

February 11, 2009

Dear Official Representatives:

During the Steering Committee teleconference on February 4 a discussion was held on various hydraulic fracturing resolutions pending in member state legislatures.

I am attaching two our office has received. The Wyoming resolution passed the Senate last week and is now before the House. The North Dakota resolution is pending.

The language of each resolution has a common theme, but is tailored to each state's needs. I understand that several states are (or will be) consideration similar efforts.

Please keep our office posted on your progress.

Thanks,

Mike Smith

SENATE CONCURRENT RESOLUTION NO. 4020

Introduced by

Senators O'Connell, Grindberg, Wardner

Representatives Berg, S. Meyer, Skarphol

1 A concurrent resolution urging Congress to preserve the exemption of hydraulic fracturing from
2 the provisions of the Safe Drinking Water Act and to not enact legislation that removes the
3 exemption for hydraulic fracturing.

4 **WHEREAS**, Congress enacted the Safe Drinking Water Act to ensure the protection of
5 the nation's drinking water sources; and

6 **WHEREAS**, since enactment of the Safe Drinking Water Act, the Environmental
7 Protection Agency has never interpreted hydraulic fracturing as constituting "underground
8 injection" under the Safe Drinking Water Act; and

9 **WHEREAS**, in 2004 the Environmental Protection Agency published a final report
10 summarizing a study to evaluate the potential threat to underground sources of drinking water
11 from hydraulic fracturing of coalbed methane production wells and the Environmental Protection
12 Agency concluded that "additional or further study is not warranted at this time..." and that "the
13 injection of hydraulic fracturing fluids into coalbed methane wells poses minimal threat to the
14 underground sources of drinking water"; and

15 **WHEREAS**, Congress, in the Energy Policy Act of 200~~4~~⁵, explicitly exempted hydraulic
16 fracturing from the provisions of the Safe Drinking Water Act; and

17 **WHEREAS**, the Interstate Oil and Gas Compact Commission conducted a survey of
18 North Dakota and other oil and gas-producing states which found that there were no known
19 cases of ground water contamination associated with hydraulic fracturing; and

20 **WHEREAS**, hydraulic fracturing is currently, and has been for decades, a common
21 operation used in exploration and production by the oil and gas industry in North Dakota and all
22 the member states of the Interstate Oil and Gas Compact Commission; and

23 **WHEREAS**, approximately 35,000 wells are hydraulically fractured annually in the
24 United States, and close to one million wells have been hydraulically fractured in the United
25 States since the technique's inception, with no known harm to ground water; and

1 **WHEREAS**, the regulation of oil and gas exploration and production activities, including
2 hydraulic fracturing, has traditionally been the province of the states; and

3 **WHEREAS**, the success of the Bakken Formation and development of domestic oil and
4 gas resources across the United States has been revitalized by technological advancements
5 which include the ability to fracture and stimulate challenging geological formations, such as the
6 Bakken Formation in North Dakota, and thus should not be limited in the absence of any
7 evidence that such fracturing has damaged the environment; and

8 **WHEREAS**, the Safe Drinking Water Act was never intended to grant to the federal
9 government authority to regulate oil and gas drilling and production operations, such as
10 "hydraulic fracturing," under the underground injection control program; and

11 **WHEREAS**, North Dakota and other member states of the Interstate Oil and Gas
12 Compact Commission have adopted comprehensive laws and regulations to provide for safe
13 operations and to protect the nation's drinking water sources and have trained personnel to
14 effectively regulate oil and gas exploration and production; and

15 **WHEREAS**, domestic production of natural gas will ensure that the United States
16 continues on the path to energy independence; and

17 **WHEREAS**, regulation of hydraulic fracturing as underground injection under the Safe
18 Drinking Water Act would impose significant administrative costs on the state, substantially
19 increase the cost of drilling oil and gas wells, and potentially stop the development of our state's
20 valuable natural resources, including the Bakken and other formations with no resulting
21 environmental benefits; and

22 **WHEREAS**, regulation of hydraulic fracturing as underground injection under the Safe
23 Drinking Water Act would increase energy costs to the consumer;

24 **NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE**
25 **HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

26 That the Sixty-first Legislative Assembly urges the Congress of the United States to
27 preserve the exemption of hydraulic fracturing from the provisions of the Safe Drinking Water
28 Act and urges the Congress of the United States not to enact legislation that removes the
29 exemption for hydraulic fracturing; and

30 **BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this
31 resolution to the President of the United States, to the President of the Senate and the Speaker

Sixty-first
Legislative Assembly

- 1 of the House of Representatives of the United States, and to each member of the North Dakota
- 2 Congressional Delegation.

SENATE JOINT RESOLUTION NO. SJ0005

Hydraulic fracturing.

