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November 9, 2020

Clerk of the Board of Supervisors
Hall of Administration, 4th Floor
800 S. Ventura Avenue
Ventura, California 93009

via email: clerkoftheboard@ventura.org

Re: WSPA Comments on Recommendation of Supervisors Bennett and Parks to the Resource Management– Agenda Item 34

Dear Members of the Ventura County Board of Supervisors,

The Western States Petroleum Association (WSPA) appreciates this opportunity to provide comments on the Recommendation of Supervisors Bennett and Supervisor Parks to Direct the Resource Management Agency to Limit Discretionary Permits for Oil and Gas Operations to Fifteen Years, to Increase the Amount of the Compliance/Site Restoration Surety, and to Incorporate Measures to Assure the Timely Permanent Plugging and Restoration of Wells that Have Been Idle for Fifteen Years or More. Supervisors Bennett and Parks' Recommendation to the Resource Management Agency is based on inaccurate facts, preempted by state law, and entirely arbitrary, and for that reason, WSPA requests that it be denied.

WSPA is a non-profit trade association representing companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas, and other energy supplies in California and four other western states. The industry contributes \$152 billion dollars every year in economic activity and directly contributes \$21.6 billion dollars in local, state and federal tax revenue to support schools, roads, public safety and other vital services. More specifically, in Ventura County alone, the oil and gas industry contributes over \$200 million dollars in state and local tax revenue annually.

WSPA 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. As such, WSPA appreciates this opportunity to provide input.

1. The Supervisors' Recommendation Contains Significant Factual Errors and Assumptions about the Oil Industry.

Oil and gas development is a vital industry and critical to Ventura County's economic wellbeing. The Supervisors' Recommendation for additional restrictions on oil and gas development comes on the heels of new restrictions already proposed by the County in the form of the recently approved General Plan Update, and proposed amendments to the Coastal and Non-Coastal Zoning Ordinance that will be heard by the Board on November 10, 2020.

While the Recommendation implies that oil production is naturally declining in the County and throughout the State, this reduction in the state's oil production is not the result of a lack of recoverable oil and gas reservoirs. California has the fifth-largest share of U.S. crude oil reserves and is the seventh-largest producer of crude oil in the nation.¹ The proved oil reserves for the state have remained roughly stable from 2014 to 2018 (the last year of available data).² Throughout this time, in-state production has continued to decline. From 1986 to 2019, oil production within California has declined by 54%.³

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. Almost nine-tenths of the petroleum consumed in the state is used in the transportation sector.⁴ Although the State has supported and subsidized the sale or lease of electric vehicles for decades, electric and hybrid vehicles still make up less than 2% of vehicles on the road in California.⁵

The Supervisors' Recommendation points to the Governor's recent executive order regarding electric vehicles, but this order, at best, will take decades to result in a significant reduction in oil demand. The executive order sets a goal that "100 percent of in-state sales of new passenger cars and trucks will be zero-emission by 2035."⁶ Even if actually implemented, this goal will only affect new cars, and would not affect the large number of conventional gasoline and diesel vehicles that remain on the road. The state will continue to require oil and gas during this transition, particularly as adoption of electric cars has been slow to date.

The Supervisors' Recommendation also references the anomalous drop in demand and crude prices occurring in 2020. The reduced economic activity resulting from COVID-19 pandemic, exacerbated by a dispute between OPEC and non-OPEC countries, led to a precipitous drop in oil prices.⁷ It would be irresponsible to base long-term zoning and regulatory

¹ California, State Profile and Energy Estimates, available at <https://www.eia.gov/state/analysis.php?sid=CA#84>

² U.S. Energy Information Administration, Form EIA-23L, Annual Report of Domestic Oil and Gas Reserves, 2014-2018, Figure 2, available at <https://www.eia.gov/naturalgas/crudeoilreserves/>

³ 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>.

⁴ U.S. Energy Information Administration, California Profile Report, available at <https://www.eia.gov/state/analysis.php?sid=CA>.

