

## A Note from the Editor

*Welcome to 2020! A new year, with new challenges for the oil and gas industry as it navigates the regulatory, environmental, legal, and political landscape in California. Frankly, 2019 left us all on our toes with the firing of the head of DOGGR and renewed attempts at the local and state levels to restrict oil and gas activities. Here's to hoping that 2020 brings better tidings!*

*As we reflect on 2019 and think ahead to 2020, we wanted to share this newsletter that summarizes some of the top stories to watch in 2020 for the California oil and gas industry.*

*If you have any questions, please feel free to reach out to any DCM attorney.*

*-Michael Sherman  
Partner & Newsletter Editor  
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## 1 DOGGR Reborn as CalGEM

While a new agency name would typically just involve changing some letterhead and email

addresses, the renaming of DOGGR to the California Geologic Energy Management Division

("CalGEM") on January 1st

represents a significant shift in the regulation of oil and gas in California. The State

has committed itself

to renewable energy targets and reducing GHG emissions. Consistent with these goals, CalGEM has a new mission that gives more flexibility in restricting oil and gas production in California (see the inset mission statement).<sup>1</sup> We will be watching

### CalGEM's New Mission:

***"Protecting public health and safety and environmental quality, including reduction and mitigation of greenhouse gas emissions associated with the development of hydrocarbon and geothermal resources in a manner that meets the energy needs of the state."***

closely in 2020 to see how CalGEM implements its new mission and, in particular, how this all plays out with new regulations and approving drilling and well stimulation permits.

## 2 More Oversight with Planned CalGEM Regulations

We didn't actually need to wait long to see how CalGEM would pursue its new mission. In November 2019, CalGEM announced new oil and gas initiatives that rely on CalGEM's new mission and, in Governor Newsom's words, will "strengthen oversight of oil and gas extraction as we phase out our dependence on fossil fuels..."<sup>2</sup>

One of the new initiatives includes planned regulations to protect residents and communities near oil and gas extraction sites. CalGEM's announcement specifically calls out prohibiting oil and gas activities within close proximity to homes, schools, hospitals, and parks, which presumably means increasing well setbacks from these types of receptors. If CalGEM adopts regulations to increase well setbacks, those regulations may be ripe for an unconstitutional takings challenge if the setbacks prevent the development of oil and gas.

The rulemaking process will start with a series of pre-rulemaking workshops sometime in 2020, with new regulations expected later in 2020 according to CalGEM's announcement.

## Continued Delays For State Well Stimulation Permits 3

In response to complaints by environmental groups about approvals of well stimulation permits, Governor Newsom fired Supervisor Ken Harris from the top post at DOGGR/CalGEM in July 2019. In the aftermath, Newsom has insisted that he cannot unilaterally impose a moratorium on well stimulation permits but that appears to be exactly what has occurred based on significant delays for permit approvals

in the past six months. A moratorium raises significant constitutional concerns and could be challenged as an unlawful takings.

CalGEM also announced a new initiative for processing well stimulation permits. Experts at the Lawrence Livermore National Laboratory will review all pending well stimulation permit applications while there is an independent audit of CalGEM's permitting processes.<sup>2</sup> This additional layer of review inevitably will cause further delays for well stimulation permits.

In addition to targeting well stimulation permits, CalGEM also imposed a moratorium on new extraction wells that use high-pressure cyclic steaming while CalGEM studies the relationship between surface expressions in the Cymric oil field and high-pressure cyclic steaming.

## 4 Well Setbacks – An Issue on Many Fronts

Setbacks are not only a hot topic for CalGEM as discussed above, but the State Legislature and local governments also considered increasing well setback requirements in 2019. These efforts to increase well setbacks will continue throughout 2020.

