



C A L I F O R N I A

DEPARTMENT OF JUSTICE

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Via Electronic Transmission

Director and Staff
Bureau of Ocean Energy Management
1849 C Street
NW Washington, DC 20240

RE: Comments on Notice of Intent To Prepare an Environmental Impact Statement on Platform Gilda Well Stimulation Treatment
91 Fed. Reg. 13063 (Mar. 18, 2026) [Docket No. BOEM-2025-0714]

Dear Director and Staff:

Rob Bonta, Attorney General of the State of California (“Attorney General Bonta”)¹, hereby submits the enclosed comments on the Department of the Interior (“Department”), Bureau of Ocean Energy Management’s (“BOEM”) Notice of Intent To Prepare an Environmental Impact Statement (“EIS”) on Platform Gilda Well Stimulation Treatment (“NOI”). As an initial matter, Attorney General Bonta opposes the use of new Well Stimulation Treatment (“WST”), including hydraulic fracturing, to increase oil and gas production offshore California. California’s long-standing State policy has been to oppose new oil and gas drilling, including WST, off its shores. Further, Attorney General Bonta opposes the use of the Department of Interior’s alternative arrangements in preparation of this EIS. Notwithstanding these objections, if BOEM persists with completing an EIS to consider the use of WST, it must fully and thoroughly analyze the impacts of doing so as required by the National Environmental Policy Act (“NEPA”) and pursuant to a standing injunction issued in *Envtl. Def. Ctr., et al. v. Bureau of Ocean Energy Mgmt., et al.*, 16-8418, ordered modified by the Ninth Circuit Court of Appeals in *Env’t Def. Ctr. v. Bureau of Ocean Energy Mgmt.*, 36 F.4th 850 (9th Cir. 2022) [Case No. 19-55526].

¹ Attorney General Bonta submits these comments pursuant to his independent power and duty to protect the environment and natural resources of the State. *See* Cal. Const., art. V, § 13; Cal. Gov. Code, §§ 12511, 12600-12612; *D’Amico. v. Bd. of Med. Exam’rs*, 11 Cal.3d 1, 14-15 (1974).

I. Introduction and Background:

In 2016, then-California Attorney General Kamala Harris and the California Coastal Commission, along with a coalition of conservation groups, filed actions against the Department challenging the adoption of a programmatic environmental assessment (“EA”) and finding of no significant impact (“FONSI”), which purported to evaluate the impact of WSTs at 22 production platforms located on 43 active leases in the Pacific Outer Continental Shelf (“POCS”) off the coast of Southern California. Plaintiffs all raised NEPA claims, and the State alleged violation of the Coastal Zone Management Act (“CZMA”), while the conservation groups pleaded claims under the Endangered Species Act (“ESA”). On cross-motions for summary judgment, the district court (1) denied California’s and the conservation groups’ motions on their NEPA claims; (2) granted California’s motion on its CZMA claim; and (3) granted the conservation groups’ motion on their ESA claim for failure to consult with the United States Fish and Wildlife Service. The district court issued a final judgment ordering the Department to refrain from approving any plans or permits by operators for the use of WSTs on the POCS unless and until it (1) completes consultation with FWS under the ESA, and (2) completes the CZMA process under 16 U.S.C. § 1456(c)(1) for the Proposed Action (judgment attached and incorporated by reference)². Plaintiffs appealed to the Ninth Circuit in 2019.

On appeal, the Ninth Circuit reversed the district court’s grant of summary judgment to the federal defendants on Plaintiffs’ NEPA claims, and affirmed the grant of summary judgment to plaintiffs on their ESA and CZMA claims. Specifically, on the NEPA claims, the Ninth Circuit found: the EA relied on the incorrect assumption that well stimulation would be infrequent; the federal agencies acted arbitrarily and capriciously by offering an analysis that ran counter to the evidence before the agency; the agencies failed to take the requisite hard look; the agencies acted arbitrarily and capriciously by assuming that compliance with a permit issued by the United States Environmental Protection Agency (“EPA”) under the Clean Water Act would render the impacts of well stimulation treatments insignificant; and the agencies failed to consider a reasonable range of alternatives. The Ninth Circuit further found that full NEPA analysis in an EIS was warranted given important issues such as that offshore WST may adversely affect endangered or threatened species, that offshore WST in the POCS would affect unique geographic areas, and that the effects of offshore WST were highly uncertain and involved unknown risks. The Ninth Circuit determined the agencies acted arbitrarily and capriciously by not preparing an EIS and by limiting their assessment to an EA that did not fully evaluate the environmental impacts of offshore WST. The Ninth Circuit accordingly vacated the EA and ordered the district court to amend its injunction to prohibit the agencies from approving permits for WST on the POCS until the agencies issued an EIS and fully and fairly evaluated all reasonable alternatives. *See generally, Env’tl. Def. Ctr. v. Bureau of Ocean Energy Mgmt.*, 36 F.4th 850 (9th Cir. 2022) (opinion attached and incorporated by reference)³.

