

Kern wants valley -- not southland -- court to resolve sludge fight

By James Burger, Californian staff writer
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Kern County is looking north -- to a potentially more friendly Tulare County Superior Court -- for resolution of its sewage sludge battle with the city of Los Angeles and county of Orange.

County attorneys will ask the Tulare court to pull an old sludge case out of limbo and rule that Kern's embattled Measure E is a valid law.

Late last year, Los Angeles and Orange lost a major round in a 4-year-old legal bout with Kern when U.S. District Court Judge Gary Feess in Los Angeles dismissed a federal lawsuit Los Angeles, Orange County and several corporations had brought against Kern.

That suit sought to block the implementation of Measure E, the 2006 voter-approved law that blocks the land application of treated human and industrial waste in the unincorporated areas of Kern County.

But while that suit is now dead, the federal court did not settle two remaining challenges to Measure E -- that state recycling mandates trump the measure and that Kern overstepped its "police powers" in passing it.

That leaves the legal door open for the southland plaintiffs to file another lawsuit -- which the city of L.A. has indicated it will do. If Tulare County takes the case, its ruling could preempt a separate lawsuit by Los Angeles down south, said Kern Chief Deputy County Counsel Mark Nations.

John Franklin, a spokesman for the Los Angeles City Attorney's Office, said Los Angeles is still reviewing the path forward in relation to Measure E.

But the city of Los Angeles continues to spread a significant portion of the solid by-product from its sewage treatment process -- called sewage sludge or biosolids -- as fertilizer at the Green Acres farm southwest of Bakersfield.

So, next month, Kern County Counsel Theresa Goldner will ask a Tulare County court to look at the pre-emption and police powers issues, rule in Kern's favor and find that Measure E is a valid law.

Court documents show she will do that by reviving an old, unresolved lawsuit the county of Los Angeles filed against Kern before Measure E passed.

That lawsuit, which got moved from Kern County to Tulare court, sought to halt Kern County rules requiring sewage sludge be subjected to very high levels of treatment before being brought here to be spread on farm fields as a soil supplement and fertilizer.

Many locals fear sludge spreading could contaminate groundwater and do other environmental damage; the Los Angeles plaintiffs insist the practice is safe.

The debate in Tulare County court was put on hold after voters banned sludge spreading altogether with Measure E -- rendering the debate about the quality of biosolids obsolete.

Now that the validity of Measure E is being challenged, court filings show, Kern will argue that Tulare County can resolve the sludge-quality suit by deciding whether Los Angeles' final challenges to Measure E have merit.

Taking the initiative is important for Kern, Nations said, because moving the case to Tulare County could speed up resolution of the legal case against Measure E.

He also said Tulare County is a better venue for the fight -- at least from Kern County's point of view.

"In Tulare County you're going to have an audience that understands some of the issues related to land application," Nations said. That just wasn't the case in urban Los Angeles where U.S. District Court Judge Feess originally ruled against Kern in the federal case.

"We got home-towned in L.A. with that federal judge," Nations said.

Feess only dismissed Los Angeles' case against Measure E after the U.S. Court of Appeal overturned his initial ruling and the U.S. Supreme Court refused to take up the case.

Nations expects Los Angeles to fight Kern County's Tulare move.

"What we expect them to say is that the Tulare court can't handle the case and it has to be a new suit," Nations said.

A hearing on Kern County's motion will be heard Feb. 24, County Counsel Goldner said.

Vote delayed on Calif air pollution program

By Noaki Schwartz, Associated Press

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LOS ANGELES—After more than two hours of public comment, the governing board of Southern California's anti-smog agency postponed voting Friday on a controversial plan that would allow companies to pollute by purchasing emission credits.

The South Coast Air Quality Management District board instead decided to vote on the issue at its February meeting.

The Clean Air Act allows for the creation of a market where a company that reduces pollution can sell the credits to other facilities that produce emissions.

It's the third time since 2006 the board has taken up the issue. Previous efforts resulted in lawsuits from environmental groups that continue to raise concerns about the way the agency develops its pollution credits.

In 2009, a court imposed a moratorium on trading credits. The state Legislature later lifted the moratorium but that decision will lose effect in 2012.

"The strategy of the plaintiffs is to draw this out as long as they can," district executive officer Barry Wallerstein told The Associated Press. "We have spent a great deal of time on a new environmental report."

Supporters urged the board Friday to move forward with the plan, saying they needed to preserve a balance between the struggling economy and public health.

Residents and representatives of environmental groups, however, pleaded with the board not to adopt the current plan, saying it would result in more Southern California residents getting asthma or dying from polluted air.

The debate was at times emotional and testy.

Ricardo Pulido, a board member for the Coalition for a Safe Environment, took issue with Chairman William Burke interrupting his public comment, and the two began arguing.

Before leaving the podium, Pulido told the board that Gov. Jerry Brown would be informed, and Burke offered him Brown's cell number.

The air quality agency oversees Orange County and parts of Los Angeles, San Bernardino and Riverside counties. It encompasses nearly 17 million people in an area that exceeds 10,700 square miles and is describe as one of the smoggiest regions in the nation.