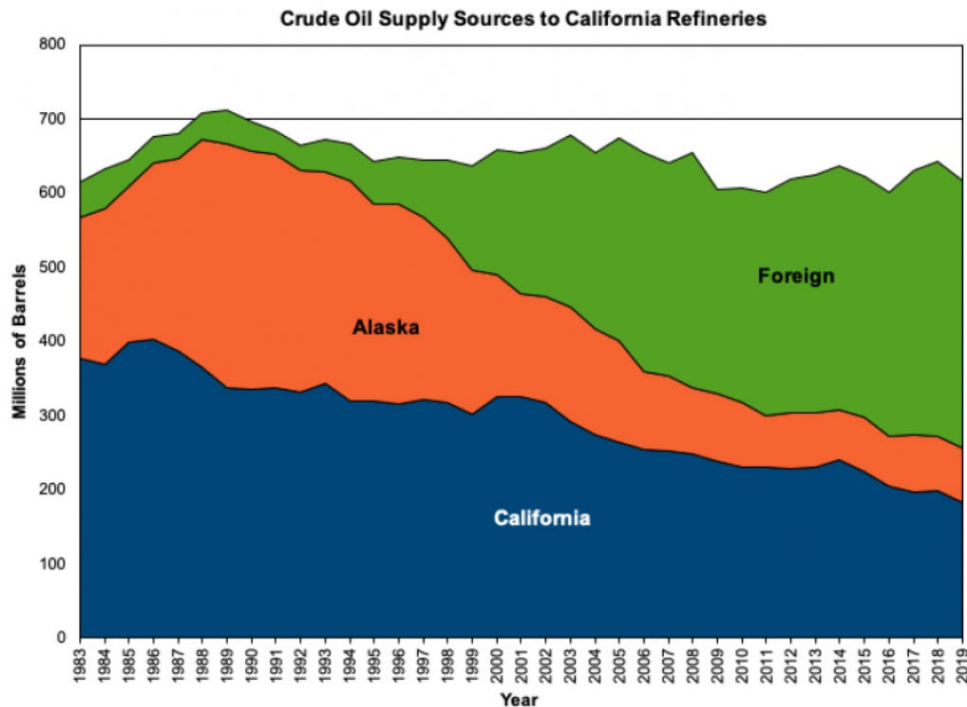
⁵ California Energy Commission, Vehicle Population in California, available at https://tableau.cnra.ca.gov/t/CNRA_CEC/views/DMVDataPortal_15986380698710/STOCK_Dashboard?

⁶ State of California, Executive Order No. N-79-20, available at <https://www.gov.ca.gov/wp-content/uploads/2020/09/9.23.20-EO-N-79-20-text.pdf>.

⁷ The Canadian Press, *Negative WTI oil price plunge a short-term anomaly with limited impact say analysts* (Apr. 21, 2020), available at <https://energynews.ca/2020/04/negative-oil-price-plunge-a-short-term-anomaly-with-limited-impact-analysts/>; Nick Lioudis, *What Causes Oil Prices to Fluctuate?* (updated Oct. 26, 2020), available at <https://www.investopedia.com/ask/answers/012715/what-causes-oil-prices-fluctuate.asp>.

decisions on these short-term anomalies. The State remains a massive consumer of oil and gas, which will continue to be a vital part of our economy.

Regulatory efforts to make it more difficult to produce oil within the State will not result in a corresponding decrease in demand. Instead, arbitrary restrictions on local production will only have the consequence of increasing imports of crude oil from foreign countries. 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>

This increase in imports from foreign countries will result in significant environmental effects that have not been analyzed by the County. Oil production from Ventura County has a lower carbon intensity than any of the foreign countries that make up the majority of imported oil.⁸ Thus, reducing local production will have the unavoidable impact of increasing global greenhouse gas emissions. Further, it will increase the State's dependence on oil production from other countries with far weaker protections and safeguards for environmental conditions, pollutant emissions, worker safety and human rights concerns. Even if oil demand was

⁸ California Air Resources Board, Calculation of 2019 Crude Average Carbon Intensity Value, available at https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/crude-oil/2019_crude_average_ci_value_final.pdf.

decreasing within the State (which it is not), all oil consumed within this State should be produced within this State.

Proposing additional unnecessary restrictions at this time would further harm an industry critical for economic growth during a global pandemic. Further, the purported concerns about idle wells are unfounded. The oil industry, not taxpayers, pays 100% of the costs to decommission onshore wells without a viable owner. Operators contribute to a fund annually and the state can bill companies if there is ever a shortfall. The state has decommissioned nearly 2,000 orphan wells in the last 30 years, all paid for by industry, not taxpayers. Recent legislation has also increased bonding requirements and requires companies to decommission a portion of their idle wells annually. Most permits issued today are to decommission wells, not drill new ones.

