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## California

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## CALIFORNIA

*Joshua L. Baker and Ryan Mahoney\**

### I. INTRODUCTION

Although California continues to transition away from its historical status as one of the nation's most important oil and gas-producing states,<sup>1</sup> California is still among the top-ten states in oil

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1. See, e.g., Rob Nikolewski, *California's ranking as an oil-producing state is slipping*, SAN DIEGO UNION-TRIBUNE (Jul. 12, 2018, 5:00 AM), <https://www.sandiegouniontribune.com/business/energy-green/sd-fi-california-crudeoil-20180711-story.html> [<https://perma.cc/963K-WV4G>] (noting that “[i]n 1985, California field production reached 394 million barrels”, but that “[i]n 2017, the state produced 173.2 million barrels- a 56 percent drop”).

production<sup>2</sup> and produces a significant amount of natural gas.<sup>3</sup> California has a long history of oil and gas exploration, production, refinement, and marketing, and as a result, well-established common law principles and statutory and regulatory laws are in place that govern all facets of the industry. The following update summarizes key changes in California oil and gas law for the survey period from January 1, 2019 to October 15, 2019.

## II. LEGISLATIVE ACTIVITY

Legislative activity in California over the survey period remained consistent with previous sessions, meaning numerous bills were introduced to further regulate oil and gas production in California but only some were passed by the Legislature and signed into law by the Governor. The most significant of these are summarized below.

### A. *Assembly Bill No. 1057*<sup>4</sup>

Assembly Bill No. 1057 (“AB 1057”) effects several changes to California oil and gas regulation by amending portions of the California Government Code, the Public Resources Code, and the Health & Safety Code. For instance, AB 1057 renames the state’s main oil and gas regulatory agency from the Division of Oil, Gas, and Geothermal Resources (“DOGGR”) to the Geological Energy Management Division (“CalGEM”),<sup>5</sup> and codifies the purposes of the division to include “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

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2. See *Rankings: Crude Oil Production, July 2019*, U.S. ENERGY INFO. ADMIN., <https://www.eia.gov/state/rankings/#/series/46> [<https://perma.cc/2RNG-3LZH>] (last visited Oct. 25, 2019).

3. See *Natural Gas Gross Withdrawals and Production*, U.S. ENERGY INFO. ADMIN., [https://www.eia.gov/dnav/ng/ng\\_prod\\_sum\\_a\\_EPG0\\_VGM\\_mmcft\\_m.htm](https://www.eia.gov/dnav/ng/ng_prod_sum_a_EPG0_VGM_mmcft_m.htm) [<https://perma.cc/7U6Q-SR47>] (last visited Oct. 25, 2019).

4. Assemb. B. 1057, 2019 Leg., 2019-2020 Reg. Sess. (Cal. 2019) (Approved by the Governor on October 12, 2019, and chaptered by the Secretary of State as Chapter 771 on October 12, 2019.)

5. Assemb. B. 1057 § 6 (amending CAL. PUB. RES. CODE § 3002 (West 2019)).

energy needs of the state.”<sup>6</sup> In this latter respect, AB 1057 requires the State Oil and Gas Supervisor (as head of CalGEM) to coordinate with other state agencies and entities (including industry sectors, business groups and environmental organizations) in furtherance of the State’s clean energy goals under the California Global Warming Solutions Act of 2006 (California Health & Safety Code § 38500 et seq.).<sup>7</sup> Interestingly, however, AB 1057 does not amend other existing statutory law that expressly provides that the State Oil and Gas Supervisor’s duties include supervising the drilling and operation of wells in the state so as to prevent loss of oil, gas, or reservoir energy and to permit the owners or operators of wells to utilize all methods and practices known to the oil and gas industry for the purpose of increasing the ultimate recovery of underground hydrocarbons.<sup>8</sup>

Of all the changes effected by AB 1057 (which also include requiring additional information from parties involved in the sale and purchase of oil and gas wells and facilities<sup>9</sup>), the most concerning to operators is that, effective January 1, 2020, CalGEM may require an operator to provide additional security (i.e., on top of current bonding requirements) of up to \$30M based on the division’s evaluation of the risk that the operator will desert its well(s) and the potential threats its well(s) may pose to life, health, property, and natural resources.<sup>10</sup>

#### B. *Assembly Bill No. 342*<sup>11</sup>

Assembly Bill No. 342 (“AB 342”) adds Section 6827.5 to the California Public Resources Code. This statute prohibits (with limited exceptions) any state entity with leasing authority over state lands from entering into any new lease or other conveyance authorizing new construction of oil- and gas-related infrastructure upon state-owned lands to support production of oil and gas upon federal lands that are or were previously designated as a national monument, park,

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6. Assemb. B. 1057 § 9.

7. *Id.*

8. CAL. PUB. RES. CODE § 3106(a)–(b) (West 2019).

9. *See* Assemb. B. 1057 §§ 11–12.

