

AMENDED IN SENATE APRIL 10, 2014

AMENDED IN SENATE MARCH 27, 2014

SENATE BILL

No. 1132

Introduced by Senators Mitchell and Leno

(Principal coauthors: Assembly Members Ammiano and Levine)

(Coauthors: Senators DeSaulnier, Jackson, Lieu, and Wolk)

(Coauthors: Assembly Members Bloom, Chesbro, Gordon, Stone, and Williams)

February 20, 2014

An act to amend Sections 3157 and 3160 of, and to repeal and add Section 3161 of, the Public Resources Code, relating to oil and gas.

LEGISLATIVE COUNSEL'S DIGEST

SB 1132, as amended, Mitchell. Oil and gas: well stimulation treatments.

Under existing law, the Division of Oil, Gas, and Geothermal Resources in the Department of Conservation regulates the drilling, operation, maintenance, stimulation, and abandonment of oil and gas wells in the state. The State Oil and Gas Supervisor, or supervisor, supervises the drilling, operation, maintenance, stimulation, and abandonment of wells and the operation, maintenance, and removal or abandonment of tanks and facilities related to oil and gas production within an oil and gas field regarding safety and environmental damage. Existing law requires an operator, prior to performing a well stimulating treatment, as defined, on a well, to obtain approval from the supervisor or district deputy. Under existing law, a person who violates any prohibition specific to the regulation of oil or gas operations is guilty of a misdemeanor.

Existing law requires the Secretary of the Natural Resources Agency, on or before January 1, 2015, to cause to be conducted, and completed, an independent scientific study on well stimulation treatments, including acid well stimulation and hydraulic fracturing treatments.

This bill would revise the definition of “well stimulation treatment.” The bill would require the scientific study to consider additional elements, including, among other things, evaluating various potential direct, indirect, and cumulative health and environmental effects of onshore and offshore well stimulation and well stimulation treatment-related activities, as specified. The bill would also prohibit all well stimulation treatments until the Secretary of the Natural Resources Agency convenes a committee to review the scientific study, as specified, the Governor issues findings that specific measures are in place to ensure that well stimulation treatments do not pose a risk to, or impairment of, the public health and welfare or to the environmental and economic sustainability of the state, and, if applicable, those findings are affirmed by judicial review, as specified. The bill would require a person claiming a vested right to perform a well stimulation treatment to seek a determination from the Secretary of the Natural Resources Agency before performing the well stimulation treatment during the time period in which the prohibition is in effect. Because a violation of the bill’s requirements would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature finds and declares all of the
- 2 following:
- 3 (1) The state has failed to appropriately monitor or track well
- 4 stimulation activity and to study its effects.
- 5 (2) Well stimulation and well stimulation-related activities
- 6 release harmful air pollutants, including methanol, crystalline silica
- 7 dust, hydrochloric and hydrofluoric acid, xylene, 2-butoxyethanol,

1 naphthalene, ethylbenzene, 2-propanol, volatile organic
2 compounds, and particulate matter, which have an adverse impact
3 on the state’s air quality and are detrimental to public health and
4 safety. Many parts of California already suffer from poor air
5 quality.

6 (3) Well stimulation and well stimulation-related activities
7 involve the use of hundreds of chemicals, many of which are
8 known to be carcinogenic or are otherwise harmful to human
9 health. These chemicals, along with dangerous chemicals present
10 in the oil and gas formation, threaten to contaminate groundwater
11 and surface water resources through numerous potential pathways.

12 (4) Exposure to the chemicals used in well stimulation and well
13 stimulation-related activities poses a widespread and significant
14 risk to public health and safety and the environment. Studies have
15 shown an increase in birth defects and illnesses in communities
16 located close to well stimulation operations.

17 (5) Well stimulation and well stimulation-related activities
18 involve the use of substantial amounts of freshwater, which cannot
19 be reused for other purposes once it is mixed with well stimulation
20 fluid chemicals. California is currently experiencing one of the
21 worst droughts in the state’s history and faces a scarcity of
22 freshwater resources.

23 (6) Well stimulation and well stimulation-related activities result
24 in the emission of a substantial amount of greenhouse gases, such
25 as carbon dioxide and methane. The construction, drilling,
26 extraction, refinement, and end-use combustion of oil and gas
27 ~~produces produce~~ vast amounts of greenhouse gas; furthermore,
28 ~~gas. Furthermore,~~ well stimulation and well stimulation-related
29 activities may lead to a dramatic increase in the overall amount of
30 recoverable oil and gas in the state. The expansion of oil and gas
31 activity and the process of well stimulation both threaten to
32 undermine the state’s goal of reducing greenhouse gas emissions.

33 (7) The disposal of wastewater resulting from well stimulation
34 and well stimulation-related activities in other states has been
35 linked to increased earthquake activity.

36 (8) Fracking and other forms of well stimulation occur
37 disproportionately near communities consisting largely of people
38 of color, low-income households, ~~non-English speaking~~
39 *non-English-speaking* households, and persons already
40 experiencing high levels of water or air pollution or water scarcity.

1 (9) Well stimulation and well stimulation-related activities
2 directly and indirectly harm wildlife, including species that are
3 protected under federal and state endangered species laws.

4 (b) It is the intent of the Legislature in enacting this act to protect
5 the public health and welfare of the state.

