



February 22, 2022

California State Lands Commission
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Subject: 2/25/2022: Item 52 Comment re: Legislation to Develop a Cost Study of the Fiscal Impact of a Voluntary Buy-Out of California's Offshore Oil and Gas Leases

Dear Commissioners,

The State Lands Commission can and should terminate offshore oil and gas leases without compensating oil companies. Senate Bill 953 would direct the Commission to terminate offshore oil and gas leases in state waters by December 31, 2023. While it gives the Commission authority to negotiate a voluntary relinquishment of those leases, as introduced there is neither a requirement for compensation nor should there be any taxpayer funds paid to oil companies. Governor Newsom's call to end offshore oil development is an important step toward phasing out California drilling, and such a phase out must not be compensated. Oil companies are legally required to pay for decommissioning and remediation, and thus California taxpayers' funds should neither go toward buy-outs nor a study. Thus, we oppose the cost study for the voluntary buy-out of offshore oil and gas leases.

Offshore oil leases are a danger to the environment, public health, coastal economy, and the climate. The State should not pay to clean up the pollution and hazards of the oil industry. The State already unfairly bears costs and burdens from offshore drilling — climate change, health care, shoreline protection, wildfire, and other costs. Oil companies have long reaped profits from public resources, have benefited financially beyond their investments, and have insufficient financial assurances for decommissioning. Rather than studying how much a voluntary buy-out should cost, the industry should be held responsible for its mess. Oil companies have no right to compensation for the reasonable phase-out of their decrepit offshore oil developments.

Offshore Drilling's Dangerous Track Record

The December 2021 failure of DCOR's pipeline from Platform Eva to shore threatened sensitive areas including Bolsa Chica wetlands, Talbert Marsh, Newport Slough, and the Santa Ana River.¹ While a series of reported oil sheens mobilized protection strategies, the spill signals a much more pervasive and deeper threat to California's coast. It came in the wake of the large San

¹ Vega, Priscilla, California-based oil company identified as source of latest sheen off Orange County coast, LA Times (Dec. 26, 2021).

Pedro Bay Pipeline oil spill in October 2021 that closed beaches and fisheries and killed hundreds of birds, marine mammals, and fish.² And in the not so distant past in 2015, the Plains All American pipeline that transported offshore oil spilled up to 142,000 gallons of oil on the Santa Barbara coast.

These recent spills join numerous incidents related to state waters drilling. In 1993, a pipeline serving California offshore leases in the West Montalvo field ruptured and spilled 87,150 gallons of oil into McGrath Lake and the Pacific Ocean. In 1983, man-made drilling Island Esther was dangerously washed away in a storm and later replaced by Platform Esther.

California's offshore oil industry also has a bad track record of violations. State records, obtained by a public records request, showed that companies drilling for oil and gas off the southern coast of California have violated state regulations at least 381 times between 2015 and 2018. The state's biggest oil and gas producer, California Resources Corporation, operates Long Beach's coastal drilling operations through its subsidiaries Tidelands and THUMS Long Beach Company. The three related entities have been hit with 293 notices of violation since February 2015, in Long Beach and the Huntington Beach Oil Fields.

Two offshore drilling platforms operated by DCOR, LLC were found to be poorly maintained during state inspections in March 2015. Regulators found that all 42 wellheads on Platform Eva off Huntington Beach "have moderate to significant corrosion," in violation of state law. On Platform Esther off Seal Beach, most of the 30 wellheads were found corroded, as were the valves and flanges, to the point where it could impair operation of the equipment, the report said. The records also detail public safety threats from offshore platforms that were neglected by two companies as they filed for bankruptcy protection, and those leases have now been quitclaimed. Rincon Island's platform off Ventura County was found to be in a "severe state of disrepair" in April 2016 as the state ordered corrective actions "to prevent damage to life, health, property, natural resources." Regulators inspecting Platform Holly near Santa Barbara found evidence that Venoco had abandoned wells that needed to be plugged and remediated.

