

Excerpts from 40 CFR 146.4, PRC 3131, and 40 CFR 144.3 regarding aquifer exemption requirement/criteria and USDW definition

40 CFR 146.4

According to 40 CFR 146.4, for an aquifer to be considered for exemption, it must meet the following criteria:

- (a) It does not currently serve as a source of drinking water; and
- (b) It cannot now and will not in the future serve as a source of drinking water because:
 - (1) It is mineral, hydrocarbon or geothermal energy producing, or can be demonstrated by a permit applicant as part of a permit application for a Class II or III operation to contain minerals or hydrocarbons that considering their quantity and location are expected to be commercially producible.
 - (2) It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical;
 - (3) It is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption; or
 - (4) It is located over a Class III well mining area subject to subsidence or catastrophic collapse; or
- (c) The total dissolved solids content of the ground water is more than 3,000 and less than 10,000 mg/l and it is not reasonably expected to supply a public water system.

Public Resources Code Section 3131

As amended by SB 83 on June 24, 2015, the CA Public Resource Code section 3131 consists of the following language:

- (a) To ensure the appropriateness of a proposal by the state for an exempted aquifer determination subject to any conditions on the subsequent injection of fluids, and prior to proposing to the United States Environmental Protection Agency that it exempt an aquifer or portion of an aquifer pursuant to Section 144.7 of Title 40 of the Code of Federal Regulations, the division shall consult with the appropriate regional water quality control board and the state board concerning the conformity of the proposal with all of the following:
 - (1) Criteria set forth in Section 146.4 of Title 40 of the Code of Federal Regulations.
 - (2) The injection of fluids will not affect the quality of water that is, or may reasonably be, used for any beneficial use.
 - (3) The injected fluid will remain in the aquifer or portion of the aquifer that would be exempted.
- (b) Based on the consultation pursuant to subdivision (a), if the division and the state board concur that an aquifer or portion of an aquifer may merit consideration for exemption by the United States Environmental Protection Agency, they shall provide a public comment period and, with a minimum of 30 days public notice, jointly conduct a public hearing.
- (c) Following review of the public comments, and only if the division and state board concur that the exemption proposal merits consideration for exemption, the division shall submit the aquifer exemption proposal to the United States Environmental Protection Agency.

Underground Source of Drinking Water (USDW)

40 CFR 144.3 defines an underground source of drinking water (USDW) as an aquifer or its portion:

- (a)(1) which supplies any public water system; or
- (2) which contains a sufficient quantity of ground water to supply a public water system;
and
 - (i) currently supplies drinking water for human consumption; or
 - (ii) contains fewer than 10,000 mg/l total dissolved solids; and
- (b) which is not an exempted aquifer.