6 SEC. 2. Section 3157 of the Public Resources Code is amended
7 to read:

8 3157. (a) For purposes of this article, “well stimulation
9 treatment” means any treatment of a well designed to enhance oil
10 and gas production or recovery by increasing the permeability of
11 the formation or the flow of fluid through the well. Well stimulation
12 treatments include, but are not limited to, hydraulic fracturing
13 treatments and acid well stimulation treatments.

14 (b) Well stimulation treatments do not include steam flooding,
15 water flooding, or cyclic steaming and do not include routine well
16 cleanout work, routine well maintenance, routine removal of
17 formation damage due to drilling, bottom hole pressure surveys,
18 or routine activities that do not affect the integrity of the well or
19 the formation.

20 (c) Well stimulation treatments do not include gas storage
21 projects that are subject to ~~Section 1742.9~~ 1724.9 of Title 14 of
22 the California Code of Regulations, but shall include well
23 stimulation treatments applied to gas storage projects to increase
24 the flow of gas.

25 SEC. 3. Section 3160 of the Public Resources Code is amended
26 to read:

27 3160. (a) The Secretary of the Natural Resources Agency shall
28 cause to be conducted, and completed, an independent scientific
29 study on well stimulation treatments, including, but not limited to,
30 hydraulic fracturing and acid well stimulation treatments. The
31 scientific study shall evaluate the hazards and risks and potential
32 hazards and risks that well stimulation treatments and well
33 stimulation treatment-related activities pose to natural resources
34 and public, occupational, and environmental health and safety.
35 The scientific study shall do all of the following:

36 (1) Follow the well-established standard protocols of the
37 scientific profession, including, but not limited to, the use of
38 recognized experts, peer review, and publication. The study shall
39 be based solely on the best available scientific, health,
40 environmental, and statistical information.

1 (2) (A) Identify all onshore areas with existing and potential
2 conventional and unconventional oil and gas reserves and gas
3 storage projects where well stimulation treatments are likely to
4 spur or enable oil and gas exploration and production, or gas
5 storage.

6 (B) Identify offshore areas, within the jurisdiction of the
7 division, with existing and potential conventional and
8 unconventional oil and gas reserves where well stimulation
9 treatments are likely to spur or enable oil and gas exploration and
10 production.

11 (3) (A) Evaluate all aspects and effects of well stimulation
12 treatments, including, but not limited to, the well stimulation
13 treatment, additive and water transportation to and from the well
14 site, mixing, storage, and handling of the well stimulation treatment
15 fluids and additives onsite, the use and potential for use of nontoxic
16 additives and the use or reuse of treated or produced water in well
17 stimulation treatment fluids, and flowback fluids and the handling,
18 treatment, and disposal of flowback fluids and other materials, if
19 any, generated by the treatment. Specifically, the potential for the
20 use of recycled water in well stimulation treatments, including
21 appropriate water quality requirements and available treatment
22 technologies, shall be evaluated. Well stimulation treatments
23 include, but are not limited to, hydraulic fracturing and acid well
24 stimulation treatments.

25 (B) Review and evaluate acid matrix stimulation treatments,
26 including the range of acid volumes applied per treated foot and
27 total acid volumes used in treatments, types of acids, acid
28 concentration, and other chemicals used in the treatments.

29 (C) Evaluate all potential direct, indirect, and cumulative health
30 and environmental effects of onshore well stimulation treatments
31 and well stimulation treatment-related activities.

32 (D) Evaluate all potential direct, indirect, and cumulative health
33 and environmental effects of offshore well stimulation treatments
34 and well stimulation treatment-related activities that are within the
35 jurisdiction of the division.

36 (E) Evaluate all direct, indirect, and cumulative health and
37 environmental effects of the full lifecycle of oil and gas
38 exploration, development, and production, including flowback
39 fluids and other byproducts that would result from allowing well
40 stimulation treatments within the state.

1 (F) Evaluate the extent of the increase in oil and gas
2 development, refining processes, and end-use combustion that
3 would result from allowing well stimulation treatments within the
4 state.

5 (4) (A) Consider potential water contamination, including
6 groundwater and surface water, potential depletion of water
7 resources, potential effects on water sustainability, and the ultimate
8 disposition, transport, transformation, and toxicology of well
9 stimulation treatments, including acid well stimulation fluids,
10 hydraulic fracturing fluids, and waste hydraulic fracturing fluids,
11 and acid well stimulation in the environment.

12 (B) Consider surface contamination, potential noise and light
13 pollution, as well as actual and potential induced seismicity.

14 (C) Consider atmospheric emissions, including potential
15 greenhouse gas emissions, the potential degradation of air quality,
16 and the potential impacts of well stimulation and increased oil and
17 gas activity on the state's efforts to meet its greenhouse gas
18 reduction targets under the California Global Warming Solutions
19 Act of 2006 (Division 25.5 (commencing with Section 38500) of
20 the Health and Safety Code).

21 (5) Identify and evaluate the geologic features present in the
22 vicinity of a well, including the well bore, that should be taken
23 into consideration in the design of a proposed well stimulation
24 treatment.

25 (6) Identify and evaluate all of the following:

26 (A) The potential impacts of well stimulation treatments on
27 private property, including home values and direct damage to
28 property and land.

29 (B) The potential human health risk for each chemical used in
30 well stimulation treatments.

31 (C) The potential economic costs and harms of increased oil
32 and gas operations in the state as a result of well stimulation
33 treatments, including, but not limited to, the resulting economic
34 costs to the agricultural sector and the tourism industry.