Most of California's offshore drilling infrastructure was built in the 1960s and have already passed their intended life span and pose safety concerns. Old oil platforms and pipelines are ticking time bombs for the next oil spill, equipment failure, or other incident. According to scientists, aging poses risks of corrosion, erosion and fatigue stress to subsea pipelines.³ Subsea pipeline corrosion appears to accelerate over time,⁴ and can act synergistically with fatigue stress to increase the rate of crack propagation.⁵ One offshore pipeline study found that after 20 years

² Los Angeles Times Staff, Full coverage: What to know about the Huntington Beach oil spill (Oct. 3 – Nov. 30, 2021), available at <https://www.latimes.com/california/story/2021-10-03/huntington-beach-oil-spill-full-coverage>; Oiled Wildlife Care Network, Pipeline P00547 Incident Wildlife Numbers (Nov. 11, 2021), available at <https://owcn.vetmed.ucdavis.edu/pipeline-p00547-incident>.

³ Petroleum Safety Authority Norway, Material Risk – Ageing offshore installations. Prepared by Det Norske Veritas on request from Petroleum Safety Authority Norway (2006). Available at <http://www.psa.no/reportarchive/category1033.html>.

⁴ Mohd, M.H. and J.K. Paik. Investigation of the corrosion progress characteristics offshore oil well tubes. *Corrosion Science* 67:130-141 (2013).

⁵ PSA Norway 2006, supra note 46.

the annual probability of pipeline failure increases rapidly, with values in the range of 0.1 to 1.0, which equates to a probability of failure of 10% to 100% per year.⁶ Another study covering 1996 to 2010 found that accident incident rates, including spills, increased significantly with the age of infrastructure.⁷

A report published in 2010 found that the number of oil spills from offshore rigs and pipelines between 2000 and 2009 *more than quadrupled* the rate of spills in prior decades.⁸ In particular, from the early 1970s through the 1990s, offshore rigs and pipelines averaged about four spills per year of at least 50 barrels (or 2,100 gallons). The average annual total skyrocketed to more than 17 from 2000 to 2009, and averaged 22 per year from 2005 to 2009 alone.⁹ And the number of spills, as well as the quantity of spilled oil, grew significantly worse even when taking increased production in account.¹⁰ In other words, another oil spill in California's ocean environment is not a question of if, but a question of when.

The State Lands Commission's Has a Public Trust Duty to End Offshore Leases

As noted in the Staff Report, the risks of environmental and economic catastrophe from oil spills coupled with climate change call for a rapid end to offshore oil and gas development. The State Lands Commission's continued leasing and authorization of state lands for offshore oil and gas drilling runs counter to its public trust duties. The public trust doctrine establishes that a state owns "all of its navigable waterways and the lands lying beneath them as trustee of a public trust for the benefit of the people."¹¹ The doctrine requires the state to preserve waterways for navigation, commerce, fishing, scientific study, recreation, preservation of habitat for birds and marine life, and protection of wild animals themselves.¹² Authorizing the continued production of offshore oil and gas despite the risks of oil spills to California's natural resources, the woefully outdated infrastructure, and the harm continued fossil fuel production poses to the climate violates the state's public trust responsibilities.

The Commission may also rely on the lease terms to end the leases due to past pollution and imminent risks to the environment and safety. The Commission has a duty to hold lessees accountable to their lease agreements and other required standards. Even by the terms of the leases, what is now known of the offshore operations and their risks should counsel that those terms risk or have been violated. The leases and California law states that the operations shall "prevent pollution and contamination of the ocean and tidelands or any impairment of and

⁶ Bea, R., C. Smith, B. Smith, J. Rosenmoeller, T. Beuker, and B. Brown, Real-time Reliability Assessment & Management of Marine Pipelines. 21st International Conference on Offshore Mechanics & Arctic Engineering. ASME (2002).

⁷ Muehlenbachs, et al. 2013. The impact of water depth on safety and environmental performance in offshore oil and gas production. *Energy Policy* 55:699-705.

⁸ Alan Levin, Oil Spills Escalated in this Decade, USA Today, June 8, 2010, *available at* http://usatoday30.usatoday.com/news/nation/2010-06-07-oil-spill-mess_N htm.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Nat'l Audubon Soc'y v. Superior Court*, 33 Cal. 3d 419, 433-34 (Cal. 1983).

