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California Court Upholds CalGEM's Use of CEQA Categorical Exemption for Approval of Oil Well Conversion Project



A California Court of Appeal upheld the California Department of Conservation Geologic Energy Management Division's determination that a project to convert a plugged oil well into a wastewater disposal well fit within the CEQA categorical exemption for "minor alteration" of existing facilities involving "negligible or no expansion" of use. *Sunflower Alliance v. California Department of Conservation*, 105 Cal.App.5th 771 (2024).

Reabold California LLC applied to CalGEM for permits to convert a plugged and abandoned oil well in the Brentwood Oil Field into a wastewater disposal well. Reabold proposed to remove the well plug, install wastewater injection equipment within the existing wellbore, and utilize an existing well-pad and access road to service the injection well. In compliance with CalGEM regulations for "Class II" underground injection control (UIC) wells, CalGEM reviewed and considered technical reports submitted by Reabold addressing project engineering and geologic and hydrogeologic conditions, which concluded that injected water would be geologically confined to the intended receiving zone.

CalGEM approved the conversion to a Class II disposal well and issued a CEQA Notice of Exemption citing the "Class 1" or "Existing Facilities" Exemption, which applies to the permitting and "minor alteration" of existing facilities "involving negligible or no expansion of existing or former use." The Sunflower Alliance, an environmental justice nonprofit, sued to set aside CalGEM's authorization of the well conversion.

"Relatively Modest" Well Conversion Projects are Within the Scope of CEQA's Existing Facilities Exemption

As a matter of law, the Court of Appeal held that a "negligible" expansion of use within the meaning of CEQA's Existing Facilities exemption "is intended to allow changes or expansions in use that are inconsequential," meaning the exemption applies "if the risk of environmental harm from the new use is negligible." The Court rejected Sunflower's argument that any change in *use* of a modified well is ineligible for the Class 1 exemption.

The Court also was not persuaded to adopt Reabold's position that coverage of the exemption depends on the "degree of change" of use. Instead, the Court found that "focusing on the environmental consequences of a change in use is a better approach."

Applying its newly announced negligibility test to answer, "whether converting a former oil well into an injection well falls within the scope of the exemption," the Court found that the Existing Facilities exemption is "appropriate for the relatively modest type of conversion project at issue here." The Court emphasized that physical modifications to the well itself involved no deepening or other significant changes to the wellbore, and no significant changes to the appurtenant well pad, roads, or vegetation. The Court also determined that the proposed change in use involved negligible environmental risks because injected water would not escape the target injection zone. Despite the language of the Existing Facilities exemption covering a non-negligible expansion of "existing or former" use, the Court judged environmental risks of the project solely in comparison to the well's former use for oil extraction rather than its current status as a plugged well.

Court Rejects Contentions that CalGEM's Approval was Unsupported by Substantial Evidence and Improperly Imposed Mitigation Measures

The Court found that substantial evidence in the administrative record supported CalGEM's reliance on the Existing Facilities Exemption to approve Reabold's project. The Court cited undisputed evidence that approximately 1,000 feet of rock would overlie the injection zone, and CalGEM's and other environmental regulators' concurrence with technical reports in the record finding that injected fluids would not escape. The Court also noted that Sunflower waived any argument that "unusual circumstances" would apply that would render the Existing Facilities exemption inapplicable.

Last, the Court rejected Sunflower's additional argument that CalGEM's conditions of approval on the well conversion permit requiring Reabold to use pressure test devices were really CEQA mitigation measures adopted to fit the project within a CEQA exemption. The Court found that CalGEM's pressure test requirements were properly characterized as conditions of approval that ensured the applicant's compliance with applicable Class II well regulatory standards.

Authors