35 (D) The potential effects on communities most likely to be
36 negatively affected by the impacts of well stimulation, including,
37 but not limited to, all of the following:

38 (i) Communities consisting largely of people of color.

39 (ii) Communities consisting largely of low-income individuals.

1 (iii) Communities consisting largely of non-English-speaking
2 households.

3 (iv) Communities already experiencing high levels of water or
4 air pollution, or water scarcity.

5 (E) Potential harm to the public health and welfare of the state's
6 residents and the state's environment, both cumulatively and
7 specific to each region where well stimulation treatments may
8 occur.

9 (F) The potential effect of increased traffic due to increased oil
10 and gas activity as a result of well stimulation treatments, including
11 air emissions from vehicle traffic, and road expansion and
12 deterioration.

13 (G) The potential effect on pipeline infrastructure due to
14 increased oil and gas activity as a result of well stimulation
15 treatments, including potential pipeline leakage.

16 (H) Potential impacts on wildlife, including harm to endangered
17 or threatened species, native plants, and habitat, including habitat
18 fragmentation.

19 (I) Whether existing emergency planning, procedures, and
20 resources adequately and fully ensure public safety in the event
21 of an emergency.

22 (J) Potential risks to worker safety.

23 (7) Include a hazard assessment and risk analysis addressing
24 occupational and environmental exposures to well stimulation
25 treatments, including hydraulic fracturing treatments, hydraulic
26 fracturing treatment-related processes, acid well stimulation
27 treatments, acid well stimulation treatment-related processes, and
28 the corresponding impacts on public health and safety with the
29 participation of the Office of Environmental Health Hazard
30 Assessment.

31 (8) Clearly identify where additional information is necessary
32 to inform and improve the analyses.

33 (b) (1) Prior to the issuance of the final scientific study, the
34 division shall conduct public hearings throughout the state to obtain
35 additional public comment. Public notice of a hearing shall be
36 provided at least 30 days prior to any hearing.

37 (2) All relevant notices and hearing documents shall be made
38 available in non-English languages necessary to inform the public
39 of the opportunity to comment and to accommodate public
40 participation.

1 (c) The Secretary of the Natural Resources Agency shall notify
2 the Joint Legislative Budget Committee and the chairs of the
3 Assembly Natural Resources, Senate Environmental Quality, and
4 Senate Natural Resources and Water Committees on the progress
5 of the independent scientific study on well stimulation and related
6 activities. The first progress report shall be provided to the
7 Legislature on or before April 1, 2014, and progress reports shall
8 continue every four months thereafter until the independent study
9 is completed, including a peer review of the study by independent
10 scientific experts.

11 (d) (1) (A) On or before January 1, 2015, the division, in
12 consultation with the Department of Toxic Substances Control,
13 the State Air Resources Board, the State Water Resources Control
14 Board, the Department of Resources Recycling and Recovery, and
15 any local air districts and regional water quality control boards in
16 areas where well stimulation treatments, including acid well
17 stimulation treatments and hydraulic fracturing treatments may
18 occur, shall adopt rules and regulations specific to well stimulation
19 treatments. The rules and regulations shall include, but are not
20 limited to, revisions, as needed, to the rules and regulations
21 governing construction of wells and well casings to ensure integrity
22 of wells, well casings, and the geologic and hydrologic isolation
23 of the oil and gas formation during and following well stimulation
24 treatments, and full disclosure of the composition and disposition
25 of well stimulation fluids, including, but not limited to, hydraulic
26 fracturing fluids, acid well stimulation fluids, and flowback fluids.

27 (B) The rules and regulations shall additionally include
28 provisions for an independent entity or person to perform the
29 notification requirements pursuant to paragraph (6) of subdivision
30 (f), for the operator to provide for baseline and followup water
31 testing upon request as specified in paragraph (7) of subdivision
32 (f).

33 (C) (i) In order to identify the acid matrix stimulation treatments
34 that are subject to this section, the rules and regulations shall
35 establish threshold values for acid volume applied per treated foot
36 of any individual stage of the well or for total acid volume of the
37 treatment, or both, based upon a quantitative assessment of the
38 risks posed by acid matrix stimulation treatments that exceed the
39 specified threshold value or values in order to prevent, as far as

1 possible, damage to life, health, property, and natural resources
2 pursuant to Section 3106.

3 (ii) On or before January 1, 2020, the division shall review and
4 evaluate the threshold values for acid volume applied per treated
5 foot and total acid volume of the treatment, based upon data
6 collected in the state, for acid matrix stimulation treatments. The
7 division shall revise the values through the regulatory process, if
8 necessary, based upon the best available scientific information,
9 including the results of the independent scientific study pursuant
10 to subparagraph (B) of paragraph (3) of subdivision (a).

11 (2) Full disclosure of the composition and disposition of well
12 stimulation fluids, including, but not limited to, hydraulic fracturing
13 fluids and acid stimulation treatment fluids, shall, at a minimum,
14 include:

15 (A) The date of the well stimulation treatment.

16 (B) A complete list of the names, Chemical Abstract Service
17 (CAS) numbers, and maximum concentration, in percent by mass,
18 of each and every chemical constituent of the well stimulation
19 treatment fluids used. If a CAS number does not exist for a
20 chemical constituent, the well owner or operator may provide
21 another unique identifier, if available.

