

## Communication from Public

**Name:** Matt Wickersham on behalf of E&B Natural Resources  
**Date Submitted:** 09/25/2024 11:05 AM  
**Council File No:** 24-0919  
**Comments for Public Posting:** Please see the attached letter.

# ALSTON & BIRD

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## **VIA LACouncilComment.com**

September 25, 2024

Chair Yaroslavsky and Councilmembers  
Energy and Environment Committee  
Room 340, City Hall  
200 North Spring Street, Los Angeles, CA 90012

Re: Energy and Environment Committee Items 6 & 7, Sept. 27, 2024, 1 pm -- Nos. 24-0919 & 21-0065; Proposed Amendments to Adjust Bond Requirements for Oil Wells.

Dear Chair Yaroslavsky and Councilmembers:

On behalf of E & B Natural Resources Management Corp. (“E&B”), we appreciate this opportunity to provide comments on the proposed amendments to the bond requirements for oil wells, proposed by the Board of Fire Commissioners on August 6, 2024.

The proposed increases in bond amounts would overlap entirely with the State’s concurrent efforts to determine the appropriate bond requirements for oil wells. State law specifies that the California Geologic Energy Management Division (“CalGEM”) is the entity with exclusive authority to supervise the abandonment of wells, and the City’s proposed increases would conflict with the State’s authority. The proposed bond amounts are also economically infeasible, exposing the City to liability for constitutional violations.

As further set forth below, E&B respectfully requests that the Committee reject the proposed amendments.

### **The City Is Simply Preempted from Interfering with CalGEM’s Regulation of the Abandonments and Idle Wells.**

The California Supreme Court has made clear that local governments may not dictate how oil operations are conducted within the state. On August 3, 2023, the California Supreme Court issued a decision in the case of *Chevron U.S.A. Inc. v. Cty. of Monterey* (2023) 15 Cal. 5th 135 (“*Chevron*”), which held that an ordinance adopted by Monterey County was preempted by State law because it contradicted the State law regulating oil and gas development. (*Id.* at p. 145.) The voters of Monterey County had adopted “Measure Z” in November 2016, which, in relevant part, prohibited the drilling of new wells and the injection or impoundment of oil and gas wastewater. (*Id.* at p. 140.)

In considering whether Measure Z was preempted by State law, the Supreme Court relied heavily on the language of section 3106 of the Public Resources Code, which says in pertinent part:

The supervisor shall also supervise the drilling, operation, maintenance, and **abandonment** of wells so as to permit the owners or operators of the wells to utilize **all methods and practices** known to the oil industry for the purpose of ***increasing the ultimate recovery of underground hydrocarbons*** and which, ***in the opinion of the supervisor, are suitable for this purpose in each proposed case.***

(Cal. Pub. Res. Code § 3106, subd. (b), emphasis added.)

The Supreme Court held that a prohibition on certain production techniques contradicted the exclusive authority provided by the State Oil & Gas Supervisor to determine the suitable method in each case, and therefore would be preempted:

By providing that certain oil production methods may *never* be used by anyone, anywhere, in the County, Measure Z nullifies—and therefore contradicts—section 3106's mandate that the state “shall” supervise oil operation in a way that permits well operators to “utilize *all* methods and practices” the supervisor has approved. In other words, whereas section 3106 directs *the supervisor* to make decisions about the use of *all* oil production methods—inclusive of those methods Measure Z identifies—Measure Z authorizes *the County* to make decisions regarding some of those methods. Thus, were any oil producer to ask the state to decide whether those methods are authorized for use in the County, Measure Z, by banning those methods, has made that decision for—and in lieu of—the supervisor; it has, in all cases, usurped the supervisor's statutorily granted authority to decide whether those methods are “suitable ... in each proposed case.

(*Chevron, supra*, 15 Cal.5th at p. 145, emphasis in original.) The proposed amendment to the bond requirements also usurps the Supervisor’s statutorily granted authority to oversee the abandonment of wells.

