



As Calif. develops regulations, opponents re-strategize how to win fracking moratorium

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Emergency rules policing unconventional drilling for oil and natural gas took effect Jan. 1 in California, and the state is crafting permanent restrictions that become law next year.

The developments arrived after a multiyear battle over the practice of hydraulic fracturing, or fracking, in which companies blast chemical-laced water some 8,000 feet underground at high pressure to break apart rock formations and release petroleum.

The Golden State's actions, however, have failed to squash a drive to ban hydraulic fracturing entirely. If anything, the new law that ordered the regulations appears to have added fuel to the anti-fracking fire.

Most major environmental groups in the state now are uniting behind an effort to pressure California Gov. Jerry Brown (D) to impose a moratorium on fracking. Several plan to join in a letter to Brown next week asking him to act by executive order. Separately, a group of nine Democratic lawmakers this week sent a letter to Brown urging that same action. Democrats control both chambers of the state's Legislature.

"The vast public health and safety implications of fracking, as well as the tremendous

public concern over this practice require our collective and urgent action," the letter from seven Assembly members and two state senators said. "We believe it is time to join with Californians who disapprove of the dangers fracking poses to their communities."

Brown, while supportive of some environmental protections around drilling, has steered away from imposing too many restrictions on fracking. That position isn't likely to change any time soon, several analysts said.

"The tide may be starting to turn against fracking, but I don't think it's gotten to the point where the governor will call a moratorium, given his past actions to allow fracking to proceed without strong regulatory oversight," said Ethan Elkind, a climate research fellow at the University of California, Berkeley's School of Law.

"The drought may be the big wild card," Elkind added, as fracking uses large amounts of water and environmentalists are beginning to push on that point. "We won't know until February," he said, "which is when the governor would declare an official drought if we don't get any more rain before then."

Last year when asked about where he stood on hydraulic fracturing, Brown said he had "sympathy for oil drilling in California ... because 98 percent of people are using oil that's

imported.” He added that “until we get them in electric cars, or walking, or riding their bikes, we need oil” (EnergyWire, May 15, 2013).

The state is taking action under S.B. 4, a measure that passed last year and required the state to roll out rules on fracking, Brown’s spokesman Evan Westrup said this week after the letter from lawmakers. The letter was signed by Assembly Members Marc Levine, Das Williams, Adrin Nazarian, Richard Bloom, Loni Hancock, Bonnie Lowenthal and Philip Ting and Sens. Noreen Evans and Lois Wolk.

“After extensive debate, the Legislature -- including the authors of this letter -- voted to enact S.B. 4, which became effective just days ago,” Westrup said. “The regulatory process has begun, and we encourage these legislators and other interested citizens to actively participate.”

The groups wanting a moratorium say they know they have a tough fight, as the Legislature last year killed three bills that sought moratoriums. But quests for controversial changes can take several attempts, they said.

“I do believe this is going to be an important year for moving the conversation forward,” said Brian Nowicki, California climate policy director at the Center for Biological Diversity. “We’re going to be moving a lot more folks in the right direction both within the Legislature and without.”

While the moratorium measures failed last year, he said, they “have many more legislators educated,” and it’s “all part of the process. This is a big bill, and big bills don’t necessarily pass the first time they come out.”

Oil industry sees moratorium as unlikely
S.B. 4, from Sen. Fran Pavley (D), last year was the sole surviving measure of several that sought

to restrict hydraulic fracturing. At one point there were 10 bills, including three that sought a ban. Two of those were killed in committee. (They came from Nazarian and Bloom, both of whom signed the letter this week to Brown.) The third, A.B. 1323 from then-Assemblywoman Holly Mitchell (D), died in the Assembly on a 24-37 vote. Another 20 lawmakers did not vote on it (EnergyWire, May 31, 2013). Mitchell has since been elected to the state Senate.

Green groups were divided on S.B. 4, with several opposing because they argued it didn’t provide enough protections. Others said that even limited oversight was needed until tougher rules could be achieved. Some lawmakers who voted for the measure agreed.

“The governor’s office pleaded with legislators to pass S.B. 4,” said Levine, lead lawmaker on the letter this week to Brown. “The choice was no regulations or some regulations.”

The legislation that was approved left “many of us unsatisfied,” Levine said, adding, “I don’t think it meets public health and safety standards that I was seeking.”

A “time-out” is needed, he said, to fully learn about the risks and implications of fracking.

A trade group representing oil and natural gas companies said that “from our perspective, not much has changed” from last year when green groups also sought a ban.

