



December 15, 2023

California State Lands Commission  
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**Subject: Comment re December 5, 2023 Item 61 (Report on the Commission’s progress in implementing AB 2257)**

Dear Commissioners,

The Center for Biological Diversity (“Center”) submits the following comments on Staff Report 61 (Informational) and Item 61 of the State Lands Commission’s December 5, 2023 meeting. The Center supports termination of offshore oil and gas production leases in state waters and requiring lessees to plug and abandon all oil and gas wells; decommission pipelines, offshore platforms, and attendant production facilities; and restore the associated tidelands and submerged lands without delay. It is our expectation that “fair compensation” to oil companies contemplated by the cost study following relinquishment or termination of the leases would be zero.

We base this expectation on several factors, including but not limited to: 1) continued operation of the leases constitutes a public nuisance, the abatement of which does not constitute a taking and requires no compensation, 2) even if considered a taking (which it is not), the lessees are entitled to no compensation and in fact have financial responsibilities to plug and abandon, decommission, and restore the affected areas, costs that likely far exceed any remaining value of continued operation (to which they are not entitled), 3) the companies have already imposed other significant costs on the state and more than recouped their investments in the operations, and 4) continued oil and gas production poses an unacceptable threat to public trust resources.

While there should be no compensation to the lessees, we provide the following comments on the factors the consultant is required by law to consider in the study and those they should consider in the study, which should all factor into the final amount lessees will owe the state.

**Regarding existing factors enumerated in the law**

*(1) Expected duration of oil production at the time of leasing.*

Although many of the leases contain language allowing the lease to continue until the lease is no longer producing “in paying quantities,” using a perpetual measure of extraction is both inexact and unrealistic.

Several studies indicate that the expected lifespan of much of the existing offshore infrastructure in use today was 15-30 years, which has already elapsed, and that there is a need to better understand if that

lifespan can be safely extended should lessees wish to continue operations.<sup>1,2</sup> Given what we know today about the impacts of oil and gas production, transport, and consumption and the risks associated with aging infrastructure, it cannot be reasonably argued that an operator of offshore oil and gas infrastructure that is more than 30 years old expects to safely continue production and operation. Perpetuating oil and gas production off the coast of California puts the state at risk of an oil spill every single day.

Platforms Emmy, Esther, and Eva were all built in the 1960s and have all significantly surpassed their intended lifespans. These rigs should be decommissioned for safety and environmental protection reasons and should not be expected to continue producing oil and gas at all.

Not only has the infrastructure outlived its intended lifespan, but circumstances have changed. We appreciate that Staff Report 61 acknowledges the significant and growing environmental impacts and threats of oil and gas production, including from greenhouse gas emissions, other air pollution burdens (that fall disproportionately on environmental justice communities), and oil spills that harm marine and coastal ecosystems. The Staff Report notes:

The risk of an oil spill, and the economic and environmental catastrophe that could follow, coupled with the fact that fossil fuels are the primary cause of climate change, call for California to seek out ways to quicken the end of offshore oil and gas development in state waters.<sup>3</sup>

The need for this transition is because these impacts impose *costs*, costs that must be assessed in this study.

Also before the Commission at its December 5 meeting is Staff Report 59 (relating to an Analysis of Public Trust Resources and Values (APTR) to assess the risks and impacts to Public Trust resources of all 12 leases for offshore oil and gas pipelines under the Commission's leasing jurisdiction). Staff Report 59 acknowledges the very different landscape we face today than when California's oil and gas infrastructure was approved and built. For example,

Since the pipelines were first installed, global temperatures have steadily increased and the resulting impacts have become significantly more pronounced.... In the decades since the pipelines were installed, California's coastal and marine economies and communities, and their needs and priorities, have evolved considerably. Other coastal and marine uses, such as recreation, tourism, and maritime trade have expanded and diversified the State's and local communities' reliance on the coast and ocean. In 2020, recreation and tourism accounted for 54 percent of the state's marine economy GDP and 74 percent of marine economy employment (NOAA, 2022 Marine Economy Report)... The State and the Commission have become acutely aware of the impacts that heavy polluting industries,

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<sup>1</sup> Nelson, Jake, et al, *Evaluating Offshore Infrastructure Integrity*, NETL Technical Report Series (2021), available at <https://www.osti.gov/servlets/purl/1780656>.

