Notice of Exemption

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk
County of: N/A

From: CA Department of Conservation
801 K Street, MS 24-03
Sacramento, CA 95814

Project Title: SB 4 Well Stimulation Treatment Regulations (OAL File No. Z-2013-1105-01)
Project Applicant: CA Department of Conservation, Division of Oil, Gas, and Geothermal Resources
Project Location – Specific: Statewide
Project Location – City: N/A
Project Location – County: N/A

Name of Public Agency Approving Project: CA Department of Conservation
Name of Person or Agency Carrying Out Project: CA Department of Conservation

Lead Agency
Contact Person: Justin Turner, Sr. Staff Counsel (916) 323-6733

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Exempt Status:

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- ☒ Categorical Exemption: CEQA Guidelines section 15308 (Class 8)
- ☐ Statutory Exemptions. State code number: _____
- ☒ Other: CEQA Guidelines section 15061(b)(3) (General Exemption)

Description of project and reasons why project is exempt:

On November 15, 2013, the Department of Conservation (Department), through its Division of Oil, Gas, and Geothermal Resources (Division), commenced a rulemaking entitled *SB 4 Well Stimulation Treatment Regulations*, regarding well stimulation treatments such as hydraulic fracturing and acid matrix stimulation. A public comment period on the originally proposed regulations was held from November 15, 2013 through January 14, 2014, pursuant to the Notice of Proposed Regulatory Action mailed to interested parties on and duly published in the *California Regulatory Notice Register* on November 15, 2013 (Register 2014, No. 46-Z, 11/15/2013). The Department since revised the proposed regulations twice. A public comment period on the first revised text of the proposed regulations was held from June 13, 2014 through July 28, 2014, and a public comment period on the second revised text of the proposed regulations was held from October 9, 2014 through October 24, 2014. The proposed rulemaking would add sections 1751, 1761, 1777.4, 1780, 1781, 1782, 1783, 1783.1, 1783.2, 1783.3, 1784, 1784.1, 1784.2, 1785, 1785.1, 1786, 1787, 1788, and 1789 to California Code of Regulations, title 14, division 2, chapter 4, subchapter 2. This rulemaking was undertaken pursuant to Senate Bill 4 (SB 4) from 2013 (Pavley, Stats. 2013, ch. 313) as amended by Senate Bill 861 (SB 861) from 2014 (Stats. 2014, ch. 35).

The Department has determined that the proposed rulemaking is exempt from full review under the California Environmental Quality Act (Public Resources Code section 21000, et seq.) pursuant to Title 14, sections 15061(b)(3) and 15308 of the California Code of Regulations. Section 15061(b)(3) provides that "[w]here it can be seen with certainty that

there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." Section 15308 sets forth a categorical exemption for actions of regulatory agencies authorized by state law to assure the protection of the environment where the regulatory process involves procedures for the protection of the environment. The regulations submitted require procedures for the protection of the environment, and there will be subsequent discretionary review of the activities to which the regulations will apply.

The proposed regulations are necessary to implement the provisions of Senate Bill 4, and Public Resources Code section 3106. One of the main tenets of section 3106 is to prevent, as far as possible, damage to life, health, property, and natural resources. (Pub. Resources Code, § 3106, subd. (a).) SB 4 advances this objective, as do the proposed regulations. Once the proposed regulations become effective, they will require oil and gas operators performing currently allowed well stimulation treatments to obtain a permit, submit treatment information, conduct evaluations, test the integrity of oil or gas wells, provide information to the Division and to potentially interested third-parties, and to review and monitor existing site-specific conditions. The proposed regulations are for the purpose of ensuring protection of the environment, and the physical effects of compliance with the proposed regulations will not generate significant physical impacts on the environment.

The proposed regulations require operators undertaking well stimulation treatment to:

- Evaluate the well and surrounding area to ensure the integrity of the well and the geologic and hydrologic isolation of the oil and gas formation during and following well stimulation treatment (sections 1782, 1783, 1783.1, 1784, 1784.1, 1784.2, 1785, 1787);
- Pressure test the well and evaluate the cement in the well prior to well stimulation treatment to ensure the competency of the well a (sections 1784.1, 1784.2);
- Handle all fluids associated with well stimulation treatment in contained systems and in accordance with all applicable requirements (section 1782, 1786);
- Monitor during and after hydraulic fracturing for seismic activity in the area (section 1785.1);
- Submit information to the Division, the public, and other government agencies in connection with performing well stimulation treatments (sections 1777.4, 1783, 1783.1, 1783.2, 1783.3, 1784, 1784.1, 1784.2, 1785, 1785.1, 1787, 1788, 1789); and
- Provide notice to neighboring land owners and tenants of an approved well stimulation permit and notice of those parties' opportunities for water sampling and testing (section 1783.2, 1783.3).

Each of the proposed regulations establishes a new requirement for protection of the environment or for public disclosure of information regarding well stimulation treatments that were already permitted by law. Adoption of the proposed regulations will prevent environmental impacts and will not result in significant environmental impacts. The physical consequences of the regulations will be benign or beneficial, as well stimulation treatment activities occurring under the regulations will cause fewer environmental impacts than well stimulation treatment activities that occur in the absence of the regulations. The benign or beneficial consequences of the proposed regulations make them subject to the above-mentioned "general exemption" from CEQA. Because the regulations will have a *beneficial* effect on the environment, "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment[.]" A "significant" effect is by definition "*adverse*." (See Pub. Resources Code, § 21068.)

In addition, as of the date that the proposed regulations would go into effect, Public Resources Code section 3160, subdivision (d), will require discretionary review and permitting of all well stimulation treatments in the state. This site-specific discretionary review of well stimulation treatments will involve evaluation of all impacts associated with a specific proposal to conduct well stimulation treatment. Impacts associated with the Division's approval of a well stimulation treatment under Public Resources Code section 3160, subdivision (d), will be considered in the course of considering the permit application. By July 1, 2015, SB 4 requires the Division to complete an environmental impact report providing detailed information regarding potential environmental impacts of well stimulation in the state, and the Division will have the benefit of that report when evaluating permit applications. This statutorily-required permitting process will ensure an outcome that is environmentally benign or beneficial compared with current regulatory conditions, which do not require a specific permit for well stimulation activities.

The Department further finds both that there are no "unusual circumstances" associated with the proposed regulations that create a "reasonable possibility that the activity will have a significant effect on the environment," and that there is no significant "cumulative impacts" resulting from "successive projects of the same type in the same place[.]" (See Cal. Code Regs, tit. 14, § 15300.2, subds. (b), (c).) The proposed regulations *strengthen* the existing regulatory regime

relating to well stimulation treatment, and do not give rise to any unintended negative environmental consequences that could result in significant effects either due solely to the regulations themselves or from "successive projects of the same type in the same place." To the extent that local governments and other state agencies may choose to strengthen their own policies and regulations relating to well stimulation treatments or to the oil and gas drilling operations for which well stimulation treatments will be employed, any such new policies or regulations will tend to *reduce*, rather than increase, the severity of environmental impacts that would otherwise occur. Well stimulation treatment was permitted under California law prior to the enactment of Senate Bill 4 and the proposed regulations being promulgated by the Department. (See Pub. Resources Code, § 3106, subd. (b).) The proposed regulations, as well as any additional policies and regulations being considered by other agencies, will make this long-time lawful activity more environmentally benign, or less environmentally harmful, than has been the case in the past.