

**BEFORE THE SUBCOMMITTEE ON
INDIAN AND ALASKA NATIVE AFFAIRS**

**COMMITTEE ON NATURAL RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES**

**Honorable James M. "Mike" Olguin
Vice Chairman, Southern Ute Indian Tribal Council
Southern Ute Indian Tribe**

**Oversight Hearing on Bureau of Land Management's
Hydraulic Fracturing Rule's Impacts on Indian Tribal Energy Development
April 19, 2012**

I. Introduction

Chairman Young, Ranking Member Boren and members of the subcommittee, I am Mike Olguin, the Vice Chairman of the Southern Ute Indian Tribe. I am honored to appear before you to provide testimony regarding Indian energy development. The leaders of my Tribe are glad that you have convened this oversight hearing to evaluate potential impacts on Indian energy development likely to result from the Bureau of Land Management's ("BLM") proposed rules regulating hydraulic fracturing undertaken in the development of Indian oil and gas resources. We have serious concerns regarding the BLM's approach to this matter, and we appreciate the opportunity to share those concerns with you today.

II. Background

The Southern Ute Indian Reservation consists of approximately 700,000 acres of land located in southwestern Colorado in the Four Corners Region of the United States. Our Reservation is part of the northern San Juan Basin, an area with that has seen widespread oil and gas development over a period of more than 60 years. The land ownership pattern within our Reservation is complex and includes tribal trust lands, allotted lands, non-Indian patented lands, federal lands, and state lands. In many situations, non-Indian mineral estates are adjacent to tribal mineral estates. This land ownership pattern is very significant and magnifies the impact of differences in federal regulation of Indian lands from the absence of regulation on neighboring non-Indian lands. Added regulatory burdens to the development of tribal minerals discourage development on Indian lands and provide a direct incentive to operators to lease and drill on offsetting non-Indian lands because of the associated cost savings. The revenues we receive from natural gas development on our Reservation are our tribe's economic lifeblood. For decades, we have worked with industry to ensure that oil and gas development occurs in an environmentally responsible manner on our lands.

Hydraulic fracturing involves the underground injection of fluid and proppants under high pressure in order to propagate and maintain fractures and enhance the movement and recovery of oil and gas. Hydraulic fracturing is necessary for the continued development of both

conventional and coalbed methane resources on our lands. Thousands of wells on our Reservation have been stimulated through hydraulic fracturing. Preliminary studies also indicate that there are significant recoverable reserves associated with shale formations underlying our Reservation that will require hydraulic fracturing in order to be produced.

Over the course of the extensive history of hydraulic fracturing on our Reservation, there have been no documented cases of adverse environmental impacts resulting from such well stimulation. It should be noted that the hydrocarbon bearing zones on our Reservation are located at depths much greater (2,500 to 8,000 feet below surface) than useable water aquifers (typically 100 to 300 feet below surface). Further, the hydrocarbon bearing zones are separated from useable aquifers by thick strata with low permeability. Even with those natural safeguards in place, our tribe has led the effort, with cooperation from the BLM, to ensure that oil and gas development activities do not adversely affect groundwater resources. Significantly, we have insisted upon regular Bradenhead testing of well integrity and have required cementing of well casings to surface.

In recent years, oil and gas companies have been able to recover oil and gas resources throughout the country from shales and tight formations previously considered unproductive. This recovery has been spurred by technological advances in horizontal drilling in association with hydraulic fracturing stimulation. The significant expansion of this activity into geographic areas not previously subject to oil and gas development has fostered debate regarding the environmental effects of hydraulic fracturing. These concerns have, in turn, led the Department of the Interior and the BLM to develop a response intended to ensure the public that, through government oversight and regulation, hydraulic fracturing occurring on federal and Indian leased lands will be undertaken in an environmentally safe and prudent manner.

III. The Process of Consultation with Affected Indian Tribes Has Been Inadequate.

In mid- December of last year, BLM's Assistant Director for Minerals and Realty Management Michael D. Nedd sent a letter inviting our tribe and other tribes to engage in government-to-government consultation regarding BLM's intent to develop regulations governing hydraulic fracturing on federal and Indian lands. We welcomed this initial invitation for early consultation. On January 19, 2011, a substantial contingent of our Tribe's staff, including representatives from our Energy Department, Natural Resources Department, and Environmental Programs Division, attended a BLM information session in Farmington, New Mexico, where representatives from the BLM provided basic information about hydraulic fracturing and asked for tribal input regarding the shape that any such regulations might take. We again congratulated BLM on this seemingly fresh approach to visiting with Tribes at the formative stages of regulation development. We also delivered at that time written comments from our Chairman Jimmy R. Newton, Jr. that addressed three principal matters: (1) suggestions for process; (2) a summary of the importance of hydraulic fracturing to the Tribe; and (3) a summary of potential environmental concerns and protection measures associated with hydraulic fracturing.

