

117TH CONGRESS
1ST SESSION

S. 2393

To clarify that a State has the sole authority to regulate hydraulic fracturing on Federal land within the boundaries of the State.

IN THE SENATE OF THE UNITED STATES

JULY 20, 2021

Mr. INHOFE (for himself, Mrs. CAPITO, Mr. CRUZ, Mr. CRAMER, Mr. SCOTT of South Carolina, Ms. LUMMIS, and Mr. LANKFORD) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To clarify that a State has the sole authority to regulate hydraulic fracturing on Federal land within the boundaries of the State.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fracturing Regula-
5 tions are Effective in State Hands Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) hydraulic fracturing is a commercially viable
2 practice that has been used in the United States for
3 more than 60 years in more than 1,000,000 wells;

4 (2) the Ground Water Protection Council, a na-
5 tional association of State water regulators that is
6 considered to be a leading groundwater protection
7 organization in the United States, released a report
8 entitled “State Oil and Natural Gas Regulations De-
9 signed to Protect Water Resources” and dated May
10 2009 finding that the “current State regulation of
11 oil and gas activities is environmentally proactive
12 and preventive”;

13 (3) that report also concluded that “[a]ll oil
14 and gas producing States have regulations which are
15 designed to provide protection for water resources”;

16 (4) a 2004 study by the Environmental Protec-
17 tion Agency, entitled “Evaluation of Impacts to Un-
18 derground Sources of Drinking Water by Hydraulic
19 Fracturing of Coalbed Methane Reservoirs”, found
20 no evidence of drinking water wells contaminated by
21 fracture fluid from the fracked formation;

22 (5) a 2009 report by the Ground Water Protec-
23 tion Council, entitled “State Oil and Natural Gas
24 Regulations Designed to Protect Water Resources”,
25 found a “lack of evidence” that hydraulic fracturing

1 conducted in both deep and shallow formations pre-
2 sents a risk of endangerment to ground water;

3 (6) a January 2009 resolution by the Interstate
4 Oil and Gas Compact Commission stated “The
5 states, who regulate production, have comprehensive
6 laws and regulations to ensure operations are safe
7 and to protect drinking water. States have found no
8 verified cases of groundwater contamination associ-
9 ated with hydraulic fracturing.”;

10 (7) on May 24, 2011, before the Oversight and
11 Government Reform Committee of the House of
12 Representatives, Lisa Jackson, the Administrator of
13 the Environmental Protection Agency, testified that
14 she was “not aware of any proven case where the
15 fracking process itself has affected water”;

16 (8) in 2011, Bureau of Land Management Di-
17 rector Bob Abbey stated, “We have not seen evi-
18 dence of any adverse effect as a result of the use of
19 the chemicals that are part of that fracking tech-
20 nology.”;

21 (9)(A) activities relating to hydraulic fracturing
22 (such as surface discharges, wastewater disposal,
23 and air emissions) are already regulated at the Fed-
24 eral level under a variety of environmental statutes,
25 including portions of—

1 (i) the Federal Water Pollution Control
2 Act (33 U.S.C. 1251 et seq.);

3 (ii) the Safe Drinking Water Act (42
4 U.S.C. 300f et seq.); and

5 (iii) the Clean Air Act (42 U.S.C. 7401 et
6 seq.); but

7 (B) Congress has continually elected not to in-
8 clude the hydraulic fracturing process in the under-
9 ground injection control program under the Safe
10 Drinking Water Act (42 U.S.C. 300f et seq.);

11 (10) in 2011, the Secretary of the Interior an-
12 nounced the intention to promulgate new Federal
13 regulations governing hydraulic fracturing on Fed-
14 eral land;

15 (11) a February 2012 study by the Energy In-
16 stitute at the University of Texas at Austin, entitled
17 “Fact-Based Regulation for Environmental Protec-
18 tion in Shale Gas Development”, found that “[n]o
19 evidence of chemicals from hydraulic fracturing fluid
20 has been found in aquifers as a result of fracturing
21 operations”; and

22 (12) on October 1, 2014, the Ground Water
23 Protection Council and State Oil and Gas Regu-
24 latory Exchange released a report entitled “State Oil
25 and Gas Regulations Designed to Protect Water Re-

1 sources” that describes the cutting edge of State-
2 based oil and gas regulations, concluding that “In
3 step with dramatic industry growth over the past
4 five years, states have substantially improved
5 groundwater protection laws and regulations gov-
6 erning oil and natural gas production.”.

7 **SEC. 3. DEFINITION OF FEDERAL LAND.**

8 In this Act, the term “Federal land” means—

9 (1) public lands (as defined in section 103 of
10 the Federal Land Policy and Management Act of
11 1976 (43 U.S.C. 1702));

12 (2) National Forest System land;

13 (3) land under the jurisdiction of the Bureau of
14 Reclamation; and

15 (4) land under the jurisdiction of the Corps of
16 Engineers.

17 **SEC. 4. STATE AUTHORITY.**

18 (a) IN GENERAL.—A State shall have the sole au-
19 thority to promulgate or enforce any regulation, guidance,
20 or permit requirement regarding the treatment of a well
21 by the application of fluids under pressure to which prop-
22 ping agents may be added for the expressly designed pur-
23 pose of initiating or propagating fractures in a target geo-
24 logic formation in order to enhance production of oil, nat-

1 ural gas, or geothermal production activities on or under
2 any land within the boundaries of the State.

3 (b) FEDERAL LAND.—The treatment of a well by the
4 application of fluids under pressure to which propping
5 agents may be added for the expressly designed purpose
6 of initiating or propagating fractures in a target geologic
7 formation in order to enhance production of oil, natural
8 gas, or geothermal production activities on Federal land
9 shall be subject to the law of the State in which the land
10 is located.

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