

From:
To: pocswellstim@anl.gov
Cc:
Subject: Request for Hearing on the Draft Programmatic Environmental Assessment
Date: Friday, March 04, 2016 2:02:50 PM
Attachments: [Letter to BOEM and BSEE Requesting Hearing FINAL \(3.4.16\).pdf](#)

Hello,

Attached please find a letter from 34 organizations requesting a public hearing on the draft environmental assessment and a two-week extension of the public comment period.

Thank you,
Kristen

Kristen Monsell
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• Ballona Creek Renaissance • Californians for Western Wilderness • Center for
Biological Diversity • Citizens Coalition for a Safe Community • Citizens For Responsible
Oil & Gas • Clean Water Action • Coastal Environmental Rights Foundation • Community
Science Center • Courage Campaign • Earthworks • Food & Water Watch • Frack Free
Butte County • Frack Free Culver City • Fresnans Against Fracking • League of United
Latin American Citizens • Local Clean Energy Alliance • Mercedians Against Fracking •
• Natural Resources Defense Council • North American Climate, Conservation and
Environment • OCICE • Rootskeeper • Santa Barbara Frack Back to Save the Central
Coast • Sierra Club • SLO 350 • South Bay Los Angeles 350 Climate Action Group • Stop
Fracking Long Beach • Sunflower Alliance • Tar Sands Action Southern California •
• The Wildlands Conservancy • Tri-City Ecology Center •

Via Electronic and First Class Mail

February 4, 2016

Rick Yarde
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David Fish
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Bureau of Safety and Environmental Enforcement
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**RE: Draft Programmatic Environmental Assessment of the Use of Well Stimulation
Treatments on the Southern California Outer Continental Shelf; 81 Fed. Reg. 8,743 (Feb.
22, 2016)**

Dear Mr. Yarde and Mr. Fish:

On behalf of 350 Bay Area, 350 Santa Cruz, 350 Silicon Valley, Aqua Terra Aeris Law Group, Ballona Creek Renaissance, Californians for Western Wilderness, the Center for Biological Diversity, Citizens Coalition for a Safe Community, Citizens For Responsible Oil & Gas, Clean Water Action, Coastal Environmental Rights Foundation, Community Science Center, the Courage Campaign, Earthworks, Food & Water Watch, Frack Free Butte County, Frack Free Culver City, Fresnans Against Fracking, League of United Latin American Citizens, Local Clean Energy Alliance, Mercedians Against Fracking, the Natural Resources Defense Council, North American Climate Conservation and Environment, OCICE, Rootskeeper, Santa Barbara Frack Back to Save the Central Coast, the Sierra Club, SLO 350, South Bay Los

Angeles 350 Climate Action Group, Stop Fracking Long Beach, Sunflower Alliance, Tar Sands Action Southern California, and the Wildlands Conservancy, and the Tri-City Ecology Center, we hereby request a public hearing on the Draft Programmatic Environmental Assessment of the Use of Well Stimulation Treatments on the Southern California Outer Continental Shelf prepared by the Bureau of Ocean Energy Management (“BOEM”) and the Bureau of Safety and Environmental Enforcement (“BSEE”).¹ We also request an extension of the thirty-day comment period.²

BOEM and BSEE prepared the Draft Environmental Assessment under the National Environmental Policy Act (“NEPA”) in order to evaluate the impacts of permitting offshore fracking, acidization and other types of dangerous well stimulation treatments.³ NEPA, America’s “basic national charter for protection of the environment,”⁴ requires federal agencies to take a “hard look” at the environmental consequences of their actions before taking action.⁵ In this way, NEPA ensures that federal agencies “will have available, and will carefully consider, detailed information concerning significant environmental impacts” and that such information “will be made available to the larger [public] audience that may play a role in both the decisionmaking process and the implementation of the decision.”⁶

In keeping with these goals, NEPA regulations require all federal agencies to “[m]ake diligent efforts to involve the public” in the NEPA process.⁷ In addition, agencies “*shall* . . . [h]old or sponsor public hearings or public meetings whenever appropriate.”⁸ Criteria used to determine whether an agency should hold a public hearing include “whether there is substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.”⁹

The criteria are clearly met in this instance because approval of offshore fracking and acidization constitutes a substantial environmental controversy. A “controversy” exists when there is “a substantial dispute [about] the size, nature or effect of the major Federal action.”¹⁰ An “outpouring of public protest” has been held to satisfy the requirement of “substantial dispute.”¹¹

There as certainly been an “outpouring of public protest” about offshore fracking. For example, when the public first learned that oil companies were fracking off California’s coast, demonstrations were held across the state, where the public protested offshore fracking and the federal government’s approval of the practice.¹² And a number of conservation organizations

¹ 81 Fed. Reg. 8,743 (Feb. 22, 2016).

² *See id.* (stating comments on the draft programmatic environmental assessment are due March 23, 2016).

³ Draft Programmatic Environmental Assessment of the Use of Well Stimulation Treatments on the Southern California Outer Continental Shelf at ES-1.