At the state level, a bill (AB 345) working its way through the Assembly would require all new oil and gas development and enhancement operations (i.e., fracking) to be located at least 2,500 feet from a residence, school, childcare facility, playground, hospital, or health clinic.<sup>3</sup> After several amendments and referrals to various committees, the bill has not yet moved out of committee to a final vote before the Assembly.<sup>4</sup>

### **\$1.2 to \$97.6 BILLION**

in anticipated constitutional takings claims with 1,500' setback in L.A.

At the local level, Ventura County is also considering increased well setbacks as discussed in the Coastal County Watch below. But the most noteworthy action may involve the

City of Los Angeles. In December 2019, the L.A. City Council voted to explore new laws requiring larger buffers between oil and gas drilling operations and sensitive receptors (schools, residential areas).<sup>5</sup> This vote comes in response to a July 2019 report prepared by the City's Petroleum Administrator, who recommended a 600-foot setback distance from sensitive receptors for existing oil and gas wells and a 1,500-foot setback distance for future oil and gas development. As acknowledged by the Petroleum Administrator's report, these increased setbacks could potentially be challenged as unconstitutional takings and could require the City to pay significant amounts of compensation to mineral owners and lessees.<sup>6</sup>

The action by the L.A. City Council is particularly noteworthy because Uduak-Joe Ntuk, the City's Petroleum Administrator, authored the July 2019 report. Uduak-Joe Ntuk is now the State Oil & Gas Supervisor, so similar setback recommendations would not be surprising as a part of the planned CalGEM regulations discussed above.

## Coastal County Watch 5

Local efforts to restrict oil and gas development, in particular in coastal counties, remain something to keep a close eye on in 2020. The past several years have seen some contentious fights over fracking and drilling bans, e.g., the fight over Measure Z in Monterey County.<sup>7</sup> More recently, Ventura County imposed a temporary moratorium in early 2019 on drilling and redrilling wells for oil production utilizing steam injection in certain areas of the County, which the County later extended until December 2020 pending a study by USGS of gas found in water wells.<sup>8</sup> Neighboring Santa Barbara County is apparently waiting for the USGS report before taking any action on steam injection.<sup>9</sup>

Ventura County is also considering significant changes to its general plan and zoning code to further restrict oil and gas development. At an August 2019 Board meeting, the Ventura County Board of

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Supervisors directed staff to prepare general plan policies that would: (1) require a minimum 1,500-foot setback from homes and a 2,500-foot setback from schools for new oil wells; and (2) require new oil wells to use pipelines to convey oil and produced water (i.e. trucking not allowed).<sup>10</sup> The Board has also directed staff to prepare zoning code amendments to require discretionary approval for modifications to oil and gas special use permits issued from 1947 through approximately 1966 and to also apply the County's current oil development standards to those special use permits.<sup>11</sup> The County's Board of Supervisors will consider both the general plan and zoning code amendments sometime in 2020.

These actions to restrict oil and gas activities could potentially be challenged by oil and gas operators, e.g., as unconstitutional takings or if the local governments fail to follow land use and environmental review laws before implementing changes.

## 6 Federal Lands – Trump v. California

In 2019, the Trump Administration ended a five-year moratorium on leasing federal lands in California for oil and gas development. This comes as no surprise given Trump's many statements promoting American energy independence and in support of the oil and gas industry and fracking in particular.

The moratorium ended when the BLM in October 2019 opened over 700,000 acres of federal lands to new oil and gas development primarily in Fresno, Monterey and San Benito Counties.<sup>12</sup> Environmental groups have already filed a lawsuit challenging the October 2019 decision.<sup>13</sup>



Follow

Fracking will lead to American energy independence. With price of natural gas continuing to drop, we can be at a tremendous advantage.

12:28 PM - 3 May 2012

In December 2019, the BLM also released an additional analysis of the potential environmental impacts from fracking on federal lands in California.<sup>14</sup> The additional analysis resolves a lawsuit over the BLM's 2014 Bakersfield Field Office Resource Management Plan. Under the plan, approximately one million acres of federal lands are now open for oil and gas leasing in the Bakersfield BLM Field Office planning area. Litigation over this decision is as certain as death and taxes.