<sup>2</sup> Isaac Animah, Mahmood Shafiee, Condition assessment, remaining useful life prediction and life extension decision making for offshore oil and gas assets, *Journal of Loss Prevention in the Process Industries*, Volume 53, 2018, Pages 17-28.

<sup>3</sup> California State Lands Commission. Staff Report 61 (December 5, 2023) at 7-8.

such as oil and gas, have on underserved communities and California Native American tribes.<sup>4</sup>

These same considerations should be taken into account in the AB 2257 study.

Finally, Staff Report 61 downplays the goals set by Governor Gavin Newsom by referring to the call for a “transition to a carbon neutral energy sector by 2045.” The Governor has issued a rulemaking to halt issuance of fracking permits by 2024 and directed the California Air Resources Board to analyze pathways for a full phaseout of fossil fuel extraction by 2045 at the latest. This should be made clear in the Commission’s analysis.

*(2) State revenues received to date.*

It is not clear how this factor is relevant. Revenue-sharing was a part of the original agreement between the lessee and the state and should not impact negotiations for voluntary relinquishment.

If this amount is somehow factored in, we encourage the study and the Commission to also evaluate the costs borne by the state over these past decades, including past (and future) enforcement, inspections, and oversight costs, short-term and long-term oil spill impacts, climate-related costs, and health costs.

*(3) Expected remaining life of the reservoir based on proven reserves.*

This calculation should be limited to existing entitlements and technologies. This figure should not include oil recoverable by new wells, well deepening, sidetracking, or other theoretically permitted activities. Adding new oil drilling permits is not a foreseeable outcome given California’s climate goals, global limits delineated by the Intergovernmental Panel on Climate Change (IPCC), and CalGEM’s mission of “protecting public health, safety, and the environment as we regulate the drilling, operation, and eventual permanent closure of oil, gas, and geothermal wells.”<sup>5</sup>

Staff report 61, Table 3 estimates 10.3-18.8 years of further production from the various lease areas, but it should not be "expected" that oil platforms will continue producing when it is expected that: (1) fossil fuel demand will fall with California’s transition to electric vehicles, renewable energy infrastructure, and greater energy efficiency; and (2) greenhouse gas emission constraints show the majority of oil and gas must stay in the ground in order for humankind to have chance to limit global warming to 1.5 degrees Celsius. A 2021 analysis concluded that globally at least 58% of oil reserves and 59% of gas reserves must be kept in the ground in order to even have a 50-50 chance of meeting a 1.5°C limit.<sup>6</sup> In short, to limit warming to 1.5°C, governments must immediately begin a managed decline that halts the approval of new fossil fuel production and infrastructure<sup>7</sup> and phases out production in many existing

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<sup>4</sup> California State Lands Commission. Staff Report 59 (December 5, 2023) at 3-4.

<sup>5</sup> California Department of Conservation. <https://www.conservation.ca.gov/calgem/Pages/Oil-and-Gas.aspx>.

<sup>6</sup> Welsby, Dan et al., Unextractable fossil fuels in a 1.5 °C world, 597 Nature 230 (2021), <https://doi.org/10.1038/s41586-021-03821-8>.

