

KIRKLAND & ELLIS

Blog Post

California Oil & Gas Legislation Takes Effect, Could Impact Production

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On January 17, 2020, California's Attorney General filed a [complaint](#) in the U.S. District Court for the Central District of California challenging the U.S. Bureau of Land Management ("BLM") decision to make certain federally managed lands in the state available for oil and natural gas development. The [lawsuit](#), brought on behalf of the Governor and various state agencies, alleges an inadequate environmental review associated with BLM's decision and is indicative of a broader policy shift on oil and natural gas taking place within the state.

Earlier in the month, on January 1, a series of significant changes to California's regulation of oil and natural gas production initially [announced](#) in November 2019 came into effect. The changes will appear familiar to those following a similar (but more sweeping) shift in Colorado [over the last year](#). Like Colorado, California will implement new regulations through a number of rulemakings that will likely take months or years to complete. However, during the interim period, California has decided to impose (i) a temporary moratorium on a particular type of production (i.e., high-pressure cyclic steaming process); and (ii) a third-party review of well stimulation permits.

In general, this shift elevates the importance of public health and environmental considerations in the regulation of oil and natural gas production within the state. In turn, production activity within the state is likely – at least in the near- and medium-term – to face both longer odds and longer waits for permitting.

Background

Building on significant legislation passed by his predecessor, California Governor Gavin Newsom added his imprint to regulation of oil and natural gas production by signing [Assembly Bill No. 1057](#) ("AB 1057") into law on October 12, 2019. The law renamed the

state's top oil and natural gas regulator from the "Division of Oil, Gas, and Geothermal Resources" to "Geologic Energy Management Division," a symbol of the shift in the regulator's priorities. The law specified that the newly renamed regulator was to focus on "protecting public health and safety and environmental quality, including reduction and mitigation of greenhouse gas emissions." In addition, the law included some more specific changes, increasing bonding and remediation requirements and penalties related thereto. In many ways, AB 1057 provided the direct predicate for the changes announced in November 2019.

These production-focused regulatory changes were enacted against the backdrop of other significant regulatory changes related to oil and natural gas being implemented across the state. For example, the state's top air emissions regulator had finalized [methane standards in March 2017](#). These methane standards phased in over several years, with the final set of requirements kicking in on January 1, 2020. Elsewhere in the state, more local regulation has impacted natural gas storage in Aliso Canyon and the use of natural gas in newly constructed buildings (e.g., Berkeley became the first California city to enact a ban on such use in [July 2019](#)).

Summary of Recent Changes

1. Moratorium on a Particular Type of Production: Spurred by leaks in Kern County, the Geologic Energy Management Division, has imposed a moratorium on a particular type of production common in that region of the state – namely, the high-pressure cyclic steaming process. The moratorium is temporary, pending additional study by the state and its technical collaborators. Importantly, the moratorium appears to be narrow. The state has clarified that cyclic steaming at lower pressures will not be impacted (i.e., will be allowed to continue).

2. New Rulemaking(s) Focused on Public Health and Safety: Like Colorado, California lawmakers are growingly focused on oil and natural gas production taking place near populated areas. While the changes announced last week provide directional certainty (i.e., more restrictive regulatory posture), the specifics will be resolved through a lengthy rulemaking process. The effort will involve a broad set of state regulators, including the state's Department of Public Health and Environmental Protection Agency; public health experts; local governments; industry and environmental leaders; and other stakeholders. The process will begin with a series of "pre-rulemaking" workshops that will be held across the state. Actual rules are not expected for at least a year.

3. Third-party Review of Well Stimulation Permits: Finally, California has decided to take aim at its broader process around approval of well stimulation permits, including permits to allow hydraulic fracturing. Responding to concerns raised by local and environmental advocates, the state had already started an internal review of its permitting process. The changes announced last week go further. The state has now instituted an “independent audit” of its permitting program. In addition, as that audit is underway, the state is instituting a third-party, scientific review of pending permit applications. This review’s stated focus is protection of public health and safety. Experts from the Lawrence Livermore National Laboratory have been retained to lead this review.

Next Steps

At least in the near- and medium-term, production activity within the state is likely to face both longer odds and longer waits for permitting. It is possible that new regulations will be challenged through litigation (and some industry leaders have signaled as much). However, much remains unsettled as many of the changes will become more specific through a lengthy rulemaking process that is just now kicking off.

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