

Whittier oil case hinges on meaning of words 'in perpetuity'

By Steve Scauzillo , San Gabriel Valley Tribune

WhittierDailyNews.com



Whittier oil and gas drilling site in the Whittier Hills show a large hole or well cellar with steel rebar sticking up. An orange excavator is parked near the site of the Whittier oil drilling site located in the Whittier Hills. The judge cancelled the project and ordered all equipment removed. Photo was shot Sunday, June 9, 2013. (Courtesy photo)

Forever might have an expiration date of June 30.

At least that's what the city of Whittier and its partner Matrix Oil hope to prove when they ask a court today for permission to drill for oil in a slice of the city's

nature preserve.

In opposing arguments, lawyers for Los Angeles County, the county's Regional Park and Open Space District and the Board of Supervisors say forever is just that — forever. They argue that the sun never sets on preservation.

"The meaning of the term 'in perpetuity' is also clear cut. It means 'a duration without limitations as to time,'" attorney Sean Riley, who represents the county, wrote.

Taxpayer dollars, courtesy of the 1992 county ballot measure Proposition A, paid \$9.3 million for the land to be preserved "in perpetuity". But, Whittier argues, debt service on the \$859 million in bonds for acquisition and improvement of open space, beaches and parks expires on June 30 — therefore so do some usage restrictions.

" 'In perpetuity' as utilized in the project agreement does not mean that each and every square foot of land which the city acquired with Proposition A funds was intended by the parties or required to be restricted from any other use forever," Jim Markman, an attorney representing the city wrote in a court brief.

A panel of three Second District Appellate Court justices are tasked to decide who's interpretation is right today, when the embattled plan to slant-drill for crude oil from under the hills enters a fifth year of courtroom drama.

While approval would set in motion construction of oil and gas wells in a 7-acre portion of the Whittier Hills, close to homes and a school, some say the court case has statewide implications.

If oil drilling is considered an acceptable use within a preserve, than other preserved lands, parks and natural habitats purchased from monies raised by taxpayers could see similar developments.

"If it became case law, all this other protected lands could fall because of Whittier's case," said Roy McKee, president of Whittier Hills Oil Watch, a group opposed to the project.

Los Angeles County Supervisors Mark Ridley-Thomas and Michael Antonovich both said oil drilling should not be an allowable use in Prop. A lands. The board voted to void the lease the city had with Matrix, saying any new use required approval from the Regional Park and Open Space District, an agency created to oversee Prop. A purchases. That agency is governed by the Board of Supervisors.

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Ridley-Thomas said the county must act as “custodians” of Prop. A funds to “ensure that they be used to expand parkland and preserve open space.”

Antonovich said at the time that supporting oil drilling on the site would “open a Pandora’s box” and could subject the county to legal challenges involving other Prop. A parklands and preserves. A Superior Court ruled the project violated Prop. A and the public trust, but left the door open for drilling after June 30. Los Angeles County wants to convince the Appellate Court the current injunction against drilling does not end, but goes on forever.

Matrix Oil attorney Jordan Porter wrote that drilling for oil and gas on public lands is indeed part of the public trust.

“The County/District cannot avoid the fundamental fact that oil and gas exploration on public lands in California is, and has been, a recognized public trust use for nearly a century,” he wrote in an argument filed Dec. 19 with the appellate court.

Mountains Recreation and Conservation Authority, which started out opposing the project but cut a deal to drop its opposition in exchange for an \$11.25 million a year share in the oil revenues, is arguing for the project. (Whittier estimated it could realize \$150 million a year for 10 years, or \$1.5 billion.)

MRCA, which oversees the Santa Monica Mountains National Recreation Area, argued only a 7-acre portion of the 1,280 acres of Whittier hills will be drilled. Goldman quoted the Regional park and Open Space District back in 2010, saying “as a result, public use and enjoyment will be minimally impacted.”

Attorneys for Los Angeles County argued in court documents that the city of Whittier can’t go forward with the project without the District’s approval. Whittier and Matrix argue that the District did not object to the project’s Environmental Impact Report and gave tantamount approval.

“The District has not consented to the lease. Just the opposite. It expressly disapproved the lease and the project on Oct. 29, 2013,” Riley wrote, arguing in his brief that the city, after it bought the land from Chevron using Prop. A monies, must keep it as a nature preserve “in perpetuity,” and that the obligation does not expire with the bond money.

The appellate court trial begins at 11 a.m. today, according to appellate court clerk Shirley Stahl.



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