Filed 4/8/20 Assn. of Irritated Residents v. Cal. Dept. of Conservation, Division of Oil, Gas etc. CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

ASSOCIATION OF IRRITATED RESIDENTS et al.,

Plaintiffs and Appellants,

v.

CALIFORNIA DEPARTMENT OF CONSERVATION, DIVISION OF OIL, GAS, AND GEOTHERMAL RESOURCES,

Defendant and Respondent;

AERA ENERGY, LLC,

Real Party in Interest and Appellant.

F078460

(Super. Ct. No. S1500CV283418)

OPINION

APPEAL from a judgment of the Superior Court of Kern County. Eric Bradshaw, Judge.

Earthjustice, Stacey P. Geis, Gregory C. Loarie and Michelle Ghafar for Plaintiffs and Appellants.

Xavier Becerra, Attorney General, Daniel A. Olivas, Assistant Attorney General, Christina Bull Arndt and Wyatt E. Sloan-Tribe, Deputy Attorneys General, for Defendant and Respondent.

Alston & Bird, Jeffrey D. Dintzer and Matthew Wickersham for Real Party in Interest and Appellant.

-ooOoo-

Appellants Association of Irritated Residents, the Center for Biological Diversity, and the Sierra Club (collectively petitioners) filed a petition for writ of mandate in Kern County Superior Court challenging the actions of the Department of Conservation, Division of Oil, Gas, and Geothermal Resources (DOGGR) in issuing 213 permits to drill new oil wells within the South Belridge oil field.[1] South Belridge oil field, located in western Kern County, is one of California's most productive oil fields and is densely arrayed with thousands of existing oil wells. The challenged permits to drill new oil wells were issued by DOGGR in 2014 to the real party in interest herein, Aera Energy, LLC (Aera). According to the petition, DOGGR failed to comply with the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.; CEQA)[2] when it issued each of the individual permits to Aera because, allegedly, no CEQA exemption was available and DOGGR failed in each instance to conduct any environmental review. Both DOGGR and Aera opposed the petition, each arguing CEQA was not violated

---

[1] By legislation taking effect on January 1, 2020, DOGGR's name was changed to the Geologic Energy Management Division. (See Pub. Resources Code, § 3002, as amended by Stats. 2019, ch. 771, § 8, eff. Jan. 1, 2020.) For purposes of this opinion, we shall retain the former name of the agency, since that was the name in effect at the time of the relevant events, proceedings, and briefing.

[2] CEQA is implemented by a series of administrative regulations promulgated by the Secretary of the Natural Resources Agency and ordinarily referred to as the CEQA "Guidelines." (*Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1184 (*Union*).) We refer to them as the "Guidelines." (See Cal. Code Regs., tit. 14, § 15000 et seq.)

because certain statutory and categorical exemptions applied. The exemptions asserted by one or both parties included the statutory exemption for ministerial projects, the statutory exemption for ongoing pre-CEQA projects, and categorical exemptions relating to minor alterations to existing facilities and to land.

The trial court, after considering the administrative record and the parties' respective legal arguments, denied the petition for writ of mandate on the ground the permit approvals were ministerial and therefore not subject to CEQA. Petitioners have appealed from the resulting judgment. We conclude the trial court correctly denied the petition for writ of mandate. Although most of the exemption claims were deficient, one was clearly applicable. Under the narrow facts of this case, including DOGGR's adoption of specific field rules applicable to drilling wells in the South Belridge oil field, we hold that DOGGR's approvals to drill the new wells in question were ministerial in nature. As will be seen, the field rules, understood in light of foundational regulatory provisions and supplemented by a technical manual referenced in the field rules themselves, constituted fixed objective standards that delineated the technical specifications for drilling new wells at that particular oil field. Thus, DOGGR's role in approving the subject new wells—wells that DOGGR acknowledged were "routine"—was simply to confirm whether the proposals conformed to those fixed objective standards. As such, the unique scenario that was presented here fit the CEQA definition of what constitutes ministerial decisionmaking. Accordingly, the judgment of the trial court is affirmed.

FACTS AND PROCEDURAL HISTORY

The Subject Permits Issued by DOGGR in 2014

The process of obtaining approvals from DOGGR to drill new oil wells is set forth in section 3203 of the Public Resources Code as follows: "The operator of any well, before commencing the work of drilling the well, shall file with the supervisor or the district deputy [of DOGGR] a written notice of intention to commence drilling. Drilling

shall not commence until approval is given by the supervisor or the district deputy. If the supervisor or the district deputy fails to give the operator written response to the notice within 10 working days from the date of receipt, that failure shall be considered as an approval of the notice and the notice, for the purposes and intents of this chapter, shall be deemed a written report of the supervisor. If operations have not commenced within 24 months of receipt of the notice, the notice shall be deemed canceled, the notice shall not be extended, and the cancellation shall be noted in the division's records. The notice shall contain the pertinent data the supervisor requires on printed forms supplied by the division or on other forms acceptable to the supervisor. The supervisor may require other pertinent information to supplement the notice." (Pub. Resources Code, § 3203, subd. (a).)[3]

In 2014, Aera filed notices of intention (or NOI's) under section 3203 to commence drilling new wells at specified locations within the South Belridge oil field.[4] In response, DOGGR granted approvals to the NOI's submitted by Aera, with each such approval granted on a form entitled "Permit to Conduct Well Operations." At least 213 such permits were issued by DOGGR to Aera between July and November 2014.[5] The permits were granted with certain conditions imposed on the operator, Aera, such as the use of specified blowout prevention equipment, the maintenance of sufficient hole fluid quality and quantity, specified well casing requirements, and directions to avoid exposure to hydrogen sulfide gas and for the proper disposal of hole fluids. Of the permitted wells,

---

[3] Unless otherwise indicated, all undesignated statutory references are to the Public Resources Code.

[4] Most of the wells to be drilled were identified in the NOI's as oil producers, while a few of the wells to be drilled were described as involving water injection. We refer to them all generically as oil wells or simply wells.

[5] The original petition alleged there were 214 permits issued, but the parties' briefing indicates the correct number was 213 permits. The discrepancy is not material. For consistency, we shall refer to the number of permits as 213.

204 were actually drilled by Aera, while one of the drilled wells was subsequently abandoned. At the commencement of this CEQA litigation, 203 of the new wells that were drilled pursuant to the challenged permits were in operation. The parties' briefing indicates the 203 wells have continued to be in operation at the time of this appeal.

The Petition for Writ of Mandate

Petitioners filed their petition for writ of mandate in the trial court on November 12, 2014. According to the petition, DOGGR is the state agency charged with the regulation of drilling, operation, maintenance, plugging and abandonment of oil, gas and geothermal wells within the state of California and, for purposes of the permits at issue in this case, was the CEQA lead agency in permitting oil and gas wells in Kern County. As noted, the petition claims that DOGGR failed to comply with CEQA because it issued each of the 213 permits to Aera to drill new oil wells in the South Belridge oil field without conducting any environmental review. The petition alleges that drilling and operation of oil wells and the utilization of certain enhanced well stimulation techniques for extracting oil such as hydraulic fracturing (commonly known as "fracking") create significant environmental risks and impacts. Among the environmental concerns expressed in the petition were air pollution, land or water contamination, and high volume water usage.

Following an initial round of demurrers, petitioners filed their first amended petition on May 15, 2015. Although the allegations of the original petition and first amended petition describe environmental effects of hydraulic fracturing, it is not disputed that any approvals by DOGGR to engage in such well stimulation treatments entailed separate and distinct permits applied for and granted after the issuance of the initial permits at issue here to drill new wells. (See § 3160, subd. (d) [describing separate permit requirement for engaging in well stimulation treatments such as hydraulic fracturing or acid well stimulation treatments].) As acknowledged by petitioners in their first amended petition, the notices of intent to drill the 213 new oil wells did not mention

enhanced well stimulation treatments such as fracking. Rather, sometime after receiving the initial permits to drill the new wells, Aera subsequently sought approvals to engage in well stimulation treatments regarding a number of the same wells under the statutory process set forth in section 3160, subdivision (d), which proposals were approved by DOGGR under separate permits for 144 of the challenged wells. The bottom line is that the present case relates solely to the initial 213 permits to drill new oil wells, not to the subsequently issued permits to engage in well stimulation treatments such as fracking.

In 2015, DOGGR and Aera filed demurrers attacking petitioners' CEQA claims. DOGGR argued in its demurrer that its approvals of the 213 permits to drill new wells at the South Belridge oil field qualified for statutory and categorical exemptions from CEQA. Aera argued petitioners' writ of mandate action was barred by res judicata because of the effect of an Alameda County Superior Court judgment, and further argued that the passage of recent legislation known as Senate Bill No. 4 precluded petitioners' claims.[6] The trial court declined to reach the CEQA exemption issues on demurrer, and all grounds for demurrer were overruled other than res judicata. Ultimately, the trial court sustained the demurrer on the ground of res judicata without leave to amend. On appeal from the ensuing judgment, we held that res judicata was inapplicable because the prior decision in the Alameda County action was based on mootness or lack of ripeness and therefore it was not a judgment on the merits. (*Association of Irritated Residents v. Department of Conservation* (2017) 11 Cal.App.5th 1202, 1207, 1229.) Accordingly, we reversed the judgment in the instant Kern County action and remanded the case back to the trial court. (*Id*. at pp. 1233–1234.)

---

6 Senate Bill No. 4 (2013-2014 Reg. Sess.) concerned oil and gas well stimulation practices such as hydraulic fracturing. It took effect on January 1, 2014, and its statutory provisions included sections 3150 to 3161. (Stats. 2013, ch. 313, § 2, enacting Sen. Bill No. 4.)

The Denial of the Petition

After the case was remanded, DOGGR and Aera answered the first amended petition for writ of mandate. The case was then set for trial, and the parties filed opening trial briefs outlining their respective positions in the case. Petitioners' trial brief argued that DOGGR's issuance of each of the 213 individual permits to drill new oil wells constituted a discretionary approval of a project, and therefore each approval was subject to CEQA. Petitioners further asserted that no exemptions applied, including the statutory exemption for an ongoing pre-CEQA project or the categorical exception for the negligible expansion of existing facilities. According to petitioners, because the permits were approved to drill new wells without conducting any environmental review, DOGGR violated CEQA.

In its trial brief, DOGGR argued that two exemptions plainly applied: the ongoing projects statutory exemption for projects in place prior to the passage of CEQA, and the categorical exemption applicable to minor or negligible alteration of existing facilities. DOGGR emphasized that the new well permits in this case represented a minor and very ordinary change within an already existing, heavily utilized oil field. As explained by DOGGR, South Belridge oil field has been in operation since 1911, and its current boundaries (approximately 10 miles long and two miles wide) in western Kern County were established in the 1950's, which was long before CEQA. DOGGR described the site as densely packed with 32,575 oil wells, of which approximately 12,875 were currently active. As of 2012, it was the third most productive oil field in California, and the sixth most productive oil field in the United States, producing roughly 23 million barrels of oil per year. DOGGR noted further that an ordinary and intrinsic aspect of oil production in a large oil field such as this one is for an operator to periodically abandon some wells and drill new wells.

For its part, Aera made substantially the same arguments as DOGGR and agreed that the above stated exemptions applied, but also argued that an additional categorical

exemption for minor alteration to land would apply here as well. Furthermore, Aera's trial brief asserted that the approvals of the 213 permits in the present case were *ministerial* in nature, not discretionary, and therefore CEQA was inapplicable.

The trial court held a hearing on the merits of petitioners' case on May 17, 2018, and the matter was taken under submission. On August 23, 2018, the trial court issued its written order denying the petition for writ of mandate. The trial court determined, in agreement with Aera, that DOGGR's issuance of the permits in the present case were ministerial. Rather than exercising discretion in approving the drilling of new wells, it appeared to the trial court that DOGGR was simply checking for conformity with fixed objective standards found in the South Belridge field rules and other regulations. Thus, the issuance of the permits appeared to be ministerial and hence not subject to CEQA. Consequently, the petition was denied. The trial court briefly addressed the other CEQA exemptions asserted by DOGGR and Aera and found they were inapplicable or not established.

On September 10, 2018, the trial court entered judgment denying the petition for writ of mandate. Petitioners timely filed their notice of appeal from the judgment.[7]

SUMMARY OF REGULATORY BACKGROUND

Overview of DOGGR's Statutory Role in Supervising Oil and Gas Activities

Before proceeding to our discussion of the exemptions at issue, some further background is helpful at this point. Because DOGGR's statutory responsibility to supervise oil and gas drilling and related operations in California provides the larger context within which the present issues will need to be evaluated, we now endeavor to summarize the nature of DOGGR's statutory mission.

---

[7] Area filed a precautionary cross-appeal to ensure there would be no impediment to addressing particular exemption issues on appeal. We note that, even without the cross-appeal, the exemption issues were adequately raised as potential or alternative grounds for affirming the underlying judgment.