² *Env’tl. Def. Ctr., et al. v. Bureau of Ocean Energy Mgmt., et al.*, 16-8418 PSG [Dkt. No. 132].

³ *Env’tl. Def. Ctr., et al. v. Bureau of Ocean Energy Mgmt. et al.*, 19-55526 [Dkt. No. 129-1].

Industry intervenors submitted a petition for a writ of certiorari to the Supreme Court of the United States in 2022, seeking review of certain issues. Certiorari was denied. *Am. Petroleum Inst., et al. v. Env'tl. Def. Ctr., et al.*, 22-703.

The Ninth Circuit issued mandate and the district court amended its injunction on July 13, 2023, consistent with instructions from the Ninth Circuit to “prohibit the agencies from approving permits for well stimulation treatments until the agencies have issued an EIS and have fully and fairly evaluated all reasonable alternatives.” *Env'tl. Def. Center, et al. v. Bureau of Ocean Energy Mgmt., et al.*, 16-8418 PSG [Dkt. No. 223] (amended injunction attached and incorporated by reference)⁴. The Ninth Circuit affirmed the injunctive relief previously fashioned by the district court with regard to the CZMA and ESA claims.

II. Suspension of Standard NEPA Procedures for WST on Platform Gilda Violates the Department’s Regulations.

The proposed procedure for preparation of an EIS is deeply flawed. The alternative arrangements BOEM is proposing to use to prepare the WST EIS on Platform Gilda violate the Department’s regulations. Pursuant to Executive Order 14156 (Declaring an Energy Emergency)⁵ (“EO 14156”), the Department adopted alternative arrangements for NEPA review of energy projects (“Alternative Arrangements”)⁶ based on a regulation that suspends standard NEPA procedures during emergencies (“Emergency Regulation”).⁷ The scope of the Emergency Regulation, however, is highly circumscribed and does not cover WST on Platform Gilda.

a. The Department Invoked Its Emergency Regulation to Suspend Standard NEPA Procedures for Review of Energy Projects.

On January 20, 2025, President Trump issued EO 14156, declaring a national energy emergency under the National Emergencies Act, 50 U.S.C. § 1601 et seq., on the basis that “insufficient energy production, transportation, refining, and generation constitutes an unusual and extraordinary threat to our Nation’s economy, national security, and foreign policy.”⁸ EO 14156 directed federal agencies to “identify and exercise any lawful authorities available . . . to facilitate the identification, leasing, siting, production, transportation, refining, and generation of domestic energy resources,” including oil and gas.⁹

On April 23, 2025, the Department adopted the Alternative Arrangements, citing to EO 14156’s emergency declaration and directive to federal agencies to identify emergency

⁴ *Env'tl. Def. Ctr., et al. v. Bureau of Ocean Energy Mgmt., et al.*, 16-8418 PSG [Dkt. No. 223].

⁵ Exec. Order No. 14,156, 90 Fed. Reg. 8,433 (Jan. 29, 2025).

⁶ U.S. Dep’t of the Interior, Alternative Arrangements for Compliance with the National Environmental Policy Act amid the National Energy Emergency (April 23, 2025), *available at* [alternative-arrangements-nepa-during-national-energy-emergency-2025-04-23-signed_1.pdf](#).

⁷ 43 C.F.R. § 46.150.

⁸ Exec. Order 14,156, § 1, 90 Fed. Reg. at 8,433.