The Public Resources Code specifically provides that the determination of when a well has been properly abandoned must be shown “to the satisfaction of the supervisor,” and includes the taking of “all proper steps ...to prevent subsequent damage to life, health, property, and other resources.” (Pub. Resources Code § 3208(a).) The scope of proper abandonment is not limited to subsurface work, but includes taking “all proper steps...to protect...surface water suitable for irrigation or farm or domestic purposes from the infiltration or addition of any detrimental substance and to prevent subsequent damage to life, health, property, and other resources.” (*Id.*, § 3208.) In addition, proper abandonment includes the “decommissioning the attendant production facilities of the well ... if determined necessary by the supervisor.” (*Id.*)

The Public Resources Code also requires that operators provide a bond, either individually or as a blanket bond, to ensure faithful compliance with the provisions of the Public Resources Code. (*Id.*, §§ 3204, 3205.) These bonds may only be canceled if the covered wells have been properly abandoned or a valid substitute bond has been provided. (*Id.*, § 3207(a).)

Pursuant to AB 1057 (2019), the Public Resources Code also authorizes CalGEM to determine whether an additional amount of security is required based on its “evaluation of the risk that the operator will desert its well or wells and the potential threats the operator’s well or wells pose to life, health, property, and natural resources.” (*Id.*, § 3205.3(a).) “The additional security required by the division shall not exceed the lesser of the division’s estimation of the reasonable costs of properly plugging and abandoning all of the operator’s wells and decommissioning any attendant production facilities in accordance with Section 3208, or thirty million dollars (\$30,000,000).” (*Ibid.*)

Based on the reasoning in the *Chevron* decision, the City is clearly preempted from imposing any bond requirement that is tied to well abandonment. The State Legislature has specifically set the amount of bond requirements that it determined were sufficient to provide financial security for the proper abandonment of wells. (*Id.*, §§ 3204, 3205.) More importantly, it specifically placed in the Supervisor’s discretion the authority to impose an additional bond requirement. (*Id.* § 3205.3(a).) If the City decides that operators must provide even more financial surety, then that nullifies the Supervisor’s statutorily conferred authority to determine that a lower amount of bond was appropriate for these operators. (*Chevron, supra*, 15 Cal.5th at p. 149 [holding that a local ordinance is invalid where it “takes those methods off the table and nullifies the supervisor’s express, statutorily conferred authority to decide what oil production methods are suitable in each case”].)

Even worse, the City’s Municipal Code places the Fire Chief as the ultimate authority on whether additional abandonment work was needed for a well. (Los Angeles Municipal Code §§ 57.105.3.9.8, 57.5706.3.16.) This directly contradicts the statutes that confer authority on the Supervisor to determine that (1) a well has been properly abandoned and (2) the standards that must be followed by the operator in conducting the abandonment and restoration of wells. Pub. Resources Code §§ 3205.3, 3208.)

The Legislature has provided that the Supervisor has final authority to determine whether a well has been properly abandoned. At most, the City’s bond requirements should be limited to issues outside the scope of CalGEM’s oversight, such as the future revegetation of drill sites, but any such bond would need to be considerably reduced to reflect a reasonable estimate for the revegetation requirements.

### **The Proposed Bond Increases Could Not Be Applied To Existing Wells without Violating Operators’ Vested Rights.**

The City is estopped from imposing any new bond amounts that exceed the conditions authorized by the vested approvals already issued to operators such as E&B.