Statutory Provisions Defining Legislative Purposes and DOGGR's Role

DOGGR, acting under the auspices of the State Oil and Gas Supervisor (referred to in the relevant code provisions as the supervisor; see § 3004), is given the power and authority to carry out the purposes of Division 3 of the Public Resources Code (§ 3000 et seq.). (§ 3013.)[8] The importance attributed by the Legislature to proper supervision of oil and gas resources in California is reflected in section 3400, which expresses that the people of the State of California have "a primary and supreme interest" in the state's oil and gas deposits. (§ 3400.) Section 3106, sometimes referred to as DOGGR's enabling statute, sets forth the duties of the supervisor and the purposes and objectives of the statutory scheme codified in Division 3. As recited more fully below, such duties and purposes include not only the supervision over the manner in which oil and gas drilling, operations, maintenance and abandonment are to be carried out by well operators,[9] but also the encouragement of the use of prudent methods to increase or maximize oil production. (§ 3106, subds. (a), (b) & (d).)

The actual language of section 3106 is instructive. Subdivision (a) of section 3106 articulates the mission given to the supervisor (i.e., to DOGGR) in the following terms: "The supervisor shall so supervise the drilling, operation, maintenance, and abandonment of wells and the operation, maintenance, and removal or abandonment of tanks and facilities attendant to oil and gas production … so as to prevent, as far as possible, damage to life, health, property, and natural resources; damage to underground oil and gas deposits from infiltrating water and other causes; loss of oil, gas, or reservoir energy, and damage to underground and surface waters suitable for irrigation or domestic

---

8 For purposes of our analysis, the terms DOGGR and the supervisor are used interchangeably.

9 An "operator" of an oil and gas well is a person who, by virtue of ownership, or under the authority of a lease or other agreement, has the right to drill, operate, maintain or control such a well. (§ 3009.)

purposes by the infiltration of, or the addition of, detrimental substances." (§ 3106, subd. (a).) Although the wording of this provision is broad enough in scope to confer upon DOGGR—in the course of its supervision over the manner in which such oil and gas activities are carried out—the authority to protect the environment from damage,[10] the mere fact that discretion may exist in the abstract does not resolve the issue before us of whether the particular permit approvals in question where ministerial or discretionary. As will be seen, the entire legal context must be considered to resolve that issue.

In subdivision (b) of the same statute, the Legislature gave to DOGGR (i.e., the supervisor) a concurrent responsibility to facilitate the increased recovery of oil and gas resources through the utilization of prudent methods and practices known to the oil industry. (§ 3106, subd. (b).)[11] Thus, a part of DOGGR's purpose was to supervise oil and gas activities in a manner that serves the objective of "increasing the ultimate recovery of underground hydrocarbons." (§ 3106, subd. (b).) In meeting the dual responsibilities set forth in subdivisions (a) and (b), subdivision (d) of section 3106 directs the supervisor to carry out its duties in a manner that encourages best practices and wise development: "To best meet oil and gas needs in this state, the supervisor shall administer this division so as to encourage the wise development of oil and gas resources." (§ 3106, subd. (d).)

---

10 In a statutory enactment taking effect on January 1, 2020, section 3011 was added to Division 3 of the Public Resources Code, which new section supplemented DOGGR's (now Geologic Energy Management Division's) statutory purposes with stronger and more elaborate wording relating to environmental protection. The new section states as follows: "The purposes of this division include protecting public health and safety and environmental quality, including reduction and mitigation of greenhouse gas emissions associated with the development of hydrocarbon and geothermal resources in a manner that meets the energy needs of the state." (§ 3011, subd. (a).) Since this revision took effect long after the permits in question were approved, we do not consider it.

11 We refer to and quote from the version of section 3106 in effect at the time of the agency approvals and other proceedings below.

The remainder of Division 3 of the Public Resources Code unfolds the specific statutory framework of procedures and standards under DOGGR's purview relating to oil, gas and geothermal activities. (See 59 Ops.Cal.Atty.Gen. 461, 471–472 (1976) [summarizing DOGGR's statutory objectives].) Among other things, these statutes include the following provisions: (i) an operator must file a notice of intention (or NOI) with the supervisor and obtain approval prior to commencing the drilling of a new well, and the same process also applies to any proposed deepening, redrilling, altering the casing of or plugging of an existing well (§ 3203, subds. (a) & (b)); (ii) an operator who engages in the drilling, redrilling, deepening, or altering the casing of a well "shall file with the supervisor an individual indemnity bond" for each such well (§§ 3204–3205); (iii) the required indemnity bonds may only be cancelled or terminated when the well is completed to the satisfaction of the supervisor or has been properly abandoned and the supervisor is satisfied that proper steps have been taken to (a) isolate all oil- or gas-bearing strata encountered in the well, (b) protect underground or surface water suitable for irrigation, farm or domestic purposes from the infiltration or addition of any detrimental substance, and (c) prevent subsequent damage to life, health, property, and other resources (§§ 3207–3209); (iv) operators must equip the oil or gas well with casing of sufficient strength, and with other safety devices as may be necessary, in accordance with methods approved by the supervisor, to prevent blowouts, explosions, fires and contamination of surface and underground domestic and irrigation waters (§§ 3219–3220); (v) the supervisor may order tests, require monitoring programs, or prescribe remedial work (§§ 3222–3226; 3106, subd. (c)); and (vi) an operator's abandonment of a well or wells must follow certain standards and approval procedures (§§ 3228–3232). Other provisions relate to well spacing (§§ 3600–3609), oil sumps (§§ 3780–3787), and obligations on the part of operators to provide various notices, information and reports to the supervisor (e.g., §§ 3203, 3215–3216, 3222–3223, 3227, 3229). Additionally, where an operator "has failed to comply with an order of the supervisor, the supervisor may

deny approval of proposed well operations until the operator brings its existing well operations into compliance with the order." (§ 3203, subd. (c).)

Furthermore, under Senate Bill No. 4 (Senate Bill 4), which took effect on January 1, 2014, new sections were added to Division 3 of the Public Resources Code establishing special procedures, standards and disclosure requirements relating to certain oil and gas well stimulation practices such as hydraulic fracturing.[12] (§§ 3150–3161, added by Stats. 2013, ch. 313, § 2.) The provisions enacted under Senate Bill 4 included the creation of a new and distinct permit requirement for conducting a well stimulation treatment on an oil and gas well. (*Association of Irritated Residents v. Department of Conservation, supra*, 11 Cal.App.5th at p. 1211.) Under section 3160, "before performing a well stimulation treatment on a well, the operator shall apply for a permit" from DOGGR. (§ 3160, subd. (d)(1).) The same section provides that a well stimulation treatment "shall not be performed on any well without a valid permit." (§ 3160, subd. (d)(3)(B).) As we have previously noted herein, the present appeal does not involve permit approvals of well stimulation treatments such as hydraulic fracturing. Rather, the permit approvals at issue concerned only the drilling of new wells.

Regulations Adopted by DOGGR

To implement the statutory purposes summarized above, the Legislature also authorized DOGGR to adopt regulations. (§ 3013.) DOGGR has done so with respect to oil and gas activities by adopting regulations set forth in title 14 of the California Code of Regulations, including sections 1712 et seq. As to specific provisions that apparently relate to oil and gas drilling, DOGGR's regulations include, among other things, well

---

[12] The new provisions added by Senate Bill 4 apply to special "well stimulation treatment[s]" described therein. A "well stimulation treatment" is defined as "any treatment of a well designed to enhance oil and gas production or recovery by increasing the permeability of the formation" including "hydraulic fracturing treatments and acid well stimulation treatments." (§ 3157; see also § 3152 [defining hydraulic fracturing treatment] and § 3158 [defining acid well stimulation treatment].)

spacing and setbacks for "new" pools (e.g., Cal. Code Regs., tit. 14, §§ 1721, 1721.1, 1721.2, 1721.7), the need for certain operators to prepare spill contingency plans or blowout prevention and control plans (Cal. Code Regs., tit. 14, §§ 1722, 1722.9), casing requirements and performance standards for well casing (Cal. Code Regs., tit. 14, § 1722.2), further specification of casing requirements (Cal. Code Regs., tit. 14, § 1722.3), standards for cementing the casing (Cal. Code Regs., tit. 14, § 1722.4), the need for blowout prevention and well control equipment (Cal. Code Regs., tit. 14, § 1722.5), standards of a drilling fluid program (Cal. Code Regs., tit. 14, § 1722.6), the authority of the supervisor to order directional surveys (Cal. Code Regs., tit. 14, § 1722.7), the need for special well safety devices for "critical wells" (Cal. Code Regs., tit. 14, §§ 1724.3, 1720, subd. (a)), and standards for disposal of drilling fluids and wastes (Cal. Code Regs., tit. 14, § 1722.6, subd. (c), see Cal. Code Regs., tit. 14, § 1775).[13] We do not suggest these are the only regulations that may bear upon drilling new wells, but they are among the more obvious ones.

Field Rules Established by DOGGR

In addition to such regulations, which are applicable statewide, DOGGR may establish rules to govern aspects of drilling and other operations at a specific oil and gas field. (Cal. Code Regs., tit. 14, § 1712.) Such field-specific rules reflect the geologic and engineering information known to DOGGR from the prior history of drilling or production operations at a particular oil field, and they are known as "field rules." (Cal. Code Regs., tit. 14, § 1722, subd. (k).) "If field rules are established, oil and gas

---

13 Other regulations address various post-drilling operational matters, such as rules or standards addressing plugging or abandonment of wells (see, e.g., Cal. Code Regs., tit. 14, § 1723), sumps, pipelines, production facilities, idle wells, disposal of oil field wastes, testing, monitoring, inspections and maintenance (Cal. Code Regs., tit. 14, §§ 1770–1779.1). Also, regulations regarding well stimulation treatments, i.e., implementing Senate Bill 4, were duly adopted by DOGGR. (Cal. Code Regs., tit. 14, §§ 1780–1789.)

operations shall be performed in accordance with those field rules." (Cal. Code Regs., tit. 14, § 1712.) By 2007, field rules were adopted by DOGGR with respect to drilling oil and gas wells at the South Belridge oil field.

Local Regulatory Background to Oil Drilling in Kern County and DOGGR's Status as Lead Agency

As a final preliminary matter before proceeding to our consideration of the exemptions at issue, we note the *local* regulatory background to this case. The Kern County zoning ordinance in place in 2014—when DOGGR issued the 213 permits to Aera—apparently allowed unrestricted drilling of new oil or gas wells in certain zoning districts of the county, including the zoning district where the South Belridge oil field was located, provided that the operator complied with the requirements of state law and other regulations. Specifically, as stated by the applicable zoning ordinance in 2014, "[n]o review or permit shall be required" from the county for operators to drill oil wells in such zones, assuming the other requirements were met. This drill-by-right approach had apparently governed drilling operations in Kern County for many decades.

Of course, governmental approvals *did* have to be obtained *from DOGGR* before drilling new wells. Pursuant to the statutory process under the Public Resources Code, Aera sought and obtained permission from DOGGR to drill the new oil wells at issue in the present case. (§ 3203, subd. (a).) Until that was done, by statute, the drilling "shall not commence." (§ 3203, subd. (a).) As noted, DOGGR is the state agency charged with the responsibility of supervising the drilling, operation, maintenance and other aspects of oil and gas wells in California. (§ 3106, subd. (a).) Under the circumstances, DOGGR occupied the role of lead agency in this case for purposes of CEQA. (§ 21067; Guidelines, § 15051, subd. (b) [lead agency is public agency with the greatest responsibility for supervising or approving the project as a whole].)

In its brief as respondent herein, DOGGR notes that it is rarely in the position of acting as lead agency for CEQA purposes, explaining as follows: "[W]hile [DOGGR]

regulates the safe extraction of oil, it is generally the locality that determines whether oil extraction is allowable in the first instance. Therefore, [DOGGR] interprets its regulatory authority generally not to include acting as a CEQA lead agency but rather to ensure that oil and gas production activities conform to the policies contained within Division 3 of the Public Resources Code (commencing with § 3000). The county or local municipality with jurisdiction over the oil field—as the public entity with general governmental powers—is usually the appropriate lead agency for CEQA purposes. [Citation.] In limited circumstances where [DOGGR] is the primary or only governmental entity regulating a proposed oil and gas activity or project, [DOGGR] will make an initial determination whether the proposed activity or project is exempt from CEQA or should receive further review."

