



January 14, 2014

Department of Conservation
ATTN: Well Stimulation Regulations
801 K Street, MS 24-02
Sacramento, CA 95814

Via electronic mail: DOGGRRegulations@conservation.ca.gov

Re: Comments on Proposed SB4 Well Stimulation Treatment Regulations

Dear Director Nechodom and Supervisor Kustic:

Thank you for the opportunity to provide comments on the Proposed SB4 Well Stimulation Treatment Regulations (“Proposed Regulations”). These comments are submitted on behalf of Los Angeles Waterkeeper, Wisthoyo Foundation and Ventura Coastkeeper (collectively “Waterkeeper”) and our thousands of members and supporters who have a vital interest in protecting our water resources from all pollution threats.

Nationwide, hydraulic fracturing (“fracking”) has developed an extensive record of causing water contamination, air pollution, earthquakes, and property damage.¹ The well-documented negative impacts of fracking in other parts of the country indicate the real danger of similar environmental damage occurring in California and serve as a warning sign that should not be ignored by the Department of Conservation and its Division of Oil, Gas and Geothermal Resources (“DOGGR”). As we have stated previously in our comment letter on the December 2012 Discussion Draft Regulations and on SB 4, Waterkeeper’s position is that to guarantee public health and the environment are not compromised, the State of California should adhere to the precautionary principle in regulating hydraulic fracturing and other well stimulation treatment methods, such as acidizing. Rather than developing well simulation treatment regulations, the State should impose a moratorium on fracking and acidizing until the well treatment stimulation study required by SB4 (Public Resources Code § 3160) is completed and reviewed and evaluated by the Legislature and the public. Nevertheless, we submit this letter to ask the Department of Conservation to revise the Proposed Regulations, at the very least, in order to provide adequate protection of surface and groundwater resources and ensure robust public notification and participation in the permitting and monitoring of well stimulation treatments.

¹ See The Pure Water Gazette, “Evidence of Environmental Damage Caused by Fracking is Massive” (January 13 2013), <http://purewatergazette.net/blog/evidence-of-environmental-damage-caused-by-fracking-is-massive-january-13-2013/>.

Following our review of the Proposed Regulations and supporting documents, including the Initial Statement of Reasons for the Proposed Regulations (hereinafter, “Initial Statement of Reasons”), our recommendations for improvement of the Proposed Regulations are:

1. **Section 1761. Well Stimulation and Underground Injection Projects.**

The definitions of “underground injection project” and “well stimulation treatment” provided in Section 1761 of the Proposed Regulations are confusing and potentially overlapping. The regulatory differences between well stimulation treatments and underground injection projects are, however, significant. *See* Initial Statement of Reasons at 3. As the Initial Statement of Reasons explains, “[b]ecause of the commonalities between well stimulation treatments and underground injection projects, it is necessary to be as clear as possible in distinguishing the two types of operations.” Initial Statement of Reasons at 4. Unfortunately, the Proposed Regulations have failed to achieve this goal. For example, while one of the key differences between the two is the duration of the treatment the only specifics provided on duration are that a “well stimulation treatment” is a “short term and non-continual process” while “underground injection” entails the “sustained or continual injection . . . over an extended period of time.” Proposed Regulations § 1761 (a) (1), (2). Moreover, the definition of “well stimulation treatment” and “underground injection project” both include the addition of fluid into wells to enhance oil and gas production. *Id.* To avoid any confusion that may result in activities being mistakenly classified as regulated under the wrong provisions and to provide the public with maximum clarity on the activities regulated by the Proposed Regulations, Section 1761 should be revised to provide additional specifics to the definitions of “well stimulation treatment” and “groundwater injection project,” including the duration of each well treatment activity as well as the exact difference in the purpose of the two types of activities.

