

# Oil Industry Fights California Over Wastewater Injections

**Rebekah Kern, Courthouse News Service, 1-24-17**

BAKERSFIELD — The oil industry sued California on Inauguration Day, calling its regulation of wastewater injection unconstitutional overreach that will shut down thousands of oil wells that do not threaten water supplies in 45 aquifers, as the state contends.

The Western States Petroleum Association and two other trade groups sued the Conservation Department of Conservation, Division of Oil, Gas and Geothermal Resources on Friday, in Kern County Court.

Wastewater injection is not the same as fracking.

In fracking, liquids, including wastewater from drilling, are injected into the ground to crack shale and make oil and natural gas accessible for pumping to the surface.

In wastewater injection, the wastewater residue of oil and gas wells is pumped back into the ground, but not primarily to release more gas and oil — simply to dispose of it. Some additional oil and gas, however, is made available by waste injection.

Two years ago, the U.S. Environmental Protection Agency tasked state oil regulators with assessing aquifers that could be endangered by injection wells. The trade groups say they could lose access to thousands of wells that are perfectly safe, because the state agency has set unreasonable compliance deadlines.

The state's Division of Oil, Gas, and Geothermal Resources, or DOGGR, oversees more than 50,000 injection wells in California. Most of them belong to members of the three plaintiff trade groups, which include the California Independent Petroleum Association and the Independent Oil Producers Agency, they say in their lengthy lawsuit.

Eighty to 85 percent of California's oil production is in Kern County, whose seat is Bakersfield. These wells produce 80-85 percent of California's oil. The groups say in the complaint that as much as 20 percent of Kern County's oil production "could be impaired or lost as a result of the unconstitutional enforcement of the deadlines in the Compliance Schedule Regulations."

The oil groups say compliance could reduce Kern County production by more than 100,000 barrels a day, at the cost of thousands of jobs and businesses and the local and state economy.

Western States Petroleum Association president Cathy Reheis-Boyd said in a statement that the groups went to court "to seek protection of our members' legal rights to operate in the state. We believe the shut-in deadlines are contrary to the Public Resources Code and violate operators' right to due process of law."

She added: "Due to the number of wells involved, more time is needed to complete the reviews and for EPA to act on the aquifer exemption applications. We believe permitted wells should be allowed to continue operating during this process."

The EPA audited California's Class II Underground Injection Control program in 2011 and found evidence that several wastewater injection wells may have contaminated aquifers used for drinking water and irrigation.

It also found that DOGGR had granted permits for injection wells outside the boundaries of exempted aquifers without EPA approval.

Class II injection wells inject wastewater produced by oil and gas extraction into oil-bearing formations to displace and extract small amounts of oil and natural gas, according to the EPA [web page](#) on Class II wells.

The EPA ordered DOGGR to review all Class II wells injecting into aquifers with unclear exemption status and overhaul its oversight program to protect drinking water aquifers.

In April 2015, DOGGR adopted a compliance schedule that codified deadlines to obtain aquifer exemption. The trade groups claim the deadlines violate due process and put thousands of their members' legally permitted wells at risk.

"Neither EPA nor DOGGR sought any input from plaintiffs' members as to the feasibility of completing the review process for approximately 45 aquifers within a period of just two years," the complaint states.

Nevertheless, the plaintiffs say their members spent plenty of time and money to cooperate with DOGGR. They say they helped it develop application templates, directed well operators working in the same oilfields to coordinate reviews, sent in more information than called for, and in most cases submitted "lengthy and enormously detailed" data well in advance of the deadlines.

But thousands of wells could be shut down on Feb. 15 because DOGGR grossly underestimated how long it would take to evaluate each application, the associations claim.

As of Friday, the groups say, DOGGR had submitted only four of the 45 aquifer exemption applications to the EPA, including one the trade groups sent in almost a year ago.

Their members could face "draconian" fines of \$20,000 a day if they do not shut in their wells even though they did not miss their deadlines, according to the complaint.

Though there are some alternative compliance strategies, the members cannot use them until the exemption applications are approved, "thus placing them in a classic Catch-22," the complaint states.

"Underscoring the unfairness of the situation, defendant has stated that it ultimately expects EPA to approve the majority of the pending aquifer exemption applications, signaling that defendant itself does not believe the wells pose any risk," the groups add.

DOGGR spokesman Don Drysdale said the department declined to comment on the lawsuit.

The associations seek a declaration that the automatic shut-in provisions violate their due process rights and an order preventing DOGGR from enforcing them until review of all 45 aquifers has been completed and the EPA has made its final determinations.

They are represented by Mark Elliott with Pillsbury, Winthrop, Shaw and Pittman in Los Angeles.