“The doctrine of vested rights as developed in land use law states that a property owner who, in good faith reliance on a government permit, has performed substantial work and incurred substantial liabilities has a vested right to complete construction under the permit and to use the premises as the permit allows.” (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 323.) “Thus, a permittee who has expended substantial sums under a permit cannot be deprived by a subsequent zoning ordinance of the right to complete construction and to use the premises as authorized by the permit.” (*Ibid.*)

E&B’s approvals from the City specify that it must comply with the existing bond requirements set forth in Section 57.105.6.26. The City may not increase its bond amounts to levels not authorized by these prior approvals. (See, e.g., *Russ Bldg. P’ship v. City & Cty. of S.F.* (1988) 44 Cal. 3d 839, 846 [“if the resolutions authorizing plaintiffs’ building permits did not contain the transit mitigation condition, application of the later-enacted TIDF ordinance to plaintiffs would impair their vested rights and violate due process”].)

### **The Increased Bond Amounts Would Subject the City to Liability for Constitutional Violations.**

The City’s Municipal Code imposes the requirement to file a bond for each oil well for which a permit is required. (LAMC § 57.105.3.9.8.1.) In order to be valid under the “Takings Clauses” of the federal and state constitutions, any legislatively-imposed permit conditions “must have an ‘essential nexus’ to the government’s land-use interest” and “‘rough proportionality’ to the development’s impact on the land-use interest.” (*Sheetz v. Cnty. of El Dorado* (2024) 144 S.Ct. 893, 900.)

In *Sheetz*, the U.S. Supreme Court held in April 2024 that a local government must comply with these requirements even where the payment of a fee is established by legislative action, broadening the old rule that this doctrine only applied to fees imposed through administrative action on a case-by-case basis. (*Ibid.*) CalGEM already oversees the abandonment of wells and requires the posting of a sufficient bond to satisfy any abandonment obligations. Neither the proposed amendment nor the City’s existing ordinances make any acknowledgment of these overlapping requirements. Given the State’s comprehensive regulation of this area, the City will not be able to show that the dramatically higher bond requirements have any nexus to the City’s land-use interest or that the existing wells will have any impact on this interest that is roughly proportional to the massive financial burden imposed by the proposed bond amounts. Without this showing, the bond requirements are an unconstitutional exaction prohibited by the Takings Clause of the federal and state constitutions, and subject to the payment of just compensation for temporary and permanent damages.

As shown by the letter submitted concurrently from Bart Le Fevre, the increased bond amounts are effectively impossible to obtain, requiring 100% cash collateral to the extent that they are available at all. So imposing a bond requirement with the proposed amounts would be economically infeasible, resulting in the shutdown of the property, which will in turn deprive the property of all beneficial economic use and create a facial regulatory taking.

Even basic due process principles under the federal and state constitutions prevent this proposal from moving forward. “Substantive due process ... prevents government from enacting legislation that is ‘arbitrary’ or ‘discriminatory’ or lacks ‘a reasonable relation to a proper legislative purpose.’” (*Kavanau v. Santa Monica Rent Control Bd.* (1997) 16 Cal.4th 761, 771.) An impossible bond requirement fails all of these standards.

The State is already implementing an aggressive Idle Well Management Program that will address any purported concern over the abandonment of unneeded wells.<sup>1</sup> The State also has access to hundreds of millions of dollars to fund orphan well abandonments.<sup>2</sup> While the City is purportedly concerned over operator bankruptcies, it seems intent to push companies towards that outcome by requiring draconian, unauthorized and unnecessary surety amounts. As such, the proposed bond amounts are entirely arbitrary, as they will only exacerbate the problem that the City is purportedly trying to solve, by greatly reducing the funds otherwise available to operators to properly abandon and restore existing wells.

**The Proposed Bond Amendment Would Create Significant Environmental Impacts, requiring Analysis under the California Environmental Quality Act.**

While the proposed bond increases will negatively impact the oil and gas industry in the City of Los Angeles, these regulatory restrictions will not reduce the State’s (or the City’s) consumption of crude oil. In the last ten years, California has fallen from the third-largest producer of crude oil in the nation to the seventh.<sup>3</sup> From 1986 to 2022, oil production within California has declined by 66%.<sup>4</sup> The regulatory hostility causing this decline in production is well-documented.<sup>5</sup>

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<sup>1</sup> CalGEM, *Idle Well Program*, available at [https://www.conservation.ca.gov/calgem/idle\\_well](https://www.conservation.ca.gov/calgem/idle_well).

