Communication from Public

Name:	Jeffrey Dintzer
Date Submitted:	09/26/2024 05:10 PM
Council File No:	24-0919
Comments for Public Posting:	Please see attached correspondence for Agenda Item 29-0919 for the Energy & Environment Committee’s September 27, 2024 Meeting.

ALSTON & BIRD

350 South Grand Avenue, 51st Floor
Los Angeles, CA 90071
213-576-1000 | Fax: 213-576-1100

Jeffrey D. Dintzer Direct Dial: **+1 213 576 1063** Email: **jeffrey.dintzer@alston.com**

September 26, 2024

Energy & Environment Committee
Los Angeles City Council
John Ferraro Council Chamber
Room 340, City Hall
200 North Spring Street
Los Angeles, CA 90012

Re: Agenda Item 24-0919 for the Committee's September 27, 2024 Meeting

Dear Councilmembers Yaroslavsky, McOsker, Blumenfield, De León, and Raman:

On behalf of California Resources Corporation (CRC), this letter addresses Agenda Item No. 24-0919 for the Energy & Environment Committee's September 27, 2024 meeting, where the Committee will consider the Board of Fire Commissioners' recommendation to impose a minimum bond requirement of $200,000 for each oil well located within the City of Los Angeles (City). For the reasons detailed below, this proposal is duplicative and unnecessary, and if passed, is invalid because it is preempted by state law. Moreover, the City does not have the authority to plug and abandon idle or orphaned wells. That authority is set forth in the California Public Resources Code and lies explicitly and solely with the state, which also bears the cost of such work. Because state law does not allow the City to perform abandonment work, the City cannot incur the costs of such work and cannot require operators to obtain millions of dollars in bonding for funds to cover costs the City cannot incur.

State law addresses oil and gas operations throughout the state including recent state legislation requiring the California Geologic Energy Management Division (CalGEM) to re-assess the sufficiency of bonding for all oil and gas operators in California based on operator and site-specific analysis. Oil and gas operator bonds are currently being increased, significantly, under this state-wide process. The local bonding proposed by the Fire Commissioners is also preempted by state law which specifically includes a comprehensive scheme to address orphaned wells, bonding and financial assurance requirements for oil wells, and well abandonment procedures. (See *Chevron U.S.A. Inc. v. County of Monterey* (2023) 15 Cal.5th 135.) Because the proposed local bonding is duplicative of and in conflict with state law and seeks to regulate in an area that is fully occupied by state law, it is prohibited by the preemption doctrine. For these reasons, CRC respectfully requests that the Committee recommend against City Council adoption of the Fire Commissioners' recommendations.

I. California Resources Corporation

CRC is an independent energy and carbon management company headquartered in Long Beach, California, and is committed to energy transition and environmental stewardship while providing local, responsibly sourced energy. CRC is focused on maximizing its mineral ownership and energy expertise for decarbonization by developing carbon capture and storage and other emissions-reducing projects. CRC explores for, produces, gathers, processes and markets crude oil, natural gas, and natural gas liquids. CRC makes significant use of advanced technologies to enhance safety and efficient production across its leading mineral acreage position and diverse portfolio. These technologies enable more production while minimizing the footprint of oil and gas development.

CRC is a responsible steward of the environment in its development of energy resources with Environmental, Social, and Governance goals that meet or exceed California's unparalleled sustainability standards. CRC produces energy in a safe and responsible manner to help support and enhance the quality of life of Californians and the local communities where we live and operate. CRC is proud to help meet the local need for ample, safe, and reliable energy by developing dependable local oil and natural gas reserves that help to reduce our state's chronic dependence on imported energy.

Within the City of Los Angeles, CRC's operations include over 150 oil wells, about half of which are active and produce approximately 500 barrels of oil per day or over 180,000 barrels per year. CRC currently has a blanket bond in place with the Los Angeles Fire Department, for all its wells, for $50,000. If the Fire Commissioners' bonding recommendations are adopted, the bond amount would increase from $50,000 to approximately $30 million. Notably, after a detailed assessment, CalGEM has determined that CRC has sufficient bonding in place for its wells throughout the state.