2. Attempts to Regulate Downhole Activities Are Preempted.

Beyond the factual inaccuracies motivating the Recommendation, the County also may not regulate activities that are preempted by state law. (*Kumar v. Superior Court* (2007) 149 Cal.App.4th 543, 552–553.) The State Oil and Gas Supervisor has authority over “the drilling, operation, maintenance, and abandonment of wells.” Cal. Pub. Res. Code § 3106(a)

California’s Attorney General concluded in 1976 that “there will . . . be a conflict with state regulation when a local entity, attempting to regulate for a local purpose, directly or indirectly attempts to exercise control over subsurface activities.” (59 Ops.Cal.Atty.Gen. 461, 478 [1976 Cal. AG LEXIS 82].) The Attorney General based this conclusion on the recognition that the Public Resources Code reflects both “growing concern over the limited nature of energy resources,” balanced with the “additional purpose” to protect “life, health, property, and natural resources.” (*Ibid.*) To achieve these purposes, state law requires “uniform regulation” of subsurface activities by CalGEM, to the exclusion of supplemental local regulation. (*Id.* at 477.)

According to the Attorney General, “where state regulation approves of or specifies plans of operations, methods, materials, procedures, or equipment to be used by the well operator or where activities are to be carried out under the direction of [CalGEM], there is no room for local regulation.” (*id.* at 462.) The Attorney General concluded “that for the most part such activities are confined to down-hole or subsurface operations.”⁹ (*Ibid.*; see also *id.* at 467 [finding that “statutory and regulatory provisions appear to occupy fully the underground phase of oil and gas activities”].)

Since 1976, the comprehensiveness of state control over subsurface energy operations has only increased. Detailed statutes and regulations currently govern the bonding and surety

⁹ Similarly, CalGEM has recognized that it “has exclusive legal jurisdiction over, and thus ‘occupies the field’ regarding, ‘subsurface regulation.’” (CalGEM, SB4 Environmental Impact Report, available at https://www.conservation.ca.gov/calgem/Pages/SB4_Final_EIR_TOC.aspx, at C.2-44.) “This means that no other State or local agencies can impose regulations or mitigation on top of those imposed by DOGGR in that context.” (*Ibid.*)

provisions for wells,¹⁰ and the monitoring, testing and compliance requirements for idle¹¹ and abandoned¹² wells. In particular, CalGEM has recently initiated an idle well management program vastly expanding its requirements for idle wells. As summarized by CalGEM on its website, CalGEM “revised its idle well regulations in April 2019 to create far more stringent testing requirements that better protect public safety and the environment from the potential threats posed by idle wells.”¹³ “The regulations require idle wells to be tested and, if necessary, repaired, or permanently sealed and closed.”¹⁴ As detailed by CalGEM in its annual reports, these new regulations are intended to ensure that “[w]ells are now being plugged before they become a problem.”

The Recommendation from Supervisors Parks and Bennet would clearly be preempted as a direct or indirect attempt to control subsurface activities. It asks for amendments to the zoning ordinance to increase surety requirements and to “assure timely permanent plugging and restoration” of idle wells. These issues are comprehensively regulated by the state, and additional restrictions are preempted. The Supervisors’ Recommendation fails to consider the current bonding and abandonment process.

3. The Supervisors’ Recommendation Is Premature.

On November 5, 2020, the Planning Commission adopted a recommendation for a report and investigation into the status of abandoned and idle oil and gas wells. In addition to being pre-empted, the Supervisors’ Recommendation is premature in failing to wait for a conclusion of the investigation.

4. The Recommendation for a 15-Year Permit Limit is Arbitrary.

The Supervisors seek to constrain the discretion of future Board members by creating a blanket policy limiting new discretionary oil and gas permits to fifteen years. This blanket policy is arbitrary and purports to limit future County officials from determining the appropriate length of time for future based on the evidence before them. The proposed time limit does not appear to have any rational connection with the time required to pursue oil and gas development activities the County. The time limit is arbitrary and not reflective of any realistic of permitted development in practice. No reasoned explanation has been given for this specific time-limit.

Ventura County producers have been operating within the County in an environmentally responsible manner for decades. Ventura oil and gas is produced under the strictest environmental standards on the planet. The industry is already overseen by over 20 government agencies.

¹⁰ Cal. Pub. Resources Code §§ 3204, 3205 *et seq.*; Cal. Code Regs., tit. 14, § 1722.8 *et seq.*

¹¹ Cal. Pub. Resources Code § 3206 *et seq.*; Cal. Code Regs., tit. 14, § 1772 *et seq.*

¹² Cal. Pub. Resources Code § 3240 *et seq.*; Cal. Code Regs., tit. 14, § 1723 *et seq.*

¹³ CalGEM, *Idle Well Program*, available at https://www.conservation.ca.gov/calgem/idle_well.

¹⁴ *Ibid.*

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We respectfully request that the Board of Supervisors reject the Supervisors' Recommendation. If you have any questions, please contact me at (916) 325-3117 or sellinghouse@wspa.org.

Respectfully,

A handwritten signature in blue ink, appearing to read "S. Ellinghouse".

Sophie Ellinghouse, Esq.