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Chevron, Aera Energy Sue to Block Monterey County, California's Voter-Approved Ban on Fracking

By Larry Buhl

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Last November, voters of Monterey County, California, passed a fracking ban known as Measure Z with 56 percent of the vote, despite being outspent 30-to-1 by the industry-backed group, Monterey County Citizens for Energy Independence.

Passing Measure Z makes Monterey the sixth California county to ban fracking, but the first to face a serious legal challenge.

In December, Chevron and Aera Energy, the two biggest companies drilling in Central California's San Ardo fields, both filed lawsuits against Monterey County to block implementation of Measure Z, alleging that it restricts how they can use their property.

The companies were joined by the San Ardo Elementary School District and several individuals who own mineral rights in the oil fields.

How Will Measure Z Measure up in Court?

Proponents of Measure Z said that re-injecting toxic wastewater, part of the hydraulic fracturing ("fracking") process, contaminates local aquifers that are protected under the federal Safe Drinking Water Act.

The measure goes further than five other local bans on hydraulic fracturing by also prohibiting the drilling of new oil and gas wells.

Opponents of Z, including the region's hospitality industry, claimed the region would lose millions in tax revenue if Z were to pass, and that California already has the strictest environmental laws in the U.S.

Responding to the lawsuits, Monterey County Superior Court issued a partial stay on Measure Z. The stay blocks the measure's ban on new wells, but not on hydraulic fracturing.

A Chevron spokesperson said via email that Measure Z "exceeds the County's authority to regulate the oil and gas industry" and harms the community:

"As a result of Measure Z, public agencies such as Monterey County and San Ardo Union Elementary School District will lose millions of dollars in tax revenue, small businesses will lose a significant source of local revenue and citizens will lose jobs. The County will also be liable for hundreds of millions of dollars in damages resulting from the illegal termination of oil and gas property rights."

Last month, the Yes on Z coalition, Protect Monterey County, along with the Center for Biological Diversity, filed motions in Monterey County Superior Court asking to become parties to the litigation. A hearing is scheduled for March 17 to determine whether these groups will become defendants, something Hollin Kretzmann, an attorney with the Center for Biological Diversity, says is a formality.

Kretzmann told DeSmog that the Yes on Z forces are on “solid legal ground.”

“The efforts to stop Z are desperate attempts to interfere with local communities to protect their water and health,” Kretzmann told DeSmog. Kretzmann added that the California Supreme Court has upheld local government’s power to curb oil and gas extraction, most notably in the 1953 case of Beverly Oil v. City of Los Angeles.

Size and Scope of Fracking Ban Make it a “Test Case” For Big Oil

In 2014, voter initiatives banning fracking passed in Mendocino, Butte, and San Benito Counties, while an anti-fracking initiative in Santa Barbara County failed. Also in 2014 Santa Cruz County Supervisors unanimously voted to ban fracking. In 2013, Marin County put a moratorium on fracking until the state could guarantee public health and safety. But only Measure Z has faced a serious legal threat.

Without question, Chevron and Aera have a financial stake in the area. The San Ardo fields are the 46th largest oil fields in the country. But Monterey County Counsel Charles McKee told DeSmog that Measure Z is facing a legal fight due to its scope.

Other local bans in California prohibited only hydraulic fracturing and wastewater injection, unlike Measure Z, which also prohibits new oil and gas wells. In addition, fracking in the five other California counties was minimal, or in the case of Mendocino and San Benito Counties, non-existent.

“Chevron and Aera are taking a stand with Measure Z,” McKee said. “Oil interests see this as a test cases for broader bans which involve oil extraction as well as fracking.”

McKee said that he plans to defend Measure Z vigorously.

“We anticipated lawsuits if Z passed,” McKee told DeSmog. “Measure Z was well drafted, because we learned from other ballot measures to be clear about the specifics of immediate and long-term effects.”

Measure Z gives companies five years to phase out wastewater injection, which could be extended to fifteen years if they can prove that five years is not enough time. And the companies get to keep all the wells already in operation, and even replace wells if they need to be replaced.

McKee said the county was going ahead with the fracking ban and is planning to hold community meetings on how to implement it.

Activists Say State Inaction Makes Local Bans Necessary

Proponents of Measure Z say the ban was necessary because county supervisors had rejected a unanimous recommendation by the planning commission for a two-year moratorium on wastewater injection, which would have given planners time to develop regulations.

Despite California's reputation as a "green energy" leader, the state is the third largest oil producer in the nation, after North Dakota and Texas. Oil and gas, the state's largest lobbying body by far, dropped more than \$36 million in the last legislative session, according to an American Lung Association study.

Fracking in California is regulated at the state level, by the Division of Oil, Gas, and Geothermal Resources (DOGGR). Governor Jerry Brown, one of the nation's leading advocates for renewable energy, has been silent on Measure Z, and has come under fire from environmentalists for rejecting any statewide ban on fracking.

Elsewhere, voter initiatives banning fracking in U.S. cities and counties have faced obstacles at the state level. A controversial 2015 Texas law stopped cities and towns from banning fracking after a ban was passed in Denton, Texas, near Dallas. Last year the Colorado Supreme Court struck down several local fracking bans, and in 2014, the Republican-dominated North Carolina legislature lifted a moratorium on fracking permits.

At the national level, the Environmental Protection Agency's final report on fracking's threats to drinking water, released last year, will likely have no impact in the Trump administration, which has appointed fossil fuel-industry friend Scott Pruitt as EPA chief and has promised to end regulation of hydraulic fracturing. Two thirds of natural gas in the U.S. is produced via fracking.

Therefore any efforts to reign in the industry and protect water supplies from oil and gas activities will likely have to come from the state and local level, upping the stakes for policies like Measure Z.