# **Judge rejects Kern's oil lawsuit as 'SLAPP' case**

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**Body**

May 5—***Kern*** County's lawsuit challenging California's de-facto ban on fracking has been thrown out of court after a Fresno judge ruled last month the filing was misdirected and improperly sought to limit Gov. Gavin Newsom's speech or executive duties.

The little-noticed order April 5 by Fresno Superior Court Judge Gabriel L. Brickey found the county's suit qualified as a "SLAPP," or strategic lawsuit against public participation, which is more often associated with efforts by developers or others trying to silence criticism.

***Kern***'s petition for writ of mandate, authorized in August by a 4-1 vote of county supervisors, had accused Newsom of overstepping his authority by unjustifiably denying permit applications for fracking and other well stimulation treatments common in ***Kern*** oilfields. They argued his administration was effectively denying good-paying jobs and property tax revenue to the state's top ***oil***-producing county.

It remained unclear Wednesday what implications, if any, the county's legal defeat may have for three industry-funded lawsuits that followed after the county's lawsuit and asked for essentially the same thing: an end to the administration's practice of withholding fracking permit approvals based not on technical problems but health and climate concerns.

The governor's office said by email the county suit had no legal footing and that the court was right to reject it, adding the administration continues to "collaborate with all partners on regulating ***oil*** and gas production towards our state's commitment to protect public health, safety and the environment."

***Kern*** Chief Administrative Officer Ryan Alsop said by email the county was disappointed with the ruling but proud to have been the first to challenge the governor's "decision and directives that ignore both the role of the Legislature and existing law to end most new ***oil*** drilling in ***Kern*** County."

He added Newsom had shown no regard for the county's workers and their families or the county's need to fund public safety and other services.

"We are resolved to continue the fight to hold (Newsom's) administration accountable and to ensure our important ***oil*** and gas industry continues to provide high-paying jobs to our local workforce, producing a substantial impact on our economy," Alsop wrote.

Fracking blasts water, sand and small amounts of toxic chemicals deep underground to open access to ***oil*** and gas reservoirs. Environmental groups say it risks air and groundwater pollution, while the industry says the practice is a safe and effective way of reducing California's growing dependence on foreign petroleum.

Under pressure from environmentalists, Newsom called on the state Legislature in fall 2020 to give him a bill that would ban fracking by 2024. But the bill that came forward far exceeded his request and ended up dying in committee. Soon after, the governor announced the start of an ongoing administrative effort that would halt the issuance of fracking permits by the same deadline.

Then, in July, California's Geologic Energy Management Division, the state's top ***oil***-regulating agency, began denying fracking permits. It cited State ***Oil*** and Gas Supervisor Uduak-Joe Ntuk's discretionary authority "to prevent, as far as possible, damage to life, health, property and natural resources" and to "protect public health and safety and environmental quality, including [the] reduction and mitigation of greenhouse gas emissions associated with the development of hydrocarbon ... resources."

***Kern*** sued Newsom in September, targeting not just fracking but also the state's moratorium on high-pressure cyclic steaming and the administration's insistence on extensive "area of review" analyses prior to approval of underground injections.

The trade group Western States Petroleum Association filed a similar suit the following month, naming Ntuk a defendant along with Newsom. Since then, local ***oil*** producers Chevron Corp. and Aera Energy LLC have filed their own legal complaints trying to overturn the governor's de-facto fracking ban.

Judge Brickey's order noted CalGEM, not Newsom, exercises authority to approve or deny fracking permits, and that Ntuk has discretionary authority to make the determination.

The judge added that the county failed to identify a specific permit that CalGEM may have incorrectly denied, and that "insufficient facts have been shown to prove (Newsom) abused his discretion by his public statements or implementation of his stated policy."

Brickey went on to say no evidence was presented showing the governor gave direct instruction to CalGEM ordering permit denials. The court order further stated the relief sought by the county "would impermissibly limit the (the governor's) public statements and/or prevent him from fulfilling his executive duties."

Reacting Wednesday to the case's dismissal, staff attorney Daniel Ress at the Center on Race, Poverty & the Environment called the county's lawsuit a frivolous and wasteful use of taxpayer money. He supported the state's permit denials as "a modest course of action well within the state's authority."

A spokesman for WSPA declined to comment on the court action, noting the trade group's own lawsuit remains active.

Aera, which also declined to comment on Brickey's order, said the company does not believe the ruling will affect its own, continuing legal action against the state.

Chevron said by email it believes its own case against the state has a strong foundation in facts and the law, and that the company maintains it was wrongly denied a fracking permit that met technical and regulatory requirements.

It reiterated accusations the state's moratorium on fracking amounts to an overreach of gubernatorial and agency authority.

"Our inability to obtain (fracking) permits disrupts business operations that generate tax revenue used to support government services and disrupts normal operations, including those of Chevron's suppliers of products and services, particularly in ***Kern*** County," Chevron's email said.

Editor's note: This story has been corrected to reflect that Alsop's accusation of a lack of regard for local workers, families and the county's funding needs was directed at the governor.

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