10. Assemb. B. 1057 § 13.

11. Assemb. B. 342, 2019 Leg., 2019-2020 Reg. Sess. (Cal. 2019) (Approved by the Governor on October 12, 2019, and chaptered by the Secretary of State as Chapter 769 on October 12, 2019).

wilderness area, wildlife refuge, or wilderness study area.<sup>12</sup> This bill was a direct response to the Trump Administration's plans to expand oil and gas production on federal land in California<sup>13</sup> and follows last year's passage of duplicative measures: Senate Bill No. 834<sup>14</sup> and Assembly Bill No. 1775.<sup>15</sup> These prohibit the California State Lands Commission ("SLC") or a public trustee from entering into any new lease or other conveyance authorizing new construction of oil- and gas-related infrastructure upon tidelands and submerged lands within state waters associated with any federal offshore oil and gas lease issued after January 1, 2018.<sup>16</sup>

*C. Assembly Bill No. 585<sup>17</sup>*

Assembly Bill No. 585 ("AB 585") amends Section 6804 of and adds Section 6829.4 to the California Public Resources Code, relating to oil and gas leases and permits covering state-owned lands and administered by SLC. In particular, AB 585:

- Authorizes SLC, when considering an approval of an assignment, transfer or sublease of an oil and gas lease or permit, to take into account whether the proposed assignee, transferee or sublessee is likely to comply with the terms of the assigned lease or permit for its duration, as determined by specified factors;<sup>18</sup>
- Requires any SLC-approved assignment, transfer or sublease (or memorandum thereof) of an oil and gas

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12. *Id.*

13. Associated Press, *Gov. Gavin Newsom Signs Bill Limiting Oil and Gas Development* (October 12, 2019, 4:23 PM), L.A. TIMES <https://www.latimes.com/california/story/2019-10-12/gov-gavin-newsom-signs-bill-limiting-oil-and-gas-development> [<https://perma.cc/NZ4T-G7AR>] (last visited Oct. 25, 2019).

14. S.B. 834, 2018 Leg., 2017-2018 Sess. (Cal. 2018) (Approved by the Governor on September 8, 2018 and chaptered by the Secretary of State as Chapter 309 on September 8, 2018.).

15. Assemb. B. 1775, 2018 Leg., 2017-2018 Sess. (Cal. 2018) (Approved by the Governor on September 8, 2018 and chaptered by the Secretary of State as Chapter 310 on September 8, 2018.).

16. *Id.*

17. Assemb. B. 585, 2019 Leg., 2018-2019 Sess. (Cal. 2019). (Approved by the Governor on July 30, 2019, and chaptered by the Secretary of State as Chapter 123 on July 30, 2019.).

18. *Id.*

lease or permit covering state-owned lands to be recorded in the office of the county recorder of the county in which the leased or permitted lands are located;<sup>19</sup> and

- Deletes existing provisions releasing and discharging an assignor or transferor from obligations accruing under an oil and gas lease or permit after the assignment, transfer or sublease of the same and instead provides (subject to a few exceptions) that the assignor, transferor or sublessor shall remain liable for, and not be released or discharged from, obligations under the lease or permit, including requirements relating to plugging and abandoning wells, decommissioning facilities, and completing well site and lease restoration.<sup>20</sup>

D. *Senate Bill No. 551*<sup>21</sup>

Senate Bill No. 551 (“SB 551”) amends Sections 3206.3 and 3258 of and adds Section 3205.7 to the California Public Resources Code, relating to oil and gas well plugging and abandonment liabilities. In particular, SB 551 provides that commencing July 1, 2022, CalGEM shall require oil and gas operators in the state to submit an initial report to the division (on a schedule to be determined by the division) demonstrating the operator’s total liability to plug and abandon all wells and to decommission all attendant facilities, including any needed site remediation.<sup>22</sup> Follow-up reporting is required on a continual basis that shall be no less frequent than every five years after each operator’s initial report.<sup>23</sup>

CalGEM must develop criteria to be used by operators for estimating their costs to plug and abandon their wells and decommission their facilities.<sup>24</sup> If the State Oil and Gas Supervisor

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19. *Id.*

20. *Id.*

21. S.B. 551, 2019 Leg., 2018-2019 Sess. (Cal. 2019). (Approved by the Governor on October 12, 2019, and chaptered by the Secretary of State as Chapter 774 on October 12, 2019.).

22. *Id.*

23. *Id.* (enacting PUB. RES. CODE § 3205.7(a)(2)).

24. *Id.*

determines that an operator has failed to use the requisite criteria or has otherwise provided estimates that are neither credible nor accurate, it may request the operator to submit revised estimates for further review and approval.<sup>25</sup>

### III. REGULATORY ACTIVITY

Regulatory activity affecting the California oil and gas industry during the survey period continued to focus on a variety of issues. In particular, new regulations regarding underground injection control and idle wells became operative in April 2019.<sup>26</sup>

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25. *Id.* (enacting PUB. RES. CODE § 3205.7(d)).

26. *See Oil, Gas, and Geothermal Laws and Rulemaking*, CAL. DEP'T CONSERVATION, <https://www.conservation.ca.gov/dog/Pages/Oil,-Gas,-and-Geothermal-Rulemaking-and-Laws.aspx> [<https://perma.cc/W6JP-HR9B>] (last visited Nov. 8, 2019) (summary and links to updated regulations relating to underground injection control and idle wells).