Even assuming DOGGR is correct that it usually takes a more limited role, nonetheless, in the present setting where there was no review or permitting process that took place at the county level, and where DOGGR exercised its supervisory responsibility in approving or issuing permits for the drilling of the new oil wells, DOGGR was the lead agency here for purposes of CEQA. (§ 21067 [lead agency is the public agency with the "principal responsibility for … approving a project" which may have a significant effect on the environment]; Guidelines, § 15051, subd. (b) ["the lead agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole"; see also Guidelines, § 15367.)[14]

As pointed out by the parties, *after* the approvals were issued by DOGGR in the present case, Kern County adopted a new ordinance in 2015 addressing oil and gas activities in a comprehensive fashion, which ordinance dovetailed with the preparation of

---

14 At the same time, DOGGR is correct that, as a general matter, the lead agency "will normally be the agency with general governmental powers, such as a city or county, rather than an agency with a single or limited purpose." (Guidelines, § 15051, subd. (b)(1).) For the reasons stated, that general rule did not apply here.

an environmental impact report (EIR) reviewing the environmental impacts of oil and gas well drilling and related oil and gas well operations within certain regions of the county. It appears that the amended ordinance was intended to streamline future oil and gas permitting in the county through a site plan review process that would incorporate mitigation measures identified in the EIR. The county certified the EIR and adopted the amended zoning ordinance in late 2015. Because these changes were implemented by the county after the approvals were granted in this case, they have no bearing on the issues before us.[15]

Having introduced the procedural, factual and regulatory background to this case, we are now prepared to discuss the CEQA exemptions at issue in the present appeal.

DISCUSSION

I. CEQA Overview

CEQA and the regulations implementing it (i.e., the Guidelines) manifest California's strong public policy of protecting the environment. (*Tomlinson v. County of Alameda* (2012) 54 Cal.4th 281, 285.) CEQA was enacted to advance four overarching purposes: "to (1) inform the government and public about a proposed activity's potential environmental impacts; (2) identify ways to reduce, or avoid, environmental damage; (3) prevent environmental damage by requiring project changes via alternatives or mitigation measures when feasible; and (4) disclose to the public the rationale for governmental approval of a project that may significantly impact the environment." (*California Building Industry Assn. v. Bay Area Air Quality Management Dist*. (2015) 62

---

[15] We note the adequacy of the county's EIR under CEQA was addressed in another case recently decided by another panel of this court. (See *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814.) In that case, the EIR was found deficient in certain respects and the trial court was directed to enter an order or judgment setting aside both the certification of the EIR and the approval of the ordinance. The opinion made clear that the county may present the ordinance to the Kern County Board of Supervisors for reapproval at a future time, but only if the county first adequately corrects the CEQA violations identified in the opinion. (*Id*. at p. 901.)

Cal.4th 369, 382 (*Building Industry*).) Procedurally, CEQA prescribes how governmental decisions will be made when public entities, including the state itself, are charged with approving, funding or undertaking a project with significant effects on the environment. (*Friends of the Eel River v. North Coast Railroad Authority* (2017) 3 Cal.5th 677, 711–712.)

To further these goals, CEQA contemplates that a lead agency[16] will follow a three-tiered or three-step process. *First*, the agency ascertains whether a proposed activity is a *project* as defined in CEQA; that is, whether it is an activity undertaken, supported or approved by a public agency that may cause a physical change in the environment. (*Building Industry, supra*, 62 Cal.4th at p. 382.) *Second*, if the proposed activity is a project, "the [public] agency must next decide whether the project is exempt from the CEQA review process under either a statutory exemption (see § 21080) or a categorical exemption set forth in the CEQA Guidelines (see § 21084, subd. (a); Guidelines, § 15300 et seq.)." (*Building Industry, supra*, 62 Cal.4th at p. 382.)[17] *Third*, if the project does not fall within an exemption, the agency must then undertake some level of environmental review. (*Union, supra*, 7 Cal.5th 1171, 1185–1187.) "Environmental review is required under CEQA only if a public agency concludes that a proposed activity is a project and does not qualify for an exemption. In that case, the agency must first undertake an initial study to determine whether the project 'may have a

---

16 As noted, CEQA review is undertaken by a lead agency, defined as the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment. (§ 21067; *Friends of the Eel River v. North Coast Railroad Authority, supra*, 3 Cal.5th at p. 712.)

17 If an exemption is found, as that term implies, no environmental review under CEQA is required. (*City of Pasadena v. State of California* (1993) 14 Cal.App.4th 810, 820.) "If the lead agency concludes a project is exempt from review, it must issue a notice of exemption citing the evidence on which it relied in reaching that conclusion. [Citation.] The agency may thereafter proceed without further consideration of CEQA." (*Union, supra*, 7 Cal.5th at p. 1186.)

significant effect on the environment.' " (*Union*, *supra*, 7 Cal.5th at p. 1186.) If it appears from the initial study the project will not have such an effect, the agency adopts a negative declaration. (*Building Industry*, *supra*, 62 Cal.4th at p. 382.) However, if the project may have a significant effect on the environment, and assuming such effects would not be fully mitigated by means of a mitigated negative declaration, the agency must prepare and certify an environmental impact report (or EIR) before approving the project. (*Union*, *supra*, 7 Cal.5th at pp. 1186–1187; *Building Industry*, *supra*, 62 Cal.4th at p. 382; *Muzzy Ranch Co. v. Solano County Airport Land Use Com*. (2007) 41 Cal.4th 372, 380–381.)

Here, the issues before us involve the second tier only, and more specifically the question of whether DOGGR's actions of approving the 213 permits were exempt from CEQA review under any of the asserted statutory or categorical exemptions.

II. Standard of Review

Appellate review under CEQA is de novo in the sense that we review the agency's actions as opposed to the trial court's decision. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 427 (*Vineyard Area*).) However, our inquiry extends only to whether there was a prejudicial abuse of discretion. (§ 21168.5.) "Such an abuse is established 'if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.' [Citations.]" (*Vineyard Area*, *supra*, at pp. 426–427.)

As noted, the present appeal involves both *statutory* and *categorical* exemptions. We briefly highlight some of the differences between these two types of exemptions.

A. <u>Statutory Exemptions</u>

"Statutory exemptions, as the term implies, are those enacted by the Legislature. 'Because CEQA is statutory in origin, the Legislature has the power to create exemptions from its requirements. Projects and activities can be made wholly or partially exempt, as the Legislature chooses, regardless of their potential for adverse [environmental]

consequences.' [Citations.]" (*North Coast Rivers Alliance v. Westlands Water Dist*. (2014) 227 Cal.App.4th 832, 850 (*North Coast*).) "A critical difference between statutory and categorical exemptions is that statutory exemptions are absolute, which is to say that the exemption applies if the project fits within its terms. Categorical exemptions, on the other hand, are subject to exceptions that defeat the use of the exemption and the agency considers the possible application of an exception in the exemption determination." (*Great Oaks Water Co. v. Santa Clara Valley Water Dist*. (2009) 170 Cal.App.4th 956, 966, fn. 8.)

Generally, an agency's finding that a statutory exemption applies to a project will be upheld if substantial evidence supports the finding of exemption. (*Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal.App.4th 1301, 1311.) However, we apply a de novo standard of review to questions of statutory interpretation, such as in construing the scope of an exemption. (*Ibid*.) Similarly, the determination of whether an approval is exempt as a ministerial action under relevant statutes or regulations is subject to our de novo review. (*Friends of Juana Briones House v. City of Palo Alto* (2010) 190 Cal.App.4th 286, 303; accord, *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Cal.App.5th 80, 88.)

B. <u>Categorical Exemptions</u>

As directed by the Legislature in section 21084, the Guidelines adopted by the Secretary of the Natural Resources Agency to implement CEQA were required to include "a list of classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt" from CEQA review. (§ 21084, subd. (a).) The Guidelines contain such a list of exempt classes of projects, which are known as categorical exemptions. (Guidelines, § 15300 et seq.) These are nonstatutory exemptions for certain categories or classes of projects that have been deemed under the Guidelines to have no significant effect on the environment. (Guidelines, § 15300 et seq.; *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1092.)

Unlike statutory exemptions, the categorical exemptions are subject to *exceptions* contained in the Guidelines. (See Guidelines, § 15300.2, subds. (b) & (c).) Since we shall conclude the categorical exemptions were inapplicable on this record, there is no need to consider exceptions to exemptions in this case.

We apply the substantial evidence test to an agency's factual determination that a project comes within the scope of a categorical exemption. (*North Coast, supra*, 227 Cal.App.4th 832, 852.) Our task is to determine whether, as a matter of law, the project met the definition of a categorically exempt project. (*Holden v. City of San Diego* (2019) 43 Cal.App.5th 404, 410.) In interpreting the exemption's scope, which is an issue of law, we apply the rule that categorical exemptions are construed narrowly to afford the fullest possible environmental protection. (*Save Our Carmel River v. Monterey Peninsula Water Management Dist*. (2006) 141 Cal.App.4th 677, 697.) Exemption categories are not to be expanded or broadened beyond the reasonable scope of their language. (*Ibid*.)

III. Statutory Exemption for Ministerial Projects

In the present appeal, petitioners claim the trial court erred in concluding the 213 permit approvals to drill new oil wells at the South Belridge oil field were *ministerial* in nature. Petitioners argue the permit approvals were discretionary, not ministerial, based on the terms of the relevant statutory and regulatory provisions carried out by DOGGR. Aera responds, as it argued in the trial court, that DOGGR's issuance of each of the permits was merely ministerial based on the specific field rules in place for drilling in South Belridge oil field. DOGGR acknowledges that the permits issued to Aera were so routine under the circumstances of this case they may have *appeared* to be ministerial to the trial court, but DOGGR insists they were nonetheless discretionary.

We shall undertake our discussion of this issue in three parts: First, we shall explain the nature of the ministerial exemption under CEQA, defining what is meant by projects that are ministerial rather than discretionary under that law. Second, we shall

briefly review the main arguments in support of each potential outcome. Third, we shall explain our ultimate decision; that is, why we have concluded the permit approvals were ministerial in this case.

A. Distinction Between Discretionary and Ministerial Projects

By its express terms, CEQA applies only to "discretionary projects proposed to be carried out or approved by public agencies." (§ 21080, subd. (a).) The same statute "correspondingly exempts '[m]inisterial projects' (§ 21080, subd. (b)(1)), a term that has been assumed to refer to projects that are not discretionary." (*Sierra Club v. County of Sonoma* (2017) 11 Cal.App.5th 11, 19–20.) Thus, the exemption for ministerial projects constitutes a *statutory* exemption: "The statutory exemptions, created by the Legislature, are found in section 21080, subdivision (b). Among the most important exemptions is the first, for '[m]inisterial' projects, which are defined generally as projects whose approval does not require an agency to exercise discretion." (*Union*, *supra*, 7 Cal.5th at p. 1186.) CEQA's statutory provisions do not define the terms discretionary or ministerial, but both are defined within the Guidelines.

A "*discretionary* project" is defined as one "which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, [or] regulations." (Guidelines, § 15357, italics added.) On the other hand, the term "*ministerial*" under CEQA "describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out.… A building permit is ministerial if the ordinance

requiring the permit limits the public official to determining whether the zoning allows the structure to be built in the requested location, the structure would meet the strength requirements in the Uniform Building Code, and the applicant has paid his fee." (Guidelines, § 15369, italics added.) Where a project approval involves elements of both a ministerial action and a discretionary action, the project will be deemed discretionary for purposes of CEQA. (Guidelines, § 15268.)[18] The determination of whether a project is ministerial may be made on a case-by-case basis. (Guidelines, § 15268.)

In deciding whether a project is discretionary for purposes of CEQA, the courts have applied a "functional" test. (*Friends of Juana Briones House v. City of Palo Alto, supra,* 190 Cal.App.4th 286, 302.) The test examines whether the agency has the authority to shape or condition the project in ways that are responsive to environmental concerns. (*Ibid*.) "[T]he touchstone is whether the approval process involved allows the government to shape the project in any way which could respond to any of the concerns which might be identified in an environmental impact report." (*Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 267 (*Friends of Westwood*).) Thus, " 'CEQA does not apply to an agency decision simply because the agency may exercise *some* discretion in approving the project or undertaking. Instead to trigger CEQA compliance, the discretion must be of a certain kind; it must provide the agency with the ability and authority to "mitigate … environmental damage" to some degree. [Citations.]' " (*San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 934.) If the public agency had the authority to exercise discretion to shape or condition the project to mitigate environmental concerns—even if it failed to exercise that discretion—the project is discretionary within the meaning of

---

18 According to the Guidelines, "[i]n the absence of any discretionary provision contained in the local ordinance or other law establishing the requirements for the permit, license, or other entitlement for use, the following actions shall be presumed to be ministerial: [¶] (1) Issuance of building permits." (Guidelines, § 15268, subd. (b).)

CEQA. (*Friends of Westwood, supra,* 191 Cal.App.3d at p. 273.) Of course, the discretionary authority must be relevant to the particular project or projects at issue. The question "is not whether the regulations granted the local agency some discretion in the abstract, but whether the regulations granted the agency discretion regarding the particular project." (*Sierra Club v. County of Sonoma, supra,* 11 Cal.App.5th at p. 25.)

