



Lead NEPA Story: Bureau of Land Management approves contested California oil and gas plan

(Greenwire, 10/4/2019) Scott Streater, E&E News Reporter

The Bureau of Land Management has approved a proposal delayed for nearly a decade due to litigation that authorizes oil and natural gas leasing and development on federal lands across central California.

The plan authorized in a record of decision (ROD) released today formally makes 683,000 acres of subsurface federal mineral estate available for oil and gas leasing, with restrictions designed to limit impacts to natural resources and wildlife.

It is expected to result in the first new BLM oil and gas leases in California in six years.

The ROD also approves amending the resource management plan (RMP) by BLM's Central Coast Field Office to allow for the proposed oil and gas leasing and development.

"This decision supports the administration's priority of promoting environmentally responsible energy development, while creating jobs and providing economic opportunities for local communities," Ben Blom, the Central Coast Field Office manager, said in an emailed statement.

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Clean Air Act: EPA sends revised permitting guidance to White House

(Greenwire, 9/27/2019) Sean Reilly, E&E News Reporter

As part of a broader push to ease industry permitting requirements, EPA is pressing ahead with a planned redefinition of "ambient air" for regulatory purposes.

The agency had initially released the draft guidance last fall. A revised version was sent yesterday to the White House Office of Information and Regulatory Affairs for a standard review, according to a government tracking website. In an email this morning, an EPA spokeswoman confirmed that the step is being taken "prior to finalization" of the guidance.

The revised policy would apply to ambient air quality analyses for pre-construction permitting under the Prevention of Significant Deterioration

(PSD) program, which applies in areas that meet federal standards.

Currently defined as "that portion of the atmosphere, to which the general public has access," ambient air exempts outdoor areas over

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land that's owned or controlled by a pollution source, to which "public access is precluded by a fence or other physical barriers," under an interpretation dating back to 1980.

But in the view of industry groups that EPA endorsed in the draft guidance, that interpretation is overly restrictive for the purposes of carrying the analyses when companies apply for PSD permits under the Clean Air Act's New Source Review program.

The broader interpretation laid out in the draft guidance says public access may be deterred by other barriers, including drones, security patrols and "rugged terrain." Accordingly, EPA wants to replace "a fence or other physical barriers" with a more expansive rendering: "measures, which may include physical barriers, that are effective in deterring or precluding access to the land by the general public," according to the draft.

The agency received several dozen comments on the proposed guidance, with industry organizations offering support and environmental groups voicing opposition, according to records obtained earlier this year by

E&E News through the Freedom of Information Act.

It is unclear which changes, if any, EPA has made in response. The revised version sent yesterday to OIRA, a part of the White House Office of Management and Budget, has not been made public.

The step is among more than a half-dozen measures EPA is undertaking during the first phase of an initiative to streamline the New Source Review program, according to an agency presentation given last month at a conference of state and local air pollution regulators and posted online.

Although the revised guidance doesn't qualify as a regulation requiring advance public notice, EPA expects state and local air agencies to adopt the policy when issuing PSD permits.

Under the New Source Review program, those pre-construction permits are needed when a power plant or other major industrial facility embarks on a significant expansion or upgrade expected to lead to more pollution in areas that currently meet National Ambient Air Quality Standards.

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NEPA and Clean Air Act: Greens join fight to defend California tailpipe standards

(Greenwire, 9/27/2019) Jennifer Hijazi, E&E News reporter

The Natural Resources Defense Council, the Sierra Club and other environmental groups joined the fight in defense of California's emission standards today.

They follow a coalition of states and municipalities taking the National Highway Traffic Safety Administration and others to court over the rollback of a historical practice allowing California to set its own vehicle emission standards for greenhouse gases.

The complaint against the Department of Transportation and NHTSA — filed in the U.S. District Court for the District of Columbia — was brought by the Environmental Defense Fund, the Center for Biological Diversity, the

Conservation Law Foundation, the Union of Concerned Scientists, Public Citizen, the Environmental Law & Policy Center and Environment America.

The greens' suit tackles NHTSA's preemption rule that the federal government argues trumps California's ability to set its own emissions. The rule serves as the basis for EPA's recent decision to revoke California's waiver.

"The Preemption Rule exceeds NHTSA's statutory authority; it is arbitrary, capricious, an abuse of discretion, contrary to law, and unwarranted by the facts; and it issued without observance of procedures required by the

National Environmental Policy Act," the complaint said.

David Doniger, a senior attorney at the Natural Resources Defense Council, said in a statement that Congress gave the state the authority to do this, and "despite the wild imaginings of the Trump administration — there's nothing in the fuel economy law that blocks that authority."

"We are confident that at the end of the day, we will win," he added.

DOT did not immediately respond to a request for comment on the environmental groups' lawsuit.