2. **Section 1780. Purpose, Scope and Applicability.**

The Proposed Regulations should be revised to remove the regulatory exemption for acid matrix stimulation treatments utilizing acid concentration of 7% or less. First, as the Initial Statement of Reasons recognizes that acid matrix stimulation treatments at or below 7% concentration extend between 30 and 50 inches and thus fall within Section 1761(a)(1)’s definition of a well stimulation treatment and should be subject to the Proposed Regulations. Initial Statement of Reasons at 4. Second, despite Section 3160 (b)(1)(C)’s requirement that any threshold values for acid matrix stimulation treatments in the Proposed Regulations must be “based upon a quantitative assessment of the risks posed by acid matrix stimulation treatments,” the Initial Statement of Reasons cites no support for its conclusion that acid matrix stimulation treatments with acid concentration of 7% or less are harmless but instead refers vaguely to “available information.” *Id.* In fact, however, even the Initial Statement of Reasons admits that there is a “risk” that acid will migrate out of the production zone. *Id.* Moreover, the Department of Conservation “has limited data about the specifics of acid matrix stimulation” in California but “[i]n the near future . . . will have the benefit of a great deal of new information about well stimulation treatment in the state.” *Id.*

Rather than exempting from regulation acid matrix treatments at 7% concentration or less, the Proposed Regulations should, in line with the precautionary principle, regulate all well stimulation treatments utilizing acid until the additional data is collected and analyzed. Should the data clearly demonstrate that acidizing well treatments with 7% acid concentration or less are

harmless to the environment and water resources, the Department of Conservation will have the opportunity to revise the Proposed Regulations and exempt certain acid well stimulation treatments by January 1, 2020.

3. Section 1781. Definitions.

The definition of “protected water” provided in Section 1781 of the Proposed Regulations should be revised and expanded to include all federal and state surface and ground water that contains more than 10,000 mg/L total dissolved solids. All waters afforded beneficial uses under a water quality control plan, such as the Los Angeles Basin Plan, must be considered protected waters under the Proposed Regulations. This is especially necessary for California where drought or near-drought conditions are routine and water demand is ever increasing.

4. Section 1782. General Well Stimulation Treatment Requirements.

To comply with Public Resources Code Section 3106 statutory mandate that the Department of Conservation and DOGGR must supervise all oil and gas production so as to prevent, as far as possible, damage to life, health, property, and natural resources, Section 1782 of the Proposed Regulations should be revised to add a requirement that well operators must ensure compliance with all regulations protecting air, water, soil and other natural resources.

5. Sections 1783 – 1783.2 (Well Stimulation Treatment Permit Provisions)

The provisions related to well stimulation treatment permits should also be revised to provide more comprehensive information to DOGGR and the public as well as allow opportunities for expanded public comment and participation.

Section 1783 of the Proposed Regulations should be revised to require all permit applications to be made available on DOGGR’s website for review by the public. Furthermore, Section 1783 must provide specifically that DOGGR will be required to ensure a qualified representative will be present to witness the well stimulation treatment operation. The addition of these requirements will incentivize well treatment operators’ compliance with SB4 and other regulations and will give an opportunity to DOGGR not only to examine first-hand the well stimulation treatment operation but also to identify and potentially prevent problems associated with the operation.

Section 1783.1 should similarly be revised to require the Permit application to include the start and end date of the proposed well stimulation treatment, baseline groundwater monitoring data collected during the three months prior to the date of the proposed well treatment, the names and locations of all surface waterbodies that may be impacted by well treatment² and provide baseline surface water monitoring data collected during the three months prior to the proposed well stimulation treatment. Furthermore, the application should provide the Spill Contingency Plan specific to the particular well stimulation operation and should specify how the Spill Contingency Plan is addressing any potential impact on surface waterbodies, including in particular, surface waters that are impaired under Section 303(d) of the Clean Water Act.

² At a minimum, this section should require that all waterbodies located within a 1-mile radius from the well treatment site be identified in the Permit application.