22 (C) The trade name, the supplier, concentration, and a brief
23 description of the intended purpose of each additive contained in
24 the well stimulation treatment fluid.

25 (D) The total volume of base fluid used during the well
26 stimulation treatment, and the identification of whether the base
27 fluid is water suitable for irrigation or domestic purposes, water
28 not suitable for irrigation or domestic purposes, or a fluid other
29 than water.

30 (E) The source, volume, and specific composition and
31 disposition of all water, including, but not limited to, all water
32 used as base fluid during the well stimulation treatment and
33 recovered from the well following the well stimulation treatment
34 that is not otherwise reported as produced water pursuant to Section
35 3227. Any repeated reuse of treated or untreated water for well
36 stimulation treatments and well stimulation treatment-related
37 activities shall be identified.

38 (F) The specific composition and disposition of all well
39 stimulation treatment fluids, including waste fluids, other than
40 water.

1 (G) Any radiological components or tracers injected into the
2 well as part of, or in order to evaluate, the well stimulation
3 treatment, a description of the recovery method, if any, for those
4 components or tracers, the recovery rate, and specific disposal
5 information for recovered components or tracers.

6 (H) The radioactivity of the recovered well stimulation fluids.

7 (I) The location of the portion of the well subject to the well
8 stimulation treatment and the extent of the fracturing or other
9 modification, if any, surrounding the well induced by the treatment.

10 (e) (1) Through the consultation process described in paragraph
11 (1) of subdivision (d), the division shall collaboratively identify
12 and delineate the existing statutory authority and regulatory
13 responsibility relating to well stimulation treatments and well
14 stimulation treatment-related activities of the Department of Toxic
15 Substances Control, the State Air Resources Board, any local air
16 districts, the State Water Resources Control Board, the Department
17 of Resources Recycling and Recovery, any regional water quality
18 control board, and other public entities, as applicable. This shall
19 specify how the respective authority, responsibility, and notification
20 and reporting requirements associated with well stimulation
21 treatments and well stimulation treatment-related activities are
22 divided among each public entity.

23 (2) On or before January 1, 2015, the division shall enter into
24 formal agreements with the Department of Toxic Substances
25 Control, the State Air Resources Board, any local air districts where
26 well stimulation treatments may occur, the State Water Resources
27 Control Board, the Department of Resources Recycling and
28 Recovery, and any regional water quality control board where well
29 stimulation treatments may occur, clearly delineating respective
30 authority, responsibility, and notification and reporting
31 requirements associated with well stimulation treatments and well
32 stimulation treatment-related activities, including air and water
33 quality monitoring, in order to promote regulatory transparency
34 and accountability.

35 (3) The agreements under paragraph (2) shall specify the
36 appropriate public entity responsible for air and water quality
37 monitoring and the safe and lawful disposal of materials in
38 landfills, include trade secret handling protocols, if necessary, and
39 provide for ready public access to information related to well
40 stimulation treatments and related activities.

1 (4) Regulations, if necessary, shall be revised appropriately to
2 incorporate the agreements under paragraph (2).

3 (f) (1) Notwithstanding any other law or regulation, prior to
4 performing a well stimulation treatment, the operator shall apply
5 for a permit to perform a well stimulation treatment with the
6 supervisor or district deputy. The well stimulation treatment permit
7 application shall contain the pertinent data the supervisor requires
8 on printed forms supplied by the division or on other forms
9 acceptable to the supervisor. The information provided in the well
10 stimulation treatment permit application shall include, but is not
11 limited to, the following:

12 (A) The well identification number and location.

13 (B) The time period during which the well stimulation treatment
14 is planned to occur.

15 (C) A water management plan that shall include all of the
16 following:

17 (i) An estimate of the amount of water to be used in the
18 treatment. Estimates of water to be recycled following the well
19 stimulation treatment may be included.

20 (ii) The anticipated source of the water to be used in the
21 treatment.

22 (iii) The disposal method identified for the recovered water in
23 the flowback fluid from the treatment that is not produced water
24 included in the statement pursuant to Section 3227.

25 (D) A complete list of the names, Chemical Abstract Service
26 (CAS) numbers, and estimated concentrations, in percent by mass,
27 of each and every chemical constituent of the well stimulation
28 fluids anticipated to be used in the treatment. If a CAS number
29 does not exist for a chemical constituent, the well owner or operator
30 may provide another unique identifier, if available.

31 (E) The planned location of the well stimulation treatment on
32 the well bore, the estimated length, height, and direction of the
33 induced fractures or other planned modification, if any, and the
34 location of existing wells, including plugged and abandoned wells,
35 that may be impacted by these fractures and modifications.

36 (F) A groundwater monitoring plan. Required groundwater
37 monitoring in the vicinity of the well subject to the well stimulation
38 treatment shall be satisfied by one of the following:

1 (i) The well is located within the boundaries of an existing oil
2 or gas field-specific or regional monitoring program developed
3 pursuant to Section 10783 of the Water Code.

4 (ii) The well is located within the boundaries of an existing oil
5 or gas field-specific or regional monitoring program developed
6 and implemented by the well owner or operator meeting the model
7 criteria established pursuant to Section 10783 of the Water Code.

8 (iii) Through a well-specific monitoring plan implemented by
9 the owner or operator meeting the model criteria established
10 pursuant to Section 10783 of the Water Code, and submitted to
11 the appropriate regional water board for review.

