



BLM's Proposed Rule on Hydraulic Fracturing Covers Drilling on Indian Lands

The Proposed Rule: On May 24, 2013 the Bureau of Land Management (BLM), published an updated draft of its proposed rule governing hydraulic fracturing (fracking) of oil and gas wells on federal and Indian lands.¹ The May 24 proposal by BLM, which is charged with managing oil and gas operations on both Federal and Indian Lands, updates earlier proposals. As the BLM notes, in FY 2012, “production from Indian leases was almost 29 million barrels of oil, 256 million Mcf of natural gas, and 155 million gallons of natural gas liquids, with a production value of \$3.4 billion and generating royalties of \$561 million” to tribes and individual allotted landowners.² Whether the Proposed Rule will appropriately balance production efficiency with environmental protection is of considerable consequence to Indian country.³

The Proposed Rule covers hydraulic fracturing (HF), injecting fluids into the host rock through the wellbore to induce cracks in the rock facilitating the flow of oil or gas to the wellbore, and also upon “re-fracturing,” when HF operation are performed on a previously “completed well. The current version of the Proposed Rule would impose (1) construction and verification standards for fracturing operations; (2) disclosure of the chemical components of the fracturing fluid; and (3) requirements for the management of “flowback” fluids from fracking operations. Comments on the proposal were due August 23, 2013.

The Role of Tribes: The Comments to the Proposed Rule state that “The BLM is committed to working with the tribes to coordinate implementation of this revised proposed rule with the tribes’ laws, rules, and permitting and inspection programs. The contents of such agreements or understandings might be different for each tribe”⁴ In addition, the Proposed Rule allows that a tribe (or state) may designate waters under Indian lands from protection under the regulation,⁵ and provides that it will cooperate with a tribe as to Indian lands (or a state as to non-Indian lands) in considering an operator’s request for a variance from requirements of the Proposed Rule.⁶

Stay Tuned: Tribes and tribal exploration and development affiliates, and private oil and gas developers holding development agreements or considering development on leases or minerals agreements for tribal or allotted minerals, should pay close attention to the progress of the Proposed Rule.

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¹ See Oil and Gas: Hydraulic Fracturing on Federal and Indian Lands, 78 Fed. Reg. 31636-31677 (May 24, 2013).

² 78 Fed. Reg. at 31661.....

³ See Eloise Odgen, Tex Hall: Proposed Fracking Regs Will Hurt Energy Development on Reservations, MHA News (March 30, 2012) available [here](#); see also, [Summary of comments of tribal leaders and states](#).

⁴ 78 Fed. Reg. at 31645.

⁵ See 78 Fed. Reg. at 31674 (Proposed § 3160.0-5 (Definition of “Usable Waters”)).

⁶ See 78 Fed. Reg. at 31640; see also id. at 31677 (Proposed § 3162.3-3(k)).