⁹ *Id.* § 2(a), 90 Fed. Reg. at 8,434.

authorities to facilitate energy production. The Alternative Arrangements identified such authority in the preexisting Emergency Regulation, and stated that “[t]his document and the environmental documents prepared under these procedures” satisfied the Emergency Regulation’s requirement to document “the determination that an emergency exists and describe the responsive action(s) taken at the time the emergency exists.”¹⁰ The Alternative Arrangements also provided that a project applicant must request application of the Alternative Arrangements but that the Department determines whether the Alternative Arrangements apply to a project.¹¹

The Alternative Arrangements provide that, for covered energy projects likely to have significant environmental impacts, the responsible official must publish a notice of intent, solicit comments, and hold a public meeting.¹² Although the public comment period is left to the discretion of the responsible official, the Alternative Arrangements advise that “most comments will be approximately 10 days.”¹³ The responsible official is directed to “prepare a focused, concise, and timely environmental impact statement addressing the purpose and need for the proposed action, alternatives, and a brief description of environmental effects” within “approximately 28 days of publishing the notice of intent.”¹⁴ The Alternative Arrangements do not require publication of a draft environmental impact statement before issuing a record of decision.¹⁵

b. The Department’s Emergency Regulation Authorizes Suspension of Standard NEPA Procedures Only in Documented Circumstances Where Imminent Threats to Specific Resources Require Urgent Action.

The Emergency Regulation applies if “an emergency exists that makes it necessary to take actions to address imminent threats to life, property, or important natural, cultural, or historic resources before preparing an environmental document.”¹⁶ If such an emergency exists, the Emergency Regulation authorizes the responsible official to “take those actions necessary to control the immediate impacts of the emergency that are urgently needed to address imminent threats to life, property, or important natural, cultural, or historic resources.”¹⁷ In taking such urgent actions, the responsible official must “document in writing that an emergency exists and describe the responsive actions taken at the time the emergency exists.”¹⁸

If the responsible official determines that additional actions must be taken before preparing an environmental document, the responsible official must make Alternative

¹⁰ U.S. Dep’t of the Interior, *supra* note 6, at 3.

¹¹ *Id.* at 2-3.

¹² *Id.* at 2.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 43 C.F.R. § 46.150.

¹⁷ *Id.* § 46.150(a).

¹⁸ *Id.* § 46.150(a)-(b).

Arrangements for NEPA compliance.¹⁹ Alternative Arrangements “shall apply only to the proposed actions necessary to control the immediate actions in response and related to the emergency action” beyond urgent actions and must be documented.²⁰ All other actions must comply with standard NEPA procedures.²¹

c. The Department Failed to Identify and Document the Emergency Requiring Suspension of Standard NEPA Procedures for WST at Platform Gilda.

The NOI for WST at Platform Gilda does not document any specific emergency or describe actions taken in response to such an emergency, as required by the Emergency Regulation. Instead, it relies on the Alternative Arrangements, which rely on the emergency declaration in EO 14156. However, EO 14156 did not determine that an emergency existed within the meaning of the Emergency Regulation or describe any actions taken in response to such an emergency. EO 14156 only directs federal agencies to identify emergency authorities applicable to the energy emergency. Therefore, the Department cannot rely on EO 14156 to satisfy the emergency documentation requirements of the Emergency Regulation.

Furthermore, while the Alternative Arrangements broadly declare that “this document and the documents prepared under these procedures” satisfy the requirement to document an emergency in each individual circumstance, the Alternative Arrangements also provide that the existence of an emergency warranting the application of emergency procedures must be decided on a case-by-case basis, at the request of the project applicant and the discretion of the responsible official.²² Therefore, the NOI must document the specific emergency that authorizes application of the Emergency Regulation. Accordingly, the NOI lacks a reasonable basis for utilizing the Alternative Arrangements.

Furthermore, the Emergency Regulation requires that documentation “describe the responsive action(s) taken at the time the emergency exists.”²³ As noted above, this requirement relates to urgent actions necessary to address “imminent threats to life, property, or important natural, cultural, or historic resources,”²⁴ which are separate from the additional emergency actions that may be authorized under alternative arrangements. Yet neither the Alternative Arrangements nor the NOI identify any urgent actions taken to address such imminent threats.

¹⁹ *Id.* § 46.150(c)-(d).

²⁰ *Id.*

²¹ *Id.* § 46.150(e).

²² U.S. Dep’t of the Interior, *supra* note 6, at 1-3. That the Alternative Arrangements do not apply generally to energy projects is supported by the final rule on the Emergency Regulation, which, in reply to comments asking about the application of alternative arrangements under the regulation to EO 14156 energy projects, stated, “Particular determinations under the DOI NEPA procedures related to E.O. 14156 are not within the scope of this rulemaking, which pertains solely to the establishment or revision of DOI procedures for compliance with NEPA.” 91 Fed. Reg. 8738, 8754 (Feb. 24, 2025).

²³ 43 C.F.R. § 46.150(b).

²⁴ *Id.* § 46.150(a).

d. The Department’s Emergency Regulation Does Not Authorize Suspension of Standard NEPA Procedures for Energy Development Projects, Including WST at Platform Gilda.

