

MONTEREY COUNTY WEEKLY

Federal Court Smacks Feds over Monterey County Oil Leases

By Sara.Rubin
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A controversial lease of federally owned oils and reserves has been reversed by a federal judge.

The decision slams the federal Bureau of Land Management for violating federal law in failing to consider the potential impacts fracking on the leased underground property, which included about 2,600 acres in Monterey and Fresno counties.

BLM routinely leases out the feds' underground mineral estate to interested oil and gas prospectors. The decision could have significant impacts on how the BLM goes about conducting the required environmental analysis that accompanies lease sales.

In preparing environmental documents to analyze the potential impacts of the 2011 lease sale, BLM did not take into account the possibility that fracking could alter the business of oil development, according to U.S. Magistrate Judge Paul Grewal of the U.S. District Court for the Northern District of California.



“Ultimately, BLM argues that the effects of fracking on the parcels at issue are largely unknown. The court agrees. But this is precisely why proper investigation was so crucial in this case,” Grewal wrote in the decision released on Sunday.

The court agreed with the plaintiffs in the case, San Francisco groups Center for Biological Diversity and Sierra Club, that BLM should have more rigorously investigated the changing economic and technological landscape of the oil and gas industry, which is making fracking a more prevalent practice, particularly in deep geological formations like the Monterey Shale.

“The Obama Administration will no longer be able to rubber stamp auctioning off our public lands to oil companies,” Center for Biological Diversity Senior Counsel Brendan Cummings says.

Grewal is careful in his decision not to issue an opinion on the practice of fracking itself, and repeatedly states that the court should defer to BLM, the subject matter expert on the practice, but writes that the federal agency didn't look deep enough in the possibility that fracking could take off.

"[The National Environmental Policy Act] places an obligation on federal agencies to take a 'hard look' at 'every significant aspect of the environmental impact of a proposed action,'" Grewal wrote.

"Whatever one's views of the virtue and vice of fracking, it is undisputed that fracking's potential—both good and bad—has not gone unnoticed."

BLM projected no more than 15 wells would be drilled over the next two decades, based on prior slow growth in oil development in the region: "This trend is not likely to change much," BLM officials wrote in environmental documents.

But the court disagreed with that assessment:

"BLM plainly limits its analysis to one scenario—a lessee drills an exploratory well, no oil is found, and the lessee halts all further exploration. Even BLM itself has acknowledged that fracking activity in the United States has increased dramatically in recent years.

"But rather than engaging in this reality by at least considering what impact might result from fracking on leased lands, whatever its ultimate conclusion, BLM chose to simply ignore it."

Grewal takes into account the potential for water contamination, and opposition by local environmental activists as well as the Monterey County Board of Supervisors.

BLM officials were not immediately available for comment Monday afternoon.

The decision applies to two parcels in Monterey County, and Cummings says it should also have a precedent-setting affect on another BLM lease sale last September—a much bigger one, at more than 6,000 acres—that followed the same type of environmental analysis.

The Center for Biological Diversity is preparing to file a separate federal lawsuit over the 2012 lease, Cummings says.

The parties are ordered to meet and come up with a proposal for how to comply with the court's decision by April 15.