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Jeffrey McDougall
Chairman OIPA

"You are hearing about STACK and SCOOP now. There always will be another hot play somewhere."

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Steve Layton
Chairman CIPA

"Concern about price is secondary in California to all the regulatory and political issues we face."

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in northwestern Los Angeles County to the Oregon border, and includes Kern County, which is home to the bulk of California's oil production. However, he goes on, "We anticipate this regulation will be used as a template by other regional boards, including the Central Coast, which has some (oil) operations around Monterey, and also the South Coast, which includes Orange County. It may even be adopted as a statewide procedure."

Methane Emissions

In March, Zierman continues, the California Air Resources Board finalized what he characterizes as "the toughest methane emissions regulation in the nation."

The rules, he indicates, which are intended to cut emissions a minimum of 50 percent, apply to on- and offshore production facilities; crude oil, condensate, and produced water separation and storage; underground storage; gathering and boosting stations; and gas processing plants as well as transmission and compressor stations.

He says the rules require such measures as leak detection and repair for both active and idle valves, flanges and connectors; replacing higher-emitting "wet seals" with lower-emitting "dry seals"; use of "no-blood" pneumatic pumps; and vapor control and/or flaring of collected emissions.

The rules are part of California's overarching preoccupation with reducing greenhouse gas emissions that began with AB 32 in 2006, which mandated reducing emissions to 1990 levels by 2020, which Zierman says equates to a 20-25 percent reduction. The primary focus under AB 32 has been a cap-and-trade program for any entity that emits more than 25,000 tons of carbon dioxide-equivalent a year.

AB 32's mandate only extends to 2020, so last year, Zierman recalls, the legislature passed SB 32, which calls for lowering GHG emissions to 40 percent below 1990 levels by 2030.

Also last year, he says, CARB released its 2030 Target Scoping Plan Discussion Draft, which contains draft amendments to extend cap-and-trade beyond 2020, as well as a number of command-and-control regulations that include a low-carbon fuel standard for refineries and the upstream methane rules. Meanwhile, he mentions, lawmakers are considering AB 378 this year, which would extend CARB's cap-and-trade authority to Dec. 31, 2030.

CIPA's position is simple, Zierman says. "The new target is 40 percent. All right, put that in the cap-and-trade program and be done. Let industries do business deals as efficiently as they can. You don't need to doodle on all these little things (regulators) may know nothing about. But that isn't the way they operate."

Local Regulation

On top of these, Layton observes that California oilmen have seen a flood of local regulatory initiatives in the past year. In November, Monterey County voters passed Measure Z, which not only banned all forms of well stimulation, but also implemented a five-year phaseout of oil and gas wastewater injection and impoundment facilities (ADGR, December 2016, pg. 31).

Layton also cites—among others—a production ban proposed by the Alameda County Planning Commission, the Santa Barbara Planning Commission's management plan for the Gavitoa Coast that includes language discouraging enhanced oil and gas recovery, and an agreement signed in September by the city of Los Angeles with anti-oil activists without industry input, even though CIPA had been granted intervenor status in the underlying lawsuit. The Los Angeles settlement agreement raises well fees and subjects oil operations to environmental assessments distinct from those required for any other businesses (ADGR, November 2016, pg. 20).

Layton describes these various actions as "a coordinated effort by the same group of people. They go in under the banner of preventing 'fracking,' but then you find it

really isn't about fracturing. They are hankering on everything necessary to produce oil."

According to Zierman, Chevron Corp. and Aera Energy LLC filed lawsuits against Monterey County's referendum in December, obtaining an injunction against implementation. Then in March, the National Association of Royalty Owners-California along with about a dozen individual mineral owners filed a third lawsuit.

He says the lawsuits argue that while local governments may regulate surface impacts, Measure Z affects downhole operations, which are the sole purview of the state. But more importantly, he says, the lawsuits allege an illegal taking of property without just compensation, which if successful, would subject Monterey County to billions of dollars in damages.

Layton comments that after failing to halt industry activity at the state level, anti-oil activists now are targeting local jurisdictions one by one. "Although all CIPA companies don't operate in all these different jurisdictions, we are all in this together," he reflects. "We must do whatever we need to, to make sure these outside interests don't find themselves in positions of power because they are unopposed." □

Colorado Appeals Court Sides Against Balanced Interpretation

By Dan Larson
Special Correspondent

DENVER—Colorado's Division V Court of Appeals ruled in March that the Colorado Oil and Gas Conservation Commission should reconsider its rejection of a petition seeking a rule making until the best available science demonstrates activity will not impair the environment. According to a lawyer familiar with the case, although the decision stops short of ordering such a rule making, it fundamentally alters the manner in which COGCC traditionally has viewed the criteria for rule making and permits.