EDF also filed a protective petition for review in the U.S. Court of Appeals for the District of Columbia Circuit today "out of an abundance of caution," opposing the preemption rule.

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California has been given special dispensation regarding air quality and emission standards for decades. And while a Golden State waiver has never been pulled before, EPA now says it has "inherent authority" to revoke a waiver if it chooses.

Critics of the rollback balk at that reasoning, especially considering more than a dozen states also opted in to follow California's stricter standards.

"States are empowered to do what this administration has refused to do — protect public health and curb emissions that fuel climate change," Paul Cort, a staff attorney with Earthjustice, said in a statement. "We're suing to protect people's right to a safe and healthy environment."

Endangered Species Act: Court pressure gets results for bumblebee

(Greenwire, 9/25/2019) Michael Doyle, E&E News reporter

The rusty patched bumblebee could finally land its critical habitat, under a new court settlement.

It won't happen anytime soon. But if it weren't for a lawsuit, the endangered species might have missed out altogether.

In the settlement announced yesterday, the Fish and Wildlife Service agreed to propose critical habitat for the bee by July 31, 2020, unless it concludes that habitat protections are not prudent. FWS must finalize any habitat designation by July 31, 2021.

"This settlement is a step in the right direction to ensure the bee's survival," Lucas Rhoads, staff attorney for the Natural Resources Defense Council's Pollinator Initiative, said in a statement.

Underscoring the possibility for future legal stings, Rhoads added that "the Service must now do their part to protect the bee's habitat or they'll find themselves in court once more."

The much-litigated bumblebee has already stirred up three lawsuits.

One directed FWS to list the bee under the Endangered Species Act, which happened in January 2017. A second suit challenged the Trump administration's effort to delay implementation of the listing. The third sought to compel critical habitat designation.

Once common throughout the midwestern and northeastern United States, the rusty patched bumblebee has since vanished from 87% of the counties it once occupied. Habitat loss, pesticide use, climate change and disease threaten its continued existence.

"Since the late 1990s, rusty patched bumble bee abundance and distribution has declined significantly," the Fish and Wildlife Service noted, adding that "along with the loss of populations, a marked decrease in the spatial extent has occurred in recent times."

"The few populations persisting and the limited distribution of these populations have substantially reduced the ability of the rusty patched bumble bee to withstand environmental

variation, catastrophic events, and changes in physical and biological conditions," FWS said.

As part of an ESA listing, FWS must designate critical habitat. This is defined as habitat with "physical or biological features essential to the conservation of the species and which may require special management considerations or protection."

The rusty patched bumblebee is found in woodlands, grasslands and, recently, residential gardens in Connecticut, Illinois, Indiana, Iowa, Maryland, Massachusetts, Minnesota, Ohio, Tennessee and Wisconsin.

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NEPA and Marine Mammal Protection Act: NOAA allows marine species disturbances for Atlantic surveys

(Greenwire, 10/2/2019) Heather Richards, E&E News reporter

NOAA Fisheries will allow the harassment of bottlenose dolphins, humpback whales and gray seals, among other marine species, during a wind developer's yearlong survey effort off the coast of Massachusetts.

Ørsted Wind Power LLC will conduct high-resolution geophysical surveys, which use sound waves to form a picture of the ocean floor and the immediate subsurface, to determine siting for turbines and associated cables. Similar surveys are frequently used by the oil and gas industry to get a better understanding of underwater resources.

The NOAA authorization allows low-level impacts to about a dozen marine species off the northern Atlantic coast. While some acoustic ocean surveys are reviewed for their potential to cause death or serious injury to marine life, the permit only authorizes disturbance. Mortalities are not expected as a result of the survey activities, according to the NOAA authorization published today (*Federal Register* 84:52464-52488).

The permit demands mitigation measures to reduce the impact to marine mammals, such as exclusion zones that are cleared of animals before operations. The surveying will take place

When FWS listed the rusty patched bumblebee, though, the agency declared that while designation of critical habitat "might be prudent," it was "not determinable" at the time. That set the clock ticking on a one-year deadline, which officials missed.

The settlement agreement filed yesterday in federal court in Washington, D.C., includes the statement that "without waiving any defenses or making any admissions," the government agrees to pay NRDC \$15,000 in attorneys' fees and costs.

in 24-hour shifts by multiple vessels, making it possible for the company to complete the project within a year.

Conservation groups weighed in on the authorization, claiming that NOAA had failed to look at the cumulative impacts the surveys could have on critical habitats for endangered species like the North Atlantic right whale, according to public comments. NOAA disagreed, noting that its environmental assessment had deemed cumulative impacts were negligible.