12 (G) The estimated amount of treatment-generated waste
13 materials that are not reported in subparagraph (C) and an identified
14 disposal method for the waste materials.

15 (2) (A) At the supervisor's discretion, and if applied for
16 concurrently, the well stimulation treatment permit described in
17 this section may be combined with the well drilling and related
18 operation notice of intent required pursuant to Section 3203 into
19 a single combined authorization. The portion of the combined
20 authorization applicable to well stimulation shall meet all of the
21 requirements of a well stimulation treatment permit pursuant to
22 this section.

23 (B) Where the supervisor determines that the activities proposed
24 in the well stimulation treatment permit or the combined
25 authorization have met all of the requirements of Division 13
26 (commencing with Section 21000), and have been fully described,
27 analyzed, evaluated, and mitigated, no additional review or
28 mitigation shall be required.

29 (C) The time period available for approval of the portion of the
30 combined authorization applicable to well stimulation is subject
31 to the terms of this section, and not Section 3203.

32 (3) (A) The supervisor or district deputy shall review the well
33 stimulation treatment permit application and may approve the
34 permit if the application is complete. An incomplete application
35 shall not be approved.

36 (B) A well stimulation treatment or repeat well stimulation
37 treatment shall not be performed on any well without a valid permit
38 that the supervisor or district deputy has approved.

1 (C) In considering the permit application, the supervisor or
2 district deputy shall evaluate the quantifiable risk of the well
3 stimulation treatment.

4 (4) The well stimulation treatment permit shall expire one year
5 from the date that the permit is issued.

6 (5) Within five business days of issuing a permit to perform a
7 well stimulation treatment, the division shall provide a copy of the
8 permit to the appropriate regional water quality control board or
9 boards and to the local planning entity where the well, including
10 its subsurface portion, is located. The division shall also post the
11 permit on the publicly accessible portion of its Internet Web site
12 within five business days of issuing a permit.

13 (6) (A) It is the policy of the state that a copy of the approved
14 well stimulation treatment permit and information on the available
15 water sampling and testing be provided to every tenant of the
16 surface property and every surface property owner or authorized
17 agent of that owner whose property line location is one of the
18 following:

19 (i) Within a 1,500 foot radius of the wellhead.

20 (ii) Within 500 feet from the horizontal projection of all
21 subsurface portions of the designated well to the surface.

22 (B) (i) The well owner or operator shall identify the area
23 requiring notification and shall contract with an independent entity
24 or person who is responsible for, and shall perform, the notification
25 required pursuant to subparagraph (A).

26 (ii) The independent entity or person shall identify the
27 individuals notified, the method of notification, the date of the
28 notification, and a list of those notified, and shall provide this
29 information to the division.

30 (iii) The performance of the independent entity or person shall
31 be subject to review and audit by the division.

32 (C) A well stimulation treatment shall not commence before 30
33 calendar days after the permit copies pursuant to subparagraph (A)
34 are provided.

35 (7) (A) A property owner notified pursuant to paragraph (6)
36 may request water quality sampling and testing from a designated
37 qualified contractor on any water well suitable for drinking or
38 irrigation purposes and on any surface water suitable for drinking
39 or irrigation purposes as follows:

1 (i) Baseline measurements prior to the commencement of the
2 well stimulation treatment.

3 (ii) Followup measurements after the well stimulation treatment
4 on the same schedule as the pressure testing of the well casing of
5 the treated well.

6 (B) The State Water Resources Control Board shall designate
7 one or more qualified independent third-party contractor or
8 contractors that adhere to board-specified standards and protocols
9 to perform the water sampling and testing. The well owner or
10 operator shall pay for the sampling and testing. The sampling and
11 testing performed shall be subject to audit and review by the State
12 Water Resources Control Board or an applicable regional water
13 quality control board, as appropriate.

14 (C) The results of the water testing shall be provided to the
15 division, appropriate regional water quality control board, and the
16 property owner or authorized agent. A tenant notified pursuant to
17 paragraph (6) shall receive information on the results of the water
18 testing to the extent authorized by his or her lease and, where the
19 tenant has lawful use of the groundwater or surface water identified
20 in subparagraph (A), the tenant may independently contract for
21 similar groundwater or surface water testing.

22 (8) The division shall retain a list of the entities and property
23 owners notified pursuant to paragraphs (5) and (6).

24 (9) The operator shall provide notice to the division at least 72
25 hours prior to the actual start of the well stimulation treatment in
26 order for the division to witness the treatment.

27 (g) If a well stimulation treatment is performed, a supplier that
28 performs any part of the treatment or provides additives directly
29 to the operator for a well stimulation treatment shall furnish the
30 operator with information suitable for public disclosure needed
31 for the operator to comply with subdivision (h). This information
32 shall be provided as soon as possible but no later than 30 days
33 following the conclusion of the well stimulation treatment.

34 (h) (1) Within 60 days following cessation of a well stimulation
35 treatment, the operator shall post or cause to be posted to an
36 Internet Web site, designated or maintained by the division and
37 accessible to the public, all of the well stimulation fluid
38 composition and disposition information required to be collected
39 pursuant to the rules and regulations adopted under subdivision
40 (d), including well identification number and location. This shall

1 include the collected water quality data, which the operator shall
2 report electronically to the State Water Resources Control Board.

