

**The California Oil and Gas Report**

# Judge Rules BLM Must Allow Additional Review of Hydraulic Fracturing

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#### By Dennis Luna, J.D., P.E.

The U.S. Bureau of Land Management (BLM) violated the National Environmental Policy Act (NEPA) by failing to include No Surface Occupancy (NSO) clauses when it sold oil and gas leases in California, a federal judge has ruled.

U.S. Magistrate Judge Paul Grewal in San Jose, California, said the BLM violated the environmental law when it sold four leases for 2,700 acres of federal land in Monterey and Fresno counties. In a ruling filed March 31, the judge said the agency should not have relied on outdated reviews which were conducted before hydraulic fracturing, or ‘fracking,’ accelerated development of energy deposits. ([Click here for a copy of the ruling](http://www.caloilgas.com/wp-content/uploads/2013/04/US-District-Court-CBD-vs-BLM.pdf).)

“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,” Judge Grewal said in his ruling.

The court found that the NSO leases absolutely prohibited any surface-disturbing activities and were more akin to a right of refusal than an actual lease for drilling. NSO leases therefore did not constitute an “irretrievable commitment of resources.”

When the BLM issues a lease that fails to include NSO clauses, the winning bidder receives vested rights that limit’s BLM’s ability to review and deny permits for well drilling. For that reason, the judge ruled, the BLM must either include NSO provisions in the leases or consider the environmental impacts of hydraulic fracturing prior to leasing the land.

The ruling resulted from a lawsuit filed in 2011 by the Center for Biological Diversity, which has taken the position that fracking poses a risk to California’s land, air and water. The group asked Judge Grewal to invalidate the leases, but he declined to do so. Instead he ordered both sides to submit proposed remedies by April 15. He granted the government’s request to disallow claims that the leases violated the Mineral Leasing Act.

The judge emphasized that he was not ruling on fracking itself. What was before the court, he said in his decision, was whether the BLM acted in accordance with the law. “What is not is the policy question of whether fracking in the Monterey Shale or anywhere else is a good thing or a bad thing,” he said.

Blair Knox, Director of Public Affairs for the California Independent Petroleum Association, noted that “This court decision is about procedure, not the merits of hydraulic fracturing. But on the merits, scientists, state regulators and federal officials have already concluded on many occasions that hydraulic fracturing is fundamentally safe and the environmental footprint of oil and gas development is limited and manageable. Any additional review from BLM will almost certainly reach the same conclusion.”

Dennis Luna is the Editor In Chief of the California Oil and Gas Report and is Managing Partner of Luna & Glushon. He is considered one of the top energy and real estate attorneys in California. Dennis is a graduate of Harvard Law School and a licensed Professional Engineer. He holds a Master of Science in Petroleum Engineering from the School of Petroleum Engineering at the University of Southern California, where he also earned a Bachelor of Science in Petroleum Engineering and a Master of Business Administration.