II. Background of Applicable State Law Governing Oil and Gas Operations

CalGEM is "tasked with overseeing the state's drilling, operation, maintenance, and plugging and abandonment of oil and gas wells." (*Chevron, supra,* 15 Cal.5th at 140.) "CalGEM is a division of the Department of Conservation and is led by the State Oil and Gas Supervisor." (*Ibid.*) Public Resources Code section 3106(a) provides in relevant part that "[t]he supervisor shall so supervise the drilling, operation, maintenance, and abandonment of wells" to prevent damage to life, health, property, and natural resources. Further, Division 3 of the Public Resources Code regulates all aspects of oil and gas exploration and extraction, including, as pertinent here, bonding and abandonment of wells. (Pub. Res. Code, §§ 3204-3208.)

California has also adopted recent legislation to address risks from potential orphaned oil wells by strengthening bonding and other financial security requirements. In 2019, the state adopted AB 1057 to specifically address concerns about orphaned wells and their potential to require taxpayers to pay to plug and abandon those wells, decommission facilities, and remediate sites. Among other things, AB 1057 (which added Public Resources Code section 3205.3) authorizes CalGEM to require additional financial security beyond the statutory minimums in Public Resources Code section 3204 based on CalGEM's evaluation of the risk that specific operators may desert their wells and the potential threat those wells pose to public health and the environment. The amount of additional security required is based on CalGEM's estimation of the costs to plug and abandon all the operators wells and decommission attendant facilities in accordance with Public Resources Code section 3208, or $30 million, whichever is less. Public Resources Code section 3205.3 establishes a process—which commenced in 2023—in which operators can submit to CalGEM cost estimates for plugging and abandoning their wells, and related work, and discuss appropriate financial security. Through AB 1057, CalGEM is specifically addressing the threat from orphaned wells at the state level and requiring financial security on an operator-specific basis to address that threat.

In 2023, California adopted AB 1167, which made further amendments and additions to the Public Resources Code to address bonding requirements for oil wells. Under AB 1167, if an oil well produces 15 barrels or less per day, based on a 12-month trailing average, the transfer of that well from one operator to another operator cannot occur unless the potential operator first (i) obtains a determination from the Supervisor of the cost to plug and abandon the well and decommission related facilities and (ii) files a bond or similar financial assurance for such amount with the Supervisor. The Supervisor may also require additional financial assurance. As with AB 1057, AB 1167 is specifically intended to address environmental and financial risks associated with orphaned wells.

Because cities and counties do not have the authority to plug and abandon wells, state law provides a mechanism under which any city or county may request a list of idle wells within its jurisdiction from the Supervisor, identify the idle wells on such list for which it determined, based on competent, professional evaluation, to have no reasonable expectation of being reactivated, and formally request the Supervisor to determine whether to order the relevant operators to plug and abandon such wells. (Pub. Res. Code §3206.5.)

If CalGEM cannot locate the operator or any prior operator of an idle well to perform the abandonment work, Public Resources Code section 3206.5 authorizes such city or county to petition the state to plug and abandon such well. Pursuant to the statute, no city or county, including the City and County of Los Angeles, has authority to undertake and incur the cost of an idle well abandonment. Without such authority the City has no valid, legal basis for requiring operators to secure millions of dollars in bonding to cover costs the City cannot incur and therefore does not have the authority to use.

III. State Law Preempts the Fire Commissioners' Proposal

A. Local Bonding Would Be Duplicative of and in Conflict with State Law

Article XI, section 7 of the California Constitution provides that "[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." "If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void." (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897.)

Local legislation conflicts with state law when it either "duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication." (*Ibid.*) "Local legislation is 'duplicative' of general law when it is coextensive therewith." (*Ibid.*) "[L]ocal legislation is 'contradictory' to general law when it is inimical thereto." (*Id.* at 899.) And an area is "fully occupied" by state law when the Legislature has expressly manifested its intent to do so or has impliedly done so based on one of the following indicia of intent: "(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefits to the locality." (*Ibid.*)

As explained above, state law expressly governs bonding and other financial assurance requirements to protect against financial and environmental threats from orphaned wells. State regulation in this area has become even more expansive in recent years with the adoption of AB 1057 (2019) and AB 1167 (2023). CalGEM is now required to make an operator-specific assessment of the appropriate bond or other financial assurance to address the potential for an operator to abandon a well and the resulting costs to address an abandonment. Moreover, an oil well may not even be acquired unless CalGEM is satisfied that a satisfactory bond or other financial assurance is in place.

