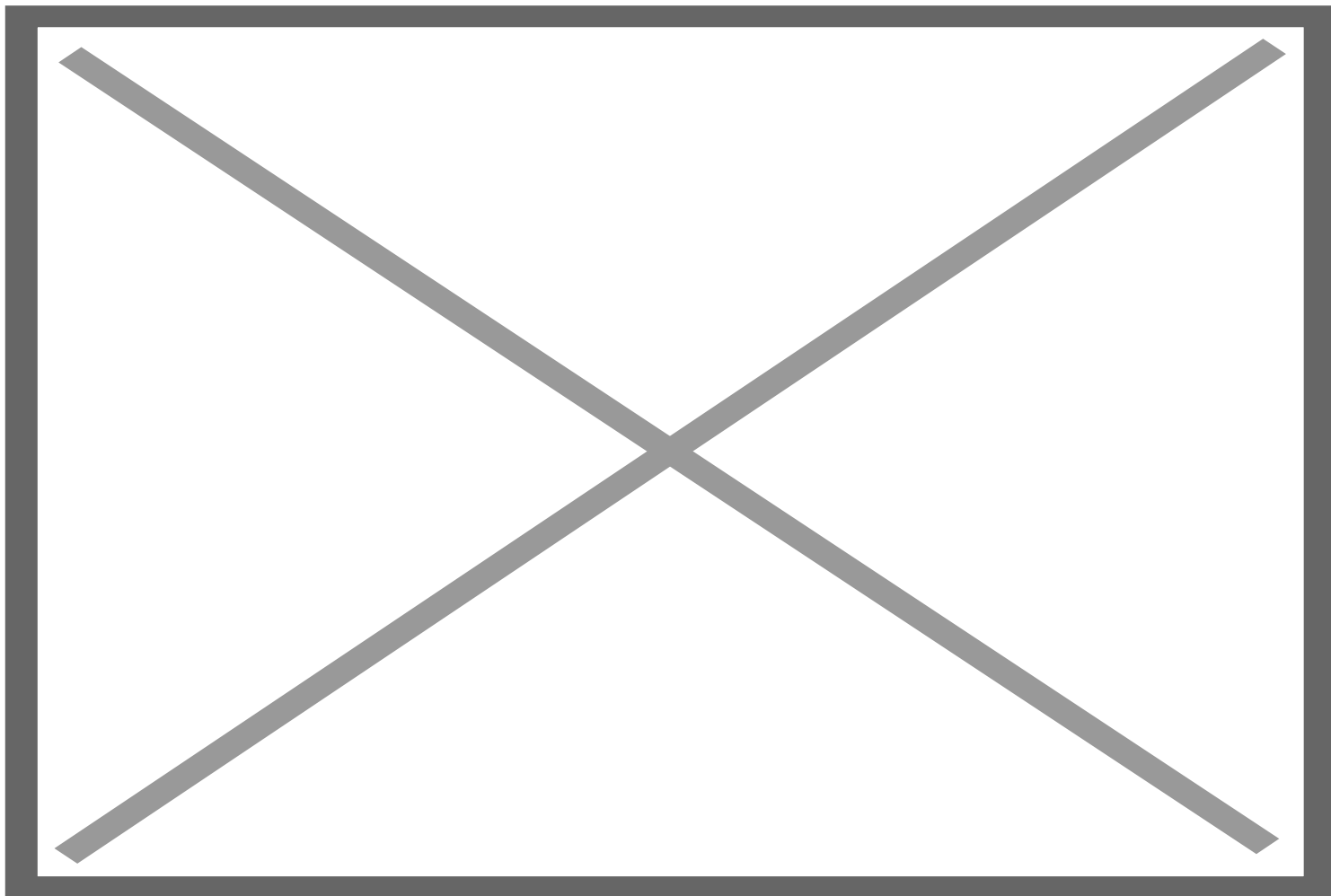


## **CEQA Action Challenging Oil Well Permits Not Barred By Res Judicata**

The court of appeal held that the doctrine of res judicata (which precludes relitigation by the same parties of issues previously adjudicated on the merits) does not apply when a prior judgment was based on mootness and ripeness grounds because it is not a judgment on the merits. [\*Association of Irrigated Residents v. California Department of Conservation\*](#) (No. F073018, May 4, 2017).



In 2012, several environmental organizations sued the California Department of Conservation in Alameda County contending that the Department failed to comply with CEQA because of its "pattern and practice" of issuing permits for oil and gas wells without analyzing the potential environmental impacts of fracking. While the suit was pending, Senate Bill No. 4 (SB 4) was signed into law. SB 4 required the Department to adopt new fracking regulations and to approve projects that met certain conditions before the new law took effect. The court then dismissed the claims as moot due to the passage of SB 4 and not ripe to the extent they targeted future practices of the Department. In 2014, environmental organizations filed a second suit in Kern County alleging that the Department failed to comply with CEQA before issuing over 200 specific drilling permits. The trial court dismissed the case on the grounds that res judicata applied because the earlier suit had involved essentially the same issues and parties and had been ruled on by the court. The court of appeal held that res judicata was not

applicable because the earlier case had not been decided on the merits but, rather, on the ground that there was no justiciable controversy before the court. The appellate court reasoned that a judgment based on mootness or ripeness not is one "on the merits" because the substance of the claim is not adjudicated. Here, the ruling in the Alameda case had been based solely on mootness and ripeness grounds, and the trial court never addressed the merits of plaintiffs' CEQA claims. The court of appeal also rejected the argument that the Alameda court had ruled on the merits of the case because the court order discussed specific ramifications of SB 4. The court of appeal concluded that the Alameda court was simply explaining its mootness ruling, not adjudicating a substantive defense. The court also held that entry of final judgment in another case in Kern County Superior Court involving similar issues did not warrant dismissal of the appeal based on collateral estoppel. The collateral estoppel doctrine bars relitigation of identical issues that were actually litigated and decided in a prior case by one who was a party in the first suit or in privity with that party (i.e., having essentially the same legal interests). The court reasoned that the ultimate legal issues in the two cases were not identical because the facts in each case were different. Further, although the Sierra Club was a plaintiff in both suits, other plaintiffs in the second Kern County case were not necessarily in privity with the Sierra Club, hence the requirements for collateral estoppel were not met.

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