emery LLP, believed a full separate study of the Monterey shale was unlikely to be necessary even though the geology is different from other U.S. shale plays. But a "harder look" at the issue would be necessary.

"The court's telling them to square those corners," he said. "Note this judge did not void the leases ... This judge is looking at a reasonable solution."

Bill Allayaud, California director of government affairs for the Environmental Working Group, said the court decision could cause the BLM to rethink how it leases land.

Oil and gas drilling on BLM lands has shot up in recent years as advances in horizontal drilling and fracking have made hard-to-reach deposits recoverable.

As a share of overall U.S. production, oil from federal onshore land accounted for about 5 percent of the total last year, and 12 percent for natural gas, according to federal data.

About 98 percent of the land under BLM control is in the western United States, including Alaska. California accounts for 6 percent of the 247 million acres under BLM control, according to the most recent statistics available on the agency's website.

California regulators are in the process of devising rules for fracking.

It is already the subject of a state-level court battle. That lawsuit, brought by the Center for Biological Diversity, Earthworks, Environmental Working Group and Sierra Club, accuses the state regulator with failing to evaluate the risks.

The state case is Center for Biological Diversity et al v California Department of Conservation, Division of Oil, Gas and Geothermal Resources, Case no. RG12652054, in Alameda County Superior Court, Oakland, CA.

The federal case is Center for Biological Diversity and Sierra Club v Bureau of Land Management, Case no. 11-06174 PSG in the U.S. District Court for the Northern District of California in San Jose, CA.