<sup>7</sup> Tong, Dan et al., Committed emissions from existing energy infrastructure jeopardize 1.5°C climate target, 572 Nature 373 (2019); Pfeiffer, Alexander et al., Committed emissions from existing and planned power plants and asset stranding required to meet the Paris Agreement, 13 Environmental Research Letters 054019 (2018).

fields and mines before their reserves are fully depleted. The U.S. (and its individual states, particularly those like California that continue to rank high on consumption and production) has a responsibility to undertake a more rapid and aggressive managed decline than globally because of its dominant role in driving the climate crisis and its harms, combined with its greater financial resources and technical capabilities to implement a just fossil fuel phase out and rapid transition to clean, renewable energy.<sup>8</sup>

*(4) Reasonably anticipated unrealized lessee revenues and profits.*

The state cannot reasonably anticipate that lessees can or should recover every last drop of oil offshore. As already stated, there is strong scientific consensus around the devastating impacts of climate change among the many other harms of oil and gas production, transport, and use. There is also political and public momentum urging agencies and governments to prioritize an expedited phaseout of fossil fuel extraction. This is leading to actions by governments to limit oil and gas extraction, which are necessary to preserve a stable climate and a livable planet.

More specifically, it is not a foreseeable outcome that Platform Eva will continue to produce oil and gas because the operator (DCOR) is not currently permitted to transport oil to shore via pipeline 0919 which ruptured in December 2021, nor have they received approval of a lease amendment application that would allow the reversal of oil flow through federal platforms to transport oil to the Port of Long Beach. The latter would have unacceptable negative health consequences by increasing oil and gas transportation and processing near already overburdened Long Beach communities living near the Port.

It is also relevant that the Development and Production Plans (DPPs) for the Beta Unit will undergo federal review this year, and the outcome of that review may impact the ability of Platform Eva to transport oil and gas to or from the Beta Unit in federal waters.<sup>9</sup> The outlook of oil and gas production on Platform Eva is far from certain based on these regulatory factors.

*(5) Reasonably anticipated unrealized state revenues.*

We urge the study to include in its evaluation of this factor the benefits (including financial) to the state and its residents from a prompt cessation of oil and gas production from aged and dangerous offshore infrastructure.

As explained in sections (3) and (4) above, there are several clear indications and predictors that fossil fuel production must and will sharply decline in the coming years including as a result of California's active and accelerating renewable energy transition, critical fossil fuel emissions constraints, public will and political momentum, and other regulatory and operational standards that the oil and gas industry is not poised to meet. For these reasons, 10-18 years is an unrealistic timeframe for the anticipation of state revenues from offshore oil and gas operations.

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<sup>8</sup> Muttitt, Greg & Sivan Kartha, Equity, climate justice and fossil fuel extraction: principles for a managed phase out, 20 Climate Policy 1024 (2020); U.S. Climate Action Network, The U.S. Climate Fair Share (2020), <https://usfairshare.org/backgrounder/>.

<sup>9</sup> *Center for Biological Diversity v. Haaland*, Case No. 2:22-cv-06996-CAS-KS, Settlement Agreement, available at <https://www.biologicaldiversity.org/programs/oceans/pdfs/33-1--2023-11-15--Settlement-Agreement-Beta-Unit-DPP.pdf>.

California's economy is the 5<sup>th</sup> largest in the world among states and countries, and the coastal tourism, recreation, and fishing industries that depend on healthy coastal resources generate over \$42 Billion in GDP and support more than half a million jobs.<sup>10</sup> The short- and long-term financial benefits of protecting the coastline are not limited to these figures, but these alone far outweigh any potential benefit to state revenues from continued oil and gas production from these leases.

Further, any consideration of lessees' and state profits or revenues must be counterbalanced against the harms and costs these operations inflict upon the state and its residents, for which the lessees must be held accountable. These impacts include, but are not limited to, cleanup and restoration efforts following oil spills, harm to coastal resources, contributions to climate destabilization, state resources expended in monitoring and enforcement, and the direct and indirect public health impacts of their operations.

