

Memo to concerned parties from NARO-CA regarding Statement of Decision, Measure Z

A big win for mineral interest owners in Monterey County! The court in Monterey County has spoken in a 51 page statement of decision released late yesterday. Measure Z has been substantially struck down on the basis of pre-emption and takings. The only portion that remains intact is that pertaining to a ban on hydraulic fracturing. Attached is a copy of the decision. After a very quick and preliminary review, following are some of our team's observations with regards to the Judge Wills' statement of decision.

The court held that Measure Z's prohibiting waste water disposal and the prohibition against new wells are preempted in their entirety by both State of California law and the Federal Safe Drinking Water Act. These provisions are therefore invalid and cannot be enforced by the County. If these two parts of Measure Z were to have remained valid, oil operations in Monterey County would become infeasible and would cease.

The Judge did hold that none of the Plaintiffs have standing with regards to a challenge to Measure Z's land use policy that would prohibit hydraulic fracturing since no one is currently using hydraulic fracturing in Monterey County. That does not mean that the ban is valid. It only means that if no one is currently being harmed by the ban on hydraulic fracturing, then no one has standing to challenge such ban. The judge left the door open for a future challenge of the hydraulic fracturing provision of the Measure if, in the future, an operator wants to use this method of well completion. In other words, Judge Wills felt that the challenge against the hydraulic fracturing provision was not ripe for adjudication at this time.

You will remember that although everyone's number one issue was pre-emption we all raised a number of other grounds in our challenge to Measure Z. Here are Judge Wills' conclusions on those other issues, none of which detract from the fact that we have a win.

(1) Measure Z does not violate the single-subject rule which is an argument that California Resources made.

(2) Because Judge Wills ruled in our favor on Preemption, he concluded he did not need to reach a decision on our General Plan Consistency argument. Accordingly he held that the argument is moot. We can still assert it in the future if we need to.

(3) Measure Z's administrative remedies which would have purportedly allowed a landowner to apply for an exception to its provisions are inadequate and unconstitutional.

(4) To the extent Measure Z takes away all economic use of any properties (as for instance where someone owns only mineral rights in a property and those mineral rights are not currently being exercised) there is an unconstitutional uncompensated taking by Measure Z. However, because Judge Wills found that LU-1.22 and LU-1.23 are preempted, the issue is moot and he decided that he does not have to determine the appropriate remedy for the taking.

(5) Judge Wills acknowledged that there were other arguments raised, but because of his preemption ruling it is unnecessary to discuss those other issues or “*to proceed to any subsequent stage of these proceedings.*”

The foregoing is a very preliminary analysis of the Court’s statement of decision. A more detailed analysis will be provided after further review.

Sincerely,
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Vice President & General Counsel
NARO-California