<sup>2</sup> CalGEM, *State Oil and Gas Well Abandonment Expenditure Plan and Annual Program Update* (June 2024), available at <https://www.conservation.ca.gov/calgem/Documents/Phase%20%20Expenditure%20Plan%20-%20DRAFT%20June%202024.pdf>.

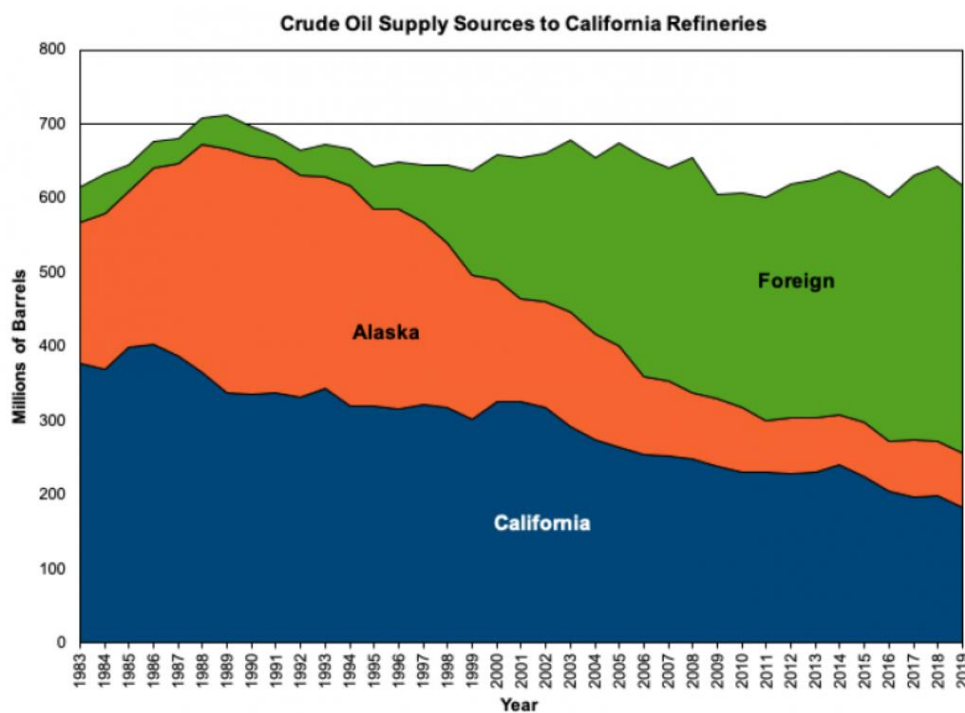
<sup>3</sup> California, *State Profile and Energy Estimates*, available at <https://www.eia.gov/state/analysis.php?sid=CA#84>.

<sup>4</sup> California Energy Commission, *Oil Supply Sources to California Refineries*, available at <https://www.energy.ca.gov/data-reports/energy-almanac/californias-petroleum-market/oil-supply-sources-california-refineries>.

<sup>5</sup> See, e.g., Bakersfield Californian, *Oil drilling all but dries up as well rework permits rise* (July 17, 2023), available at [https://www.bakersfield.com/news/oil-drilling-all-but-dries-up-as-well-rework-permits-rise/article\\_6001fd72-2500-11ee-9ff7-f3ca6fe0250b.html](https://www.bakersfield.com/news/oil-drilling-all-but-dries-up-as-well-rework-permits-rise/article_6001fd72-2500-11ee-9ff7-f3ca6fe0250b.html); Reuters, *California new oil well approvals have nearly ground to a halt* (July 13, 2023), available at <https://www.reuters.com/business/energy/california-new-oil-well-approvals-have-nearly-ground-halt-data-show-2023-07-13/>; LA Times, *Newsom’s oil regulators deny new fracking permits, but*

