



Superior Court of California
County of Kern
Bakersfield Department 8

Date: 10/04/2021

Time: 8:00 AM - 5:00 PM

BCV-15-101645

VAQUERO ENERGY VS COUNTY OF KERN

Courtroom Staff

Honorable: Gregory Pulskamp

Clerk: Stephanie Lockhart

NATURE OF PROCEEDINGS: RULING

NATURE OF PROCEEDING:

Ruling on Petitioners' Joint Motion to Enforce Second Peremptory Writ of Mandate; heretofore submitted on September 20, 2021.

RULING:

The Court grants Petitioners' Joint Motion in part.

DISCUSSION:

Petitioners contend that Respondents essentially circumvented the Second Writ of Peremptory Mandate regarding CEQA compliance when Respondents began to issue oil and gas permits pursuant to the 2021 ordinance without first obtaining a judicial determination that the writ had been satisfied (i.e. without first obtaining a judicial discharge of the writ). Respondents (and Real Parties in Interest) contend that Respondents did not begin to issue permits pursuant to the 2021 ordinance until after Respondents had made a determination that the CEQA requirements of the writ had been satisfied (i.e. a judicial determination/discharge of the writ was not required).

The plain language of Public Resources Code section 21168.9(b) appears to require a judicial determination as to whether or not a writ has been satisfied. Section 21168.9(b) provides that, upon the issuance of a writ of mandate, "[t]he trial court shall retain jurisdiction over the public agency's proceedings by way of a return to the peremptory writ until the court has determined that the public agency has complied with this division." (Emphasis added.) Relevant case law also seems to confirm that a judicial determination is required. (See, e.g., POET, LLC v. State Air Resources Bd. (2017) 12 Cal.App.5th 52 and County of Inyo v. City of Los Angeles (1984) 160 Cal.App.3d 1178). As noted in POET, "[w]e intended ARB's corrective action to be regarded as 'completed' when that corrective action was approved by the trial court . . ." (POET, supra, at p. 88-89.) As noted in County of Inyo, "[t]he writ . . . will not be satisfied until there has been a final judicial determination . . ." (Citations omitted.) (County of Inyo, supra, at p. 1184.) Therefore, the default rule is that the court should make the determination regarding whether a writ has been satisfied.

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An issue arises, however, as to whether parties to an action may agree to set aside the default rule and have the writ composed in a way that permits the determination to be made by an entity other than the court. In POET, the court seems to suggest, but does not explicitly state, that the writ could theoretically be drafted in this manner (POET, supra, at p. 88-90.) However, in County of Inyo, the court rejected a stipulation of the parties and indicated that courts could not delegate this authority to any other entity. (County of Inyo, supra, at p. 1184-1186.) The issue does not need to be resolved in this case because, even if we were to assume that a court could honor an agreement to delegate its authority, there is insufficient evidence in this case to establish that the parties reached such an agreement. In other words, based on the declarations submitted, it is clear that the parties did not have a meeting of the minds regarding any particular agreement that is sufficiently clear to override the default rule requiring a judicial determination. Therefore, Respondents did not have authority to unilaterally determine that the CEQA requirements of the writ had been satisfied when they began to re-issue oil and gas permits pursuant to the 2021 ordinance. Accordingly, the 2021 ordinance must be set aside as inoperable until a judicial determination is made that the ordinance satisfies the CEQA requirements of the Second Peremptory Writ of Mandate.

Petitioners further request that all permits issued under the 2021 ordinance to date be invalidated. Respondents (and Real Parties in Interest) contend that any order issued by this court suspending the 2021 ordinance should operate prospectively only, and that invalidating the previously issued permits would be inappropriate because Petitioners unreasonably delayed seeking relief and invalidating the previously issued permits would cause great administrative and economic harm. Petitioners, Respondents, and Real Parties in Interest all cite relevant and valid authority supporting their respective positions. Based on the facts presented, it does appear that Respondents adopted the 2021 ordinance in an open and obvious process that included participation from various interested entities, including Petitioners. It also appears from the facts presented (particularly from the declarations of Ms. Oviatt and Ms. Reheis-Boyd), that Respondents and Real Parties in Interest have been prejudiced by Petitioners' failure to act sooner and that invalidating previously issued permits would cause Respondents and Real Parties in Interest severe logistical and economic harm. Therefore, this court's ruling will entail prospective relief only and will not impact the permits issued under the 2021 ordinance to date.

DISPOSITION:

The Court orders Respondents to immediately suspend operation of the ordinance adopted on March 9, 2021, and to cease reviewing and approving oil and gas permits under said ordinance, until and unless this Court 1) determines that the ordinance complies with the CEQA requirements of the Second Writ of Peremptory Mandate and 2) issues an order discharging the Second Writ of Peremptory Mandate; this order shall not impact the validity of the permits issued under said ordinance to date.

Petitioners will prepare an order consistent with this ruling for the Court's signature pursuant to California Rule of Court 3.1312.

Copy of minutes mailed to all parties as stated on the attached certificate of mailing.

FUTURE HEARINGS:

April 28, 2022 at 8:30 AM in Department 8 - Oral Argument/Trial.

CERTIFICATE OF MAILING

The undersigned, of said Kern County, certify: That I am a Deputy Clerk of the Superior Court of the State of California, in and for the County of Kern, that I am a citizen of the United States, over 18 years of age, I reside in or am employed in the County of Kern, and not a party to the within action, that I served the *Minutes dated October 06, 2021* attached hereto on all interested parties and any respective counsel of record in the within action by depositing true copies thereof, enclosed in a sealed envelope(s) with postage fully prepaid and placed for collection and mailing on this date, following standard Court practices, in the United States mail at Bakersfield California addressed as indicated on the attached mailing list.

Date of Mailing: October 06, 2021

Place of Mailing: Bakersfield, CA

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Tamarah Harber-Pickens
CLERK OF THE SUPERIOR COURT

Date: October 06, 2021

By: Stephanie Lockhart
Stephanie Lockhart, Deputy Clerk

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