Conversely, if an agency's authority to approve a project does not include the ability to exercise judgment to shape or condition the project in ways that would mitigate potential environmental impacts, requiring CEQA review would serve no purpose. (*San Diego Navy Broadway Complex Coalition v. City of San Diego, supra,* 185 Cal.App.4th at p. 933.) Thus, where the issuance of a permit is governed by fixed standards or objective criteria set forth in a statute, regulation or other law such that there is no room for the agency to exercise any discretion or judgment to shape the project in a manner responsive to environmental concerns, the agency's decision would be ministerial. (*Sierra Club v. County of Sonoma, supra,* 11 Cal.App.5th 11, 22–23; *Friends of Juana Briones House v. City of Palo Alto, supra,* 190 Cal.App.4th at p. 300; *Sierra Club v. Napa County Bd. of Supervisors* (2012) 205 Cal.App.4th 162, 180 [permit ministerial where approval based solely on the project's conformity with fixed objective criteria or measures contained in applicable ordinances and regulations]; Guidelines, § 15369; cf., *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 118 ["standard is not so fixed and objective as to eliminate the need for judgment and deliberation"].) In *Mountain Lion Foundation v. Fish & Game Com., supra,* the Supreme Court embraced this functional distinction between discretionary and ministerial projects, observing as follows: "The statutory distinction between discretionary and purely ministerial projects implicitly recognizes that unless a public agency can shape the project in a way that would respond to concerns raised in an EIR, or its functional equivalent, environmental review would be a meaningless exercise." (*Id.* at p. 117.)

Generally, because CEQA is interpreted broadly to afford protection to the environment, our courts have given a restrictive construction to what constitutes a ministerial project exempt from environmental review. (*Friends of Westwood, supra,* 191 Cal.App.3d at p. 271; accord, *Friends of Juana Briones House v. City of Palo Alto*, *supra*, 190 Cal.App.4th at pp. 301–302.)

B. The Trial Court's Ruling and the Parties' Respective Arguments on Appeal

In navigating this issue, we next consider the differing positions taken by the trial court below and the respective parties on appeal.

We begin with the trial court's written ruling on this issue since it resulted in the judgment from which petitioners have appealed.[19] In finding the permit approvals in this case were ministerial in nature, the trial court observed "the permits for the wells appear to simply restate requirements that are contained in the applicable field rules and regulations." The trial court reasoned that although petitioners referred to a number of regulations setting forth well drilling criteria such as provisions relating to setbacks, spacing, casing standards and blowout protection equipment, it was not shown that any discretion "was, or could have been" exercised in this case since DOGGR's task was merely to review the well drilling proposals for conformity with the existing objective standards or specifications set forth in the regulations and field rules. The trial court further explained: "There *was* discretion in the adoption of field rules and regulations," but once those were established by DOGGR, determining conformity with the objective standards set forth in the rules and regulations was analogous to approval of a ministerial building permit. "Such conformity reviews do not render the rule or regulation discretionary." Moreover, the trial court held there was no evidence that any

---

[19] Although CEQA review is ordinarily of the agency's decisionmaking, not the trial court's, here we have the unusual situation where the trial court determined the permits were ministerial—even while DOGGR had assumed the permits were discretionary but focused on *other* exemptions.

individualized standards were created or applied to any of the subject wells; but rather, the permits issued by DOGGR simply "restate[d] the same objective requirements that are found in the South Belridge field rules, and some of the regulations."

The trial court then concluded its discussion of this issue as follows:

> "Approving the drilling and operation of oil and gas wells, like the issuance of building permits, may be discretionary, or may be ministerial. It is a case-by-case determination. [¶] The Belridge oil fields have been in operation for over a *century*. It consists of over 32,000 active and inactive wells. There are currently approximately 12,800 active wells. The oil fields are the subject of decades of experience, logs and records. The Belridge field rules *supersede* statewide regulations because 'sufficient geologic and engineering information is available from previous drilling or producing operations.' 14 CCR §§ 1712, 1722(k). Under *different* circumstances such as a new oil field, or a new pool or zone, or where an operator seeks to deviate from an established rule, discretion might be involved and the result might be different. Under the circumstances of the present case, it appears that [Aera] could have legally compelled issuance of the permits. The approvals were ministerial."

We believe the trial court's analysis highlights the unique question presented in this case of whether DOGGR's permits for new wells were ministerial versus discretionary. On the one hand, through the adoption of the requirements stated in its regulations and field rules, DOGGR did proactively shape the manner that the wells would be drilled in ways that help protect the environment. On the other hand, because those regulations and especially the field rules for South Belridge oil field entailed fixed, technical and objective standards, the nature of DOGGR's review of the proposals to drill routine new oil wells in this case was reduced to determining whether there was conformity with the objective standards that DOGGR had already put in place. Thus, the trial court found the approvals here more closely resembled a local agency's issuance of ministerial building permit(s) upon findings of objective conformity to a zoning ordinance and other building standards, rather than an exercise of individualized discretionary judgment.

We next consider DOGGR's position vis-à-vis that of the trial court, as set forth in DOGGR's respondent's brief in the instant appeal. According to DOGGR, although it may have *appeared* to the trial court that the permits to drill new wells at South Belridge were ministerial in nature because they were so routine, the approvals were nonetheless discretionary as a matter of law.[20] DOGGR supports its position as follows: "[W]hile the discretionary nature of the permits remained intact as a matter of law, the actual exercise of discretion was not apparent for these particular permits in this particular oil field due to the fact that new drilling in this oil field is so routine.… [¶] Though [DOGGR] disputes that its review and approval of NOIs at South Belridge field is a ministerial act, it acknowledges that it is *routine*. For decades, in any given year [DOGGR] has approved the drilling of dozens or hundreds of new wells within the South Belridge field and approved the plugging and abandonment of dozens or hundreds of others. Though [DOGGR] exercises discretion in issuing and conditioning such approvals, it is a streamlined process and new wells often do not require permit conditioning beyond what [DOGGR's] regulations and the South Belridge field rules require. Unlike the alternative situations the trial court opined likely would require discretionary decision making for CEQA purposes—proposed new wells in a new field, or new zone of an existing field, or in deviation from established field rules—a new well in South Belridge is a commonplace thing unlikely to pose any impacts differing from its 32,000 neighbors. [¶] Indeed, while the routine nature of new well placement and old well plugging is inherent to operations at the South Belridge field and supports [DOGGR's] determination that the wells at issue were exempt from CEQA review, it also can create the false impression that [DOGGR's] approval of the wells was ministerial.… [T]hat is not the case." (fn. omitted.)

---

20 As noted, although DOGGR characterizes its approvals as discretionary, it argues that environmental review under CEQA was unnecessary because *other* exemptions were applicable.

Thus, as conceded by DOGGR, its decisions to approve the drilling of new wells in South Belridge oil field often do not require any permit conditions beyond what DOGGR's existing regulations and field rules already specify, and, under all the circumstances regarding that particular oil field, such approvals of drilling are often routine. At the same time, DOGGR insists we should not confuse routine with ministerial, and it maintains that because it ultimately does place conditions on the permit approvals, the approvals remain discretionary for purposes of CEQA—even though routine.

Of course, DOGGR's characterization of the nature of its decisionmaking process is not insignificant because, ordinarily, the public agency charged with administering its own regulations is in the best position to know whether its actions were discretionary or ministerial. (See Guidelines, § 15268, subd. (a).) However, DOGGR's discussion is only a very general one; it does not refer us to a particular example of an oil and gas regulation or other applicable law that would, consistent with DOGGR's position, reflect that it possessed the ability to exercise any meaningful discretionary or individualized judgment in shaping the particular drilling projects here. Under CEQA, the question of whether an agency has discretionary or ministerial authority over a project ultimately "depends on the authority granted *by the law* providing the controls over the activity." (Guidelines, § 15002, subd. (i)(2), italics added.) In any event, no indication is given by DOGGR that its decisionmaking here went beyond mechanically checking for conformity with, and/or merely restating in the permits themselves, the objective requirements of existing regulations and field rules.

The arguments presented on appeal by (i) petitioners and (ii) Aera are much more detailed. Each side contends the statutes, regulations and field rules, or some portions thereof, support their contrary positions on this issue. Petitioners, in claiming the approvals were discretionary, emphasize broad language contained in several statutes and regulations. Aera, in claiming the approvals were ministerial, argues that any discretion

that would otherwise have existed under broader statutory and regulatory provisions was effectively eliminated in this case by the establishment of fixed technical standards for drilling new wells as set forth in the South Belridge field rules and certain regulations. That is, according to Aera, there was no room left for the exercise of any individualized judgment when the subject permits were granted to drill the routine new wells at South Belridge; rather, the decisionmaking process was reduced to simply checking for conformity with the applicable fixed technical standards.

We have concluded that Aera's view is correct. In explaining more fully why that is so, we shall review in the next part of our discussion the relative merits of the several arguments raised by petitioners and by Aera.

C. <u>Our Evaluation of the Merits</u>

The key question is whether one or more of the pertinent statutory or regulatory provisions or rules reflect that DOGGR possessed the ability to exercise discretionary judgment to shape or condition the particular projects at issue here (i.e., Aera's proposals in 2014 to drill new wells in South Belridge oil field) in ways that would respond to environmental concerns. (*Friends of Westwood*, *supra*, 191 Cal.App.3d at p. 273.) To reiterate, a discretionary action is one "which requires the exercise of judgment or deliberation … as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, [or] regulations …." (Guidelines, § 15357); whereas, in contrast, a ministerial action "involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out." (Guidelines, § 15369.)

Our analysis will require us to consider, one at a time, the distinct statutory or regulatory provisions to which the parties have tethered their respective arguments. As will be seen, some of the provisions are inconclusive by themselves, since the entire legal context must be considered. Furthermore, although others of the statutory and regulatory

provisions reflect discretionary authority in the abstract relating to certain performance standards (e.g., for casing requirements and blowout prevention equipment), the field rules specify how to meet or satisfy the performance standards at issue. That is, any discretionary judgment that might otherwise have been made as to said performance standards, is *already* made by the field rules. Finally, there are also some provisions not relevant or applicable to these drilling projects.

1. Section 3106—The Enabling Statute

Section 3106, subdivision (a), gives the supervisor (i.e., DOGGR) the duty to "supervise the drilling, operation, maintenance, and abandonment of wells … so as to prevent, as far as possible, damage to life, health, property, and natural resources." Petitioners argue this section means that there must have been a discretionary aspect to DOGGR's decision to approve the new wells. We disagree. The authority and purposes articulated in section 3106, subdivision (a), are undeniably broad, but standing alone this section does not answer the question of whether the particular permits to drill new wells were discretionary or ministerial in this case. That question requires our consideration of the entire legal context, including the reality that DOGGR has to some extent carried out its authority under section 3106, subdivision (a), by adopting objective standards in its regulations and field rules to ensure that the drilling of new wells in South Belridge oil field will be carried out correctly. Furthermore, consideration must be given to whether DOGGR's implementation of its regulations and field rules so effectively narrowed down any discretion which might otherwise have existed that the approvals in this case were rendered ministerial. Thus, the broad or general authority conferred by section 3106, subdivision (a), indicating discretion *in the abstract*, does not by itself resolve the question at hand. (See *Sierra Club v. County of Sonoma*, *supra*, 11 Cal.App.5th at p. 25 [discretion in the abstract insufficient].)

2. Section 3203—The NOI Approval Statute

In claiming the permits to drill new wells were ministerial in nature, Aera argues that the language and structure of the approval process set forth in section 3203 indicates that such approvals may, at least in some cases, constitute ministerial decisionmaking. In relevant part, section 3203, subdivision (a), provides as follows: "The operator of any well, before commencing the work of drilling the well, shall file with the supervisor … a written notice of intention to commence drilling. Drilling shall not commence until approval is given by the supervisor or the district deputy. If the supervisor or the district deputy fails to give the operator written response to the notice within 10 working days from the date of receipt, that failure shall be considered as an approval of the notice and the notice, for the purposes and intents of this chapter, shall be deemed a written report of the supervisor.… The notice shall contain the pertinent data the supervisor requires on printed forms supplied by the division or on other forms acceptable to the supervisor. The supervisor may require other pertinent information to supplement the notice." (§ 3203, subd. (a).)

