

La Habra Heights Oil Watch v. Shauna Clark
BS152800
January 7, 2015

Return on Writ of Mandate

On January 5, 2015, Respondent Shauna Clark filed a return to the Court's writ. The return indicates that on January 2, 2015, Respondent's City Council approved revised ballot language, removing the word "any" before the word "treatment" in the original ballot language (Clark Decl., ¶¶ 1-3). The new proposed language is as follows (*id.*, ¶ 2):

Shall an ordinance be adopted that prohibits land use for treatment of oil or gas wells that is designed to enhance production or recovery, any new oil and gas wells, and reactivation of idle wells ?"

On January 6, 2015, Petitioners filed an objection to the revised language. Petitioners contend that excising the word "any" from the ballot language still fails to convey the application of the ballot language to specified techniques. Petitioners propose that the Court add the words "certain unconventional" in place of "any". On January 6, 2015, the Intervenor objected to the new language proposed by Petitioners at this late date in the proceeding and further contends that he has not been given an adequate opportunity to respond.

Petitioners' objection has merit. Elections Code § 9203(a) requires that Respondent provide a ballot title that is "a true and impartial statement of the purpose of the proposed measure." The ballot question approved by the City Council does not meet this standard. It still fails to include even a basic description of the specific extraction techniques that Measure A targets – techniques that involve the injection of materials into a wellbore or oil pocket to either enhance the production of petroleum or facilitate its recovery from the drilling site. The removal of the word "any" is insufficient to enable the ballot question to convey "the character and real purpose of the proposed measure." *Widders v. Furchtenicht* (2008) 167 Cal.App.4th 769, 781. Comparison of Measure A to the ballot question provides "clear and convincing proof that the ballot title or summary is ... inconsistent with the requirements of Section 9203." Elections Code § 9204.

Petitioners' objection is sustained. Therefore, the Court does not discharge the writ. The Court does not, however, order Respondent to adopt the language proposed by Petitioners. The Intervenor's objection to that language is also well-taken. (The Court notes, however, that the Intervenor has had adequate time to respond, despite his protestations.) Instead, the Court orders the parties to meet and confer in an attempt to draft language that the parties agree satisfies Section 9203(a). The parties are ordered to return to Dept. 86 at 11:00 a.m. today for a status update.

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FILED
Superior Court of California
County of Los Angeles

JAN 07 2015

Sherri R. Carter, Executive Officer/Clerk
By Annette Gajardo, Deputy
Annette Gajardo

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

LA HABRA HEIGHTS OIL WATCH, CENTER)
FOR BIOLOGICAL DIVERSITY, WILLIAM R.)
PHELPS, OFELIA BERMUDEZ, MICHAEL)
HUGHES, WILLIAM WELCHER,)
Petitioners/Plaintiffs)
vs.)
SHAUNA CLARK, the City Clerk and City)
Manager of the City of La Habra Heights, and)
DOES 1 through V,)
Respondent/Defendant.)
and)
LA HABRA HEIGHTS CITY COUNCIL, BRIAN)
BERGMAN, Mayor of the City of La Habra)
Heights, LAYNE BAROLDI, GREG STEFFLRE,)
ELEE PHILLIPPS, and WILLIAM HINZ, and)
DOES VI through X.)
Real Parties in Interest.)
JAMES PIGOTT, an individual,)
Intervener-Respondent.)

CASE NO.: BS152800
~~Proposed~~ JUDGMENT
Date: January 7, 2015
Time: 9:30 a.m.
Dept: 86
Judge: Hon. Joanne B. O'Donnell

1 Good cause appearing, and pursuant to the Order of this Court issued on December 31,
2 2014, IT IS HEREBY ADJUDGED that:

3 [1] Respondent CLARK, and Respondent's officers, agents, employees, service
4 providers, and all others acting at Respondent's direction and control, to print and distribute
5 the "Ballot Label" (a.k.a., the "Ballot Question") for the initiative measure known as "Measure
6 A" to be voted on in the general municipal election in the City of La Habra Heights on March
7 3, 2015, with the following amendment:

8 The Ballot Label for Measure A that read:

9 "Shall an ordinance be adopted that prohibits land use for any treatment of oil or
10 gas wells that is designed to enhance production or recovery, any new oil and
11 gas wells, and reactivation of idle wells?"

12 Shall be amended to read (deletions in ~~strikethrough~~):

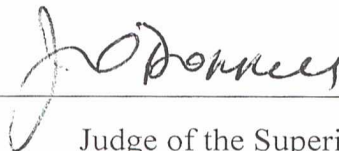
13 "Shall an ordinance be adopted that prohibits land use for ^{certain treatments} ~~any treatment~~ of oil or
14 gas wells ~~that is~~ designed to enhance production or recovery, any new oil and
15 gas wells, and reactivation of idle wells?"

16 [2] All other ballot materials related to Measure A on the ballot in the City of La
17 Habra Heights on March 3, 2015, including but not limited to the Ballot Argument Against
18 Measure A, which had been at issue in this action, shall be printed and distributed in the Ballot
19 Pamphlet without any alteration of any kind; accordingly, each and all of these ballot materials
20 shall be printed and distributed in the Ballot Pamphlet as they were submitted to Respondent
21 CLARK and made available for public examination pursuant to Elections Code section 9295.

22 [3] This Judgment shall fully and finally resolve this entire action.

23 [4] This judgment, and any notice of entry of judgment, may be served upon the
24 parties by facsimile or by e-mail to the parties or to their counsel, in addition to the methods of
25 service expressly authorized by the Code of Civil Procedure.

26 DATED: January 7, 2015



Judge of the Superior Court

JOANNE B. O'DONNELL

1 APPROVED AS TO FORM:

2 Dated: January 7, 2015

EARTHJUSTICE

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4 By: ADRIANO L. MARTINEZ
5 *Counsel for Petitioners LA HABRA HEIGHTS OIL*
6 *WATCH, CENTER FOR BIOLOGICAL DIVERSITY,*
7 *PHELPS, BERMUDEZ, HUGHES, and WELCHER*

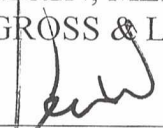
8 Dated: January __, 2015

BEST BEST & KRIEGER, LLP

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10 By: DANA VESSY
11 *Counsel for Respondent CLARK, City Clerk of the*
12 *City of La Habra Heights, and for Real Party in*
13 *Interest LA HABRA HEIGHTS CITY COUNCIL*

14 Dated: January 7, 2015

NIELSEN, MERKSAMER, PARRINELLO,
GROSS & LEONI, LLP

15 
16 By: CHRIS E. SKINNELL
17 *Counsel for Real Parties BERGMAN, BAROLDI,*
18 *STEFFLRE, PHILLIPPS, and HINZ*

19 Dated: January 7, 2015

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24 *Counsel for Intervener-Respondent PIGOTT*