



February 8, 2017

Mr. James Eggleston  
Protect Monterey County  
P.O. Box 1946  
Monterey, CA 93942

Dear Mr. Eggleston:

Thank you for your letter of January 23, 2017. The following is a response to provide additional context regarding aquifer exemptions, clarify potential sources of confusion, and clarify the relationship between the Division's actions pursuant to state and federal law and Monterey County's implementation of Measure Z. Further, for the reasons discussed below, the Division of Oil, Gas, and Geothermal Resources (Division) will proceed as planned with its public hearings and consideration of aquifer exemptions in Monterey County.

Measure Z is a county ballot measure that, among other things, prohibits land uses in support of oil and gas wastewater injection. The Measure defines "oil and gas wastewater injection" as the injection of oil and gas wastewater "into a well for underground storage or disposal." Existing storage/disposal injection wells are allowed to continue for a minimum of five years after Measure Z's effective date, and Monterey County may extend this "phase-out" period for up to ten additional years. The wastewater injection ban is currently stayed under an agreement between Monterey County and private litigants who have filed lawsuits challenging the legality of Measure Z. The stipulated stay is anticipated to remain in effect until the judicial process resolves the questions surrounding Measure Z's legality.

As you know, the Division and State Water Resources Control Board (State Board) are currently considering a proposal to expand the limits of an existing aquifer exemption in and around the San Ardo and McCool Ranch Oil Fields in Monterey County. A public hearing on the proposal will be held on February 9, 2017. Following a public comment period, the Division will issue a written response to comments. If the Division and State Board elect to advance the proposal further, the proposal will be submitted to the United States Environmental Protection Agency for review and potential approval. I encourage you to visit the Division's webpage on aquifer exemptions, which includes links to information about the exemption process, as well as the technical data and statement of basis for the expansion of the San Ardo McCool Ranch exemption.<sup>1</sup> I also encourage you to attend and provide any comments at the February 9 public hearing.

The Division does not agree that Measure Z prevents further consideration of the proposed aquifer exemption for several reasons. First, an aquifer exemption is neither equivalent to a permit to inject, nor any form of entitlement to oil and gas operators. An exemption is merely an administrative characterization of an aquifer based on findings that the aquifer meets certain federal regulatory criteria and should not be considered a protected underground source of drinking water for purposes of the federal Safe Drinking Water Act (SDWA) (See 40 C.F.R. §§

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<sup>1</sup> The webpage address is [http://www.conservation.ca.gov/dog/Pages/Aquifer\\_Exemptions.aspx](http://www.conservation.ca.gov/dog/Pages/Aquifer_Exemptions.aspx).

144.7, 146.4.) New injection wells would still require permits from the Division, and the existence of an aquifer exemption does not entitle operators to permits or limit the Division's discretion to deny permits.

Second, it is very important to recognize that the proposed aquifer exemption would serve the independent purpose of establishing SDWA compliance for wells that are not prohibited by Measure Z – namely, existing wells that inject fluids for purposes of enhancing oil recovery (“enhanced oil recovery wells”). As noted above, Measure Z's injection ban and phase-out applies only to wells that inject for purposes of wastewater storage or disposal. Yet if the aquifer exemption is not approved, existing enhanced oil recovery wells would be out of compliance with the SDWA. Failure to pursue the proposed exemption would therefore impact enhanced oil recovery wells beyond the scope of the Measure approved by the local electorate.

Finally, Measure Z allows existing disposal wells to continue for a minimum of five years (but possibly up to fifteen years depending on Monterey County's implementation of Measure Z's phase-out extension process). The proposed aquifer exemption would bring existing disposal wells into compliance with the SDWA during the phase-out period. The exemption review process is therefore independently important to ensure that any ongoing injection during the phase-out period occurs only in aquifers that are determined not to be underground sources of drinking water.

Neither the approval of an aquifer exemption nor the Division's issuance of permits will excuse operators from complying with Measure Z, or otherwise undermine in any way Monterey County's enforcement of Measure Z. In fact, the Division's permits state that operators must comply with other federal, state and local laws. The Division and Monterey County staffs have been in communication since the passage of Measure Z. We have agreed that in the event the Division issues future permits for new drills, well stimulation treatments, or storage/disposal injection operations, the Division will inform the Monterey County Planning Department to ensure the County has notice of the permit so that the County can determine how and when to enforce Measure Z. It is the Division's intent to work closely with the County as it implements Measure Z.

I hope this letter helps answer some of your questions and addresses your concerns. Please feel free to contact me if you have further questions at (916) 323-1777 or email at [Ken.Harris@conservation.ca.gov](mailto:Ken.Harris@conservation.ca.gov).

Sincerely,



Kenneth A. Harris Jr.,  
State Oil and Gas Supervisor

CC: Senator Bill Monning's Office;  
Assemblymember Anna Caballero's Office;  
Assemblymember Mark Stone's Office;  
Charles McKee, Monterey County Counsel