In support of its argument, Aera points out that California courts have recognized that landowners have property rights to drill for oil or other minerals under their land (see, e.g., *Bernstein v. Bush* (1947) 29 Cal.2d 773, 778), albeit such rights are subject to reasonable regulation through the exercise of the police powers by state or local governments (see *Beverly Oil Co. v. City of Los Angeles* (1953) 40 Cal.2d 552, 557–559; see also 59 Ops.Cal.Atty.Gen., *supra*, 461).[21] Consistent with this legal background, Aera believes that section 3203 reveals a process that has taken into account the property rights involved (assuming that local government has given the green light to drill at that

---

[21] As was observed in *Beverly Oil Co. v. City of Los Angeles, supra,* 40 Cal.2d at p. 558: "[I]t is recognized that oil production is a business which must operate, if at all, where the resources are found. Nevertheless, city zoning ordinances prohibiting the production of oil in designated areas have been held valid."

particular site) by primarily focusing on whether the operator seeking to drill for oil or gas "has complied with the applicable statutory and regulatory provisions." According to Aera, this best explains why the original statutory language—which is still in effect—calls for an operator to submit a "notice of intention to commence drilling," rather than describing the process as an application for a permit. In other words, Aera maintains that the crux of the statutory approval process is to provide notice and detailed project information to DOGGR to allow DOGGR to confirm that each proposed drilling project is in full accordance with applicable standards set forth in the statutes, regulations and field rules. Further, in light of DOGGR's considerable knowledge and technical expertise, that confirmation process by DOGGR might be done fairly quickly, which arguably explains why the statute requires DOGGR to provide its response within 10 days or else the NOI will be automatically deemed approved. (See § 3203, subd. (a).) In summary, according to Aera the nature of the approval process embodied in section 3203 means that *in some instances* at least, such as where routine proposals to drill new wells were clearly in conformity with DOGGR's objective standards set forth in its regulations and field rules, the approvals would be ministerial.[22]

We agree that the language and structure of section 3203, which refers to a notice of intention process and only a 10-day period for the agency to respond (with automatic approval if no response is timely made), is clearly amenable to and consistent with the proposition that, in some cases, approvals to drill routine wells may be of a ministerial nature. Nonetheless, this observation does not resolve the issue before us. Discretion may still be exercised under a relatively rapid timeline, particularly by an agency with the considerable technical knowledge and expertise of DOGGR in oil and gas drilling operations. Consequently, the outcome of our analysis of whether the 213 approvals at

---

22 Although was have summarized Aera's argument in this paragraph, we have no occasion to decide whether everything Aera posits about the section 3203 approval process is correct.

issue in this case were ministerial or discretionary will ultimately depend upon the nature of the *other* statutes, regulations and field rules applicable to the 213 permit approvals. Therefore, as was the case with section 3106, section 3203 cannot by itself resolve the exemption issue before us.

3. Requirements and Standards for Well Casing and Blowout Prevention Equipment Culminating in Specific Field Rules

Petitioners argue that the provisions relating to well casing and blowout prevention equipment reflect that DOGGR exercised discretionary judgment on those aspects of the drilling projects, which would potentially impact environmental concerns. Aera's response is that any potential discretion that may have otherwise existed on those subjects was eliminated by the specific field rules put in place for South Belridge oil field. In considering this matter, our approach will be to move from the broader standards to the more specific ones by first examining the statutory provisions, then the regulations, and lastly the field rules.

Section 3219 states: "Any person engaged in operating any oil or gas well wherein high pressure gas is known to exist, and any person drilling for oil or gas in any district where the pressure of oil or gas is unknown shall equip the well with casings of sufficient strength, and with such other safety devices as may be necessary, in accordance with methods approved by the supervisor, and shall use every effort and endeavor effectually to prevent blowouts, explosions, and fires." While section 3219 addresses situations where pressures are high or unknown, section 3220 makes clear that all oil and gas wells must be "properly" cased with "water-tight and adequate" casing "in accordance with methods approved by the supervisor." Section 3220 states: "The owner or operator of any well on lands producing or reasonably presumed to contain oil or gas shall properly case it with water-tight and adequate casing, in accordance with methods approved by the supervisor or the district deputy, and shall, under his direction, shut off all water overlying and underlying oil-bearing or gas-bearing strata and prevent any water

from penetrating such strata. The owner or operator shall also use every effort and endeavor to prevent damage to life, health, property, and natural resources; to shut out detrimental substances from strata containing water suitable for irrigation or domestic purposes and from surface water suitable for such purposes; and to prevent the infiltration of detrimental substances into such strata and into such surface water."

If the standards set forth in the above statutory provisions were all we had to go on, discretion on DOGGR's part would arguably be reflected in its supervisory oversight of whether a well drilling project, as proposed by an operator, contained casings of "*sufficient*" strength for high pressure or unknown pressure levels, along with other safety equipment, "*as may be necessary*" to effectually prevent blowouts, explosions and fires (§ 3219, italics added); and, in all other circumstances, whether a proposed well drilling project was "*properly*" cased with casing that was "*adequate*" to meet the statutory objectives (§ 3220, italics added). Evaluative standards such as "sufficient" or "adequate" generally signal the exercise of sound professional judgment on the part of the public agency or its staff, and thus, typically indicate discretionary decisionmaking. (See *People v. Department of Housing & Community Development* (1975) 45 Cal.App.3d 185, 193; *Natural Resources Defense Council, Inc. v. Arcata Nat. Corp*. (1976) 59 Cal.App.3d 959, 970–971.)

However, the same statutes *also* provide that such standards may be met by compliance with "methods approved by the supervisor" (§§ 3219–3220), and elsewhere DOGGR is expressly empowered to adopt rules and regulations to carry out the statutory purposes (§ 3013). These statutory provisions create the possibility that objective specifications and fixed technical standards might be established by DOGGR in its regulations and/or field rules that would, if complied with by the operator, satisfy the statutory criteria. According to Aera and the trial court, that is precisely what DOGGR has done, especially in the establishment of field rules for drilling new wells in South Belridge oil field.

Before addressing the field rules, we shall next consider the regulations adopted by DOGGR on the subjects of casing standards and blowout prevention equipment so that we may review the nature of the standards expressed in those regulations. DOGGR's regulations include the following casing program requirements: "Each well shall have casing designed to provide anchorage for blowout prevention equipment and to seal off fluids and segregate them for the protection of all oil, gas, and freshwater zones. All casing strings shall be designed to withstand anticipated collapse, burst, and tension forces with the appropriate design factor provided to obtain safe operation. [¶] Casing setting depths shall be based upon geological and engineering factors, including but not limited to the presence or absence of hydrocarbons, formation pressures, fracture gradients, lost circulation intervals, and the degree of formation compaction or consolidation." (Cal. Code Regs., tit. 14, § 1722.2.) While keeping in mind that we have not yet considered the impact of the field rules, the question of whether a proposed new oil well would comply with this regulation would appear to require DOGGR's consideration of various "geological and engineering factors," and whether the "appropriate" design factor to meet the regulatory objectives were correctly applied (Cal. Code Regs., tit. 14, § 1722.2), a process that would appear to entail some degree of discretion on DOGGR's part.

Additional casing requirements are specified in the next applicable regulation (i.e., Cal. Code Regs., tit. 14, § 1722.3), which indicates that "[c]onductor casing" shall be cemented to a maximum depth of 100 feet, but exceptions may be granted by the district deputy "if conditions require deeper casing depth." (Cal. Code Regs., tit. 14, § 1722.3, subd. (a); see also Cal. Code Regs., tit. 14, § 1722.4 [relating to cementing methods, placement and depth to fill annular space].) Further, "[s]urface casing" must be "cemented into or through a competent bed and at a depth that will allow complete well shut-in without fracturing the formation immediately below the casing shoe." (Cal. Code Regs., tit. 14, § 1722.3, subd. (b).) According to this regulation, the general surface

casing requirements may be varied by DOGGR's district deputy, including through adoption of a field rule, "consistent with known geological conditions and engineering factors, to provide adequate protection for freshwater zones and blowout control." (Cal. Code Regs., tit. 14, § 1722.3, subd. (b).) The same regulation provides that "[i]ntermediate" casing "may be required" for protection of oil, gas, and freshwater zones, and to seal off anomalous pressure zones, lost circulation zones, and other drilling hazards. (Cal. Code Regs., tit. 14, § 1722.3, subd. (c).) Based on this synopsis, and without consideration of the impact of the field rules, it appears that discretion on DOGGR's part is indicated in this regulation. The provision for exceptions to the specified depth of conductor casing would require the exercise of discretion to decide if "conditions require" such measures. The authority to vary general surface casing requirements or to require intermediate casing would appear to involve discretion being used to decide, consistent with known geological conditions and engineering factors, what is adequate protection for freshwater zones and blowout control.

Finally, on the issue of blowout prevention and related well control equipment, the applicable regulation provides as follows: "Blowout prevention and related well control equipment shall be installed, tested, used, and maintained in a manner necessary to prevent an uncontrolled flow of fluid from a well. Division of Oil, Gas, and Geothermal Resources publication No. MO 7, 'Blowout Prevention in California,' shall be used by Division personnel as a guide in establishing the blowout equipment requirements specified in the Division's approval of proposed operations." (Cal. Code Regs., tit. 14, § 1722.5.)[23] Considered by itself, without taking the impact of the field rules into account, this regulation likewise appears to show that DOGGR exercises some measure

[23] Because DOGGR's official publication No. MO 7, "Blowout Prevention in California," is referred to in this regulation as containing applicable blowout equipment requirements, is also referred to in the field rules, and is an official record of a public agency, we grant petitioners' request for judicial notice thereof.

of discretion, such as whether proposed equipment would be what is "necessary" to provide well fluid control. Because this regulation also identified DOGGR's publication No. MO 7 as a guide that sets forth blowout prevention equipment requirements, that publication will be considered along with the field rules in our assessment of whether DOGGR's permit approvals were discretionary or ministerial. Since blowout prevention equipment is sometimes abbreviated in the technical literature and field rules by use of the acronym "BOPE," we shall follow that practice by referring to DOGGR's publication No. MO 7 as the BOPE manual.

Having reviewed the statutes and regulations relevant to casing standards and blowout prevention equipment, the question remains whether DOGGR's establishment of specific *field rules* for the South Belridge oil field resulted in such fixed standards or objective criteria that the approval of the new wells in this case were ministerial. In our evaluation of the field rules, we keep in mind that local field rules *supplant* the more general statewide regulations promulgated by DOGGR regarding the precise requirements covered thereby.[24] This distinction between the scope of statewide regulations and local field rules is explained by the regulations: "These regulations shall be statewide in application for onshore drilling, production, and injection operations. All onshore prospect, development, and service wells shall be drilled and operated in accordance with these regulations, which shall continue in effect until field rules are established by the Supervisor pursuant to [Cal. Code Regs., tit. 14,] [s]ection 1722(k). *If field rules are established, oil and gas operations shall be performed in accordance with those field rules.*" (Cal. Code Regs., tit. 14, § 1712, italics added.) Field rules for a particular oil field may only be put into place by DOGGR "[w]hen sufficient geologic

---

[24] In other respects, it is reasonable to assume that the field rules would simply supplement the regulations.

and engineering information is available from previous drilling or producing operations." (Cal. Code Regs., tit. 14, § 1722, subd. (k).)[25]

DOGGR's field rules for South Belridge oil field consist of rules for three zones or pools within the South Belridge oil field (i.e., Antelope Shale, Etchegoin/Diatomite, and Tulare), with each zone or pool having its own distinct set of published rules set forth in a separate chart. Since it appears that nearly all of the permit approvals at issue here relate to wells in the Etchegoin/Diatomite zone of the South Belridge oil field, we will focus our discussion on the field rules applicable thereto.[26] These field rules include pertinent specifications on the casing program, including references to each casing string of the well (i.e., conductor casing, surface casing, intermediate casing and production casing), with cementing depths and annular cement fill also indicated. The same field rules also include a description of the applicable blowout prevention equipment by making references to component codes and classes of equipment found in the BOPE manual. The class of blowout prevention equipment required by DOGGR is listed in the pertinent field rules as "IIA2M," with the additional requirement of "hydraulic BOPE" also specified. As explained with the assistance of the BOPE manual, the "IIA2M" designation in the field rules is apparently a combination of three elements that identify DOGGR's precise requirements for (i) blowout prevention equipment (i.e., class II), (ii) hole-fluid monitoring equipment (i.e., class A), and (iii) rated working pressure of the weakest component of the wellhead stack and choke system (2M or 2,000 pounds per

---

[25] Once established, field rules may only be changed by DOGGR by distributing notice of the proposed change and allowing at least 30 days for comments from the affected persons. (Cal. Code Regs., tit. 14, § 1722, subd. (k).) Given the short 10-day approval process, the field rules here could not have been changed by DOGGR in time to affect the permits in question.