The “energy emergency” declared by EO 14156 does not constitute an emergency under the plain meaning of “threats to life, property, or important natural, cultural, or historic resources.”²⁵ Nor does the “energy emergency” constitute an “imminent threat” requiring “urgently needed actions” to “control the immediate impacts of the emergency.”²⁶ WST at Platform Gilda likewise does not constitute such an emergency. The NOI states, “[t]he purpose of the Proposed Action is to enhance the recovery of petroleum and gas from an existing oil platform . . . to further the conservation and orderly development of [outer continental shelf] oil and gas resources” by authorizing use of hydraulic fracturing for well stimulation.²⁷ As noted above, the Alternative Arrangements do not cite any documentation of such urgent actions, as required by the Emergency Regulation, and indeed they cannot—because no such emergency exists.

e. The Department’s Emergency Regulation Does Not Authorize Use of Alternative Arrangements for Projects, Including WST at Platform Gilda, That Do Not Control Actions Taken in Response to an Emergency.

The language of the Emergency Regulation limits alternative arrangements to “proposed actions necessary to control the immediate *actions* in response and related to the emergency” beyond urgent initial actions.²⁸ The plain meaning of this provision limits actions authorized under alternative arrangements to those that modify urgent actions taken in immediate response to an emergency. The provision does not apply to additional actions taken to address impacts of the emergency itself. The Emergency Regulation provides that the only actions that may be taken to address the impacts of the emergency itself are “actions necessary to control the immediate *impacts* of the emergency that are urgently needed to address imminent threats to life, property, or important natural, cultural, or historic resources.”²⁹ Those actions are not covered by the Emergency Regulation’s provision for Alternative Arrangements. Again, the NOI does not document any immediate actions in response to an emergency, as required by the Emergency Regulation. Nor does the NOI explain how WST at Platform Gilda would “control the immediate actions” that were taken in response to the alleged emergency.

Use of the Alternative Arrangements to prepare the EIS is inappropriate in this instance and BOEM is urged to use standard NEPA procedures in further consideration of the Proposed Action.

²⁵ *Id.*

²⁶ *Id.* § 46.150(a).

²⁷ 91 Fed. Reg. At 13,063-64.

²⁸ 43 C.F.R. § 46.150(c) (emphasis added).

²⁹ *Id.* § 46.150(a) (emphasis added).

III. BOEM Is Bound by a Permanent Injunction and Must Comply With The Injunction To Prepare an EIS That Considers WST on The POCS.

BOEM is reminded of its obligations pursuant to the judgment for injunctive relief obtained by the State of California and conservation groups from the district court and Ninth Circuit. The permanent injunction issued by the district court and ordered modified by the Ninth Circuit remains in place. There is no expiration date and the time to appeal is long past.

The injunction clearly states BOEM is prohibited from “approving permits for well stimulation treatments until the agencies have issued an EIS and have fully and fairly evaluated all reasonable alternatives.” The Ninth Circuit detailed BOEM’s violation of NEPA by its failure to prepare a full EIS “on the effects of authorizing offshore well stimulation treatments.” *Envtl. Def. Ctr. v. Bureau of Ocean Energy Mgmt.*, 36 F.4th at 882. BOEM risks the same violation here if it fails to prepare a programmatic EIS that analyzes the effects of authorizing WST on the POCS as a whole. It is also concerning that BOEM is considering only two alternatives, including the Proposed Action, when the Ninth Circuit previously found that BOEM did not consider a reasonable range of alternatives when it considered the proposed action and three alternatives. *See, Env’tl. Def. Ctr. v. Bureau of Ocean Energy Mgmt.*, 36 F.4th at 877. BOEM must comply with the terms of the permanent injunction or risk violation. In addition, BOEM is urged to carefully consider the Ninth Circuit’s explanation of its prior shortfalls in conducting environmental assessment regarding WST on the POCS, as evidenced in its opinion in *Envtl. Def. Ctr. v. Bureau of Ocean Energy Mgmt.*, 36 F.4th 850 (9th Cir. 2022), and to better analyze the environmental impacts of WST and fully and thoroughly comply with NEPA procedures.

