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THE ROYALTY OWNERS ACTION REPORT

January 2018



*Ed Hazard, President  
Roy Reed, Director*

## A MAJOR LEGAL VICTORY IN CALIFORNIA

### *Court Affirms Royalty Owners' Rights in Measure Z Challenge*

December 28 began as just another unremarkable day in the trough between Christmas and New Year's, but became

notable with the release of Monterey County Judge Thomas Wills' 51-page Statement of Intended Decision in the legal challenge of Monterey County's Measure Z, a voter-approved initiative which would have resulted in the cessation of oil production in the rich San Ardo oilfield. With a final keystroke, Judge Wills' decision was posted and the rights of Monterey County operators and royalty owners to produce their petroleum resources were restored.

Measure Z, launched by *Protect Monterey County* and supported by the *Center for Biological Diversity*, was promoted as an "anti-fracking" initiative and was passed by the County's voters last year. Billed as an "anti-fracking" initiative even though hydraulic fracturing is not used in Monterey County, Measure Z further banned creation of new oil wells as well as the use of injection wells for disposal of waste water, effectively spelling the doom of the south-county San Ardo oilfield, one of the state's largest, which has been safely operating since the 1940's.

Unwilling to accept the unwarranted taking of their rights to produce their petroleum resources, San Ardo area royalty owners, together with NARO-California and producers filed a number of lawsuits challenging the measure. Producers Chevron USA, Aera Energy (a partnership between Exxon Mobil and Shell), California Resources Corporation, Eagle Petroleum and Trio Petrole-

um all filed separate actions.

In March of 2017 NARO-California joined the fray as lead plaintiff in the matter of *NARO-CA, et al v. County of Monterey*. Joining NARO-California in this action were over 80 Monterey County royalty owners who participated as additional named plaintiffs in the lawsuit. NARO-California Vice-President and noted petroleum attorney Edward Renwick, Esq. acted as our lead counsel with Monterey County attorney Jacqueline Zischke doing a stellar job as our local co-counsel in this case. NARO-California Board President Ed Hazard participated in the action, appearing and monitoring each day of the proceedings in support of the rights of all NARO-California members and this state's mineral interest owners at large. Walt Duflock, NARO-California member and local royalty owner, was instrumental in supporting the rights of royalty owners with his tireless efforts to facilitate teamwork and participation of a



large and diverse group of San Ardo area royalty owners both prior to and during the trial. For the sake of efficiency, the Court ultimately consolidated the six separate lawsuits into one case.

The trial was held during the week of November 13 in Monterey County Superior Court, with Judge Thomas Wills presiding. The proceedings concluded on Thursday, November 15th and the wait for the Judge's decision began.

On December 28, 2017 Judge Wills' Statement of Intended Decision was posted and the long wait was over.

In his decision, Judge Wills affirmed the Plaintiffs' position that Measure Z's prohibitions on new oil wells and waste water disposal wells were preempted in their entirety by both California State law and the Federal Safe Drinking Water Act. As such, both provisions are, therefore, invalid and may not be enforced by the County.

Judge Wills further ruled that, to the extent portions of Measure Z take away all economic use of any properties, there would be an unconstitutional, uncompensated taking of private property. If those portions of Measure Z were to remain valid, Monterey County would be liable to damaged mineral and royalty owners for the value of their assets, which could amount to hundreds of millions, potentially, billions of dollars.



Attorneys Ed Renwick and Jacqueline Zischke at the court house.

The Judge did hold that none of the Plaintiffs have standing with regard 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 that method of well completion. Judge Wills simply felt that the challenge against the hydraulic fracturing provision was not ripe for adjudication at this time.

While a number of other grounds were raised in Plaintiffs' actions, the key findings for producers and royalty owners were with regard to preemption and unconstitutional regulatory takings, which were the heart of our basis for this action. Judge Wills acknowledged that while there were other causes of action raised, his preemption ruling makes it unnecessary to discuss those other issues or *"to proceed to any subsequent stage of these proceedings."*

The Statement of Intended Decision clearly indicates a win for both the oil industry and royalty owners. This affair also represents a number of "firsts" for California's oil industry, royalty owners, NARO-California and for NARO. Measure Z was the first "anti-fracking" initiative passed by California voters in



L to R: NARO-CA local co-counsel Jacqueline Zischke, NARO-CA members and royalty owner plaintiffs Jamie Brown and Walt Duflock, NARO-CA President Ed Hazard, and NARO-CA Vice Pres. & General Counsel Ed Renwick

a county with significant oil production; this was the first legal action in which a NARO state chapter was a plaintiff in a suit challenging such an initiative; and it was the first legal victory resulting from such a partnership between a NARO chapter, produc-

ers, and royalty owners.

Almost immediately after the posting of the Statement of Intended Decision, both Dr. Laura Solorio, of Protect Monterey County, sponsor of Measure Z, and Kassie Segal, Esq., of the Center for Biological Diversity, decried Judge Wills' decision with the usual combination of bluster and hyperbole, and pledged a legal appeal, none of which came as a surprise.

NARO-California believes Judge Wills' decision is of vital importance to all Californians because it defends and preserves their property rights. No government entity may take citizens' property without just compensation. A number of anti-oil initiatives have appeared on California ballots with each sharing the same goal - to take the property of private citizens in order to further the radical anti-oil agenda. Just decisions, such as that handed down by Judge Wills, act to defend us all against such unconstitutional and misguided initiatives.

NARO-California would like to express our gratitude to all of the Monterey County royalty owners and our members statewide who made this victory possible. They have not only provided invaluable assistance in protecting their own rights, but have also assisted in protecting the property rights of all Californians.

While we await an appeal action, we remain gratified with Judge Wills' decision which affirms our constitutional rights to produce our resources. We remain confident that the decision is sound and sufficient to withstand any subsequent challenges. This battle in Monterey County has been won, but the war goes on.

**For more information, please visit the NARO-CA webpage at: <http://naro-us.org/California>**