# **Calif. County Hasn't Fixed Oil Permitting Rules, Court Says**

Law360 Legal News - Corporate

March 8, 2024 Friday

Copyright 2024 Portfolio Media, Inc. All Rights Reserved



**Section:** APPELLATE, CALIFORNIA, COMPLIANCE, ENERGY, ENVIRONMENTAL

**Length:** 868 words

**Byline:** Keith Goldberg

**Highlight:** A California appeals court again nixed a ***Kern*** County, California, ordinance that paves the way for faster ***oil*** and gas development in the area, saying the court-ordered, revised policy still doesn't comply with the state's bedrock environmental law.

**Body**

A California appeals court again nixed a ***Kern*** County, California, ordinance that paves the way for faster ***oil*** and gas development in the area, saying the court-ordered, revised policy still doesn't comply with the state's bedrock environmental law.

A panel of the state's Fifth District Court of Appeals on Thursday unanimously struck down the ordinance, which allows a single environmental review to authorize tens of thousands of projects. The appeals court, which nixed the original ordinance in 2020, said ***Kern*** County hadn't sufficiently analyzed the potential cancer risks for people living near multiple ***oil*** and gas wells and wrongly removed a water supply mitigation measure by claiming the California Environmental Quality Act doesn't require analyzing or mitigating impacts to low-income or disadvantaged communities.

"The county's erroneous view of CEQA's principles addressing social and economic effects tainted its analysis of ... the significance of lowering groundwater levels in wells and ... appropriate mitigation for reducing the significance of the project's contribution to that cumulative impact," the court said in its opinion Thursday.

Reversing a 2022 lower court ruling that backed the revised ordinance, the Fifth District Court of Appeals said ***Kern*** County couldn't issue a new ordinance, and issue new permits under such an ordinance, until it redoes its environmental review to fix the CEQA violations.

The appeals court also set aside projects approved as a result of the ordinance, rejecting the county's plea to keep them in place while the deficient environmental review is fixed.

"Here, the CEQA violations relating to the assessment of health risks and impacts on water supply are relatively far reaching and also taint the adoption of the statement of overriding considerations," the court said in its opinion. "Therefore, in the circumstances presented, we cannot find the affected project activities are severable and severance will not prejudice full compliance with CEQA."

The ordinance was adopted in March 2021 following a unanimous vote by the Board of Supervisors of ***Kern*** County, the hub of ***oil*** and gas production in California. The five supervisors approved the measure, which allows more than a decade of ***oil*** and gas development without additional site-specific assessments by permitting a single environmental impact report to serve as an environmental review for more than 40,000 new ***oil*** and gas projects.

Environmental and community groups, as well as a local landowner, promptly challenged the approval, saying the new environmental impact report did not fix the problems that led the California appeals court in 2020 to deem its predecessor insufficient. The complaint named two ***oil*** and gas industry groups - the California Independent Petroleum Association and Western States Petroleum Association - as interested parties.

The challengers alleged the revised environmental review failed to require appropriate environmental consideration or mitigation efforts, and that the ordinance does too little to protect residents from pollution created by ***oil*** and gas development. A California superior court judge backed the ordinance in 2022, prompting the appeal to the Fifth District Court of Appeals

"Fortunately, the court recognized that environmental review is written into our state law for a reason," Ann Alexander, an attorney for the Natural Resources Defense Council, said in a statement Thursday. "It's obvious that ***Kern*** County is willing to flout the law on a serial basis to appease a dying industry, and we're glad the court did not let them get away with it."

***Kern*** County counsel Margo Raison said Friday the county is reviewing the decision.

"As always, our ***Kern*** County Board of Supervisors continues to support our ***oil*** industry and environmentally protective ***oil*** and gas permitting as part of the energy future of not only ***Kern*** County, but California at large," Raison said.

The environmental and community groups are collectively represented by Colin C. O'Brien and Gregory D. Muren of Earthjustice, Caroline Farrell and Daniel I. Ress of the Center On Race, Poverty & the Environment, Ann Alexander of the Natural Resources Defense Council, and Hollin Kretzmann of the Center For Biological Diversity.

V Lions Farming is represented by Rachel B. Hooper, Susannah T. French, Kevin P. Bundy and Tori B. Gibbons of Shute Mihaly & Weinberger LLP.

***Kern*** County, California, is represented in-house by Margo A. Raison, and Jennifer L. Hernandez, Bradley B. Brownlow, Marne S. Sussman, Daniel R. Golub and Emily M. Lieban of Holland & Knight LLP.

Western States Petroleum Association is represented by Blaine I. Green, Mark E. Elliott, and Eric Moorman of Pillsbury Winthrop Shaw Pittman LLP.

The California Independent Petroleum Association is represented by Craig A. Moyer, Benjamin G. Shatz and Sigrid R. Waggener of Manatt Phelps & Phillips LLP.

The cases are V Lions Farming LLC et al. v. County of ***Kern*** et al., case numbers F084763, F085102 and F085220, in the Court of Appeal of the State of California, Fifth Appellate District.

--Editing by Kristen Becker.

Update: This story has been updated with comment from the ***Kern*** County Counsel.

Link to PDF

**Load-Date:** March 21, 2024

**End of Document**