The Fire Commissioners' recommending local bonding is preempted for several reasons. First, there is no question that it is "duplicative" of state requirements. The Fire Commissioners propose to place an arbitrary $200,000 bond on each well in the City even though state law already requires CalGEM to make a site and operator-specific bonding determination for the exact same wells. As the state agency charged with overseeing oil and gas operations, CalGEM certainly has the capability to determine appropriate bonding under state law, and the Fire Commissioners' recommendation does not argue otherwise.

Second, the Fire Commissioners' recommendation conflicts with state law, as it improperly seeks to "double dip" by placing a generic bond on top of the operator-specific bond to be set by CalGEM.

Finally, the threat of orphaned wells and necessary financial assurance has been "fully and completely covered" by state law with specific provisions, including the 2019 and 2023 legislation described above, which comprehensively address these issues. Because state law requires CalGEM to make operator-specific determinations based on the specific wells at issue, there is no room for duplicative and conflicting local legislation.

There is also no rational policy basis for local bonding. Duplicative local bonding would only add millions in bonding costs and potentially push marginal operators out of business, making the bonding requirement a self-fulfilling prophecy. Further, the notion of City bonding implies that the City bears some responsibility for plugging and abandoning orphaned wells. But the Fire Commissioners have not cited any authority that supports this. By contrast, the state has authority to plug and abandon wells it deems deserted or orphaned. And, as explained above, if the City becomes concerned about an idle well it believes has no reasonable expectation of being reactivated, current law (Pub. Res. Code, § 3206.5) allows the City to petition the Supervisor to plug and abandon that well. Thus, the City already has tools—through the comprehensive statewide scheme—that it could use to resolve the concerns set forth by the Fire Commissioners.

B. The City's Status as a Charter City Does Not Disturb the Preemption Analysis

The fact that the City is a charter city does not change the preemption analysis discussed above. While the "home rule" doctrine under article XI, section 5(a) of the California Constitution allows charter cities to legislate with respect to municipal affairs, this power gives way when the state enacts a statute that is "reasonably tailored to the resolution of a subject of statewide concern." (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 5.) The California Supreme Court has held that if "the subject of the state statute is one of statewide concern and [] the statute is reasonably related to its resolution, then the conflicting charter city measure ceases to be a 'municipal affair' pro tanto and the Legislature is not prohibited by [the Constitution] from addressing the statewide dimension by its own tailored enactments." (*State Building & Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 556.)

There is no question that the state law governing oil and gas operations is of statewide concern. Public Resources Code section 3106 "directs the supervisor to administer the state's regulations in a way that serves the dual purposes of ensuring the state has adequate oil and gas resources, while protecting the environment." (*Chevron, supra,* 15 Cal.5th at 144.) The purpose of Division 3 of the Public Resources Code, which includes the above-discussed provisions on bonding, abandonment, and orphaned wells, "include[s] protecting the public health and safety and environmental quality, including reduction and mitigation of greenhouse gas emissions associated with the development of hydrocarbon geothermal resources in a manner that meets the energy needs of the state." In accordance with Division 3, CalGEM is undertaking a vigorous effort state-wide to ensure adequate bonding and financial assurances to protect against orphaned wells. The City's general interest in protecting the health and safety of its residents does not override the Supervisor's and CalGEM's responsibility for balancing those concerns for all California residents while meeting the energy needs of the state. Accordingly, the provisions of the Public Resources Code addressing bonding and financial assurances address a matter of statewide concern.

Moreover, the state provisions are reasonably related to a statewide concern and narrowly tailored to avoid unnecessary interference with local concerns. The state law requires operator and site-specific analysis and is much more targeted than the Fire Department's proposal to assess a "one-size-fits-all" bonding requirement without accounting for circumstances unique to each well or operator. Moreover, the state (not the City) is obligated to plug and abandon any orphaned wells, and the state's scheme allows the City to request that the state address a well the City fears may be abandoned.