3 (2) (A) The division shall develop an Internet Web site for
4 operators to report the information required under this section. The
5 Internet Web site shall be capable of organizing the reported
6 information in a format, such as a spreadsheet, that allows the
7 public to easily search and aggregate, to the extent practicable,
8 each type of information required to be collected pursuant to
9 subdivision (d) using search functions on that Internet Web site.
10 The Internet Web site shall be functional within two years of the
11 Department of Technology's approval of a feasibility study report
12 or appropriation authority to fund the development of the Internet
13 Web site, whichever occurs latest, but no later than January 1,
14 2016.

15 (B) The division may direct reporting to an alternative Internet
16 Web site developed by the Ground Water Protection Council and
17 the Interstate Oil and Gas Compact Commission in the interim
18 until approval or appropriate authority pursuant to subparagraph
19 (A) occur. Prior to the implementation of the division's Internet
20 Web site, the division shall obtain the data reported by operators
21 to the alternative Internet Web site and make it available in an
22 organized electronic format to the public no later than 15 days
23 after it is reported to the alternative Internet Web site.

24 (i) The operator is responsible for compliance with this section.

25 (j) (1) All geologic features within a distance reflecting an
26 appropriate safety factor of the fracture zone for well stimulation
27 treatments that fracture the formation and that have the potential
28 to either limit or facilitate the migration of fluids outside of the
29 fracture zone shall be identified and added to the well history.
30 Geologic features include seismic faults identified by the California
31 Geologic Survey.

32 (2) For the purposes of this section, the "fracture zone" is
33 defined as the volume surrounding the well bore where fractures
34 were created or enhanced by the well stimulation treatment. The
35 safety factor shall be at least five and may vary depending upon
36 geologic knowledge.

37 (3) The division shall review the geologic features important to
38 assessing well stimulation treatments identified in the independent
39 study pursuant to paragraph (5) of subdivision (a). Upon
40 completion of the review, the division shall revise the regulations

1 governing the reporting of geologic features pursuant to this
2 subdivision accordingly.

3 (k) (1) Public disclosure of well stimulation treatment fluid
4 information claimed to contain trade secrets is governed by Section
5 1060 of the Evidence Code, or the Uniform Trade Secrets Act
6 (Title 5 (commencing with Section 3426) of Part 1 of Division 4
7 of the Civil Code), and the California Public Records Act (Chapter
8 3.5 (commencing with Section 6250) of Division 7 of Title 1 of
9 the Government Code).

10 (2) Notwithstanding any other law or regulation, none of the
11 following information shall be protected as a trade secret:

12 (A) The identities of the chemical constituents of additives,
13 including CAS identification numbers.

14 (B) The concentrations of the additives in the well stimulation
15 treatment fluids.

16 (C) Any air or other pollution monitoring data.

17 (D) Health and safety data associated with well stimulation
18 treatment fluids.

19 (E) The chemical composition of the flowback fluid.

20 (3) If a trade secret claim is invalid or invalidated, the division
21 shall release the information to the public by revising the
22 information released pursuant to subdivision (h). The supplier shall
23 notify the division of any change in status within 30 days.

24 (4) (A) If a supplier believes that information regarding a
25 chemical constituent of a well stimulation fluid is a trade secret,
26 the supplier shall nevertheless disclose the information to the
27 division in conjunction with a well stimulation treatment permit
28 application, if not previously disclosed, within 30 days following
29 cessation of well stimulation on a well, and shall notify the division
30 in writing of that belief.

31 (B) A trade secret claim shall not be made after initial disclosure
32 of the information to the division.

33 (C) To comply with the public disclosure requirements of this
34 section, the supplier shall indicate where the trade secret
35 information has been withheld and provide substitute information
36 for public disclosure. The substitute information shall be a list, in
37 any order, of the chemical constituents of the additive, including
38 CAS identification numbers. The division shall review and approve
39 the supplied substitute information.

1 (D) This subdivision does not permit a supplier to refuse to
2 disclose the information required pursuant to this section to the
3 division.

4 (5) In order to substantiate the trade secret claim, the supplier
5 shall provide information to the division that shows all of the
6 following:

7 (A) The extent to which the trade secret information is known
8 by the supplier's employees, and others involved in the supplier's
9 business and outside the supplier's business.

10 (B) The measures taken by the supplier to guard the secrecy of
11 the trade secret information.

12 (C) The value of the trade secret information to the supplier and
13 its competitors.

14 (D) The amount of effort or money the supplier expended
15 developing the trade secret information and the ease or difficulty
16 with which the trade secret information could be acquired or
17 duplicated by others.

18 (6) If the division determines that the information provided in
19 support of a request for trade secret protection pursuant to
20 paragraph (5) is incomplete, the division shall notify the supplier
21 and the supplier shall have 30 days to complete the submission.
22 An incomplete submission does not meet the substantive criteria
23 for trade secret designation.

24 (7) If the division determines that the information provided in
25 support of a request for trade secret protection does not meet the
26 substantive criteria for trade secret designation, the department
27 shall notify the supplier by certified mail of its determination. The
28 division shall release the information to the public, but not earlier
29 than 60 days after the date of mailing the determination, unless,
30 prior to the expiration of the 60-day period, the supplier obtains
31 an action in an appropriate court for a declaratory judgment that
32 the information is subject to protection or for a preliminary
33 injunction prohibiting disclosure of the information to the public
34 and provides notice to the division of the court order.

35 (8) The supplier is not required to disclose the trade secret
36 information to the operator.