Sponsored by: Senator(s) Bebout, Anderson, J., Cooper,
Hines, Martin and Vasey and
Representative(s) Anderson, R., Cohee,
Craft, Illoway, Lockhart, Lubnau, Meyer,
Miller and Pedersen

A Bill

for

1 A JOINT RESOLUTION requesting Congress to preserve the
2 exemption of hydraulic fracturing in the Safe Drinking
3 Water Act and to not pass any future legislation which
4 would remove the exemption.

5

6 WHEREAS, the United States Congress passed the Safe
7 Drinking Water Act, 42 U.S.C § 300h (SDWA) to assure the
8 protection of the nation's drinking water sources; and

9

10 WHEREAS, since the enactment of the SDWA, the United States
11 Environmental Protection Agency (EPA) had never interpreted
12 hydraulic fracturing as constituting "underground
13 injection" within the SWDA; and

14

1 WHEREAS, the United States 11th Circuit Court of Appeals
2 ruled contrary to argument of the EPA that hydraulic
3 fracturing constituted "underground injection" under the
4 SDWA. Legal Environmental Assistance Foundation v. United
5 States Environmental Protection Agency, 118 F3d 1467 (11th
6 Cir. 1997); and

7

8 WHEREAS, in 2004, the EPA published a final report
9 summarizing a study to evaluate the potential threat to
10 underground sources of drinking water (USDWs) from
11 hydraulic fracturing of coalbed methane (CBM) production
12 wells and concluded that "additional or further study is
13 not warranted at this time..." and that "the injection of
14 hydraulic fracturing fluids into CBM wells poses minimal
15 threat to USDWs."; and

16

17 WHEREAS, the United States Congress, in the Energy Policy
18 Act of 2005, explicitly exempted hydraulic fracturing from
19 the provisions of the SDWA; and

20

21 WHEREAS, the Interstate Oil and Gas Compact Commission
22 (IOGCC) conducted a survey of oil and gas producing states
23 and found that there were no known cases of ground water
24 contamination associated with hydraulic fracturing; and

1

2 WHEREAS, hydraulic fracturing is currently, and has been
3 for decades, a common operation used in exploration and
4 production by the oil and gas industry in all the member
5 states of the IOGCC without groundwater damage; and

6

7 WHEREAS, approximately thirty-five thousand (35,000) wells
8 are hydraulically fractured annually in the United States
9 and nearly one million (1,000,000) wells have been
10 hydraulically fractured in the United States since the
11 technique's inception, with no known harm to groundwater;
12 and

13

14 WHEREAS, the regulation of oil and gas exploration and
15 production activities, including hydraulic fracturing, has
16 traditionally been the province of the states; and

17

18 WHEREAS, the SWDA was never intended to grant to the
19 federal government authority to regulate oil and gas
20 drilling and production operations, such as "hydraulic
21 fracturing", under the Underground Injection Control
22 program; and

23

1 WHEREAS, the member states of the IOGCC have adopted
2 comprehensive laws and regulations to provide for safe
3 operations and to protect the nation's drinking water
4 sources, and have trained personnel to effectively regulate
5 oil and gas exploration and production; and

6

7 WHEREAS, production of coal seam natural gas, natural gas
8 from shale formations and natural gas from tight
9 conventional reservoirs is increasingly important to
10 domestic natural gas supply and will be more important in
11 the future; and

12

13 WHEREAS, domestic production of natural gas will ensure
14 that the United States continues on the path to energy
15 independence; and

16

17 WHEREAS, hydraulic fracturing plays a major role in the
18 development of virtually all unconventional oil and gas
19 resources and, thus, should not be limited in the absence
20 of any evidence that hydraulic fracturing has damaged the
21 environment; and

22

23 WHEREAS, regulation of hydraulic fracturing as underground
24 injection under the SDWA would impose significant

1 administrative costs on the state and substantially
2 increase the cost of drilling oil and gas wells with no
3 resulting environmental benefits; and

4

5 WHEREAS, regulation of hydraulic fracturing as underground
6 injection under the SDWA would increase energy costs to the
7 consumer.

8

9 NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE
10 LEGISLATURE OF THE STATE OF WYOMING:

11

12 **Section 1.** That the Wyoming State Legislature hereby
13 declares its support for maintaining the exemption of
14 hydraulic fracturing from the provisions of the SDWA and
15 urges the Congress of the United States not to pass
16 legislation that would remove the exemption for hydraulic
17 fracturing.

18

1 **Section 2.** That the Secretary of State of Wyoming
2 transmit copies of this resolution to the President of the
3 United States, to the President of the Senate and the
4 Speaker of the House of Representatives of the United
5 States Congress and to the Wyoming Congressional
6 Delegation.

7

8

(END)