In addition, BOEM is reminded that the injunction issued by the district court orders BOEM to refrain from approving “any plans or permits (e.g., Development and Production Plans, Applications for Permits to Drill, Applications for Permits to Modify) for the use of well stimulation treatments on the Pacific Outer Continental Shelf unless and until BOEM (1) completes consultation with the FWS under the ESA, and (2) completes the CZMA process under 16 U.S.C. § 1456(c)(1) for the proposed action described in the Final Programmatic Environmental Assessment of the Use of Well Stimulation Treatments on the Pacific Outer Continental Shelf dated May 2016.” (emphasis added) *Envtl. Def. Ctr., et al. v. Bureau of Ocean Energy Mgmt., et al.*, 16-8418 PSG [Dkt. No. 223]. BOEM must ensure compliance with all aspects of the permanent injunction before considering approval of permits for WST in the POCS.

IV. Specific Considerations under NEPA.

In addition to complying with the standing injunction and addressing the considerations raised by the Ninth Circuit in *Envtl. Def. Ctr., et al. v. Bureau of Ocean Energy Mgmt.*, BOEM is urged to address the following specific considerations under NEPA in preparation of any EIS that considers WST on the OCS:

a. BOEM May Not Improperly Constrain the Purpose and Need Statement

In the NOI, BOEM states that the purpose of the Proposed Action is to “enhance the recovery of petroleum and gas from an existing oil platform . . . , beyond that which could be recovered without the use of WSTs” and that the need is to “further the conservation and orderly development of OCS oil and gas resources in accordance with the Outer Continental Shelf Lands Act of 1953 (“OCSLA”) . . . through the efficient recovery of oil and gas reserves from the POCS.” 91 Fed. Reg. at 13064. This purpose and need statement is “unreasonably narrow,” *City of Carmel-by-the-Sea v. U.S. Dept. of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997), and improperly constrains the range of reasonable alternatives BOEM should consider. In addition, the statement does not adequately consider BOEM’s “statutory authorization to act” in relation to the proposed project. *Citizens Against Burlington v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991). The statement must explain how the action relates to statutory duties under OCSLA to ensure that “environmental safeguards” are in place for offshore oil development and “balance orderly energy resource development with protection of the human, marine, and coastal environments.” 43 U.S.C. §§ 1332(3), 1802(2)(B).

b. BOEM May Not Rely on Flawed Assumptions.

The 2016 EA relied on unsupported assumptions about the frequency of well stimulation and consideration of impacts by other agencies, and BOEM therefore violated NEPA by failing to take the required “hard look” at the potential environmental effects of authorizing well stimulation treatments offshore California. *Envtl. Def. Ctr. v. Bureau of Ocean Energy Mgmt.*, 36 F.4th at 872-75.

BOEM appears poised to make the same mistakes again. For example, BOEM states that “[i]t is anticipated that up to 6 wells could be stimulated per year.” 91 Fed. Reg. at 13064. This appears similar to BOEM’s “forecast of up to five WSTs per year” in 2016, 36 F.4th at 873, though BOEM does not clarify whether its current projection is 6 treatments per year or 6 wells with multiple treatments per year. The stated purpose of the Proposed Action is to allow for the use of WST, and there is no evidence that operators will limit the number of treatments unless required to. As explained in comments on the 2016 draft EA, the record shows that the oil industry has specific plans to continue the use of advanced well treatments in the future (see comments of the Environmental Defense Council)³⁰, especially given that many of the state’s offshore wells are nearing the end of their useful life using traditional methods. The California Coastal Commission submitted a comment in 2016 noting that the “frack-pac technique” had been used in some areas of the OCS and “use of hydraulic fracturing in State waters in the Long Beach Unit has become a routine well completion practice for certain reservoirs.”³¹ The California Department of Conservation also submitted a comment in 2016 noting that an independent scientific report by the California Council on Science and Technology concluded

³⁰ Environmental Defense Center, *Comments on the Draft PEA for Well Stimulation Treatments on the OCS* (Mar. 23, 2016).

³¹ California Coastal Commission, *Coastal Commission Staff Comments on Draft PEA for Well Stimulation Treatments* (Mar. 23, 2016), p. 4.

record keeping for WST in federal waters did not meet state standards.³² The report also outlined the trends in offshore fracking along with the deficiencies in recordkeeping.³³ The previously-submitted comments and reports cited within are incorporated here by reference and must be considered.