[26] We note a few agency documents in the record on appeal related to North Belridge wells. It appears those were inadvertently included in the administrative record for this case. The pleadings referred only to wells in the South Belridge oil field, which are the relevant wells/approvals for purposes of this appeal.

square inch). Detailed objective specifications, measurements and technical standards for each identified class or component of equipment are set forth in the BOPE manual. The same field rules also state that a "[d]iverter" will be "required on conductor except where no steam within 50 feet of the surface casing shoe," and that a particular water shut-off test will not be required because no fresh water is present in the area and the pool has a successful water shut-off history.[27]

As we have noted, the field rules themselves are presented in a chart that contains the necessary information regarding casing requirements and blowout prevention equipment, among other things. The categories and terminology in the field rules appear to correspond to those stated in DOGGR's regulations on the same subjects, with equipment specifications more fully identified in the BOPE manual. Although in this chart format the field rules are stated in relatively terse and abbreviated terms, they can be understood in light of the corresponding regulations addressing casing requirements and blowout prevention equipment set forth in DOGGR's regulations on those subjects, and by reference to the BOPE manual. So understood, the field rules specify to a person planning to drill a well in the South Belridge oil field precisely what will be required to satisfy the performance objectives set forth in the regulations on the subjects covered by the field rules. To put it another way, discretionary considerations in the regulations are eliminated by being resolved by the fixed objective standards set forth in the field rules.

Based on the objective nature of the technical specifications set forth in the South Belridge field rules (viewed in conjunction with the BOPE manual) on the topics of

---

[27] Petitioners argue that the provision in the field rules for a diverter "except where no steam within 50 feet of the surface casing shoe" evidences discretion. While it is true that DOGGR exercised discretion by establishing that fixed standard in the field rules for this zone, we disagree that it shows that any discretion was exercised when the NOI's to drill new wells were approved. A waiver of diverter would occur, if at all, based on observable objective geologic conditions, not on the exercise of subjective judgment at the time the permits were issued.

adequate blowout prevention equipment and casing program requirements for new wells to be drilled there, we agree with Aera and the trial court that DOGGR, by adopting those particular field rules for South Belridge, established such fixed objective standards that there was no further leeway for DOGGR to exercise discretionary judgment or deliberation on those subjects. Rather, DOGGR merely determined whether the proposals submitted by Aera were in technical conformity with the field rules.

4. Requirements for Well Spacing and Setbacks

Petitioners argue that the well spacing and setback requirements in the regulations confirm that DOGGR's decisionmaking was discretionary. We disagree. The trial court found there was no evidence that the NOI's submitted by Aera to drill new wells potentially involved any spacing or setback issues, nor did DOGGR's staff have to make any decision to approve a well that did not comply with prescribed objective rules. In their appeal, petitioners have not presented any potential reason that Aera's proposals to drill new wells were, or even could have been, the subject of agency action with respect to spacing or setback regulations. Again, mere discretion in the abstract, not shown to be applicable to the project at hand, is insufficient to establish a discretionary project. (See *Sierra Club v. County of Sonoma*, *supra*, 11 Cal.App.5th at p. 27 [ignoring best management practices issue where there was no evidence in the record to suggest that such practices played any role in issuing the permit].) Moreover, the referenced regulatory provisions for well spacing patterns and setbacks relate to the drilling of wells into *new* pools. (Cal. Code Regs., tit. 14, §§ 1720, subd. (c), 1721–1721.2.) There is no evidence or plausible argument that any of the subject wells in this case involved a new pool.

5. Additional Provisions Cited by Petitioners Fail to Show Discretion

Since the present case relates solely to DOGGR's issuance of initial permits to drill new wells in South Belridge oil field, we conclude that a number of provisions set forth in Division 3 of the Public Resources Code and/or in DOGGR's regulations are not

relevant to show agency discretion in this matter, because they relate to other, distinct, subsequently proposed activities requiring separate approvals. As explained below, the provisions in this category include those regulating hydraulic fracturing, plugging and abandoning of wells, and other post-drilling operational regulations uniformly applicable to all operators but not impacting the issuance of the drilling permits themselves.

As to well stimulation treatments such as hydraulic fracturing, petitioners have pointed out that after obtaining initial permits to drill wells, Aera subsequently obtained DOGGR's approval to engage in well stimulation treatments such as hydraulic fracturing on a number of the wells in question. However, any approvals by DOGGR to engage in such well stimulation treatments entailed separate and distinct permits applied for and granted after the issuance of the initial permits at issue here to simply drill new wells. (See § 3160, subd. (d) [describing separate permit requirement for engaging in well stimulation treatments such as hydraulic fracturing or acid well stimulation treatments].) The subject of well stimulation treatments, the conditions for allowing them to occur and the permitting process involved therewith have been carefully addressed within statutory provisions that were in effect at the time of the relevant approvals to drill new wells. (§§ 3150–3161.) Although it may have been hypothetically possible for an applicant such as Aera to have combined a request to conduct a well stimulation treatment with its initial NOI to initially drill the well, thereby making them into a single project for which a combined approval was sought (see § 3160, subd. (d)(2)(A); see Cal. Code Regs., tit. 14, § 1751), that did not occur here. In other words, on the issue of whether the approvals were discretionary or ministerial, the present case simply relates to the initial 213 permits to drill new oil wells, not to the subsequently issued permits to engage in well stimulation treatments such as fracking.

Petitioners also argue that provisions relating to plugging and abandoning wells (see, e.g., § 3208; Cal. Code Regs., tit. 14, §§ 1723–1723.8) indicate the approvals in question were discretionary. However, as pointed out by Aera, plugging and

abandonment are distinct well operations that require the filing of a separate NOI and approval from DOGGR. (§§ 3203, subd. (b) [well plugging]; 3229 [well abandonment].) Again, in the present case, the approvals in question relate to the initial okay by DOGGR to drill the new wells. Because operators must file separate NOI's for plugging and abandonment operations, any discretion conferred in the provisions regulating those distinct subsequent operations did not appear to have a role in the initial decision of whether to grant the approvals to drill the new wells in the first place.

Additionally, DOGGR's ongoing ability to enforce or remedy violations of the regulatory scheme did not appear to come into play or to otherwise render the initial approvals to drill new wells discretionary. For example, the fact that the supervisor may order tests, require monitoring programs, prescribe remedial work or require updated spill contingency plans (see, e.g., §§ 3222–3226, 3106, subd. (c), 3203, subd. (c), 3270.1) would not indicate a discretionary decision was being made. Such matters constitute existing regulatory conditions that all well operators would be operating under, not a basis for concluding the initial decision to approve the NOI's for new wells was itself an exercise of discretionary judgment or deliberation. (See *Sierra Club v. County of Sonoma*, *supra*, 11 Cal.App.5th at p. 27, fn. 16 [postapplication inspections relating to compliance with permit had "nothing to do with whether the Commissioner exercised discretion in issuing the permit in the first instance"].)

6. <u>Permits Merely Restate Regulatory Provisions</u>

Petitioners point out that the permits issued by DOGGR to Aera to drill the new wells contained conditions, and they argue this demonstrates DOGGR was exercising its discretion to shape the project through the imposition of such conditions. Aera disagrees, arguing that the conditions stated in the permits merely restated existing requirements set forth in the statutory and regulatory scheme. That is also what the trial court held. It is clear that Aera and the trial court are correct.

To begin with, the requirement stated in the written permits that a "sufficient" quantity and quality of hole fluid be used to control blowouts is, in substance, a brief restatement of an existing comprehensive regulation setting forth DOGGR's drilling fluid program requirements. That regulation provides, in part, as follows: "The operational procedures and the properties, use, and testing of drilling fluid shall be such as are necessary to prevent the uncontrolled flow of fluids from any well. Drilling fluid additives in sufficient quantity to ensure well control shall be kept readily available for immediate use at all times. Fluid which does not exert more hydrostatic pressure than the known pressure of the formations exposed to the well bore shall not be used in a drilling operation without prior approval of the supervisor." (Cal. Code Regs., tit. 14, § 1722.6.)

Another example of the permits simply restating existing regulatory requirements concerns the disposal of well drilling fluids. The permits state that such fluids must be disposed of in compliance with "Regional Water Quality Control Board regulations." Section 1722.6 of DOGGR's regulations provides that "[d]isposal of drilling fluids shall be done in accordance with Section 1775, Subchapter 2 of these regulations." (Cal. Code Regs., tit. 14, § 1722.6, subd. (c).) In turn, section 1775 of DOGGR's regulations requires that the disposal of oilfield wastes shall "conform to State Water Resources Control Board and appropriate California Regional Water Quality Control Board regulations." (Cal. Code Regs., tit. 14, § 1775, subd. (a).) Thus, the permit wording amounted to a brief recapitulation of a standard that already existed under existing regulations.

The permits also routinely stated that permission must be obtained before venting or flaring natural gas. This does not reflect the exercise of an individualized discretionary judgment. All operators are statutorily prohibited from the unreasonable waste of natural gas, and the same statute provides that "[t]he blowing, release, or escape of gas into the air shall be prima facie evidence of unreasonable waste." (§ 3300.) To enforce this provision, DOGGR issued in 1988 an official "Notice to Operators"

requiring operators to obtain permission prior to flaring natural gas, except in emergency situations.[28] The permit wording simply reflects these legal requirements.

Some permits mention under the heading "Note" that "hydrogen sulfide gas … is known to be present in the area" and "adequate safety precautions shall be taken prior to and during well operations." We agree with Aera that this is not a requirement relating to the protection of harm to the environment, but more of a worker safety warning in light of what is known about the existing physical conditions in that area. (See Lab. Code, § 6400 [stating employer's responsibility to provide safety devices, safeguards and adopt precautionary practices to provide a safe workplace for its employees].)

We note that language stated in some permits requiring a directional survey within 60 days of completion of drilling *does* involve a certain kind of discretion—namely, the discretion under the regulations to decide whether or not a particular well shall be directionally surveyed. (See Cal. Code Regs., tit. 14, § 1722.7.) However, since such survey could be made after the well is already drilled, this requirement does not appear to be an example of shaping the manner of carrying out the well drilling project itself so as to mitigate its environmental impacts. Rather, in this context, it appears to be more for informational purposes and/or for consideration in connection with any future requests to conduct other well operations.

In summary, we agree with the trial court that the conditions stated in the permits did not, in this case, reflect the existence of discretionary decisionmaking on DOGGR's part because the conditions were merely a restatement of existing regulatory requirements. As such, the restated requirements did not indicate an exercise of any discretionary individualized judgment.

---

28 We grant Aera's request for judicial notice of this official record of the public agency.

7. Our Conclusions under the Unique Circumstances Presented

Based on the foregoing, we conclude that the 213 permit approvals in this case were ministerial, rather than discretionary. Although some statutory provisions and regulations reflect that, under other circumstances, DOGGR would ordinarily exercise discretion in making well drilling permit decisions, that was not the case here. On the limited and narrow circumstances presented here, DOGGR did not exercise discretionary judgment or deliberation, but merely determined in a mechanical fashion whether there was conformity with applicable standards set forth in the regulations and especially the field rules. The written permits themselves did not suggest otherwise, because the purported conditions set forth in the permits merely restated existing regulatory obligations to which operators such as Aera were already bound.

We emphasize our decision is a narrow one, since it is based on the following unique set of circumstances: (i) the geologic and engineering information available from the long history of previous drilling and production operations at South Belridge oil field enabled DOGGR to establish, and it did so establish, specific field rules for South Belridge oil field that constituted fixed objective technical standards for new drilling projects, including standards relevant to adequate casing programs and blowout prevention equipment; (ii) the approvals granted by DOGGR in this case merely required it to verify that the proposed new well drilling projects conformed to the technical specifications and fixed objective standards set forth in the field rules and regulations, and it appears that was precisely what DOGGR in fact did; (iii) DOGGR, which possesses agency expertise in oil and gas matters, has characterized the particular proposals in this case to initiate drilling of new wells at South Belridge oil field as being merely "routine" in nature, and has further observed that periodic requests to drill new wells are ordinary and incidental aspects (along with periodic plugging and closure of other wells) of the basic ongoing operations of a large established oil filed such as this

one;[29] and (iv) the conditions set forth in the written permits merely restated existing regulatory standards which operators such as Aera would already be bound to follow. Under the above stated set of circumstances, we agree with and affirm the trial court's determination that the ministerial exemption was applicable to the permit approvals at issue in this unique case. Accordingly, DOGGR's decisions during 2014 to approve the 213 permits were *exempt* from CEQA as *ministerial* decisions, and no further CEQA review was or is necessary relating to the drilling of those wells.

The parties have presented further argument on whether or not *other* exemptions may have applied in this case, including the statutory exemption for ongoing pre-CEQA projects and two categorical exemptions. In the remainder of this opinion, we shall proceed to address these other alleged exemptions.

IV. Statutory Exemption for Ongoing Pre-CEQA Projects

We next consider the statutory exemption for ongoing pre-CEQA projects, which both DOGGR and Aera argue was applicable to DOGGR's issuance of the 213 permits to Aera to drill new wells in this case. We begin by explaining the nature of this exemption.

