

## **Oil and gas permit lawsuit could have big impact**

By Lois Henry

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The trial over Kern County's 2-year-old oil and gas permitting ordinance began last week without much fanfare.

But the stakes are huge for all sides.

The outcome of this lawsuit could change how Kern's main economic driver does business.

It certainly could affect the coffers of a number of entities — most of all the local air district — considering the county collected more than \$4 million in fees under the new permits in its first year.

And since Kern is the first county ever in California to permit oil operations using a single overarching environmental impact report, or EIR, a lot of eyes are watching this quiet but fierce rumble in our oil patch.

There are two basic issues: One is environmental, the other is constitutional (see sidebar).

First, though, let's get acclimated.

Before this ordinance was passed by the Board of Supervisors on Nov. 9, 2015, Kern County did not permit oil operations.

Not well drilling, nor workover operations (working an existing well).

Those activities were considered “by right” in Kern.

The only agency oil companies needed a permit from was the state Division of Oil, Gas and Geothermal Resources, which focused primarily on oil formations and well structure, not environmental impacts.

Meaning there was little to no environmental review.

With concerns over how oil affects the environment growing in Sacramento, local industry reps came to Kern in 2013 seeking a permit process that would address environmental issues and give them some certainty.

So, county planners set on the herculean task of developing a single EIR that would lay out anticipated impacts and ways to mitigate those impacts for a 20-year timeline.

The EIR was approved as was the new zoning ordinance, which basically permits oil operations after a long check list of must-dos are done.

Like really long — 88 new mitigation measures and more than 100 new restrictions.

The county was sued almost immediately.

Thus the trial that started last week.

While lawyers — oh soooo many lawyers — argued the finer points of how the California Environmental Quality Act, or CEQA, should be interpreted and whether Kern studied this impact or that impact well enough, I wondered how the past year and a half had gone under the new ordinance.

Wouldn't ya know it, the Planning Department posted an annual progress report on its website about exactly that in December.

In the first year under the new ordinance, Kern had permitted 1,122 new wells and 72 workover operations.

It also collected, as noted above, more than \$4 million.

The bulk of that money, about \$3.5 million, went to the San Joaquin Valley Air Pollution Control District.

The district uses that money to retire a wide variety of older, more polluting engines from school buses to lawn mowers.

“Our grant programs are already oversubscribed,” said Seyed Sadredin, executive director of the air district. “In order to achieve the new PM2.5 standards (tiny bits of dust and soot) we would need \$2 billion a year to replace thousands upon thousands of older, polluting trucks, tractors, irrigation pumps, off-road equipment, etc.”

Sadredin figured for every \$10,000 the district spends through its grant programs, it can get 1 ton of NOx (nitrogen oxide, which helps form ground-level ozone) emissions reductions.

So, \$3.5 million isn't enough, but it's not nothing either.

Sadredin praised Kern's new oil permitting structure as helping the district regulate portions of the industry it didn't have access to before.

“Our involvement had always been after the oil is pumped out, the processing and transportation phase,” he said. “This gets us to emissions associated with the drilling phase.”

Yes, the county's new permitting process regulates aspects of the industry that had been overlooked and that's good, said Gordon Nipp, vice chair of the Kern-Kaweah Chapter of the Sierra Club, which joined four other activist groups and sued over the permit ordinance.

The bigger issue for Nipp, though, is that this permit process lets oil companies off the hook for project-by-project environmental reviews.

Instead, the single, overarching EIR is considered review enough, he said.

The EIR allows about 3,600 wells to be permitted per year up to a cap of just more than 70,000 wells by 2035.

“Lorelei (Oviatt, Kern County's planning director) told oil companies they would never have to do CEQA again for the next 20 years,” Nipp said. “And that really stirs me up because who knows what's going to happen in the next 20 years in the oil fields, how they may decide to change operations and extraction methods.

“Under this, they'll be able to do it without any public input or review because the county is rubber-stamping oil permits.”

Oviatt declined to comment as the case is in litigation.

Nipp would have rather seen the county create a long-range EIR that made some basic assumptions about environmental impacts but still required each project to be reviewed as it came up.

“Otherwise, how is the public going to find out what's going on?”

Sadredin couldn't speak to every aspect of the EIR but said as far as the air district is involved, each project (or well) is treated uniquely.

When an operator wants to drill a well, the district does an emissions quantification specific to that well.

“To me, there is project-by-project review and it's all totally open to the public,” he said.

Ultimately, Kern County Superior Court Judge J. Eric Bradshaw will decide whether the county's EIR is adequate.

Spoiler alert: EIR lawsuits are typically successful, meaning judges toss them back to the government agencies for a redo.

After the redo, though, they are most often accepted.

Considering the vehemence of anti-oil activists, I doubt that will be the end of it.