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Executive Summary (2013)

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EXECUTIVE SUMMARY

By: Gina S. Warren¹

This 2013 Survey on Oil & Gas provides an annual summary, bringing together the judicial, regulatory, and legislative activities of thirty-four states. In addition to the typical court cases addressing lessee and lessor disputes, two apparent overarching themes have emerged this year. First is a heightened regulation of, and litigation regarding, hydraulic fracturing and its potential negative environmental impacts. At the forefront of these potentially negative environmental impacts are concerns for water quality and quantity, earthquakes, and increased air pollution emissions. Second, several states are reporting litigation over leases issued by the Bureau of Land Management, mostly claiming a failure to prepare (or a deficiency in preparing) environmental impact assessments.

HYDRAULIC FRACTURING

While the federal government has studied the possibility of regulating hydraulic fracturing at various levels, to date, regulation is left to the states. As a result, many states have identified opportunities for regulation. West Virginia established an entire act dedicated to the regulation of “new technologies and practices” in horizontal drilling and hydraulic fracturing. Other states have focused on regulations for public disclosure of the chemical components in hydraulic fracturing fluid. For example, California recently proposed legislation that would require a mapping of every well within the state where hydraulic fracturing is occurring and a compilation of the chemicals used for those wells. Colorado’s Conservation Commission adopted rules for disclosure of hydraulic fracturing fluid. Kansas, Nebraska, and Indiana all enacted legislation requiring the establishment of reporting and disclosure requirements. Tennessee has pending legislation that would direct its oil and gas board to do the same, and Ohio enacted what some have termed as “aggressive” hydraulic fracturing standards with a goal of increasing public disclosure so as to make the process more transparent. Notably more aggressive, however, is the Vermont ban on hydraulic fracturing altogether, and court opinions upholding

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two city-wide bans on oil and gas exploration and production in New York. As states begin to enforce these disclosure and regulatory requirements on hydraulic fracturing, it will be interesting to see if courts experience an increase in litigation. For example, in Wyoming, four environmental groups have filed suit seeking disclosure of alleged trade secret information related to hydraulic fracturing. Maybe in next year's survey, we will have the outcome of that case.

BUREAU OF LAND MANAGEMENT LEASES

Another area garnering significant attention is oil and gas development on Bureau of Land Management ("BLM") lands and a lack of, or deficiency in, preparation of environmental assessment studies. California, Colorado, and Montana all saw litigation over leases issued through the BLM, allegedly without appropriate environmental assessment. In California, a suit was brought claiming that environmental studies should have been done on the potential environmental impact of hydraulic fracturing. In Montana, an ongoing lawsuit alleged that the BLM did not appropriately address climate change effects and the potential of greenhouse gas emissions from oil and gas leasing. And, in Colorado, a district court found an environmental impact statement to be deficient, which covered some 120,000 acres of BLM land in Western Colorado. As the federal government continues to increase development on BLM lands, it is likely that these types of lawsuits will increase in frequency as well. It will be interesting to see how state courts and legislatures address these issues.