A. Nature of Ongoing Projects Exemption

CEQA took effect on November 23, 1970. (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 272; § 21000 et seq., added by Stats. 1970, ch. 1433, § 1.) Because CEQA as a statutory enactment was not intended to have a retroactive application, a form of statutory exemption is recognized for projects that were approved or lawfully undertaken prior to CEQA's effective date and that are still ongoing today. (*North Coast*, *supra*, 227 Cal.App.4th at pp. 855–857; §§ 21169–21171; Guidelines, § 15261.) Where, as here, a private project is involved, the Guidelines indicate the effective date of CEQA for purposes of the exemption is deemed to be April 5, 1973.

---

[29] In its brief herein, DOGGR concedes that it has "allowed operators to place new wells in the field so long as the well placement meets all well safety requirements."

(Guidelines, § 15261, subd. (b).) The key issue in analyzing this exemption is whether the challenged action is " 'a normal, intrinsic part of the ongoing operation' " of the pre-CEQA project, rather than an expansion or modification thereof. (*North Coast, supra*, 227 Cal.App.4th at pp. 857, 864; *Nacimiento Regional Water Management Advisory Com. v. Monterey County Water Resources Agency* (1993) 15 Cal.App.4th 200, 201, 204–208 (*Nacimiento*).)

A brief summary of relevant case law is helpful to understanding this exemption. In *Nacimiento*, a government agency built a dam and reservoir prior to the enactment of CEQA. The project as conceived and built was for the operation of a reservoir, including the storing and periodic release of water in varying amounts and for different uses. The plaintiff in that case had challenged the agency's decision in 1991 to release large amounts of water to benefit various interests downstream, but the appellate court concluded that the challenged activity was not an enlargement of the original project but was merely an adjustment to fluctuating conditions; therefore, the agency's decision to release water was an inherent part of the ongoing project. (*Nacimiento*, *supra*, 15 Cal.App.4th at pp. 201, 204–208.) Because the project in that case did not involve enlargement of capacity to divert water or make other material revisions, but instead continued operations within existing parameters, it fell within the ongoing project exemption and did not require CEQA review. (*Id*. at pp. 207–208.)

Similarly, in *North Coast, supra*, 227 Cal.App.4th 832, we held that two-year interim renewal contracts entered by Westlands Water District (and related water districts) and a federal agency came within the ongoing projects exemption where the activity to be carried out under the interim renewal contracts was essentially a continuation of the pre-CEQA water delivery project, including the water volumes and the facilities involved. (*North Coast*, at pp. 864–866.)[30] On the other side of the factual

[30] In that case, we also held that assignment agreements providing a right to receive additional acre-feet of water did not constitute a material expansion of the project, but

spectrum from *Nacimiento* and *North Coast* is the case of *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795. In *County of Inyo v. Yorty*, which involved a pre-CEQA aqueduct and pumping project, a substantial expansion of the extraction of groundwater and the use of added pumping facilities after CEQA took effect were considered to be a new project, severable from the original pre-CEQA aqueduct, and, therefore, environmental review of that expanded water extraction program was required. (*County of Inyo v. Yorty*, *supra*, at pp. 804–808; accord, *County of Amador v. El Dorado Water Agency* (1999) 76 Cal.App.4th 931, 968–969 [substantial change of focus from nonconsumptive hydroelectric water use to substantial consumptive water use reflected an enlargement or modification of the pre-CEQA project; therefore, the exemption was held inapplicable].)

B. <u>The Parties' Arguments</u>

Before we evaluate whether the challenged activity in this case (i.e., approvals granted in 2014 to drill 213 new wells) was a normal and intrinsic part of the ongoing operation of a pre-CEQA project, rather than an expansion or modification thereof, we note the parties have staked out divergent positions on whether there is a pre-CEQA project at all. DOGGR and Aera claim that the *South Belridge oil field* itself was the pre-CEQA project, and argue further that the challenged approvals here were simply an ordinary and incidental aspect of *that* greater project's (i.e., the oil field's) ongoing operations. In other words, DOGGR and Aera claim the oil and gas operations that have been ongoing at South Belridge since before CEQA should be viewed *as an interrelated*

---

merely provided a more stable supply to offset shortages to the originally contracted amount caused by regulatory reductions imposed by the federal agency. "Considered in that light, the assignment agreements … did not result in an expansion or material modification of the *underlying activity* that was approved in the original pre-CEQA project. Rather the practical and primary effect of the assignment agreements was to facilitate the ability of Westlands Water District to receive a stable and adequate supply of water *within the scope and parameters* of the approved pre-CEQA original project. As such, the assignments were within the scope of, and incidental to, the ongoing original project." (*North Coast*, *supra*, 227 Cal.App.4th at p. 865.)

whole for purposes of this exemption, rather than being viewed as an aggregation of many separate projects. On the other hand, petitioners contend the only relevant project is the 213 permit approvals in question in this case, whether viewed collectively or individually, and argue that said 213 wells were neither contemplated by nor within the scope of any pre-CEQA project approval or approvals. Petitioners further argue that, in any event, the significant expansion in the total number of active and inactive wells at South Belridge post-CEQA (noting a 16-fold increase between 1960 and today), as well as the increases in the volume of oil being produced post-CEQA, precludes the application of the ongoing project exemption here.[31]

Under CEQA, a "project" is generally defined broadly as "*the whole of an action*, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment ...." (Guidelines, § 15378, subd. (a), italics added.) The term includes projects based on the issuance to a private party "of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." (Guidelines, § 15378, subd. (a)(3); § 21065.) The Guidelines further state: "The term 'project' refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term 'project' does not mean each separate governmental approval." (Guidelines, § 15378, subd. (c).) It is well established that separate activities will be treated as part of the same project where they are integral parts or inherent aspects of the same project. (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1225–1230.) It has also been recognized that where activities are closely related to a project's objective, including where a series of coordinated steps are

---

31 Petitioners note that South Belridge oil field produced over 7.5 million barrels of oil in 1966, but by 2007 it produced over 29 million barrels of oil. Petitioners further note the number of total wells grew from 1,614 in 1960, to 6,822 in the 1980's, to over 32,000 active and inactive wells today.

taken toward the achievement of that objective, the various activities may be considered together as part of the same project. (*Id*. at pp. 1225–1231; *County of Ventura v. City of Moorpark* (2018) 24 Cal.App.5th 377, 385.)

To avoid having to unnecessarily resolve the novel issue of whether there is a cognizable pre-CEQA project in this case, our approach will be to provisionally accept, for the sake of discussion only, that the South Belridge oil field may permissibly qualify as a preexisting CEQA project for purposes of this exemption. Only if we conclude that the record supports a conclusion that there has been no material expansion or modification of that ongoing project, as so conceived, will we then proceed to decide the legal question of whether an entire oil field, presumably involving the activities of many operators and separate approvals over time, may be treated as constituting a single pre-CEQA project having a life of its own, with its own inherent project objectives and parameters for purposes of this CEQA exemption.

The contention by Aera and DOGGR that the South Belridge oil field is an ongoing pre-CEQA project relies in part on the broad definition of a project noted above, but also—and more fundamentally—on the unique nature of an oil field, including how oil production ordinarily develops within an oil field. The gist of this latter argument, as it applies to South Belridge oil field, may be briefly summarized in two main points: First, long before CEQA was passed, the South Belridge oil field was already an established oil field densely packed with thousands of producing wells. Second, the underlying activity being challenged here—i.e., a well operator's drilling of new wells—was merely an ordinary, basic and incidental part of the ongoing operations of such an established oil field.

On the first point, DOGGR notes among other facts that South Belridge oil field has been in existence and operation since 1911, its current boundaries were established in

the 1950's, and by 1974 the oil field contained 2,618 producing wells.[32] These facts are historical, supported by the record, and are not disputed. We conclude that substantial evidence supports the preliminary factual assertion by DOGGR and Aera that South Belridge was already an established oil field and densely packed with thousands of wells by the time CEQA took effect.[33]

We next consider the second main point of DOGGR's exemption claim: namely, that the activity approved by DOGGR of permitting Aera to drill new wells was merely an ordinary and incidental part of the ongoing operations of such an established oil field. In support, DOGGR provides some statistical data, including that in the 10 years prior to the enactment of CEQA, 1,712 wells were added to the field, but 774 other wells were shut-in and made inactive. DOGGR also acknowledges that in the decades after CEQA was enacted, it has allowed operators to place new wells in the field so long as the well placement satisfied all well safety requirements. Total wells at South Belridge increased from 1,614 in 1960 to 6,822 in the 1980's. The numbers of productive wells and total wells continued to increase over the years. By the time of the judgment in the trial court, South Belridge oil field contained over 32,000 total oil wells, more than 12,800 of which were active producing wells. The above data cited from the record evidences that, both pre- and post-CEQA, requests for new wells (and to plug others) were being requested by operators and routinely approved by DOGGR over the years.[34]

---

[32] We focus on DOGGR's arguments because it is the public agency with expertise in oil and gas operations, and it is the agency claiming the exemption. We recognize that Aera has made substantially the same arguments. In our discussion of DOGGR's arguments, we are also addressing Aera's similar contentions.

[33] As noted previously, we are leaving to the side for the moment the question of whether the oil field itself may properly be considered a pre-CEQA ongoing project.

[34] DOGGR also refers to two examples from its oil production records indicating that at South Belridge oil field in the year 1974, 254 new wells were drilled while one was abandoned; and in 2009, 490 new wells were drilled and another 608 were plugged and/or abandoned.

Further, DOGGR explains that such activities are incidental and intrinsic to an established oil field such as South Belridge because prudent operators, to effectively reach the oil belowground, will need to periodically plug or abandon some wells while also drilling for new ones within the oil field boundary. In light of DOGGR's presumed expertise in oil and gas operations, we have recited at length from DOGGR's explanation of this matter:

> "The well permit approvals that appellants challenge here are a normal, intrinsic part of the ongoing project that is the large, established, and densely-developed South Belridge oil field. [¶] … [¶] [A]dding new oil wells at South Belridge is not itself a separate project, but only a step towards the ultimate objective of the ongoing oil extraction project. The purpose of an oil field is to extract all the oil contained therein that the operator can prudently recover from beneath the ground. The physical boundaries of an oil field (and the hydrocarbon-bearing geological formation beneath it) define the scope of that oil field as a resource-extraction project. Oil production from a single field is a dynamic process which consists of extracting the viscous fluid from often large and irregularly-shaped underground geological formations. This necessarily involves successive drillings. [¶] In large oil fields such as South Belridge, periodically abandoning wells that have ceased production and drilling new wells to continue production elsewhere within the field is also a normal and intrinsic part of operating the field.… Drilling new wells, and plugging old wells, is the nature of operating an oil field. It follows that this regular operation of the longstanding South Belridge oil field is exempt from CEQA."

In responding to petitioners' claim that the substantial post-CEQA increase in the number of wells placed at the oil field and/or the fields' greatly increased productivity precludes the application of the ongoing projects exemption here, DOGGR states: "[T]he nature of the project at South Belridge field—the recovery of all hydrocarbon resources that the operator can practicably extract—has remained constant for a century. Its consistent objective has always been to safely and economically extract *all* of the oil that is accessible within the field's boundaries. Placing additional and more technologically advanced wells within that field, while increasing the project's speed, safety, and efficiency, does not alter or expand the original project's scope.… [A]dding new wells

within the oil field comprises part of the ongoing operations of a project that predates CEQA's enactment by decades."

Aera similarly argues that the new wells approved by DOGGR were not separate or divisible projects that were distinct from the South Belridge oil field considered as a whole because new wells are incidental to the normal operation of an established oil field. Moreover, both Aera and DOGGR insist that increases that may have been allowed over time in the total number of wells in the oil field were consistent with the statutory policy imperative in California set forth in section 3106, subdivision (b). That section declares that DOGGR shall supervise drilling and other related activities so as to permit the operators of wells "to utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of underground hydrocarbons." (§ 3106, subd. (b).) Since one such method or practice is the periodic adding of new wells at an established oil field, the statute is consistent with DOGGR's allowance of an increase in the number of wells that will be placed there.

The same evidence and arguments were presented to the trial court. The trial court accepted the proposition that the pre-CEQA project was the South Belridge oil field, but ultimately concluded the ongoing projects exemption was inapplicable because of the substantial expansion of the number of wells placed there. Recognizing that we are reviewing the agency's decision, not the trial court's, we quote the trial court's ruling here because it contains helpful analysis. Based on its survey of the evidence in the record, the trial court explained its ruling on this issue as follows:

> "The project of developing and extracting oil from the Belridge oil fields predates CEQA. The current boundaries of the oil field were established in the 1950's, and the geologic and other relevant characteristics of the subsurface are sufficiently well known from decades of experience that field rules have been adopted that are specific to each of the oil producing zones/pools. It is a normal, intrinsic part of developing a large, established oil field that wells will be drilled and later abandoned, and new wells will be drilled. The nature of oil production is to find and extract *all* of the resource in a reasonably prudent manner. The wells

> at Belridge are densely populated. The oil field has been continuously drilled and developed. In 1960, there were over 1,400 producing wells. In 1974, there were 2,618 producing wells. In 1985, there were over 4,700 producing wells. Since the early 1960's, DOGGR has been continuously charged [by the enactment at that time of § 3106, subd. (b)] with supervising oil and gas drilling and operations so as to *permit* operators 'to utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of underground hydrocarbons.' [¶] However, there are now approximately 12,800 active wells, and the Belridge project has materially expanded from its pre-CEQA status. DOGGR's approval of the subject wells is more like the circumstances present in *County of Inyo v. Yorty*[, *supra*,] 32 Cal.App.3d 795, and less like the circumstances present in *North Coast, supra*[, 227 Cal.App.4th 832]. There has been an expansion and modification of the project sufficient to take it outside the 'ongoing project' exemption."