*(6) Lessees' decommissioning and restoration costs.*

As oil well complexity increases with each well deepened, sidetracked, or expanded in any direction, the costs of plugging and abandonment increase. Reported values in the preliminary cost study estimates should be adjusted to account for the additional costs of any future well development and ongoing production. Any calculations of anticipated revenues and profits should be viewed in direct relation to these costs along with the costs to restore and remediate the oil and gas sites. Delaying decommissioning also only increases the risk of leaks and spills due to ongoing wear and vulnerability of already old infrastructure. Decommissioning sooner will confer a greater public benefit at a lower cost.

A 2023 study found that while some sources of funding have been secured for decommissioning of onshore oil and gas infrastructure, costs have been woefully underestimated.<sup>11</sup> Due to the increased difficulty and complexity of plugging and abandonment operations at sea, projected costs of plugging, abandonment, decommissioning, and restoration can be expected to be even higher (and more underestimated) than the projected onshore costs.<sup>12</sup>

**Additionally, we urge the Commission to consider the following factors that were not enumerated factors but are nonetheless critical to the cost study, some of which were mentioned above**

1. Lessees' revenues and profits generated to date from the oil and gas leases, which should be considered available to the state in the event an operator tries to avoid its financial obligations to plug, abandon, and decommission all offshore infrastructure.
2. Costs associated with oil production to date, including state inspection, enforcement, oversight, and cleanup costs.
3. Costs to California and its residents from:
  - a. health impacts associated with fossil fuel extraction, transportation, refining, and processing

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<sup>10</sup> *Clean Coast Economy*. Oceana (2018). <https://usa.oceana.org/wp-content/uploads/sites/4/4046/california.pdf>.

<sup>11</sup> Purvis, Dwayne, *There Will Be Blood: Decommissioning California's Oilfields*. Carbon Tracker (2023). <https://carbontracker.org/reports/there-will-be-blood/>

<sup>12</sup> *Offshore Oil and Gas Field Decommissioning: Disputes and Other Challenges*. OGV Energy (2021) <https://www.ogv.energy/news-item/offshore-oil-and-gas-field-decommissioning-disputes-and-other-challenges>

- b. impacts to Tribal and cultural resources from continued occupation by oil infrastructure, spill risks and damages, and fossil fuel-driven climate change and sea level rise
  - c. climate and natural resource impacts from continued production, transport, and use of fossil fuels
4. Fiscal benefits of:
- a. restoring offshore oil production sites
  - b. eliminating the potential for spills, accidents, and other environmental harms
  - c. eliminating the costs of future inspection, enforcement, oversight, and cleanup
  - d. eliminating greenhouse gas emissions
  - e. eliminating harm to public health and safety
  - f. reducing harms from transport, refining, and combustion of oil and gas
  - g. the cost savings associated with decommissioning sooner

As noted above, the Commission’s forthcoming Analysis of Public Trust Resources and Values regarding pipelines offshore California will:

evaluate each pipeline lease’s (1) spill risks and pipeline integrity; (2) potential impacts to coastal and marine ecosystems and economies; (3) consistency with the State’s efforts to address the climate crisis; (4) consistency with the public’s current needs and uses of the coastal and marine environments, with a particular focus on the needs of underserved communities and tribal governments and communities; and (5) impacts to tribal cultural resources and sacred landscapes.<sup>13</sup>

The risks of oil spills; potential environmental consequences of oil spills; climate change impacts of the oil and gas produced and transported; and impacts to recreation, tourism, public health, environmental justice, tribal cultural resources, and other uses and values is too great to justify continuing oil and gas development and transportation off the coast of California. While the draft cost study states it did not investigate “possible environmental liability related to the properties due to unlawful pollution or other ecologic damage; therefore, our estimates do not include any costs due to such possible liability,”<sup>14</sup> the many costs of oil and gas operations (and the savings that would result via prompt decommissioning) *should* be included in the 2257 cost study for it to provide a full foundation for action.