## State Lands Commission – a Tough Place for Oil and Gas 7

The State Lands Commission – the State entity charged with administering State lands, including leases for State owned lands and offshore oil and gas leases in State waters – became the latest battleground between California and the Trump Administration last year. In response to Trump's plans to open up federal lands in California to more drilling and, potentially, hydraulic fracturing, California adopted a new law to restrict the State Lands Commission from aiding oil and gas development on certain federal lands.

Specifically, the new law prohibits the State Lands Commission from entering into leases or other

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*“I support the policy that no oil and gas product from new offshore drilling ever makes landfall in California, and I support an oil extraction fee so Big Oil pays its fair share.”*

*-Lt. Governor Eleni Kounalakis,  
State Lands Commission Member*

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conveyances for State lands that authorize “new construction of oil- and gas-related infrastructure ... to support production of oil and natural gas upon federal lands that are designated as, or were at any time designated as, federally protected lands.”<sup>15</sup>

In addition to these restrictions, the State Legislature adopted new criteria for transferring State oil and gas leases and new requirements for releasing transferors from liability under those leases.<sup>16</sup>

The State Lands Commission will remain a tough place in 2020 for oil and gas development. Commission members have spoken out against further oil and gas

development and, in particular, oppose offshore drilling plans proposed by the U.S. Department of Interior along the California coast.<sup>17</sup>

## 8 State Waters Regulation – Finally (Almost) Here

The State Water Resources Control Board in 2019 finally adopted new rules for a State wetland definition and permitting procedures related to the discharge of dredged or fill material to waters of the State.<sup>18</sup> The rules come after nearly a decade of consideration by the State Board and counters a plan by the Trump Administration to curtail the scope of the federal Clean Water Act. It also provides a good example of federalism in the environmental context: where the federal government steps out, California will surely step in!

The new permitting procedures go into effect on May 28, 2020, with public training and guidance on the procedures occurring in Spring 2020.<sup>19</sup> Of course, that assumes the new definition and permitting procedures survive a pending lawsuit brought by various irrigation districts and the City and County of San Francisco.<sup>20</sup> If implemented, project developers should expect long wait times in obtaining a permit for any project that fills waters of the State --- something which is very broad and basically encompasses any type of current and historical water body and place that could potentially have water, such as historic floodplains.

Oversimplified, but not too far from the truth!

**State Waters**  
Is water here?  
Has water ever been here?  
Could water ever be here  
(even hypothetically)?

+ Federal waters

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## Endnotes – enjoy for more reading on the stories discussed above!

<sup>1</sup> New mission of CalGEM, Cal. Pub. Res. Code §3011.

<sup>2</sup> Department of Conservation News Release #2019-05, Nov. 19, 2019, available at: <https://www.conservation.ca.gov/index/Pages/News/California-Establishes-Moratorium-on-High-Pressure-Extraction.aspx> (last visited Jan. 2, 2020).

<sup>3</sup> AB 345, introduced by Assembly Member Muratsuchi on February 4, 2019, available at: [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB345](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB345) (last visited Jan. 5, 2020).

<sup>4</sup> Legislative History of AB 345, available at: [http://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill\\_id=201920200AB345](http://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201920200AB345) (last visited Jan. 2, 2020).

<sup>5</sup> “L.A. seeks legal advice on creating oil, gas drilling buffers,” Dec. 10, 2019, <https://www.dailynews.com/2019/12/10/l-a-seeks-legal-advice-on-creating-oil-gas-drilling-buffers/> (last visited Jan. 2, 2020).

<sup>6</sup> Report available here: [http://clkrep.lacity.org/onlinedocs/2017/17-0447\\_rpt\\_BPW\\_07-29-2019.pdf](http://clkrep.lacity.org/onlinedocs/2017/17-0447_rpt_BPW_07-29-2019.pdf) (last visited Jan. 2, 2020).

