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## Public Law Update: New Case Provides Guidance on CEQA Exemption Frequently Used by Public Agencies

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In *Sunflower Alliance v. California Department of Conservation*, the First Appellate District of the California Court of Appeal reversed a Contra Costa County Superior Court decision granting a petition for writ of mandate challenging a state agency's use of a categorical exemption from the California Environmental Quality Act ("CEQA"). The appellate court upheld the Department of Conservation's Division of Geologic Energy Management's ("CalGEM") use of the Class 1 exemption for a project to convert an oil well into an injection well. The appellate court held that any expansion of the well's use is negligible because the environmental risks of injecting the water are low, and as such, the well conversion project falls within the CEQA Guidelines section 15301 Class 1 "Existing Facilities" Exemption. This case provides important guidance on the interpretation of the term "negligible" in Class 1 categorical exemption, which is frequently relied upon by public agencies.

### **Legal Background**

CEQA requires public agencies—like CalGEM—to consider the environmental impacts of their activities. Projects may be exempt from CEQA under various statutory and categorical exemptions.

The Legislature has authorized the Secretary of the California Natural Resources Agency to adopt regulations creating a list of classes of projects determined to be categorically exempt from CEQA based on findings that they do not have a significant effect on the environment. Known as the "categorical exemptions," such classes of projects are "declared to be categorically exempt from the requirement for the preparation of environmental documents."

The Class 1 exemption for "existing facilities" applies to "the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of the existing or former use." The key consideration in determining whether the existing facilities exemption applies is whether the project involves negligible or no expansion of use beyond the existing or former use.

## ***Factual Background***

In 2020, Reabold California LLC filed an application with CalGEM to convert a former oil well in the Brentwood Oil Field into a Class II injection well. The oil well formerly pumped oil and water from an aquifer from 1963-1983, and was then plugged. The oil well is more than 4,000 feet deep. In 1982, the EPA exempted the aquifer from the Safe Drinking Water Act, making it eligible for Class II injection wells. After the proposed conversion, the oil well would pump excess water back into the aquifer, eliminating nearly a dozen weekly trips to a disposal site 32 miles away for the produced water. Only minor alterations would occur to the well and the proposed injection site.

Three regulatory agencies—Department of Conservation’s Division of Geologic Energy Management’s (“CalGEM”), the State Water Resources Control Board, and the Regional Water Quality Control Board—reviewed Reabold’s application. After resolving their concerns, CalGEM approved the project and found the project exempt from CEQA under the Class 1 exemption as a “minor alteration” of an existing facility involving “negligible or no expansion” of the well’s former use.

## ***Trial Court Decision***

Sunflower Alliance filed a petition for writ of mandate challenging CalGEM’s use of the categorical exemption and asking a court to set aside the project approval. The trial court agreed with Sunflower that the Class 1 exemption did not apply because—as injection is a “significantly different use”—it was “not convinced that changing an oil and gas well into a water injection well involves negligible or no expansion of use.” The trial court entered judgment in favor of Sunflower and issued a peremptory writ of mandate directing CalGEM to set aside its notice of exemption and its approval of the project. Reabold appealed.

## ***Appellate Court Decision***

The primary issue in this case was whether the conversion of a former oil well to an injection well falls within the scope of the Class 1 exemption, specifically whether it involves a negligible expansion of use. The Court of Appeal held that the change in the well’s use involved a negligible expansion and thus met the Class 1 exemption’s key criterion. In reaching that decision, the Court used traditional canons of statutory interpretation to interpret “negligible” expansion to mean an inconsequential change in use. The Court then used the risk of environmental harm as the barometer for whether a change is consequential or not, stating that “when a modified project is put to a new use, the change in use is unimportant, as far as CEQA goes, if the risk of environmental harm from the new use is negligible.”

Here, the Court found that the change in the well's use would be negligible, because the environmental risks of the conversion are inconsequential for a number of reasons.

First, the physical modifications to the well itself would entail only modest alterations to the existing well. Second, the new use is limited to the disposal of produced water (which currently is trucked to a disposal site 32 miles away from the well site), which would be injected into the aquifer "cleaner than when it was removed." The project will also not involve any other uses (e.g., fracking) that may pose environmental risks. Finally, the approval of the project as a Class II injection well involved a regulatory determination that the injected water cannot escape the aquifer and harm people, property or the environment because the injected water will be geographically confined within the aquifer by 1,000 vertical feet of shale and is located 4,000 feet underground. Additionally, because the EPA had already determined that the aquifer will never serve as a source of drinking water and exempted the aquifer from the Safe Drinking Water Act, there is no harm in injecting water back into the aquifer.

Finally, while Petitioner did not advance any arguments that an exception applied, it did argue that the agency improperly imposed conditions masquerading as mitigation measures. The Court rejected that argument by noting that the only conditions imposed were to ensure that the project meets the existing regulatory standards for Class II injection wells.

The Court concluded that CalGEM properly found the well conversion project exempt from CEQA. The Court reversed the trial court's judgment and remanded the matter with directions to enter a new judgment denying Sunflower's petition for writ of mandate and ordering CalGEM to reinstate its project approval and notice of exemption.

### ***Significance of Ruling***

The Court's ruling is important because it interprets the meaning of "negligible" in the key consideration of the Class 1 exemption, which is perhaps one of the most frequently used categorical exemptions. The ruling is also significant because it is yet another case demonstrating the First Appellate District's recent and very palpable shift in CEQA cases, which have recently appeared to be less favorable to CEQA Petitioners.

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