C. AB 3233 Does Not Disturb the Preemption Analysis

AB 3233, which was signed on September 25, 2024, does not undermine the preemption analysis set forth above. Setting asides questions as to its validity, AB 3233, in relevant part, would allow a local entity to prohibit oil and gas operations or "impose regulations, limits, or prohibitions on oil and gas operations or development that are more protective of public health, the climate, or the environment" than state law. The Fire Commissioners' recommended bonding requirement is not more protective of health or the environment than state law. As already discussed, state law empowers the expert state agency charged with overseeing oil and gas to make operator and site-specific determinations to ensure appropriate bonding and financial assurances are made for each well in the state. The City's proposal is arbitrary and capricious and is not supported by any analysis to show that is more protective than the state regulations or necessary in light of those regulations.

Moreover, AB 3233 also provides that in the event a local entity limits or prohibits oil and gas operations, the owner or operator "shall be responsible for plugging and abandoning its wells, decommissioning attendant production facilities, and related measures, ***pursuant to the rules of this division [Division 3].***" Thus, AB 3233 recognizes state law supremacy with respect to plugging and abandonment and "related measures," which encompasses the provisions in Division 3 for bonding and financial assurance to ensure the proper closure of orphaned wells. "Related measures" also encompass the provisions in Division 3 requiring the state to address orphaned wells and allowing the City to petition the state to address wells it fears will be abandoned.

IV. Conclusion

CRC respectfully requests that the Committee recommend against City Council approval of the Fire Commissioners' local bonding proposal because (i) it is preempted by state law, (ii) the City does not have the authority to plug and abandon idle wells and therefore cannot require operators to obtain millions of dollars in bonds to cover costs that the City cannot incur by law, and (iii) is unsupported by any evidence that it is more protective of the environment than the comprehensive statewide scheme that is already in place and is being vigorously implemented by CalGEM to address risks from orphaned wells.

Finally, this letter will serve as a request to include me on the mailing/distribution list for information related to the City's consideration of the Fire Commissioners' recommendations on oil well bonding. Without limitation, please provide me with notice of any meetings, hearings, workshops, or published documents relating to these issues. Thank you for your attention to this matter.

Very truly yours,

Jeffrey D. Dintzer

Communication from Public

Name:	
Date Submitted:	09/26/2024 05:59 PM
Council File No:	24-0919
Comments for Public Posting:	Please see the attached letter, submitted on behalf of the Warren Resources entities in reference to Agenda Item Nos. 6 & 7 on the September 27, 2024 Energy & Environment Committee Meeting (Council File Nos. 24-0919 and 21-0065).

DAY ▪ CARTER ▪ MURPHY LLP

3620 American River Dr., Suite 205
Sacramento, CA 95864
T: 916.570.2500

daycartermurphy.com

Tracy K. Hunckler
thunckler@daycartermurphy.com

September 26, 2024

VIA ONLINE PUBLIC COMMENT FORM: LACouncilComment.com

Los Angeles City Council
Energy and Environment Committee
200 N. Spring Street, Room 340
Los Angeles, CA 90012

Re: *Agenda Item Nos. 6 & 7: September 27, 2024 Energy & Environment Committee Meeting Council File Nos. 24-0919 and 21-0065*

Dear Chairperson Yaroslavsky and Councilmembers McOsker, Blumenfield, De Leon, and Raman:

This firm represents Warren E&P, Inc.; Warren Resources of California, Inc.; Warren Resources, Inc.; Warren Management Corp.; and Warren Operating LLC (collectively "Warren").[1] On behalf of Warren, we are providing these comments in order to express our concern and encourage open dialogue between the City and industry stakeholders surrounding Council File Nos. 24-0919 and 21-0065, and specifically the recommendations set forth in the Board of Fire Commissioner's Report dated July 15, 2024, recommending that the City Council "(a) Authorize the Fire Department to request the Office of Finance to adjust the bond requirements for oil wells; and (b) request the City Attorney to draft an ordinance for the Oil Wells Unit to start collecting penalties for violations committed by oil well operators not in compliance with the City's policies and procedures." (The "Report").