In commenting on the process going forward, Chairman Newton's letter specifically urged that "the consultation process include not only an opportunity to comment on proposed BLM regulations but consultation on the formulation of proposed regulations." Chairman Newton further suggested that "BLM circulate discussion drafts of possible regulations for review and comment before any proposed regulations are issued." Only recently have we learned that our concept of meaningful consultation has been shortchanged by the BLM. It is now our understanding that, notwithstanding our requests and suggestions, BLM proceeded to develop draft proposed regulations in isolation and submitted those draft regulations to the Office of Management and Budget for publication approval in the Federal Register as proposed regulations under the Administrative Procedures Act. We have not seen the text of the draft proposed regulations but we were provided with a summary sheet of their terms. Approximately ten days ago, we submitted written comments to the BLM expressing our deep concerns with many of the substantive proposals contained in those draft regulations.

Although we genuinely appreciated BLM's initial approach to consultation, we are not satisfied with this process as it is unfolding. It is vital that Congress and the Administration realize that every extra regulatory step, every extra required report, and every extra approval imposed by the Government on operators in Indian Country increases the costs of operating in Indian Country and decreases the competitive opportunity for Indian tribes to attract energy development dollars to our lands. That critical sensitivity is lost in the approach that is reflected in BLM's summary of its proposed regulations. More fundamentally, however, as to process, this is another example of the federal trustee's train leaving the station before Indian Country has had a chance to buy a ticket.

IV. The Tribe's Substantive Comments Would Improve the Quality of the Draft Regulations and Reduce Adverse Economic Impacts in Indian Country.

Chairman Newton's preliminary correspondence in January and written comments to the BLM in April stressed that any new regulations associated with hydraulic fracturing be cost effective and consistent with best available industry practices. The current set of draft regulations being reviewed by OMB does not meet those threshold objectives. A number of the proposals are impractical, expensive and will needlessly drive operators off of Indian lands.

For example, one of BLM's draft proposals would require a minimum 30-day advance notice and BLM approval of frac design before an operator could initiate well stimulation. Specific frac design does not occur until a well has been drilled and specific data regarding the target formation have been obtained, so it generally cannot be provided in advance of drilling. Once drilling has been completed, frac design proceeds quickly and fracturing operations begin as soon as possible in order to utilize equipment efficiently and minimize ongoing surface and wildlife disturbance. Even assuming that BLM has the personnel qualified to review and approve frac design, which is highly questionable, the approval process would cause substantial delays to an already time-sensitive process. Although a notice filing might be appropriate, an operator's ability to conduct hydraulic fracturing should not be contingent upon additional approvals beyond the Application for Permit to Drill ("APD").

Another example is reflected in BLM's suggestion that operators be required to provide cement bond logs ("CBLs") for all wells. Our experience indicates that requiring cement to the surface of well casing is a more cost effective approach to ensuring well integrity than universally requiring CBLs. CBLs are just one of a variety of additional tests or monitoring conditions that can be pulled from a hat and imposed upon operators by the BLM with little consideration for the cost or benefit to be obtained. In fact, even in the absence of approved regulations, we are increasingly seeing BLM add detailed conditions related to hydraulic fracturing as part of the APD approval process for standard wells under the guise of NEPA compliance. One recent condition called for microseismic monitoring during frac operations, which could add several hundred thousand dollars to the cost of well completion and stimulation while generating little or no useful information.

In raising these concerns, we are mindful of the important role that BLM plays in reviewing and processing oil and gas development activities on Indian lands. We, too, are actively involved in that review and we are protective of the environment. In the interest of safety and environmental protection, our Tribe has been a long-time supporter of operator disclosure of substances contained in frac fluids, and we will continue to participate in domestic water well testing and data collection. We are compelled, however, to express our concern that the steps being proposed by BLM to regulate hydraulic fracturing on our lands have been developed with little regard for practical considerations or the adverse financial impact that such regulations will have upon Indian tribes.

Conclusion

In conclusion, I am honored to appear before you today on behalf of the Southern Ute Indian Tribe. We hope that our comments will assist you in your important work on behalf of Indian Country. We look forward to continuing our work with the Subcommittee on this and other important matters.

At this point, I would be happy to answer any questions you may have.