The March 23 ruling in *Martinez, et al. v. Colorado Oil and Gas Conservation Commission* has drawn a speedy response from representatives of the state's oil and gas industry, who are expressing support for the commission's reading of its authority. Some legal experts warn a different interpretation may prove ominous for oil and gas activity. According to Mark Mathews, an attorney at Brownstein Hyatt Farber Schreck in Denver, not only does the petition in question jettison a standard that weighs environmental priorities as

one concern among others, it also arguably opens the door to a permitting approach in which oil and gas companies must perform the nearly impossible task of proving a negative.

"By throwing out the balancing test traditionally used by the COGCC that weighs the importance of developing oil and gas resources with safety and public health issues, and not providing any guidance for the level of required environmental protection, the decision may be interpreted as mandating the commission not to approve any rule—or even any permit—that allows impairment of the environment to any degree," Mathews assesses. "That is extraordinary."

A Balancing Act

After the ruling, a COGCC spokesman indicated the commission was "evaluating whether to appeal to the Colorado Supreme Court" and reiterated the commission's belief that "existing rules and permitting requirements are protective of public health, safety and welfare and, as such, it does not see a near-term effect on our regulatory approach."

The case was brought in October 2013

by a group of Colorado teenagers, who petitioned the commission to revise its rules so that no drilling permits be issued “unless the best available science demonstrates, and an independent third party confirms, that drilling can occur in a manner that does not impair” the state’s environment, human health or contribute to climate change. Their petition was supported by filings from 27 local and national environmental and community organizations.

COGCC heard the petition April 28, 2014, and denied it according to the rationale that the commission lacked authority to revise its rules as petitioned under the state’s Oil and Gas Conservation Act. A district court upheld the commission’s decision on July 2, 2014.

“The commission denied the petition as outside its authority because the proposed rule would require a readjustment of the Oil and Gas Conservation Act’s balance between the development of oil and gas resources and protection of public health, safety and welfare,” Matthews explains. “Instead, the proposed rule sought to require the commission to make its decision solely based on environmental impacts.”

He says the commission maintains that its statutory authority under the act requires it to balance four goals:

- Maximizing the efficient production of a resource pool;
- Protecting correlative rights;
- Preventing waste; and
- Protecting the environment.

It also is required to consider the cost-effectiveness and technical feasibility of any measure implemented to protect the environment, Matthews points out. “None of the act’s multiple goals are intended to be considered in isolation, but are instead part of a balancing process guiding the commission’s decisions,” Matthews describes.

Overriding Concern

Writing in the 2-1 majority opinion, Appeals Court Judge Terry Fox says the statute clearly holds that development and resource production clearly must take place “in a manner consistent with” environmental protection. Such language “does not create a balancing test,” Fox holds. Rather, it deems development as in the public interest when it protects health, safety and welfare.

In her dissenting opinion, Judge Laurie Booras observes that the law directs the commission to “prevent and mitigate significant adverse environment impacts” at the same time it considers cost-effectiveness and technical feasibility. “There would be no reason to consider cost-effectiveness and technical feasibility if protection of the environment was, by itself, the deter-

mining factor,” Booras points out.

The ruling focuses on a single issue, Matthews indicates. “It said COGCC had the authority to consider the petition and therefore should reassess its rejection of it,” he emphasizes. “It did not direct the commission to stop what it was doing. Nor did it provide guidance for what rules should be changed or even if a rule making was called for. Still, the ruling does have very significant implications. Courts rarely second-guess agencies’ interpretations of their enabling statutes or the process by which agencies make complex decisions. Here, the majority did both.”

The two industry groups that have filed in support of COGCC are expressing concern that the appeals court decision adds uncertainty to the state’s regulatory process.

“The ruling throws out decades of

precedent encouraging this balancing test, and instead elevates environmental protection as the primary goal,” holds Colorado Oil & Gas Association President Dan Haley. “Protection of our environment is a key pillar in our existing statute. We encourage the COGCC to appeal.”

Tracee Bentley, executive director of the Colorado Petroleum Council, expresses disappointment and concludes that the decision lacks sound legal basis. “Colorado’s oil and natural gas industry has a long record of environmental stewardship that belies the need for additional onerous rules and restrictions,” she says.

Given the ruling’s significance and potential impact, Matthews predicts COGCC will fight it. “I will be surprised if the commission does not appeal the ruling,” he relates. □

CDPHE Says Oil Operations Pose Little Risk To Residents

Colorado’s Department of Public Health and Environment (CDPHE) has issued a new report that says that oil and gas operations pose a “low” risk to public health and the environment. The report, titled “Oil and Gas Operations and Public Health and the Environment,” was released in late 2014. It is the first of a series of reports that CDPHE is releasing on the topic of oil and gas operations and public health. The report states that the department has conducted a comprehensive review of the scientific literature on the topic and found that the evidence is “inconclusive” on many issues. However, it does find that there is a “low” risk to public health and the environment from oil and gas operations. The report also identifies several areas where further research is needed, including the potential for air pollution, water contamination, and seismicity. CDPHE is currently conducting research in these areas and will release additional reports in the coming months.