C. Our Analysis and Conclusion

In our estimation, DOGGR and Aera have shown that an operator's activity of periodically drilling some new wells while plugging other older wells is ordinary and incidental to effectively maximizing the goal of extracting oil from an established oil field. Even if we were to extrapolate from this fact about an operator and say it is likewise true of the entire South Belridge oil field as the supposed project, there are fatal evidentiary gaps in regard to this theory. What we believe has not been adequately shown is whether—or to what extent—the remarkable increase in the overall number of producing wells at South Belridge oil field post-CEQA can be accounted for in this way. It does not appear DOGGR and Aera are suggesting that simply because South Belridge is an established oil field and densely populated with wells, *any* increase in the number of productive wells would automatically be incidental to the pre-CEQA project. Like the trial court, we believe the considerable increase in productive wells here (i.e., from 2,618 in 1974 to over 12,800 in 2014) presents an impediment to application of this exemption, at least in the absence of satisfactory evidence in the record and cogent explanatory discussion to the contrary. On the present record, it is unclear to this court whether—or to what extent—the ongoing activity at South Belridge in 2014, including the 12,800 productive wells and the 213 new wells approved by DOGGR, merely represent

incidental or intrinsic operations of the original pre-CEQA project, or instead manifest a material expansion thereof. For this reason, we decline to hold that the exemption is applicable here. (See *North Coast*, *supra*, 227 Cal.App.4th at pp. 857, 864 [key test is whether the challenged activity is a normal, intrinsic part of the ongoing operation of the pre-CEQA project, rather than an expansion or modification thereof]; accord, *County of Amador v. El Dorado County Water Agency*, *supra*, 76 Cal.App.4th at pp. 968–969].) In light of the limited basis for our disposition of this issue, we need not resolve the legal question of whether the entire South Belridge oil field may properly be conceived of as a pre-CEQA project for purposes of this exemption. Even if it could have been so treated, the showing in other respects was inadequate for the reasons we have stated.

V. Categorical Exemption for Minor Alteration to Existing Facilities or Grounds

We next turn our attention to the claimed categorical exemptions. As note earlier herein, the Legislature in section 21084 directed the Secretary of the Natural Resources Agency to establish in the Guidelines "a list of classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from [CEQA]." (§ 21084, subd. (a); *Berkeley Hillside Preservation v. City of Berkeley*, *supra*, 60 Cal.4th at p. 1092.) These are referred to as categorical exemptions and are listed in the Guidelines under enumerated classes of projects which have been determined not to have a significant effect on the environment. (Guidelines, §§ 15300, 15301 et seq.) Additionally, each public agency, in establishing its own procedures, is required to list those specific activities which fall within each of the exempt classes. (Guidelines, § 15300.4.) In this case, two of the classes of categorical exemptions are raised: (i) DOGGR and Aera assert the class 1 ("Class 1") exemption for minor alteration of existing facilities (see Guidelines, § 15301); and (ii) Aera argues the class 4 ("Class 4") exemption for minor alterations to land (see Guidelines, § 15304). We shall discuss these categorical exemptions below.

A. Class 1: Minor Alteration of Existing Facilities

DOGGR and Aera claim the 213 permit approvals came within the Class 1 exemption relating to minor alteration of existing facilities. We disagree. A categorical exemption (numbered class 1) is recognized in the Guidelines for "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 existing or former use." (Guidelines, § 15301.) If otherwise applicable, the key consideration is whether the project's relationship to the subject existing facilities involves negligible or no expansion of an existing use. (See *North Coast, supra*, 227 Cal.App.4th at p. 867.) The Class 1 exemption recognizes that "[t]he continued operation, leasing, or 'minor alteration' of facilities, 'involving negligible or no expansion of use beyond that existing,' is unlikely to cause 'a substantial adverse change in the physical conditions which exist in the area affected by the proposed project.' [Citations.]" (*World Business Academy v. State Lands Com*. (2018) 24 Cal.App.5th 476, 496.) The examples set forth in Guidelines section 15301 of activities that typically fit within this exemption include, among other things, interior or exterior alterations of structures (such as interior partitions, plumbing, or electrical conveyances), work on existing roads or sidewalks, restoration or rehabilitation of existing facilities or mechanical equipment, minor additions to existing structures, and minor repairs and alterations to existing dams and appurtenant structures. (See Guidelines, § 15301, subds. (a)–(d), (m).) As the language and examples in the regulation make clear, this exemption relates to a minor alteration or continuation of the use of an existing facility or structure—something already in place.

DOGGR's own regulation provides further clarification of the Class 1 existing facilities exemption within the context of oil and gas operations. (Cal. Code Regs., tit. 14, § 1684.1.) This regulation summarizes that the Class 1 exemption "consists of the operation, repair, maintenance, or minor alteration of existing public or private structures,

facilities, mechanical equipment, or topographical features involving negligible or no expansion of use beyond that existing previously." (Cal. Code Regs., tit. 14, § 1684.1.) Next, DOGGR's version of the Class 1 exemption sets forth examples of what would qualify within the oil and gas context, including the following: "[R]emedial, maintenance, conversion, and abandonment work on oil, gas, injection, and geothermal wells involving the alteration of well casing, such as perforating and casing repair, removal, or replacement; installation or removal of downhole production or injection equipment, cement plugs, bridge plugs, and packers set to isolate production or injection intervals." (Cal. Code Regs., tit. 14, § 1684.1.) Of interest to our present discussion, we note that the only type of examples provided in DOGGR's regulation implementing the Class 1 exemption relate to work that is undertaken on the operator's *existing* wells or equipment in use. (Cal. Code Regs., tit. 14, § 1684.1.)

In light of the language of the Class 1 exemption in the provisions discussed above, including the examples provided therein, we fail to see how the drilling of over 200 *new* wells on separate sites within a large oil field, and presumably entailing new casing, cement and other new internal structures applicable to each separate well, can reasonably be classified as the minor alteration of an *existing* facility. These are wells that stand on their own; that is, they are neither a continuation nor minor alteration of some other existing facility or structure at the site. Reasonably speaking, the activity here does not appear to fit the language of the Class 1 exemption described in the above regulations. Exemption categories are " ' "not to be expanded or broadened beyond the reasonable scope of their statutory language." ' " (*World Business Academy v. State Lands Com.*, *supra*, 24 Cal.App.5th at p. 495; see also *Save Our Carmel River v. Monterey Peninsula Water Management Dist.*, *supra*, 141 Cal.App.4th at p. 697 [categorical exemptions usually narrowly construed "to afford the fullest possible environmental protection"].) As the trial court put it, although there may be some degree of flexibility in the application of the exemption, "neither Guideline [section] 15301, nor

its counterpart in [Cal. Code Regs., tit. 14, section] 1684.1, can be reasonably understood to include new oil wells." We agree. Accordingly, we conclude the activity involved here does not fall within the terms of the exemption.

But even if we are mistaken that the drilling of 200 plus new wells at South Belridge is not within the scope of the Class 1 exemption language, the exemption would still fail here for another reason. The underlying premise of DOGGR's and Aera's argument is that the entire oil field may properly be deemed the existing facilities under CEQA. However, that premise is assumed but not adequately supported by legal analysis and authority along with specific recitation to the record. A conclusory assertion is not sufficient. Among other things, it has not been adequately explained how the distinct facilities and uses of other operators in the oil field may be cobbled together to create an all-encompassing existing facility for purposes of this CEQA exemption. (See *Tilbury Constructors, Inc. v. State Comp. Ins. Fund* (2006) 137 Cal.App.4th 466, 482 [matters asserted in perfunctory fashion or not adequately briefed may be passed over, particularly regarding complex issues].)

For all these reasons, we conclude that the Class 1 existing facilities exemption was inapplicable, or at least not established, in this case.

B. <u>Class 4: Minor Alteration in Condition of Land</u>

Aera contends the Class 4 categorical exemption is established by the record. We disagree. Guideline section 15304, entitled "Minor Alterations to Land," provides in relevant part as follows: "Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic tress except for forestry and agricultural purposes." (Guidelines, § 15304.) The same Guideline provides the following examples of the type of activity that would fall within this exemption: grading on land with a slope of less than 10 percent; new gardening or landscaping; filling of earth into previously excavated land with material compatible with the natural features of the site; minor trenching and

backfilling where the surface is restored; and maintenance dredging where the spoil is deposited in a spoil area authorized by all applicable state and federal regulatory agencies. (Guidelines, § 15304, subds. (a)–(c), (f) & (g).)

In applying the Class 4 exemption for minor alterations to land within the sphere of oil and gas operations, DOGGR's corresponding regulation states as follows: "Class 4 consists of drilling operations that result only in minor alterations with negligible or no permanent effects to the existing condition of the land, water, air, and/or vegetation." (Cal. Code Regs., tit. 14, § 1684.2.) The language clearly provides that "drilling operations"—which would presumably include the drilling of wells—are within the scope of the Class 4 exemption if certain qualifications are met. The stated qualifications for the exemption are that the drilling operations will result in only "minor alterations" to land because the effects "to the existing condition of the land, water, air and/or vegetation" are either (i) "negligible" or (ii) not permanent. (Cal. Code Regs., tit. 14, § 1684.2.)

Although DOGGR only asserted the Class 1 categorical exemption, not Class 4, we may consider whether the record shows another exemption applied to the facts of this case. (See, e.g., *CREED-21 v. City of San Diego* (2015) 234 Cal.App.4th 488, 513 & fn. 8; *California Farm Bureau Federation v. California Wildlife Conservation Bd*. (2006) 143 Cal.App.4th 173, 190–191.) DOGGR *did* refer to evidence assertedly bearing on its contention (with respect to the Class 1 exemption) that the new oil wells constituted a minor alteration of existing facilities and the project's effect on existing use would be negligible. The evidence included that South Belridge oil field has been in operation since 1911 and has been densely packed with thousands of oil wells within its boundaries on land that is approximately 10 miles long and two miles wide. As of 2012, it was the third most productive oil field in California, and the sixth most productive oil field in the United States. At the time the 213 approvals were granted to drill new wells, there were more than 32,000 total wells at South Belridge, of which over 12,800 were active. In

terms of percentages, DOGGR noted that the challenged new wells would constitute only approximately 1.6 percent of active wells and .65 percent of total wells. Based on this evidence, DOGGR maintained that "the 213 wells at issue that [it] authorized are interspersed within—and comprise a tiny fraction of—the more than 32,000 active and inactive wells that currently make up the South Belridge oil field." Further, DOGGR asserted that "[g]iven the massive size and decades of operations at this oil field, adding a small number of wells constitutes a minor alteration or negligible expansion." Similar evidence and argument were presented in the trial court.

Aera argues the evidence described above (offered by DOGGR in support of the Class 1 exemption) is sufficient to demonstrate that the Class 4 exemption applies here as a matter of law. We disagree. The referenced evidence related to DOGGR's attempt to show that only a minor alteration of existing facilities was taking place with the addition of the 213 wells and that such alteration would only result in a negligible expansion of overall use. Thus, the impacts being considered were the proportion of new wells to existing oil wells at South Belridge and the proportionately small increases expected in overall use of the oil field. There is no evidence the environmental factors specified in the Class 4 exemption were in view, and the record is silent on those factors with respect to this case. Moreover, since DOGGR never claimed the Class 4 exemption, we cannot imply findings or assume that it considered the environmental impacts specified in the Class 4 exemption. Under the circumstances, we have no alternative but to hold—as the trial court did—that the Class 4 exemption was not demonstrated by substantial evidence in the record.

DISPOSITION

The judgment of the trial court is affirmed. CEQA review was unnecessary in this case because the project approvals were ministerial in nature under the limited facts of

this case, and therefore the trial court correctly denied the petition for writ of mandate. DOGGR and Aera are awarded their costs on appeal.[35]

LEVY, Acting P.J.

WE CONCUR:

FRANSON, J.

SMITH, J.

[35] We note that we have disposed of all issues in this case, including those raised in Aera's precautionary cross-appeal.