37 (9) Upon receipt of a request for the release of trade secret
38 information to the public, the following procedure applies:

39 (A) The division shall notify the supplier of the request in
40 writing by certified mail, return receipt requested.

1 (B) The division shall release the information to the public, but
2 not earlier than 60 days after the date of mailing the notice of the
3 request for information, unless, prior to the expiration of the 60-day
4 period, the supplier obtains an action in an appropriate court for a
5 declaratory judgment that the information is subject to protection
6 or for a preliminary injunction prohibiting disclosure of the
7 information to the public and provides notice to the division of
8 that action.

9 (10) The division shall develop a timely procedure to provide
10 trade secret information in the following circumstances:

11 (A) To an officer or employee of the division, the state, local
12 governments, including, but not limited to, local air districts, or
13 the United States, in connection with the official duties of that
14 officer or employee, to a health professional under any law for the
15 protection of health, or to contractors with the division or other
16 government entities and their employees if, in the opinion of the
17 division, disclosure is necessary and required for the satisfactory
18 performance of a contract, for performance of work, or to protect
19 health and safety.

20 (B) To a health professional in the event of an emergency or to
21 diagnose or treat a patient.

22 (C) In order to protect public health, to any health professional,
23 toxicologist, or epidemiologist who is employed in the field of
24 public health and who provides a written statement of need. The
25 written statement of need shall include the public health purposes
26 of the disclosure and shall explain the reason the disclosure of the
27 specific chemical and its concentration is required.

28 (D) A health professional may share trade secret information
29 with other persons as may be professionally necessary, in order to
30 diagnose or treat a patient, including, but not limited to, the patient
31 and other health professionals, subject to state and federal laws
32 restricting disclosure of medical records including, but not limited
33 to, Chapter 2 (commencing with Section 56.10) of Part 2.6 of
34 Division 1 of the Civil Code.

35 (E) For purposes of this paragraph, “health professional” means
36 any person licensed or certified pursuant to Division 2
37 (commencing with Section 500) of the Business and Professions
38 Code, the Osteopathic Initiative Act, the Chiropractic Initiative
39 Act, or the Emergency Medical Services System and the

1 Prehospital Emergency Medical Care Personnel Act (Division 2.5
2 (commencing with Section 1797) of the Health and Safety Code).

3 (F) A person in possession of, or with access to, confidential
4 trade secret information pursuant to the provisions of this
5 subdivision may disclose this information to any person who is
6 authorized to receive it. A written confidentiality agreement shall
7 not be required.

8 (I) A well granted confidential status pursuant to Section 3234
9 shall not be required to disclose well stimulation treatment fluid
10 information pursuant to subdivision (h) until the confidential status
11 of the well ceases. Notwithstanding the confidential status of a
12 well, it is public information that a well will be or has been subject
13 to a well stimulation treatment.

14 (m) The division shall perform random periodic spot check
15 inspections to ensure that the information provided on well
16 stimulation treatments is accurately reported, including that the
17 estimates provided prior to the commencement of the well
18 stimulation treatment are reasonably consistent with the well
19 history.

20 (n) Where the division shares jurisdiction over a well or the
21 well stimulation treatment on a well with a federal entity, the
22 division's rules and regulations shall apply in addition to all
23 applicable federal laws and regulations.

24 (o) This article does not relieve the division or any other agency
25 from complying with any other provision of existing laws,
26 regulations, and orders.

27 (p) Well stimulation treatments used for routine maintenance
28 of wells associated with underground storage facilities where
29 natural gas is injected into and withdrawn from depleted or partially
30 depleted oil or gas reservoirs pursuant to subdivision (a) of Section
31 3403.5 are not subject to this section.

32 SEC. 4. Section 3161 of the Public Resources Code is repealed.

33 SEC. 5. Section 3161 is added to the Public Resources Code,
34 to read:

35 3161. (a) All well stimulation treatments shall be prohibited
36 until the scientific study pursuant to Section 3160 is completed
37 and all of the requirements of this section are met.

38 (b) No later than six months after the scientific study is
39 complete, the Secretary of the Natural Resources Agency shall

1 convene a committee to review the scientific study. The committee
2 shall include a representative from all of the following:

- 3 (1) The Natural Resources Agency.
- 4 (2) The California Environmental Protection Agency.
- 5 (3) The State Air Resources Control Board.
- 6 (4) The State Water Resources Control Board.
- 7 (5) The State Department of Public Health.

8 (c) (1) After reviewing the scientific study as required under
9 subdivision (b), the committee shall issue a tentative report,
10 available to the public, evaluating the scientific study using the
11 best scientific, health, environmental, and statistical information
12 available, that shall include, but is not limited to, all of the
13 following findings:

14 (A) Whether the scientific study is based solely on the best
15 scientific, health, environmental, and statistical information
16 available, and meets all of the requirements of subdivision (a) of
17 Section 3160.

18 (B) Whether the regulations adopted pursuant to subdivision
19 (d) of Section 3160 are sufficient to ensure that the damage and
20 risks associated with well stimulation treatments, and the increased
21 oil and gas development as a result of these treatments, do not pose
22 a risk to, or impairment of, the public health and welfare or the
23 environmental and economic sustainability of the state.

24 (C) Whether there are measures in place to ensure that well
25 stimulation treatments, and the increased oil and gas development
26 as a result of these treatments, will not impede progress for
27 achieving the greenhouse gas reduction targets under the California
28 Global Warming Solutions Act of 2006 (Division 25.5
29 (commencing with Section 38500) of the Health and Safety Code).

