Shale and Hydraulic Fracturing

Federal

Advocacy groups challenged federal oil and gas leasing. WildEarth Guardians and Physicians for Social Responsibility filed suit in federal district court against the U.S. Bureau of Land Management (BLM), contending that 397 oil and gas leases issued since 2015 are invalid because BLM allegedly failed to perform an adequate analysis under the National Environmental Policy Act (NEPA). The complaint alleges that BLM failed to properly analyze climate impacts from oil and gas development on public lands and criticizes oil and gas leasing as undermining President Obama’s pledge to mitigate climate change. The groups seek a moratorium on all oil and gas leasing until BLM identifies each lease sale’s direct greenhouse gas emissions, estimates indirect downstream emissions, predicts cumulative emissions combined with all other onshore oil and gas development, and calculates the “social costs” of each lease using the “social cost of carbon” advanced by the U.S. Environmental Protection Agency (EPA). The leases at issue cover over 380,000 acres in Colorado, Utah and Wyoming.

EIA projected tight oil production will continue its decline until 2017 turnaround. The U.S. Energy Information Administration (EIA) reported that, based on projections from its Annual Energy Outlook 2016, tight oil production is expected to decline by 700,000 barrels per day until turning around in 2017. That represents an approximate 14 percent decline from the production peak in 2015. While recognizing that the industry has significantly decreased its investments in tight oil due to stagnant prices, EIA believes that the downturn will ultimately spur greater efficiencies in well drilling and completion techniques that will increase yields from a single well. Once production costs decline further, EIA anticipates the Bakken shale play to produce 1.3 million barrels per day by 2019, enough to surpass the Eagle Ford as the country’s highest producing tight oil formation. When considering current trends and known technically recoverable resources, the EIA projects that Bakken production could increase to 2.3 million barrels per day (at $136 per barrel) by 2040, amounting to roughly a third of projected tight oil production.

States

Environmental groups sued to place hydraulic fracturing ban on Ohio ballots. Environmental groups filed a complaint in the Ohio Supreme Court against the Ohio Secretary of State and three county election boards challenging decisions to keep hydraulic fracturing bans off of November ballots. The initiatives would have turned municipalities into charter systems with a “community bill of rights” that would ban hydraulic
fracturing; strip corporations of various rights such as the right to speak in opposition to the bans or challenge ordinances; and invalidate conflicting state and federal laws. Election boards in Athens, Meigs and Portage counties found that the proposed ballot initiatives were invalid under state law and Ohio Secretary of State Jon Husted upheld the election board decisions, finding that the ballot measures failed to comply with an Ohio Constitution provision requiring charter government proposals to describe the full range of powers and duties of officers in the proposed charter county. The groups sued, however, claiming that there are sufficient details in the proposed charters to satisfy the requirement, including cross-references to existing law. This recent complaint follows an earlier action challenging a decision finding a similar ballot initiative invalid for a proposed charter for a fourth Ohio county, Medina County.

**Texas Sunset Advisory Commission issued a report recommending changes to Texas Railroad Commission and regulation of oil and gas development.** The Texas Sunset Advisory Commission issued its 2016 report recommending changes in how the Texas Railroad Commission (RRC) regulates oil and gas development. The Sunset Commission periodically reviews agency funding and functions in order to recommend changes to the legislature. The RRC used the review to appeal for a 19 percent funding increase that would largely fund 51 new inspectors as well as an electronic permitting and hearing system to replace the current system, which relies chiefly on hard-copy records. Commissioners also asked for a more stable funding mechanism. Since most of its budget is raised through fees collected from the oil and gas industry, the recent downturn has strained its budget and led to staff reductions. Environmental groups have used the review to seek a complete overhaul of the RRC, claiming that the elected commissioners are too aligned with industry. In response, the Sunset Commission has recommended the RRC be more aggressive in enforcement and proposed ways to change the RRC’s makeup and restrict industry campaign contributions. Other recommendations include divesting the RRC of power over gas utility regulations and contested administrative cases. The RRC disagreed with many of the recommendations, seeing no need for major reforms. The report now goes to the state legislature for its consideration.

**Oklahoma Corporation Commission acted in response to earthquakes and U.S. EPA issued a report on seismic activity in Texas.** A pair of earthquakes just under magnitude 4.0 near the town of Luther prompted the Oklahoma Corporation Commission to shut down two wastewater disposal wells and order 19 others to reduce their waste volumes. This is the first time disposal wells in Oklahoma were ordered to stop or reduce injections since March 2016, as quakes are down overall in 2016 when compared with last year. In Texas, EPA released a report blaming seismic activity in North Texas on wastewater disposal wells, saying the two are “correlated.” The RRC has stated that it lacks sufficient data to agree with EPA’s findings — a conclusion that EPA disputes, but EPA recommends daily monitoring and reporting of disposal well injection pressures and volumes to develop additional data. The RRC has imposed conditions on 28 wastewater disposal permits to mitigate the potential for seismic activity from disposal and denied 11 permit applications for wells that would have been sited in areas of historic seismicity.

If you have any questions regarding this Sidley Update, please contact the Sidley lawyer with whom you usually work or

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