Since 2016, use of offshore fracking has become common, especially in areas where there is not an injunction in place and the federal government has allowed the practice.³⁴ BOEM also states in the NOI that “[a]ll liquid waste will be disposed of in accordance with the platform’s currently approved National Pollutant Discharge Elimination System (NPDES) permit.” 91 Fed. Reg. at 13064. It is not clear if BOEM intends to rely on this NPDES permit to allege that liquid waste disposal will not have significant environmental impacts, or to otherwise minimize impacts. To the extent BOEM does intend to do so, an agency cannot excuse itself from conducting the required “hard look” under NEPA because an activity is conducted pursuant to another permit or because impacts have been discussed in a “non-NEPA document,” *see S. Fork Band Council of W. Shoshone v. U.S. Dept. of Interior*, 588 F.3d 718, 726 (9th Cir. 2009). The California Coastal Commission’s 2016 comments pointed out some of the other flaws in relying on the NPDES permit, including that the sampling schedule required under the permit is not coordinated with WST activities and the testing prescribed under the permit may not adequately detect impacts.

c. **BOEM Must Consider Reasonable Alternatives to the Proposed Action.**

NEPA requires project proponents to provide a “detailed statement” regarding the “alternatives to the proposed action.” 42 U.S.C. § 4332(2)(C)(iii). The requirement to consider reasonable alternatives “lies at the heart of any NEPA analysis.” *Cal. ex rel. Lockyer v. U.S. Dept. of Agric.*, 459 F. Supp. 2d 874, 905 (N.D. Cal. 2006). The alternatives requirement also “ensures that each agency decision maker has before him and takes into proper account all possible approaches to a particular project (including total abandonment of the project) which would alter the environmental impact and the cost-benefit balance.” *Calvert Cliffs Coordinating Comm. v. U.S. Atomic Energy Comm’n*, 449 F.2d 1109, 1114 (D.C. Cir. 1971). “The existence of a viable but unexamined alternative renders” an EIS inadequate. *W. Watersheds Project v. Abbey*, 719 F.3d 1035, 1050 (9th Cir. 2013) (internal quotations and citations omitted).

BOEM plans to consider just two alternatives. BOEM’s NOI identifies the Proposed Action, also called Alternative A and the Preferred Alternative, as authorizing DCOR to hydraulically fracture “up to 16” wells on Platform Gilda with “up to 38 treatment stages.” 91 Fed. Reg. at 13064. BOEM states that “[i]t is anticipated that up to 6 wells could be stimulated

³² California Council on Science and Technology, *Independent Scientific Assessment of Well Stimulation in California, Vol III (Chapter 2)* (2015).

³³ California Council on Science and Technology, *Independent Scientific Assessment of Well Stimulation in California, Vol I (Chapter 3) & Vol. III (Chapter 2)* (2015).

³⁴ Center for Biological Diversity, *Toxic Waters: How Offshore Fracking Pollutes the Gulf of Mexico* (July 2021), <https://www.biologicaldiversity.org/campaigns/fracking/pdfs/Toxic-Waters-offshore-fracking-report-Center-for-Biological-Diversity.pdf>.

per year.” *Id.* But BOEM does not limit well stimulation to that number of wells per year and also does not impose limits on the annual or total number of treatment events and timeframe over which the Proposed Action may occur. In addition to the Proposed Action, BOEM will also evaluate a No Action Alternative, also called Alternative B. BOEM claims that additional alternatives—specifically, implosive/explosive fracturing and enhanced oil recovery techniques—were considered but not carried forward. *Id.* at 13065. BOEM does not consider whether traditional techniques may continue to be used to recover petroleum and gas from the existing oil platform or whether alternative energy sources may be used instead.

BOEM’s limited analysis of just two alternatives would violate NEPA. The two alternatives BOEM plans to consider are a reduction from those considered in the EA which the Ninth Circuit found inadequate. In that EA, in addition to the proposed action and no action alternative, the agencies also examined: “(1) authorizing well stimulation treatments at depths more than 2,000 feet below the seafloor surface; [and] (2) authorizing well stimulation treatments but prohibiting the open water discharge of waste fluids.” *Envtl. Def. Ctr. v. Bureau of Ocean Energy Mgmt.*, 36 F.4th at 877. The Ninth Circuit found the agencies violated NEPA by failing to consider a reasonable range of alternatives and remanded to the district court with instructions to amend its injunction. *Id.* at 878, 882.