¹² *Ctr. for Biological Diversity*, 166 Cal.App.4th 1349, 1363 (Cal. Ct. App. 2008); *Santa Teresa Citizen Action Grp. v. City of San Jose*, 114 Cal. App. 4th 689, 709 (Cal. Ct. App. 2003).

interference with bathing, fishing, or navigation in the waters of the ocean.”¹³ Additionally, continued dirty and dangerous operations of these aging platforms violate California laws to protect the coast, the climate, and wildlife.

In sum, the law requires that Commission protect public health, climate, water and other trust resources. It not only has the authority but also the duty to terminate leases to protect those important state resources.

The Polluter Must Pay, Not the State

The Commission should not be swayed by the oil industry wrongly declaring that any attempt to terminate leases is unlawful or requires compensation for their vested rights or taking of private property.

First, offshore oil and gas leases are on public land — California state lands — and thus terminating a lease is not a taking of private property. The operators’ rights extend at most to the terms of the lease. Moreover, even in the exceptional circumstance where government action deprives a property owner of all value of the property, courts will still decline to find a taking if the restricted activity is a public nuisance.¹⁴

Oil spills and chronic pollution from offshore oil and gas activities pose a public nuisance especially in light of the age of California’s offshore oil infrastructure that is long past its intended life span. Additionally, the scientific consensus on the fossil fuel industry’s effect on the climate, together with countless studies linking fossil fuel production with other adverse environmental and public health harms, shows oil and gas production is a public nuisance.¹⁵

Second, any vested rights that oil operators once had have long expired. Even vested rights can be terminated with a reasonable phase out, during which the lessee can recoup a reasonable return on its investment.¹⁶ The offshore oil leases are more than sixty years old, and the anticipated life span of offshore platforms is generally 25 years. California’s offshore oil developments have operated for decades, have recouped their costs many times over, and should not require any amortization. Further, the recouped costs under a reasonable amortization period should be far less than an oil company’s expected profits because courts will balance “the public gain to be derived from a speedy removal of the nonconforming use against the private loss

¹³ Pub. Res. Code 6873.

¹⁴ See *Keystone Bituminous Coal Ass’n v. DeBenedictis*, 480 U.S. 470 (1986); *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1029 (1992) (confirming once again that all property is subject to “background principles of the State’s law of property and nuisance[.]”)

¹⁵ Of note, the *Lucas* decision recognized that some activities can *become* nuisances even if they were not thought to be nuisances when first authorized.

¹⁶ *Metromedia, Inc. v. San Diego* (1980) 26 Cal.3d 848, 882; See also *In Rith Energy v. United States*, (Fed. Cir. 2001), 270 F.3d 1347, a coal company brought a takings claim when its permit was revoked after extracting only 9% of what the coal it intended to produce. The Court confirmed that this was not a taking under *Lucas* because the company was allowed to extract some value before operations ceased.

which removal of the use would entail.”¹⁷ Because the public gain from a phase out would be enormous, it should overwhelm any costs to the oil companies.

Vested rights may be terminated or impaired immediately to address a “compelling public necessity”¹⁸ or prevent “a menace to the public health and safety or a public nuisance.”¹⁹ Any business “may be wholly prohibited, where their danger is sufficiently great.”²⁰ Here, continued production from the aging infrastructure is a health and safety menace and public nuisance and counsels against any vested rights.

Finally, the state always has the authority to halt operations that pose a danger to health and safety. Until these leases are terminated, the millions of gallons of crude oil extracted and pumped through offshore and coastal pipelines every day continue to fuel the climate crisis and pose a toxic threat to the to the people, wildlife, and unique coastal environment of California.

In addition to the oil spills discussed above, existing offshore drilling deepens the climate emergency. The overwhelming scientific consensus has conclusively determined that without significant, rapid emissions reductions, warming will exceed 1.5 degrees Celsius and will result in catastrophic damage around the world. Every fraction of additional warming above 1.5 degrees Celsius will worsen these harms, threatening people’s lives, health, safety, and livelihoods; as well as the economy and national security for this generation and future generations. To keep within the 1.5°C limit, the world’s fossil fuel production must decrease by roughly 6% per year between 2020 and 2030.²¹ Most developed oil and gas fields and coal mines must be shut down before their reserves are fully depleted to keep warming to below 1.5°C.²² In short, existing oil production must be phased out to avoid dangerous climate change.