Importantly, the Proposed Regulations should include a provision on public notice and opportunity for review and comment on the Permit application for any well stimulation treatment. Moreover, DOGGR should not be allowed to approve a Permit application without previously reviewing groundwater monitoring results and any other data and information, consulting with the public and coordinating with all administrative agencies that have authority to regulate the activities and impacts of the proposed well treatment. These agencies may include, but are not limited to, the Air Quality Management Districts, Department of Toxic Substances Control, State and Regional Water Boards and local agencies. Finally, each Permit must be supported by findings demonstrating the proposed well stimulation treatment will not impact public health or natural resources.

Next, Section 1783.2 of the Proposed Regulations must be revised to expand the radius of property owners and tenants that should be provided with a copy of the issued Permit to 5,000 feet (or one mile) radius from the wellhead of the well where well stimulation will occur *and* 1,500 feet of the horizontal projection of the subsurface parts of the well. This section should be further amended to remove the provision on notification of the availability of water sampling and testing (*see* Section 1783.2 (a)(2), (3)) and instead require water testing of any groundwater and surface water which has assigned beneficial uses pursuant to a Regional Water Board Basin Plan and State Water Board Water Quality Plans. This water testing should be required for the duration of the well stimulation treatment and for five years after well treatment completion to ensure the well treatment is not impacting surface water and ground water resources.

6. Section 1786. Storage and Handling of Well Stimulation Treatment Fluids.

Section 1786 should be amended to require secondary containment for all portable or temporary production facilities. The Initial Statement of Reasons fails to provide any justification for treating portable and temporary production facilities differently from other production facilities and indeed, given the known dangers associated with well stimulation treatment fluid spills, secondary containment of these fluids should be required in all cases.

Further, Section 1786 should be revised to require well operators to collect a sample of any well treatment fluid spill and provide information on the fate of the spill, including whether the fluid reached a storm drain, municipal or private road or surface water, the quantity of the spill and the amount that was contained and/or otherwise recovered before it reached a storm drains, road or waterbodies.

7. Section 1788. Required Public Disclosures.

Section 1788 should be revised to require public disclosure of the chemicals to be used in the well stimulation treatment at least 60 days before, not after the well treatment is completed. Specifically, no exemption to this requirement shall be allowed for claims of trade secret exemption. Rather, all of the information related to the chemical constituents used in the well treatment should be provided to the public.

8. Section 1789. Post-Well Stimulation Treatment Report.

Section 1789 should be revised to provide the complete and accurate results of the well stimulation treatment, including the exact amount and source of all water used for the treatment,

the exact amount and chemical composition of well stimulation flowback fluid and the exact amount of oil and gas that recovered as a result of well stimulation treatment.

Conclusion

Waterkeeper appreciates the opportunity to submit comments on the Proposed Regulations. As stated throughout our comments, we strongly believe that all well fracking and acidizing stimulation treatment projects in California should be prohibited until the impacts of these types of well stimulation treatments on our environment and public health are thoroughly studied and analyzed. However, to best represent the interest of our members and supporters in the absence of a moratorium, we request the Department of Conservation to revise the Discussion Draft according to our comments above. We look forward to working with the Department of Conservation on developing the kind of regulations on fracking that will ensure both humans and nature are not harmed by fracking. Please do not hesitate to contact us if you have any questions or would like to discuss these issues further.

Sincerely,



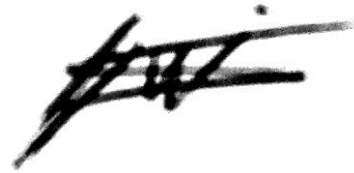
Tatiana Gaur
Staff Attorney
Los Angeles Waterkeeper



Liz Crosson
Executive Director
Los Angeles Waterkeeper



Mati Waiya
Chumash Ceremonial Elder & Executive Director
Wishtoyo Foundation



Jason A. Weiner, M.E.M.
Associate Director & Staff Attorney
Wishtoyo Foundation's Ventura
Coastkeeper Program