What does not belong in the cost study and that we were dismayed to see in the draft is a section on potential carbon credits associated with decommissioning (Section 8.4). Just as zero compensation is due to these lessees, they should not be permitted to profit from doing what should be done to comply with the existing laws and obligations of the state to protect public trust resources and safeguard public health, safety, and welfare

That oil and gas production constitutes a nuisance is further illustrated by the harms already inflicted on the state and legal battles underway to address some of the impacts of the oil and gas industry’s continued operation. For example, multiple local governments, including several counties in California, have sued fossil fuel producers to recover damages for climate change impacts, because fossil fuel

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<sup>13</sup> California State Lands Commission, Staff Report 59 (December 5, 2023), at 2.

<sup>14</sup> California State Lands Commission, Staff Report 59 (December 5, 2023), Exh. A Draft Cost Study at 17, available at [https://slcprdwordpressstorage.blob.core.windows.net/wordpressdata/2023/11/12-05-23\\_59.pdf](https://slcprdwordpressstorage.blob.core.windows.net/wordpressdata/2023/11/12-05-23_59.pdf).

extraction constitutes a public nuisance (and for other violations of law).<sup>15</sup> The California Attorney General has recognized and supported these claims in other cases, defending local governments' rights to address nuisances stemming from fossil fuel extraction, which include "loss of land due to rising seas, reducing our drinking water supply by decreasing snowpack, harming air and water quality, reducing the productivity of our agriculture and aquaculture, decimating biodiversity and ecosystem health, and increasing the intensity of severe storms and wildfires."<sup>16</sup> The State of California itself has brought a lawsuit against major oil companies for promoting fossil fuel consumption while hiding the resulting damage to the climate. As Attorney General Bonta stated after filing the lawsuit:

Oil and gas companies have privately known the truth for decades — that the burning of fossil fuels leads to climate change — but have fed us lies and mistruths to further their record-breaking profits at the expense of our environment. Enough is enough.... With our lawsuit, California becomes the largest geographic area and the largest economy to take these giant oil companies to court. From extreme heat to drought and water shortages, the climate crisis they have caused is undeniable. It is time they pay to abate the harm they have caused. We will meet the moment and fight tirelessly on behalf of all Californians, in particular those who live in environmental justice communities.<sup>17</sup>

We are in a climate emergency — global experts have repeatedly called for deep, rapid, and sustained reductions in greenhouse gas emissions to avoid the worst consequences of climate change.<sup>18</sup> The Fifth National Climate Assessment reported that "[e]ven if greenhouse gas emissions fall substantially, the impacts of climate change will continue to intensify over the next decade, and all US regions are already experiencing increasingly harmful impacts."<sup>19</sup> Oil and gas lessees are not entitled to continue exacerbating this global crisis. Oil and gas companies challenging actions taken to protect the public as "takings" will be forced to confront this evidence. Given the well-documented and wide-ranging climate and other damage caused by oil and gas operations, it is increasingly unlikely that oil and gas entities will win this fight, and highly unlikely that categorical takings claims against agency actions phasing out or restricting oil and gas production will succeed.

These climate harms are in addition to the local adverse impacts to air, water, and health from oil and gas production. In 2021, tens of thousands of gallons of crude oil gushed into the beautiful waters off Huntington Beach, making landfall and impacting sacred lands and waters of the Acjachemen and Tongva Peoples, highlighting the recurring damage that offshore drilling causes to the human and

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<sup>15</sup> See, e.g. Columbia Law School and Arnold & Porter, U.S. Climate Change Litigation, <https://climatecasechart.com/us-climate-change-litigation/> (last updated in December 2023).

<sup>16</sup> Brief for California Attorney General Xavier Becerra as Amicus Curiae at 15, *County of San Mateo v. Chevron*, Case No. 18-15499 (9th Cir., filed Jan. 29, 2019).

