

FRACKING COMES TO THE SILVER STATE... ARE WE READY?

BY LINDA M. BULLEN, ESQ. AND KURT R. MATTSON

Hydraulic fracturing, commonly referred to as fracking, is a means of releasing oil and natural gas from far below the surface of the earth for their recovery at the earth's surface. Fracking frees hard-to-reach hydrocarbon resources by injecting a pressurized solution of water, sand and chemicals into underground shale formations miles below the surface. The injection of this solution fractures the shale and allows the oil or gas to seep into the well, so that it can be pumped to the surface.

Nevada Enters the World of Fracking

Nevada stepped into the world of fracking in earnest in 2013, with the passage of NRS 522.119, in which the Nevada Legislature directed Nevada's Division of Minerals and the Environmental Protection Agency (EPA) to jointly develop a hydraulic fracturing program to assess the effects of hydraulic fracturing on the state's waters, to require persons who engage in hydraulic fracturing to disclose each chemical used in the process and to provide public notice of hydraulic fracturing activities.¹ NRS 522.119(2) mandates that the Division of Minerals adopt regulations implementing the hydraulic fracturing program required by subsection one. Proposed regulations were issued on February 25, 2014, and they propose extensive changes to Nevada Administrative Code Chapters 522 and 534A, including notice, sampling, disclosures and monitoring of the hydraulic fracturing process.²

The proposed regulations were designed to address the issues associated with fracking that have been identified in other jurisdictions across the United States and throughout the world, including groundwater contamination, increased seismic activity and impact on biological resources, among others.³ The result is a set of proposed regulations that set out very specific parameters for all facets of the fracking operation, particularly those that concern water use and disposal.⁴ Contamination of water resources has been one of the most publicly debated concerns of opponents to fracking operations. For example, the proposed regulations require operators to collect initial baseline samples and subsequently monitor samples from each available water source, not to exceed four sources, within a one-mile radius of the proposed borehole or surface projection for the proposed hydraulic fracturing activity.⁵ Sample locations must be carefully selected, based upon proximity to the proposed well, orientation of the sampling locations, and the depth and condition of available water sources.⁶ A regimen for testing the fracking water is required, and the state may require collection and testing of an available water source if the Administrator of the Department of Conservation "finds that additional testing is warranted as the result of a change in the quality of the water which is identified during the collection and testing of a subsequent sample."⁷ In

addition to the groundwater testing requirements before, during and after fracking operations have ceased, the proposed regulations require the operator to ensure that it is using only chemicals approved by the division, unless it applies for and receives an exception via a detailed sundry notice.⁸ After the process has been completed, all chemicals used in the operation must be identified on fracfocus.org within 60 days.⁹ Moreover, the regulations in their current iteration require the operator to provide samples throughout the process to the division. Among other requirements, “flowback,” or the water produced at the well site, must be sealed in steel tanks and may not be removed until the division approves it.¹⁰

Controversy over Fracking Regulation

Despite the division’s attempt in the proposed regulations to address the concerns identified in other jurisdictions, the proposed regulations remain controversial. A variety of viewpoints, both for and against hydraulic fracturing, were articulated at public meetings held throughout the state in March 2014, by the division.¹¹ Currently, the state is evaluating the comments received and anticipates finalization of the regulations by late summer 2014. ■

- 1 NRS § 522.119 (1) (a)-(c).
- 2 Nev. Admin. Code, LCB Draft of Proposed Regulation R011-14, February 25, 2014, Sec. 8. (hereafter proposed regulation).
- 3 Executive Board, New York Chapter of the American Society of Landscape Architects, *Comments on the New York State Department of Environmental Conservation Draft Supplemental Generic Environmental Impact On High Volume Horizontal Hydraulic Fracturing*, January 9, 2012.
- 4 Proposed Regulation, Sec. 11(3).
- 5 Proposed Regulation, Sec. 8(1).
- 6 *Id.*
- 7 Proposed Regulation, Section 8(4).
- 8 Proposed Regulation, Sec. 11(1)(c).
- 9 Proposed Regulation, Sec. 11(4).
- 10 Proposed Regulation, Sec. 11(3).
- 11 Public workshops on the proposed Hydraulic Fracturing regulations were held on March 17-21, 2014 in Carson City, Elko and Las Vegas. Nevada Division of Minerals, *Notice of Public Workshops for the Amendment of Regulations for Oil And Gas Wells, Wells Intended for Hydraulic Fracturing and for Geothermal Wells*, February 27, 2014.



LINDA BULLEN is a shareholder and trial attorney in Lionel Sawyer & Collins’ Litigation Department. Bullen’s practice includes environmental law as an emphasis, with more than 25 years of experience in that practice area. From 1994-1997, Bullen was the Assistant Attorney General in Minnesota, where she prosecuted environmental crimes and counseled the

Minnesota Department of Natural Resources and the Minnesota Department of Transportation. Bullen holds the distinction of being the first Nevada attorney to be invited to join the American College of Environmental Lawyers.



KURT R. MATTSON is the Director of Library Services and Continuing Education at Lionel Sawyer & Collins in Las Vegas. Mattson is also the editor of the *BSA/AML Update* and co-author of *Mortgage Procedure Guide to Federal and State Compliance and Fair Debt Collection Practices* (all from Matthew Bender). He most recently wrote an article on print

and online legal research for the *Nevada Lawyer* in October 2013.

ENVIRONMENTAL AND NATURAL RESOURCES SECTION

BY LINDA M. BULLEN AND
THERESE A. URE

The Environmental and Natural Resources Section of the State Bar of Nevada would like to welcome to the section all bar members practicing in the area of environmental and natural resource law, or who have an interest in this area of law.

The section offers attorneys opportunities to refine their legal expertise through section events, quarterly meetings and presentations. Section members frequently get the chance to network and interact with others in the legal community practicing in this diverse and ever-changing area of the law. The section also hosts events with other related bar sections, allowing members to broaden their legal scope.

A great way to stay current with the changing nature of this practice area is to attend the section’s annual CLE event, during which the section brings together a group of experts to present topics relevant to the practice of environmental and natural resource law. Additionally, the section conducts CLE presentations throughout the year and at its quarterly meetings.

One of the Environmental and Natural Resources Section’s biggest social events is the presentation of its Lifetime Achievement Award to an individual who has dedicated his or her career to furthering environmental and natural resource interests in Nevada. The presentation takes place at a ceremony held in the spring; governmental and agency personnel and members of the environmental community always join section members in attending this special event.

The section hopes to see many current and new members at one of its upcoming events. For more information on the Environmental and Natural Resources Section, visit the state bar’s website at <http://www.nvbar.org/content/environmental-and-natural-resources-law-section>. The sections officers (listed on the website) encourage those with questions to contact them.