30 (D) Whether other specific measures are in place to ensure that
31 well stimulation treatments within the state do not pose a risk to,
32 or impairment of, the public health and welfare or the
33 environmental and economic sustainability of the state.

34 (2) The public shall have 60 days to submit comments to the
35 committee regarding the tentative report and the committee shall
36 give full consideration to all of the comments received.

37 (3) (A) If the findings in the report conclude that well
38 stimulation treatments pose a risk to, or impairment of, the public
39 health and welfare or to the environmental and economic
40 sustainability of the state, the committee may require an additional

1 study to address any areas of concern and the prohibition on well
2 stimulation treatments pursuant to subdivision (a) shall remain in
3 effect.

4 (B) If the findings in the report conclude that well stimulation
5 treatments do not pose a risk to, or impairment of, the public health
6 and welfare or to the environmental and economic sustainability
7 of the state, the committee shall certify the report as final.

8 (d) Upon certification by the committee, the report shall be
9 provided to the Governor and the appropriate committees of the
10 Legislature.

11 (e) (1) Upon receipt of the report, the Governor shall determine
12 whether specific measures are in place to ensure that well
13 stimulation treatments within the state do not pose a risk to, or
14 impairment of, the public health and welfare or to the
15 environmental and economic sustainability of the state, and shall
16 provide specific findings of this determination to the Legislature.

17 (2) If the Governor's findings conclude that there are not specific
18 measures in place as described in paragraph (1), the prohibition
19 on well stimulation treatments pursuant to subdivision (a) shall
20 remain in effect.

21 (3) If the Governor's findings conclude that there are specific
22 measures in place as described in paragraph (1), the prohibition
23 of well stimulation treatments pursuant to subdivision (a) shall
24 end on the date provided in subdivision (f).

25 (4) A person who submitted comments to the committee or
26 provided testimony at a hearing held by the division pursuant to
27 subdivision (b) of Section 3160 may seek judicial review of the
28 Governor's findings within 90 days after the date that the findings
29 are issued. The Governor's findings shall be considered final when
30 all pending legal challenges are resolved and the Governor's
31 findings based on clear and convincing evidence are affirmed.

32 (f) (1) This section shall become inoperative 90 days after the
33 date the Governor issues the findings pursuant to paragraph (3) of
34 subdivision (e) or, if judicial review pursuant to paragraph (4) of
35 subdivision (e) is requested, on the date the judicial decision
36 affirming the Governor's findings is considered final and
37 nonappealable.

38 (2) This section shall be repealed on January 1 immediately
39 following the date it becomes inoperative under paragraph (1).

1 (g) (1) This section shall not be interpreted to impair or infringe
2 any vested right to conduct or continue to conduct a well
3 stimulation treatment.

4 (2) A person claiming a vested right to perform a well
5 stimulation treatment has the burden of proof, by clear and
6 convincing evidence, that he or she had a vested right to perform
7 a well stimulation before January 1, 2015. The past or current
8 ownership or operation of an existing well does not create a vested
9 right for future well stimulation. The occurrence of past well
10 stimulation events does not create a vested right for future well
11 stimulation. The claimant shall submit to the Secretary of the
12 Natural Resources Agency all necessary evidence to demonstrate
13 a vested right, including, at minimum, all of the following:

14 (A) All necessary discretionary permits have been obtained and
15 the activity will not result in an intensification or expansion of the
16 permitted activity.

17 (B) The completion of substantial construction work in
18 preparation for well stimulation.

19 (C) The incurrence of substantial costs and liabilities in good
20 faith reliance on the division's approval granted before January 1,
21 2015.

22 (D) Any other information deemed necessary by the secretary
23 to determine whether a vested right exists.

24 (3) A person claiming a vested right may request a public
25 hearing before the Secretary of the Natural Resources Agency.

26 (4) If a hearing is requested, the Natural Resources Agency shall
27 notify affected local governments and all known interested parties
28 of the date, time, and location of the public hearing and post the
29 same information to a publicly accessible part of the agency's
30 Internet Web site at least 20 days in advance of the hearing. Any
31 member of the public may submit comments or evidence regarding
32 the existence of a vested right.

33 (5) A person claiming a vested right shall not perform a well
34 stimulation treatment until the Secretary of the Natural Resources
35 Agency makes a final determination that the person has a vested
36 right.

37 (6) If the Secretary of the Natural Resources Agency determines,
38 by clear and convincing evidence, that a vested right exists, the
39 prohibition on well stimulation with respect to the claimant shall
40 apply after a reasonable amortization period, to be determined by

1 the secretary. If the secretary determines that there is no clear and
2 convincing evidence that a vested right exists, the secretary shall
3 deny the claim.

4 (7) (A) Any interested party may challenge the Secretary of
5 the Natural Resources Agency's determination that a vested right
6 exists in superior court.

7 (B) The well owner or operator may challenge the secretary's
8 determination that a vested right does not exist in the superior
9 court.

10 (h) The division shall not approve as complete any Interim Well
11 Stimulation Treatment Notice forms, or make any other approval
12 to authorize a well stimulation treatment, on or after January 1,
13 2015.

14 (i) This section does not preempt local government's land use
15 authority to regulate or prohibit oil and gas operations, including
16 well stimulation treatments and related activities.

17 SEC. 6. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.