In response to the draft EA, California and other commenters suggested specific reasonable alternatives for the agencies to consider in the final EA, including:

- Prohibiting ocean discharge.
 - The prior EA assumed that impacts to water quality and marine organisms would be avoided due to dilution and low occurrence. These assumptions did not account for increased frequency of WST and lack of toxicity and indirect effects data for many fracking additives.
- Prohibiting WST in specific locations or at particular times of year.
 - In particular, the Center for Biological Diversity recommended an alternative that would prohibit WST when certain species were more likely to be in the area, such as when endangered whales are feeding in or migrating off the coast of California. Timing could also be restricted for other purposes, such as to limit potential accidents in adverse weather.
- Requiring the disclosure of WST constituents and additives.
 - Under California Senate Bill 4 (2013), the State began to obtain information on the chemical composition of fracking and acidizing

fluids, and found they include known carcinogens, toxics, and chemicals of unknown toxicity.³⁵

- In a 2016 comment, the California Department of Conservation pointed out that there are public-facing websites where this disclosure could occur, including FracFocus or <https://www.conservation.ca.gov/calgem/Pages/WSTDisclosureSearchDisclaimer.aspx>.
- Requiring notice to be given to state agencies and the public before well stimulation treatments are conducted.
 - The California Coastal Commission noted in a 2014 comment letter that when it reached out to the Bureau of Safety and Environmental Enforcement (BSEE) and BOEM (collectively, “Bureaus”) about recent authorizations of WST on the POCS, BSEE indicated it had issued four authorizations in the prior two years and had not informed the Commission about the applications or authorizations. This deprived the Commission of the opportunity to coordinate and determine whether the actions were covered under current plans, whether more extensive environmental review was necessary, and whether the actions should have triggered federal consistency review under the CZMA.
 - State agencies that should be notified include the California Coastal Commission, State Lands Commission, Department of Conservation, and Department of Fish and Wildlife/Office of Spill Prevention and Response.
- Requiring testing of well stimulation fluids and effluent.
 - The chemicals in fracking and acidizing fluids pose risks to marine and human life, and an independent scientific report by the California Council on Science and Technology recommended that the contents of fracking effluent be disclosed, fracking and acidizing be chemically evaluated, and waters be protected from fracking chemicals and stimulation reaction products.³⁶

³⁵ California Council on Science and Technology, *Independent Scientific Assessment of Well Stimulation in California, Vol II Summary Report* (2015).

³⁶ California Council on Science and Technology, *Independent Scientific Assessment of Well Stimulation in California, Vol III* (2015).

- The California Coastal Commission also noted in 2016 that there is uncertainty regarding toxicity, adsorption to the seafloor, indirect effects, and bioaccumulation
- Limiting the number of well stimulation treatments in a given year.
 - The California Coastal Commission noted in 2016 that BSEE and BOEM’s conclusions in the 2016 EA about environmental impacts were based on unsupported assumptions that a low amount of WST would occur. The Commission recommended that several scenarios be examined to understand potential environmental effects of increased WST use. Without an expanded environmental analysis, the Commission recommended that the Bureaus, at minimum, clearly limit the rate of WST use and specify that any future increase beyond that rate would require additional review. The California Department of Conservation also made this recommendation.

d. BOEM Must Thoroughly Analyze the Potential Impacts of Permitting WST.

BOEM must prepare a thorough analysis of the potential impacts of WSTs, and cannot rely on compliance with regulations and permitting regimes to substitute for this analysis. As the Ninth Circuit held, BOEM may not rely on a NPDES permit to analyze the impacts. “The NPDES permit is issued by a different federal agency, and it does not specifically address ‘the impacts of the project at issue.’” *Envtl. Def. Ctr.*, 36 F.4th at 874 (quoting *S. Fork Band Council of W. Shoshone v. U.S. Dept. of Interior*, 588 F.3d 718, 726 (9th Cir. 2009)).

Nor can BOEM rely on dilution to avoid analyzing potential impacts. As the Ninth Circuit stated, the fact that “well stimulation fluids will be diluted with seawater does not excuse the data gaps regarding the specific ‘effects of discharging WST fluids on marine life’ nor the lack of data on the ‘chronic impacts of these chemicals’ in seawater.” *Envtl. Def. Ctr.*, 36 F.4th at 881.

Instead, BOEM must provide a thorough analysis of the potential impacts of WSTs, including their discharge, on marine resources including marine and coastal fish, marine birds, sea turtles, and fisheries. In conducting this analysis, the Bureaus must review and respond to the comments that California state agencies and others submitted on the previous draft programmatic EA, including the comments from California’s Division of Oil, Gas, and Geothermal Resources (“DOGGR”) (now known as the California Geologic Energy Management Division or “CalGEM”).³⁷ As the Ninth Circuit noted, DOGGR stated in its comments that “effects of discharging WST fluids on marine life are not fully understood due to the lack of toxicity data”

³⁷ California Department of Natural Resources, Division of Oil, Gas, and Geothermal Resources, *Comments on the Draft Programmatic Environmental Assessment (PEA) for the use of Well Stimulation Treatments on the Southern California Outer Continental Shelf* (Mar. 23, 2016).

and urged the agencies to conduct toxicity testing to address this gap. *Envtl. Def. Ctr.*, 36 F.4th at 880. These comments are attached and incorporated by reference.