Oil drilling platforms, pipelines and refineries also create air pollution, including carcinogens and endocrine disruptors, that threatens human health. Volatile organic compounds (VOCs) emitted during offshore drilling include the “BTEX compounds” — benzene, toluene, ethyl benzene and xylene — which Congress has listed as Hazardous Air Pollutants.²³ Many of these VOCs are associated with serious short-term and long-term effects to the respiratory, nervous or circulatory systems.²⁴ Additionally, VOCs create ground-level ozone, or smog, which can contribute to asthma, premature death, stroke, heart attack and low birth weight.²⁵

¹⁷ *Id.* at pp. 882-883.

¹⁸ *Jones v. Los Angeles* (1930) 211 Cal. 304, 314.

¹⁹ Davidson, *supra*, 49 Cal.App.4th at 650 (finding a setback ordinance could override building owner’s vested rights if “sufficiently necessary to the public welfare”).

²⁰ *Jones*, *supra*, 211 Cal. at 316.

²¹ *Id.*

²² Oil Change International, *Drilling Toward Disaster: Why U.S. Oil and Gas Expansion Is Incompatible with Climate Limits* (2019), <http://priceofoil.org/drilling-towards-disaster>.

²³ 42 U.S.C. § 7412(b).

²⁴ Colborn, T. et al. 2011. Natural gas operations from a public health perspective. *Human and Ecological Risk Assessment* 17: 1039- 1056 (2011)

²⁵ Jerrett, M. et al. Long-term ozone exposure and mortality. *N Engl J Med* 360:1085-1095 (2009).

The fossil fuel companies that operate in California state waters should also not be compensated for relinquishing their leases because they have significant unfunded decommissioning costs for which they are responsible and need to be paid. The oil industry is expected to pay the entirety of the financial costs of its activities, consistent with the “polluter pays” principle as articulated in the Public Resources Code.²⁶ The oil companies have a duty and are financially responsible for decommissioning their oil and gas developments. Specifically, the “operator shall become responsible and liable, until each obligation under this subdivision is met, for plugging and abandoning all wells and decommissioning all production facilities and related infrastructure.”²⁷ This is also specified in each of the leases. While costs vary, it costs around \$100 million to decommission offshore platforms off California. While bonding has improved, the funds remain insufficient to cover costs. Platform Emmy has only a \$30 million bond, Platforms Eva and Esther have a \$21 million bond. If anything, the Commission should require immediate prepayment of full decommissioning costs. The recent high-profile bankruptcies of oil producers like Venoco, HVI Cat Canyon, and California Resources Corporation underscore the need to act quickly before oil companies try to evade their responsibilities to pay for cleanup costs.

To the extent that the Commission decides to study the costs of terminating offshore oil leases, it should not pay oil companies but instead compensate environmental justice communities that have experienced the disproportionate burden of the fossil fuel industry pollution. It should also create good, new jobs for the workers and their families with accountability for supporting their successful transition. These costs should be borne by the fossil fuel industry. The State should investigate and hold oil companies accountable for their legal violations and pursue criminal, civil, regulatory, and administrative remedies for those violations, including climate damage.

Conclusion

The two pipeline spills off Huntington Beach in 2021 that dumped crude oil into California state waters demonstrates why dirty fossil fuel development is a public nuisance and why offshore oil and gas leases should be terminated. Until they are, the oil production, transportation and processing threatens the climate, people, wildlife and economy of California. The Commission has the authority and duty to protect our public trust resources and must immediately end offshore drilling. Taxpayers should not pay the toxic oil industry that has profited off public resources, polluted our air, water, and climate for decades.

²⁶ Pub. Resources Code, § 3250 (“The Legislature further finds and declares that, although the abatement of such public nuisances could be accomplished by means of an exercise of the regulatory power of the state, such regulatory abatement would result in unfairness and financial hardship for certain landowners, while also resulting in benefits to the public. The Legislature, therefore, finds and declares that the expenditure of funds to abate such nuisances as provided in this article is for a public purpose and finds and declares it to be the policy of this state that *the cost of carrying out such abatement be charged to this state’s producers of oil and gas* as provided in [this] Article.”) (emphasis added)

²⁷ Pub. Res. Code § 6829.4 (b)(1).

Sincerely,

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