“The same coastal representatives who were unsuccessful in getting the Legislature to embrace a moratorium last year are now

asking the governor to embrace a moratorium, which he has said he will not do,” Tupper Hull, spokesman for the Western States Petroleum Association (WSPA), said in an email.

“The same groups that oppose petroleum energy at every possible opportunity are using the S.B. 4 regulatory hearings as a soapbox to misrepresent the safety record of hydraulic fracturing,” Hull added. “What’s new here?”

Rock Zierman, CEO of the California Independent Petroleum Association, noted that when a moratorium was considered last year, it “only garnered 24 votes out of 80 assembly members.”

“The only thing that has changed since then is that (1) the author of the moratorium has left the Assembly for the Senate (one less vote) and (2) the governor and [state Division of Oil, Gas and Geothermal Resources] are in the process of implementing the toughest [hydraulic fracturing] regulations in the country,” Zierman said in an email.

The green groups and lawmakers said they have new strategies for getting a ban.

Fracking has been occurring in California for decades, and the state has “never reviewed the effects to our aquifers, soils, air or any health effects of the unknown and undisclosed chemical mixtures being used to frack for oil and gas,” said Teala Schaff, spokeswoman for Evans. Some of that is ordered under S.B. 4 but will not be complete for at least a year.

Evans is “hopeful that [Brown’s] platform of environmentalism and support of controversial environmental issues in the past like banning shark finning and bear hunting with dogs would lend to extending a pause in the practice

of fracking in [California] while regulations are drafted and studies are completed,” Schaff said.

“Governor Brown is a pragmatic guy,” she added. “He did sign S.B. 4, but that bill did not include a moratorium largely due to industry pressure, and he tends to look at the overarching issues. But S.B. 4 only begins the discussion of studying the effects and drafting regulations for the future; meanwhile, the practice continues unbridled today in communities throughout [California].”

In addition to directly lobbying in Sacramento, the fracking opponents plan to work in local communities where hydraulic fracturing is occurring, in order to drive activism and influence Brown. One online petition seeking a ban -- started 18 months ago by suburban Los Angeles resident Aura Walker, 44 -- has more than 36,800 signatures.

“The more people -- working-class people -- get involved, the bigger the movement can get,” Walker said. “It’s got to be at that level.”

Oil group citing S.B. 4 in court

The California Department of Conservation’s Division of Oil, Gas and Geothermal Resources (DOGGR) in November released preliminary rules on oil well stimulation activities in response to S.B. 4. Under the guidelines, companies using oil recovery techniques must obtain permits from the state, give at least 72 hours’ notice and identify where the work will occur. They need to reveal how much water would be used and the source of that fluid. Testing of the groundwater quality in most cases must happen in advance. There are rules on reporting earthquakes near drilling and chemicals used in fracking formulas.

The regulations are open for comment and are not yet final.

Green groups and lawmakers say they have new reasons for seeking a moratorium, some based on S.B. 4.

Soon after S.B. 4 passed, WSPA cited the new law as a reason to dismiss a lawsuit from the Sierra Club, the Center for Biological Diversity, Earthworks and the Environmental Working Group that charged the state has failed to properly police fracking. WSPA, in paperwork California filed in Superior Court in Alameda County, referred to the fact that the state will be governing fracking but that the final rules do not take effect until 2015 (EnergyWire, Oct. 30, 2013).

“DOGGR is required under S.B. 4 to conduct a statewide Environmental Impact Report (EIR) under [the California Environmental Quality Act], analyzing the potential effects of well stimulation,” the WSPA filing said. “... In the short term the Legislature stated that DOGGR shall allow the continued practice of hydraulic fracturing while DOGGR conducts this EIR and adopts these regulations. ... Given that the Legislature in S.B. 4 has described how DOGGR is required to conduct its review of hydraulic fracturing under CEQA, plaintiffs’ claims are moot and should be dismissed.”

A judge considered WSPA’s motion to dismiss in a hearing last month. Both sides are waiting for a decision.

It’s a concern that the oil industry is using S.B. 4 to buttress its ability to use fracking with limited environmental oversight, the Center for Biological Diversity’s Nowicki said. There are questions whether enough review is being done for the next year while DOGGR develops the final regulations.

“The only way to truly protect California and Californians from the threat and dangers of fracking is to ban fracking,” Nowicki said. “If we don’t continue to push the message, then the industry takes this year to run away while the regulations aren’t in place yet but are being developed.”

The oil industry has said there is environmental oversight of drilling operations.