"[NOAA's] biological opinion was that the proposed action is not likely to jeopardize the continued existence of identified ESA-listed species. It is also [NOAA's] opinion that the proposed action is not likely to destroy or adversely modify designated North Atlantic right whale critical habitat," the agency wrote.

A call to Ørsted was not returned in time for publication.

Survey activity is planned for two areas leased to Ørsted affiliates Deepwater Wind New England LLC and Bay State Wind LLC.

Deepwater was the first company to raise offshore wind turbines in U.S. waters with the 30-watt Block Island pilot project off Rhode

Island that went live in 2016. It was recently merged with Ørsted. Bay State is a joint venture between Ørsted and Eversource Energy that proposes an 800-megawatt development, 15 miles off the coast of Martha's Vineyard.

The Eastern Seaboard is the epicenter of the nascent offshore wind industry in the U.S.,

where state commitments to buy offshore wind power now total about 20,000 MW.

Fishing concerns, however, recently delayed a Massachusetts wind project. Construction was planned this year for Vineyard Wind, which now awaits a supplemental analysis to study the cumulative fisheries impact of the offshore wind industry.

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"It strikes a balance between resource conservation and energy development consistent with BLM's mission for managing the lands for multiple use and sustained yield," Blom added.

Plans to open the 683,000 subsurface acres to potential oil and gas leasing have been under consideration since the George W. Bush administration in 2007.

A detailed "reasonably foreseeable development scenario" conducted by BLM estimates that a maximum of 37 new oil and gas wells might be drilled in the study area during the next 20 years.

But a BLM source told E&E News that the bureau has yet to receive a single expression of interest from industry to lease parcels in the planning area.

Still, oil and gas leasing and development in the region have sparked lawsuits from environmental groups as far back as 2011, eventually resulting in a 2013 federal court order that blocked leasing activity in the area. BLM agreed in legal settlements to reevaluate the potential impacts of drilling and to make adjustments to comply with National Environmental Policy Act stipulations.

Today's ROD fulfills BLM's obligations to comply with the settlement terms for managing oil and gas leasing of federal minerals in 11 counties within BLM's Central Coast Field Office, but primarily in Fresno, Monterey and San Benito counties, the bureau said.

Most new oil and gas development would likely be limited to areas in or near existing oil fields in Fresno County, said Serena Baker, a spokeswoman for BLM's Central California District Office in El Dorado Hills.

The ROD also approves issuing two oil and gas leases that were awarded in 2011 but suspended, as well as an additional 12 "pending leases" within the boundaries of the Central Coast Field Office.

The 14 leases — covering about 17,600 acres in Monterey and San Benito counties — had been challenged in separate federal lawsuits filed in 2011 and 2012.

BLM's approval of the 14 leases can be appealed to the Interior Board of Land Appeals within 30 days of the signing of the ROD today by acting BLM California Director Joe Stout. A notice of availability for the ROD will be published in Monday's *Federal Register*.

None of the 14 leases can be developed without the developers submitting applications for permit to drill, which then requires additional, site-specific environmental review, Baker said.

In total, all 683,000 subsurface acres would be subject to "controlled surface use" stipulations that "promote responsible energy development by reducing the environmental impacts associated with development," BLM said.

An additional 42,400 acres of minerals would include no-surface-occupancy requirements, including areas within the 8,000-acre Joaquin Rocks area of critical environmental concern (ACEC) and the Ciervo-Panoche Natural Area.

What's more, the plan closes to development 67,500 acres of subsurface federal minerals underneath congressionally designated wilderness areas or wilderness study areas, as well as the Fort Ord National Monument and the 31,000-acre Clear Creek Serpentine ACEC.

The Ciervo-Panoche Natural Area has been prioritized by the Fish and Wildlife Service for the recovery of the federally endangered San Joaquin kit fox and other species, including the giant kangaroo rat, Baker said.

In this way the leasing and development plan "supports recovery of threatened and endangered plants and animals in the Ciervo Panoche Natural Area by protecting core populations from surface disturbance," Blom said in his email.

The oil and gas leasing and development plan has drawn support from the Western States Petroleum Association in Sacramento, Calif., and other industry organizations. But environmental groups such as the Center for Biological Diversity and Sierra Club expressed concern when BLM released the final environmental impact statement (EIS) in May.

Future litigation challenging today's ROD is likely based on the fact that BLM received 436 administrative protests challenging the final EIS.

All but 24 protests were denied because the protesting parties did not have standing to administratively challenge the proposal in the final EIS, according to the ROD.

Of those 24 protests, 17 were dismissed because they did not raise "protestable issues" involving specific laws or regulations; the remaining seven were denied because they raised issues already addressed in the final EIS and RMP amendment, it said.

The Record of Decision and Approved Resource Management Plan Amendment for Oil and Gas Leasing and Development may be viewed at <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage¤tPageId=96879>.

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