<sup>7</sup> “Fracking ban case settled in Monterey County,” May 15, 2018, <https://www.thecalifornian.com/story/news/2018/05/15/monterey-county-reaches-measure-z-settlement-defend-fracking-ban/613482002/> (last visited Jan. 2, 2020).

<sup>8</sup> Urgency Ordinance No. 4547, adopted November 5, 2019 by the Ventura County Board of Supervisors, available in the Board Archives at: <https://www.ventura.org/board-of-supervisors/agendas-documents-and-broadcasts/> (last visited Jan. 6, 2020).

<sup>9</sup> “Ventura Says No to New Cyclic-Steam Oil Drilling,” June 11, 2019, <https://www.independent.com/2019/06/11/ventura-says-no-to-new-cyclic-steam-oil-drilling/> (last visited Jan. 2, 2020).

<sup>10</sup> See August 6, 2019 Ventura County Board of Supervisor Meeting Minutes, Item 44, Page 3, available at: [https://ventura.granicus.com/DocumentViewer.php?file=ventura\\_575c037158d7eafc69b87f529e2a6c03.pdf&view=1](https://ventura.granicus.com/DocumentViewer.php?file=ventura_575c037158d7eafc69b87f529e2a6c03.pdf&view=1) (last visited Jan. 2, 2020).

<sup>11</sup> For a summary of this issue, read the Ventura County Counsel’s September 10, 2019 recommendation, available in the Board Archives at: <https://www.ventura.org/board-of-supervisors/agendas-documents-and-broadcasts/> (last visited Jan. 6, 2020).

<sup>12</sup> BLM Central Coast Field Office Press Release, Oct. 3, 2019, <https://www.blm.gov/press-release/blm-central-coast-field-office-issues-decision-oil-and-gas-development> (last visited Jan. 2, 2020.)

<sup>13</sup> CBD Press Release, Oct. 30, 2019, <https://biologicaldiversity.org/w/news/press-releases/lawsuit-challenges-trump-administrations-california-fracking-plan-2019-10-30/> (last visited Jan. 2, 2020).

<sup>14</sup> BLM Bakersfield Field Office Press Release, Dec. 12, 2019, <https://www.blm.gov/press-release/blm-bakersfield-field-office-issues-decision-supplemental-environmental-analysis> (last visited Jan. 2, 2020).

<sup>15</sup> Cal. Pub. Res. Code § 6827.5.

<sup>16</sup> Cal. Pub. Res. Code § 6804.

<sup>17</sup> Inset quote from Eleni Kounalakis’ election website: <https://www.eleniforca.com/environment> (last visited Jan. 2, 2020). See, e.g., the Commission’s opposition to offshore leasing: <https://slcprdapapazappwordpress.azurewebsites.net/commission-meeting-highlights/february-4-2019-meeting-highlights/> (last visited Jan. 6, 2020).

<sup>18</sup> More information on the State Board’s rules for the state wetland definition and permitting procedures: [https://www.waterboards.ca.gov/press\\_room/press\\_releases/2019/pr04022019\\_swrcb\\_dredge\\_fill.pdf](https://www.waterboards.ca.gov/press_room/press_releases/2019/pr04022019_swrcb_dredge_fill.pdf) (last visited Jan. 2, 2020).

<sup>19</sup> Check the State Board website for updates on timing of guidance: [https://www.waterboards.ca.gov/water\\_issues/programs/cwa401/wrapp.html](https://www.waterboards.ca.gov/water_issues/programs/cwa401/wrapp.html) (last visited Jan. 2, 2020).

<sup>20</sup> “California Water Board Faces Lawsuit Over New Wetlands Rules,” May 1, 2019, <https://www.courthousenews.com/california-water-board-faces-lawsuit-over-new-wetlands-rules/> (last visited Jan. 2, 2020).