



June 25, 2018

State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814



Department of Conservation  
Division of Oil Gas and Geothermal Resources (DOGGR)  
801 K Street, MS 18-05  
Sacramento, CA 95814

Re: Comment Letter -- 2018 Draft MOA Between State Water Board and DOGGR

Chair Marcus, Executive Director Sobeck, Director Bunn, and Supervisor Harris

Thank you for the opportunity to comment on the “Revised Memorandum of Agreement between the State Water Resources Control Board and the Department of Conservation Division of Oil, Gas and Geothermal Resources Regarding Underground Injection, Surface Discharges, and Other Program Issues” (the MOA). Our organizations strongly support the revision of the MOA. After 30 years, and numerous challenges within the UIC program and other oil field regulatory issues, a new agreement between DOGGR and the State Board is a necessary step in protecting California’s water from oil and gas development. Effective regulation, that protects ground and surface waters from the oil and gas industry, requires cooperation from both water regulators and oil and gas regulators. This revised MOA should help facilitate effective cooperation. Our organizations support the adoption of this revised MOA and recommend several improvements.

Feedback on sections:

Underground Injection Control

- Aquifer Exemptions
  - We support the general process for reviewing and approving aquifer exemptions, which includes requiring concurrence from the State Board before submitting an application to EPA. This collaborative process has resulted modified exemptions, such as changes in boundaries or added

conditions such as groundwater monitoring. These changes demonstrate that including the State Board in the process has resulted in tangible benefits for groundwater protection. This collaborative approach could be a model for other states and EPA.

- In the review process we support the flexibility on timing offered to the State Board and DOGGR to provide comments, seek additional information, and make approvals. Allowing the agencies time to gather information and make sound decisions is crucial to the protection of groundwater. We oppose adding any artificial time restraints on either agency's decision-making process.
  - We support the State Board's authority to require conditions on exemptions.
  - Groundwater monitoring should be required for all exemptions and should not be a discretionary requirement. We urge DOGGR to amend this MOA to specify that groundwater monitoring be required for all aquifer exemptions and that the State Board is the entity with responsibility to review and approve groundwater monitoring plans.
  - We support the inclusion of water quality requirements/limitations into project approval letters (PALs) as a means to ensure compliance with these requirements. In addition to incorporating these requirements into new and revised PALs, existing injection projects in these aquifers must be reviewed immediately and the PALs should be amended to ensure compliance with these limitations.
  - The MOA contemplates that DOGGR and the State Board may seek to rescind an aquifer exemption. We recommend that this MOA outline a protocol to facilitate the process of sending a rescission request to EPA. Although EPA may not have a process for rescinding an exemption, there is nothing in law or regulation that would prevent such an action. Indeed it may be appropriate to re-grant USDW protections for an aquifer that was previously exempted. The examples of the 11 aquifers that were historically treated as exempt, yet were not granted exemptions demonstrate that aquifers that have been used for injection may be subject to protection at a future date. We suggest that while a rescission application is being prepared, DOGGR and the State Board designate the aquifer as an "exempt aquifer not suitable for injection" or some other classification that does not require federal approval. This designation would then trigger a cessation of all new permits and an immediate halt to any existing injection, and revocation of permits for injection into that aquifer.
- UIC Projects
    - While we support the role of the State Board in reviewing and commenting on UIC project applications, we recommend that the MOA specify a process that aligns with the requirements for aquifer exemptions, requiring written concurrence from the State Board prior to DOGGR issuing a project approval.
    - As noted for aquifer exemptions, we support the flexibility on timing for each agency. We would oppose adding any timing constraints for agency review of UIC approvals.

- Like with aquifer exemptions, we recommend that all UIC projects require groundwater monitoring and that the State Board be responsible for approval and enforcement of monitoring plans.
- We recommend that the MOA specify a public process that includes a comment period and public meeting for all UIC project approvals and modifications. Adding a well to a project is a modification that should trigger this public process and would trigger the modification of a PAL.
- We recommend that project reviews be conducted annually, as specified in DOGGR’s Manual of Instruction (MOI) Sec 170.13.31. The review process and flow chart in the MOA establish a good process for project reviews and should be expanded to include:
  - An annual requirement for DOGGR to send a notice of review to the SWRCB.
  - Requiring DOGGR to respond in writing to all comments made by the SWRCB (or Regional Boards) in the annual/project review process.
  - Establishing a protocol for how DOGGR and the SWRCB respond when a project review identifies non-compliance with regulations or is failing to protect a USDW. This response must include an immediate halt to operations that do not comply with regulations, the PAL, or are not protective of a USDW.
  - A public comment opportunity as part of the project review.
  - A public, online listing of all UIC projects and their project review status, including any reviews in progress, time of last review, and any projects that have not been reviewed in the last year.
- We support the addition of a protocol for revising PALs to incorporate new requirements, and urge that any change in aquifer exemption conditions such as monitoring or limitations on injection trigger an immediate project review to update the PAL.
- We support the addition of the “Water Quality Requirements” section to PALs that specifies the mechanism for monitoring and enforcing compliance.

#### Surface Discharge

- Waste Discharge Requirements and Waivers
  - The MOA should specify enforcement of DOGGR’s SB4 pits discharge prohibition. Specifically, it should clarify how the prohibition on wastewater from stimulated wells is enforced, and which agency ensures compliance. Currently it is unclear which agency is ensuring that wastewater from stimulated wells is not discharged to pits. Based on where well stimulation has occurred in the State and location of pits, it is highly likely that produced water from stimulated wells has been discharged to pits, and neither agency has implemented an enforcement mechanism to bring operators into compliance. Additionally, the Central Valley Regional Board’s general orders on pits conflict with DOGGR well stimulation regulations, by allowing produced water from stimulated wells to be discharged to pits in some situations. This presents a potential enforcement gap and should be addressed in the MOA.

Thank you for considering our recommendations. We welcome an opportunity to discuss our comments with both DOGGR and the State Board.

Sincerely,

Andrew Grinberg  
Clean Water Action

Gustavo Aguirre Jr  
Central California Environmental Justice Network (CCEJN)

Bill Allayaud  
Environmental Working Group

Briana Mordick  
Natural Resources Defense Council