As an initial matter, Warren was not provided notice of the Proposed Policy (defined below) or of the Committee's hearing on the matter, and therefore provides these brief comments on short notice. Warren further understands that the City has not yet held a workshop or stakeholder meeting on the topic, nor has there been an opportunity for industry or bond brokerage representatives to otherwise

[1] Warren operates drilling and production sites within the City and would be detrimentally affected by the proposed policy that would change the City's bonding requirement and related penalty fees. It has a beneficial interest that would be adversely affected by the environmental impacts associated with the Proposed Policy (defined below), and the Proposed Policy will otherwise have a direct, substantial effect on Warren and its operations. Further, Warren makes these comments on behalf of the public interest, which interest would suffer if the City does not perform its duties under CEQA.

provide feedback on the Report or Proposed Policy. Warren therefore submits this letter not only to preserve its rights to potentially challenge any action taken, but more importantly to draw the Committee's attention to items that are missing from the administrative record and require further thoughtful consideration before any action is taken on the Report.

It is our understanding that the Los Angeles Fire Department ("LAFD") proposes to adjust bond requirement levels for oil well operators from $10,000 per well with the option of a $50,000 blanket bond to $200,000 per well with no blanket bond being allowed (the "Proposed Policy"). Such a drastic increase in the bonding requirement—especially with no option of a blanket bond—requires an in-depth analysis of impacts before any action is taken. For an operator like Warren with hundreds of wells maintained within consolidated well cellars at a single site, the Proposed Policy would increase Warren's current blanket bond exponentially, with the City requiring a bond in excess of $40 million dollars. Even if feasible to obtain, such a bond amount could so severely impact Warren's financial position that such requirement would threaten Warren's ability to continue its current, lawful operations at the facility on its property.

The three-page LAFD Report, which does not otherwise attach documentation supporting its recommendations, fails to discuss or even acknowledge these implications and otherwise falls short in many respects:

- The Report does not address—and it appears the City did not perform—a feasibility study. Indeed, nothing in the Report or otherwise available in the public record suggests that the City has considered whether a bond in the required amount would even be available in California. We have located no evidence in the public record that LAFD has obtained information from brokers, bonding companies or industry on the feasibility of securing bonds at the proposed levels.

- The Report surveyed four oil service companies contracted for abandonments before concluding that $200,000 per well was an appropriate figure. It is not clear from the Report where these companies are located or what kind of abandonment they considered in providing their estimates. In any event, the Report fails to consider evidence that abandonments can be performed for far less, and fails to account for any economy of scale that might result from abandoning a consolidated group of wells at once. Specifically, there is no evidence that operators in Los Angeles were contacted about their well abandonment costs, including operators like Warren who have been abandoning large numbers of wells each year within the City.

- Relatedly, the Report fails to consider that not all operators are the same. While the City's concern is presumably focused on addressing orphaned wells, the bonding requirement would apply to all wells in the City. In Warren's case—where hundreds of wells are consolidated into three completely underground well cellars—the cost of abandonment would be far less. The average of $200,000 per well does not consider a reasonable range of well configurations or the costs associated with their successful abandonment, in favor of an unsupported, one-size-fits-all approach.

- To the same end, the Report does not consider the fact that the State of California already regulates bonding of oil and gas wells through a process that evaluates an operator's risk of desertion. Specifically, the Public Resources Code regulates bonding (§§ 3204-3207) and abandonment of wells (§ 3208), and further provides for increased bonding if there is concern about the desertion of wells or facilities (§ 3205.3).

In addition to the above concerns, the Proposed Policy, as currently drafted, would likely subject the City to numerous legal challenges, including that the bonding requirement is preempted by state law; that the bonding amount is arbitrary, irrational, and an abuse of discretion; that its adoption is a violation of CEQA and various due process rights; and ultimately that excessive bonding constitutes a taking and will deprive operators of their vested rights.

Warren is continuing to gather detailed information on these issues, as well as the impact the Proposed Policy will have on Warren's operations. Warren would like to express its desire to be involved in this ongoing public process, and would encourage this Committee to hold workshops and stakeholder meetings before moving forward. We look forward to working with the City to address its concerns and reach its goals in a way that makes sense for all involved.

Sincerely,

DAY CARTER & MURPHY LLP

Tracy K. Hunckler