



**California Independent Petroleum Association**

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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 the California Independent Petroleum Association (CIPA) and its nearly 300 members, we appreciate this opportunity to provide comments on the proposed amendments to the bonding requirements for oil wells, proposed by the Board of Fire Commissioners on August 6, 2024. We believe the proposed amendment is illegal and misguided for the following reasons:

**I. The Ordinance is Preempted by State Law**

**Orphan wells are a state responsibility and the Ordinance is therefore preempted by state law**

The proposed ordinance fails to recognize that orphan well cleanup is a state responsibility. State law specifies that the California Geologic Energy Management Division (“CalGEM”) is the entity with *exclusive* authority to supervise the abandonment of wells. The state maintains bonding and idle well management plans to ensure operators properly retire their assets. Bonds are only utilized in the event that a well or facility is deserted by an operator because they went out of business. In the case of orphan wells, the state currently has access to nearly \$300 million in funds to plug orphan wells. Industry statewide is also required by law to backfill any unmet need the state has regarding remediating orphan wells and facilities. In the case of real estate development, the developer takes on the responsibility of plugging and remediating any orphaned wells. There is no exposure to the city. As a result, there is no nexus between the proposed bond and the city’s land-use interest.

Because of this specific and extensive state program on orphan and idle wells and downhole operations, the city is preempted by state law from enacting bonding requirements. Although the industry has not challenged the City’s current 40-year-old bonding requirement, if this Ordinance is adopted, the City would face legal challenges. Recent court decisions suggest in that event, the City would lose.

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.) Earlier *this month*, a Los Angeles Superior Court

judge struck down the City's most recent attempt to regulate oil and gas operations as preempted, relying in part on Chevron. The law in this area is clear.

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 "decommissioning the attendant production facilities of the well ... if determined necessary by the supervisor." (*Id.*)

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.) This direct conflict with the state's authority makes the proposed Ordinance even more clearly preempted than the ordinance in Chevron or the City's recent oil and gas amortization ordinance. The proposed Ordinance in this case will be struck down as preempted as well.

## **II. The Ordinance Imposes Unconstitutionally Arbitrary Fees**

### **The \$200,000 bonding level is arbitrary**

The flat rate of \$200,000 in bonding per well imposed by the Ordinance is arbitrary and did not result from a proper analysis of the circumstances of individual operators. No operators were consulted nor was their input solicited. In many cases, operators would be asked to bond at a level greater than their liability. This is illegal.

### **The Supreme Court has ruled against arbitrary fees**

A recent Supreme Court ruling in [Sheetz v. County of El Dorado](#) makes clear that impact fees adopted by a legislative body are an unconstitutional taking of property if there is not "an essential nexus" to the government's land use interest and the fee was not justified by the potential impact. Here, there is no nexus between the bonding requirement and the City's land use interest, both because the City has failed to analyze what its land use interest actually is and because, as discussed above, the state's regulations in this area already cover any potential impacts.

### **The Ordinance fails to recognize enhanced state assurance and plugging requirements**

In addition to the state's current programs, recent legislation is enhancing the state's assurance and plugging requirements. AB 1057 (Limon) gave the State Oil and Gas Supervisor enhanced authority to require additional bonding or assurance from operators, up to \$30 million. Several CIPA members, including those with assets within the city limits, are currently working with CalGEM to adopt an assurance program that covers all their assets either through additional bonding or an asset retirement plan. Additionally, the legislature this year passed AB 1866 (Hart) that increases the number of idle wells operators must eliminate each year. Prior to its passage, industry was already eliminating idle wells at a record pace, with over 11,000 eliminated in just the last two years. AB 1866 will only increase this pace. The Ordinance fails to acknowledge even the existing state bonding requirements, let alone these

significant enhancements, nor does it provide for any setoff for amounts that operators have already provided in bonding at the state level. This failure to acknowledge that many of the threatened harms the Ordinance claims to remedy are already covered by state law and regulations further demonstrates the arbitrary nature of the Ordinance.

### **The Ordinance fails to take into account existing capital and assets operators maintain**

The proposed ordinance fails to take into account non-bond assurance that many operators maintain such as surface land values and sinking funds. In many cases, operators either have cash set aside in a sinking fund to cover future well plugging or own surface land that is highly valuable as developable real estate that would more than cover any facility remediation. The City failed to take this into account in the drafting of the Ordinance. In the cases where operators already maintain sufficient assurance for any future liabilities, the Ordinance would have one additional fact pattern that would make it illegal according to recent court decisions.

### **The Ordinance fails to recognize the bonding requirement under the amendment is not commercially available**

CIPA has consulted several insurance brokers to explore whether the increased bonding required by the Ordinance is commercially available. They have confirmed that for nearly all operators the answer is no. There is no evidence that the City made any similar inquiries before setting its arbitrary bonding level. As a result, if operators who are currently compliant suddenly and arbitrarily are deemed noncompliant, the Ordinance may create a self-fulfilling prophesy and create orphan wells, the very issue the City claims it is trying to avoid.

## **III. The Ordinance has Significant, Unmitigated Environmental and Financial Impacts**

### **The City failed to conduct the required CEQA analysis**

By reducing production in Los Angeles but without a commensurate reduction in demand, 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>1</sup> The City must do an environmental analysis under CEQA to determine the potential impacts associated with the proposed bond increases.

### **The Ordinance would increase imports and GHGs, lower property tax collection, and raise gasoline prices**

If this amendment leads to operators being non-compliant and shuts in domestic energy production, the result will be increased tanker traffic into our crowded ports importing foreign oil to meet the state's increasing demand. Those imports are exempt from California's strict environmental, labor, and human

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<sup>1</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.

rights regulations. They also do not pay any local taxes unlike in-state oil production which pays both an ad valorem property tax as well as a city sales tax.

Given that imported oil is typically \$5-\$6 more expensive per barrel than oil produced in-state, and the price of feedstock oil is the primary driver of gasoline prices, this ordinance will result in increased gasoline prices.

In conclusion, the proposed ordinance is illegal, preempted by state law, unnecessary, not commercially viable, will increase foreign imports and GHGs, and raise gasoline prices. For these reasons, the ordinance should be rejected.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rock Zierman', with a stylized flourish at the end.

Rock Zierman  
CEO