⁴ 40 C.F.R. § 1500.1(a).

⁵ *Kleppe v. Sierra Club*, 427 U.S. 390, 410, n. 21 (1976); 40 C.F.R. § 1500.1(a).

⁶ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

⁷ 40 C.F.R. § 1506.6(a).

⁸ *Id.* § 1506.6(c) (emphasis added).

⁹ *Id.*

¹⁰ *Blue Mountains Diversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998) (citations omitted).

¹¹ *Greenpeace Action v. Franklin*, 14 F.3d 1324, 1334 (9th Cir.1992).

¹² *See e.g.*, Fracking foes plan Coastal Commission rally today in Long Beach, OC Register, Mar. 11, 2014,

sent letters to BOEM and BSEE urging the agencies to place a moratorium on offshore fracking, acidization and other well stimulation treatments unless and until extensive environmental review was conducted and the practices proven safe.¹³ Moreover, the oil industry claims offshore fracking has no adverse environmental impacts, while numerous scientists and reports have linked fracking to water contamination, air contamination, spills, earthquakes and birth defects.¹⁴ BOEM and BSEE's proposal to allow oil and gas companies to use offshore fracking and other well stimulation treatments in the future therefore clearly constitutes a substantial public controversy. Indeed, it is hard to imagine an issue more fitting of this description than offshore fracking. Moreover, the number of groups signed on to this request demonstrate that there is substantial interest in holding the hearing. A public hearing is therefore required.

For this same reason, we also request an extension of the public comment period. BOEM and BSEE released the Draft Programmatic Environmental Assessment on February 19, 2016 and opened the comment period on February 22, 2016. But it has given the public a mere 30 days before the comment period closes. This time period is very brief, particularly given the controversial and highly scientific and technical nature of the action at issue.

A longer time period for public comment would be in keeping with the overall purpose of environmental review under NEPA — to solicit comments from individuals, scientists, conservation organizations, and other interested parties to ensure that the agency has all relevant information, including “high quality” data, “[a]ccurate scientific analysis, expert agency comments, and public scrutiny,” before making a final decision.¹⁵ A longer time period would also be consistent with one of the basic tenets of administrative law — that “[t]he opportunity for comment must be a meaningful opportunity.”¹⁶ Accordingly, we respectfully request that BOEM and BSEE extend the current comment deadline of March 23, 2016 by 15 days, so that the comment period closes on April 7, 2016.

In sum, given the substantial controversy surrounding BOEM and BSEE's proposed action, we request a public hearing during the comment period on the Draft Environmental Assessment. For the same reason, and because of the highly technical and scientific nature of the

<http://www.ocregister.com/articles/fracking-605193-commission-beach.html>; Hundreds of Tribal Representatives Join Huge Rally to Oppose Fracking, IC Magazine, Mar. 18, 2014, <https://intercontinentalcry.org/hundreds-tribal-representatives-join-huge-rally-oppose-fracking-22513/>

¹³ See e.g., Letter from the Center for Biological Diversity to BOEM and BSEE, Oct. 3, 2013, http://www.biologicaldiversity.org/campaigns/offshore_fracking/pdfs/LetterOnOffshoreFrackingMoratoriumNEPA_2013.pdf; Letter from Environmental Defense Center, et al. to BOEM and BSEE, Dec. 23, 2013, <http://documents.coastal.ca.gov/reports/2014/2/W7a-2-2014.pdf>, pg. 12.

¹⁴ See e.g., Goebel, T. H. W., S. M. Hosseini, F. Cappa, E. Hauksson, J. P. Ampuero, F. Aminzadeh, and J. B. Saleeby (2016), Wastewater disposal and earthquake swarm activity at the southern end of the Central Valley, California, *Geophys. Res. Lett.*, 43, doi:10.1002/2015GL066948; Ellen Webb, et al. 2014. Developmental and reproductive effects of chemicals associated with unconventional oil and natural gas operations. *Reviews on Environmental Health*. Vol. 29, Issue 4, pp. 307–318, ISSN (Online) 2191-0308, ISSN (Print) 0048-7554. doi: 10.1515/reveh-2014-0057; California aquifers contaminated with billions of gallons of fracking wastewater, RT.com, Oct. 2014, <https://www.rt.com/usa/194620-california-aquifers-fracking-contamination/>; Fontenot, Brian E, et al. 2013. An evaluation of water quality in private drinking water wells near natural gas extraction sites in the Barnett Shale Formation. *Environ. Sci. Technol.* 47 (17), pp 10032–10040; doi: 10.1021/es4011724.

¹⁵ *Id.* § 1500(b); *Robertson*, 490 U.S. at 349; 42 U.S.C. §§ 4331; 4332.

¹⁶ *Rural Cellular Ass'n v. F.C.C.*, 588 F.3d 1095, 1101 (D.C. Cir. 2009).

action, we also request a 15-day extension of the comment period. Thank you for your attention to this matter. We look forward to your prompt reply.

Sincerely,

/s/ Kristen Monsell

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