Despite the decreased in-state production, the demand for oil within the State has remained high and is not likely to decrease in the near future. California is the second-largest consumer of petroleum products in the nation and the largest consumer of motor gasoline and jet fuel. In 2021, 85% of the petroleum consumed in the State is used in the transportation sector.<sup>6</sup> Although the State has supported and subsidized the sale or lease of electric vehicles for decades, electric and hybrid vehicles still only make up about 5% of the light-duty vehicles on the road in California.<sup>7</sup>

As oil produced within California declined since 1986, imported oil from foreign countries has been used to replace the persistent demand within the State:



Source: California Energy Commission, *Oil Supply Sources to California Refineries*, available at <https://www.energy.ca.gov/data-reports/energy-almanac/californias-petroleum-market/oil-supply-sources-california-refineries>

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*industry is pushing back* (July 9, 2021), available at <https://www.latimes.com/environment/story/2021-07-09/california-oil-regulators-deny-new-fracking-permits>; San Francisco Chronicle, *Report Criticizes Oil Regulations: Environmental rules blamed for decline in state's production* (March 29, 1993)

<sup>6</sup> U.S. Energy Information Administration, *California Profile Report*, available at <https://www.eia.gov/state/analysis.php?sid=CA>.

<sup>7</sup> California Energy Commission, *Light-Duty Vehicle Population in California*, available at <https://www.energy.ca.gov/data-reports/energy-almanac/zero-emission-vehicle-and-infrastructure-statistics/light-duty-vehicle>.

Reduced domestic production will result in greater imports of crude oil from out of state sources, primarily foreign countries, which have not been analyzed by the City.<sup>8</sup> The use of foreign crude oil is associated with substantial emissions associated with transportation as foreign crude oil needs to be transported from between 4,000 miles (Ecuador) and 13,000 miles (Saudi Arabia) one-way to get to California. This causes the GHG lifecycle emissions associated with foreign crude oil to be considerably higher than conventionally-recovered California crude oil as well as increasing the spill risks associated with tankering crude oil and the resulting impacts on marine biology.

As such, reduced domestic production of oil and gas is associated with increased emissions via higher reliance on imported oil from outside the State. The GHG emissions associated with the production, processing, and transportation of crude oil into the State will result in increased GHG emissions. For these reasons, CalGEM has already determined that alternatives that reduce in-state production would ultimately result in greater environmental impacts from the expected increase in GHG emissions:

- “[V]iewed on a larger programmatic level, the indirect impacts outside of those fields would create much greater impacts to greenhouse gas emissions from the importation of oil and gas from out of the State that would result if Alternative 1 were implemented. Given the importance in California law of efforts to address climate change (e.g., Assembly Bill 32, the California Global Warming Solutions Act), [CalGEM] has given considerable weight to this negative attribute of Alternative 1, and finds that, for this reason, Alternative 1 cannot be the environmentally superior alternative.”<sup>9</sup>
- “This alternative would restrict future oil and gas activity ... The decrease in California production is not quantifiable (EIR Section 8.3.2). The replacement supply would increase the activity of tanker ships delivering foreign oil to California via ports and marine terminals in Los Angeles, Long Beach, and the San Francisco Bay Area, and it would increase the activity of rail trains hauling crude oil primarily from North Dakota and Canada. In-state emissions from oil and gas production would ... occur at lower levels; however, these emissions would be offset by increasing levels of emissions from tanker ships and locomotives delivering crude to California and from terminal facilities necessary to offload and handle the imports.”<sup>10</sup>

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<sup>8</sup> Argus Media, *California Crude Imports at Highest since 2019: EIA* (July 6, 2023), available at <https://www.argusmedia.com/en/news/2466576-california-crude-imports-at-highest-since-2019-eia>.