EPA also commented on the potential for significant impacts from the discharge of WST fluids, and we attach and incorporate these comments by reference.³⁸ EPA commented that BOEM should provide “a quantitative assessment, including the expected dilution factors prior to discharge, to further evaluate potential impacts and to support the conclusion that water quality would not be adversely affected.”³⁹ EPA also noted that BOEM had not provided an analysis of the discharge of flowback fluids from acid treatments and commented that BOEM should provide an analysis of the potential impacts of low pH flowback fluids from acid treatments, including “a discussion of the fate of such acidic discharges in the ocean and how quickly the discharge plume would achieve compliance with benchmark criteria such as the California Ocean Plan standards for pH of 6-9 units.”⁴⁰ EPA possessed the chemical inventory for two hydraulic fracturing operations conducted at Platform Gilda in “late 2014- early 2015” and offered to forward this inventory to assist in the analysis.⁴¹ BOEM should analyze this data in the EIS.

In addition to impacts from the discharge of WST fluids, EPA commented that BOEM needs to adequately analyze the potential for wellbore casing failures. EPA asked for clarification as to “whether existing wells in the active leases, which have been in production up to 48 years, would be more susceptible to casing failure during WST operations due to their age, and provide data to demonstrate that casing failures are not reasonably foreseeable.”⁴² Specifically, it recommended that BOEM “discuss quantitatively how the data relied upon are representative of the age of the wells on the OCS,” and “clarify whether or not the assessment of the potential for well bore casing failure is based solely on WST for the existing wells.”⁴³ To protect against such failures, EPA recommended that BOEM require that “tubing-casing annuli are actively monitored for leak detection during operations.”⁴⁴

The California Coastal Commission commented that BOEM should provide evidence or data supporting the conclusion that the release of WST chemicals (and injected wastewater in general) to the ocean via existing fractures and faults is “not reasonably foreseeable” and consider any evidence that such releases of injected wastewater may have occurred.⁴⁵ The Coastal Commission also stated that BOEM should address whether WST activities would

³⁸ United States Environmental Protection Agency, *Region 9 Comment on Programmatic Environmental Assessment of the Use of Well Stimulation Treatments on the Outer Continental Shelf, Southern California Planning Area* (Mar. 23, 2016).

³⁹ 2016 EPA Region 9 comment, *supra* note 35, at p. 1.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at p. 3.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ 2016 California Coastal Commission comment, *supra* note 31, at p. 6.

increase the likelihood and/or severity of accidents (including ship collisions) or spills above the existing baseline.⁴⁶

To the extent the referenced agency comments and other resources may not provide BOEM with enough information to make a reasoned choice, it must obtain the necessary information because “[g]uesswork by the agencies does not discharge their responsibilities under NEPA.” *Envtl. Def. Ctr.*, 36 F.4th at 881. More specifically, as the Ninth Circuit stated, “[t]hat the agencies know the toxicity of *some* chemicals used in well stimulation treatments does not adequately respond to the concerns raised about the uncertainty of how these chemicals interact when mixed together, when interacting with subsurface minerals, or when coming into contact with surrounding formation rock.” *Id.* To the extent BOEM does not have information to address these issues, it must obtain it or provide “convincing reasons for why these data gaps are not essential or could not be mitigated through further study.” *Id.*

These comments are attached and incorporated here by reference. BOEM must consider these alternatives in the EIS.

V. Conclusion

Attorney General Bonta reiterates his opposition to the use of new WST, including hydraulic fracturing, to increase oil and gas production offshore California and further opposes the use of the Department’s Alternative Arrangements in preparation of this EIS. Notwithstanding these objections, if BOEM persists with completing an EIS to consider the use of WST in the POCS, it must fully and thoroughly analyze the impacts of doing so as required by NEPA and pursuant to the standing injunction, specifically addressing the NEPA considerations raised above and incorporated by reference in the attachments.

Attorney General Bonta reserves the right to submit additional comments on a draft or final EIS.

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⁴⁶ *Id.*

March 30, 2026

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We thank BOEM for the opportunity to submit these comments and respectfully request that BOEM address the considerations raised in the EIS.

Sincerely,



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