<sup>17</sup> Office of the Attorney General, Press Release, Attorney General Bonta Announces Lawsuit Against Oil and Gas Companies for Misleading Public About Climate Change (Sept. 16, 2023), <https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-lawsuit-against-oil-and-gas-companies>.

<sup>18</sup> IPCC, 2023: Summary for Policymakers. In: Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, pp. 1-34, doi: 10.59327/IPCC/AR6-9789291691647.001, [https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC\\_AR6\\_SYR\\_SPM.pdf](https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf).

<sup>19</sup> USGCRP, 2023: Fifth National Climate Assessment. Crimmins, A.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, B.C. Stewart, and T.K. Maycock, Eds. U.S. Global Change Research Program, Washington, DC, USA. <https://doi.org/10.7930/NCA5.2023>.

wildlife communities who call it home. Orange County beaches shut down for a week, where tar and oil killed birds, wildlife, and local tourism. Seven offshore drilling platforms on the California coast have been shut down since the 2015 failure of Plains All American Pipeline's coastal oil pipeline caused the Refugio Oil Spill. The Center calculated that production from those platforms could have added 33.9 million metric tons of carbon dioxide pollution to the atmosphere from 2015-2020.<sup>20</sup> That's the equivalent of burning almost 37 billion pounds of coal. The company that owned the pipeline in the 2015 spill was criminally prosecuted and found guilty of nine criminal charges by a jury in 2018.

Oil and gas production has long polluted and disrupted coastal marine environments, imposing continuing risks on coastal communities' economies, health, and natural resources. Much of the infrastructure is old and corroded, long past its lifespan. Aging infrastructure with limited deliverables risks stranded assets, as industry offloads decommissioning and cleanup obligations on the public. The 11 remaining active oil and gas leases and three active offshore platforms in state waters pose ongoing and unacceptable threats to the \$42 billion coastal economy and conflict with California climate policy.

The U.S. Pipeline and Hazardous Materials Safety Administration has documented more than 12,500 pipeline incidents in the past 20 years, 660 of which involved human fatalities.<sup>21</sup> On November 16, 2023, a subsea pipeline in the Gulf of Mexico ruptured spilling over 1 million gallons of crude oil into the sea most likely caused by corrosion.<sup>22</sup> This major spill was just the latest result of a pattern of neglect and unacceptable risk in offshore oil and gas regulation and operations.

## **Conclusion**

Oil and gas production is a public nuisance that has no place in California's future. There's no safe or clean way to drill for oil. New Jersey, Oregon, and Virginia have all banned offshore drilling in state waters; it's time for California to fully protect its waters and coastal communities too. It can do that by terminating offshore oil and gas leases without delay, thereby minimizing damage and risk and ensuring costs are borne by those responsible (the lessees), not the public.

In summary, we urge the Commission to direct the consultants conducting the cost study to ensure the full costs to the state, public health, the environment, and the economy from past and continued oil and gas operations be fully evaluated and incorporated in the final cost study. The results should confirm that offshore drilling is a costly public nuisance, and the Commission should cancel the leases without delay or compensation.

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<sup>20</sup> Center for Biological Diversity, Press Release, Pipeline Shutdown Prevented 34 Million Tons of Carbon Pollution in California (May 15, 2020), available [here](#).

<sup>21</sup> US Pipeline and Hazardous Materials Safety Administration. *Pipeline Incident 20 Year Trends* (Accessed December 14, 2023). <https://www.phmsa.dot.gov/data-and-statistics/pipeline/pipeline-incident-20-year-trends>.

<sup>22</sup> NRC Report: *Oil: Crude near Venice, LA*. SkyTruth (Accessed December 14, 2023) <https://alerts.skytruth.org/report/45992f2f-6086-98be-3c54-8e52e73c4632/>.



Sincerely,

A handwritten signature in black ink, appearing to read "Julie Teel Simmonds". The signature is fluid and cursive, with the first name "Julie" and last name "Simmonds" clearly legible.

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