<sup>9</sup> See CalGEM, *Final Environmental Impact Report, Analysis of Oil and Gas Well Stimulation Treatments in California* (June 2015) at ES-23, available at [https://www.conservation.ca.gov/calgem/Pages/SB4\\_Final\\_EIR.aspx](https://www.conservation.ca.gov/calgem/Pages/SB4_Final_EIR.aspx).

<sup>10</sup> *Id.* at p. 12.3-8.



- “[CalGEM] has given considerable weight to the fact that increased oil imports would lead to increased greenhouse gas generation.”<sup>11</sup>

By reducing production in Los Angeles, that crude oil will be replaced with additional imported oil that will necessarily have a higher carbon intensity and thus generate greater GHG emissions than the crude oil available within the State. As such, the proposed amendment creates a significant environmental impact.<sup>12</sup> The City must do an environmental analysis under CEQA to determine the potential impacts associated with the proposed bond increases.

E&B is committed to a truly sustainable energy future and empowering the future energy mix, partnering with state, local, and community leaders in civil public discourse and calling out potentially damaging policy changes such as the ones being considered here that threaten equality, economy, environment, and energy. We urge the Committee not to move forward with the proposed bond increases.

Respectfully,



Matt Wickersham

Counsel for E&B Natural Resources Management Corp.

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<sup>11</sup> *Id.* at p. C.2-63.

<sup>12</sup> The proposed bond increases would also result in cumulatively significant impacts. (*San Lorenzo Valley Community Advocate for Responsible Education v. San Lorenzo Unified School District* (2006) 139 Cal.App.4th 1356, 1381.) The proposed amendment would result in cumulative environmental impacts from the many other restrictions on oil and gas operations recently adopted, including by the City and County of Los Angeles and the increased setback provisions adopted by SB 1137. The City must consider the cumulative impacts of the various regulatory obstructions to local oil production, including of impacts to mineral resources, air quality, marine biology, transportation impacts, and increased emissions of GHG.

## Communication from Public

**Name:** INpower

**Date Submitted:** 09/25/2024 11:00 AM

**Council File No:** 24-0919

**Comments for Public Posting:** Please see the attached letter on behalf of INpower.

September 24, 2024

**VIA LACouncilComment.com**

September 24, 2024

Chair Yaroslavsky and Councilmembers  
Energy and Environment Committee  
Room 340, City Hall  
200 North Spring Street, Los Angeles, CA 90012

Re: Energy and Environment Committee Items 6 & 7, Sept. 27, 2024, 1 pm -- Nos. 24-0919 & 21-0065; Proposed Amendments to Adjust Bond Requirements for Oil Wells.

Dear Chair Yaroslavsky and Councilmembers:

On behalf of E & B Natural Resources ("E&B"), we appreciate this opportunity to provide comments on the proposed amendments to the bond requirements for oil wells, proposed by the Board of Fire Commissioners on August 6, 2024.

INpower a global insurance services company, has approached surety underwriters who specialize in Oil and Gas bonds, with a request to consider an Abandonment Bond as proposed by the City of Los Angeles.

Our market capabilities analysis can be summarized as follows:

- Outright declinature- terms of obligation are too onerous
- Requirement for E&B to provide 100% collateral in the form of a full cash deposit or irrevocable Letter of Credit, plus payment of annual premium.

The challenges with this bond requirement are significant, and it is important to recognize that oil and gas surety companies are very conservative with their underwriting philosophy. Bonding obligations are backed by an agreement, whereby the surety company maintains full recourse against the lease operator, should there be a claim. This factor, coupled with the dollar amount and onerous nature of the bond language, falls outside of the energy surety markets' requirements.

In my 30 years of oil and gas bonding and insurance experience, the above-referenced bonds are not viable when set against traditional oil and gas bond underwriting thought processes.

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**INpower Global Insurance Services, LLC**

Should you have any questions, please let us know.

Best regards,



Bart J. Le Fevre

Chief Executive Officer & President