

Local Development Disputes Abound

By Dan Larson
Special Correspondent

From Pennsylvania to California, “keep it in the ground” activists who have organized to shut down oil and natural gas development in their communities are rallying around the mantra of local control, industry leaders report. Moreover, they warn, companies should expect such opposition to intensify.

In May 2013, commissioners in Mora County, N.M., voted to ban all oil and gas development, in what was considered the first such action in the country (*AOGR*, June 2013, pg. 16). Although a federal court declared the ordinance unconstitutional and the commission withdrew it in March 2015, New Mexico has continued to see more efforts at local oil and gas regulation, most recently in Sandoval County, where commissioners were to consider in January revising the county’s oil and gas regulations, reports the Independent Petroleum Association of New Mexico.

The controversies extend far beyond the Land of Enchantment. In Colorado, where the past decade saw the industry notch several important victories against local bans and moratoria at the same time it faced a regular cycle of state regulatory rule making, the opposition is relentless and determined, describes Colorado Oil & Gas Association President and Chief Executive Officer Dan Haley.

Press accounts list six community organizations formed in the latter half of 2017 that all share a stated mission to prevent any new oil and gas development in communities along Colorado’s Front Range.

“Make no mistake,” Haley advised association members at the group’s annual meeting in November. “Our industry is under attack.”

Bait-And-Switch

In Pennsylvania, home to the Community Environmental Legal Defense Fund, a federal judge on Jan. 5 issued sanctions amounting to \$52,000 against two of the group’s attorneys for their “continued pursuit of frivolous claims and defenses” related to litigation about local government’s refusal to acknowledge a disposal well permit (see story page 18).

Elsewhere, the group, which promotes itself as pioneer for community rights, claims it has organized local affiliates to push for drilling moratoria, fracturing bans and permit denials for pipelines and

oil trains in California, Colorado, Illinois, New Mexico, Ohio, Oregon, Pennsylvania and Texas.

At the center of the latest legal wrangling is an ordinance authored by CELDF and passed by the Grant Township, Pa., council in 2014 that banned an injection well’s permits.

According to industry representatives, the township ordinance and others like it claim legal primacy for the local government and assert the right to pre-empt state or federal rules while concurrently stripping companies of their property rights. Under that reasoning, state permits are invalid if they cover any activity that runs afoul of community laws.

According to public statements from the foundation’s leader, CELDF’s other underlying principle is to award rights to nature and ecosystems. “This challenges one of the fundamental underpinnings of our current legal system—that the natural environment is property and those who own the most property can destroy nature,” characterizes CELDF Chief Executive Thomas Linzey.

He also publicly acknowledges that legal action against a local government supports its mission by inciting outrage among residents and driving “creation of a statewide community rights network to drive constitutional change at the state level.”

Fundamentally changing government is CELDF’s ultimate goal, maintains Jackie Stewart, Ohio state director for Energy In Depth. “The local control fracturing bans that CELDF uses against the oil and gas industry are a bait-and-switch,” she holds. “Fortunately, when people realize what is going on—that the so-called Community Bill of Rights is just a ruse to build support for CELDF’s rights of nature campaign—they get aggravated.

“If CELDF was really serious about banning hydraulic fracturing, it would take the fight to (the Capitol),” Stewart suggests. “It knows it would not get anywhere, because our legislators understand what is going on and repeatedly have said they will not allow that because shale development has poured more than \$50 billion into the state’s economy.”

Effective Response

Stewart says she emphasizes two key messages about CELDF. “First, I make it clear that these people are not from Ohio, they are not your neighbors and they are not actually local concerned citizens. They are a well-coordinated litigation

factory, funded by large national environmental groups and they do not have your best interests at heart,” she describes. “Second, their actions in your town, even under the guise of free legal advice, eventually will cost the taxpayers. From the election filings to the legal defense, a lot of taxpayer money is at stake.

“CELDf knows its legal positions are groundless as the recent federal court decision proved, but it keeps coming back,” Stewart adds.

Next up will be a pair of statewide initiatives CELDF hopes to place on the ballot for Ohio’s November 2018 election, she notes (see story, page 27). “It will require money and local coordination across the state, which they currently do not have,” Stewart relates. “But nothing is impossible, and the campaign organizers at CELDF are persistent, so you never know.”

In the meantime, Stewart continues to encourage companies to engage their neighbors, address their questions and be prepared to stay in the game, even from the sidelines.

“After the curtain lifts to reveal how this organization operates and its true mission is exposed, the pushback will come organically from the chambers of commerce, building trades or political leaders,” Stewart concludes.

Counting On Controversy

California Independent Petroleum Association President Rock Zierman acknowledges that a significant segment of the Golden State population opposes fossil fuels in principle, whether because of climate change, pollution or perceived health hazards.

“We always count on the controversy,” Zierman describes. “There are small but very loud groups in these hot spots. Whenever they see any kind of drilling rig, they protest.”

Zierman describes a trio of efforts by opposition groups to restrict development, or in the case of Los Angeles, impose setbacks on existing production that effectively could spell its end. Promoted by Stand Together Against Neighborhood Drilling (STAND-LA), a community organization that claims to bring “residents, health practitioners and communities of faith working together to protect low-income communities of color” from nearby oil production, the proposed 2,500-foot setback it advocates may shut down 90 percent of the city’s 322 active oil wells, calculates the Cali-

fornia Department of Oil, Gas and Geothermal Resources.

The group claims that its efforts are behind the LA City Council's June 14, 2017, decision in which, city records show, the council approved File 17-0447 that called for a study of:

- Half-mile setbacks for all producing wells;
- How to compensate mineral owners for lost production; and
- Current and potential health impacts from production sites and abandoned oil fields.

"We did not oppose the study," Zierman says. "Opponents call oil and gas operations dangerous without any scientific basis, so a study by the city will bring out the truth.

"We did point out that ending LA oil production is short-sighted," he adds. "If our refiners import crude from countries that don't follow the same environmental protections, what is gained?"

Zierman deems the setback proposal's language to be purposely vague, and predicts that if it becomes law it will apply to any downhole operation, including re-drills and workovers. "If operators are prohibited from bringing any rig on site, they cannot do the routine maintenance. Slowly, all the wells will stop producing," Zierman reasons. "In 10 years, the industry will be completely pushed out of the city."

Elsewhere in California, opposition groups continue to push anti-development initiatives and fracturing bans. When voters in Monterey County passed a measure touted as a ban on hydraulic fracturing in November 2016, a coalition of companies and royalty owners sued. One year later, Measure Z, as the initiative was known, was challenged in *Chevron et. al. v. County of Monterey* and largely reversed in a trial before County Superior Court Judge Thomas Wills.

Although he ruled that state and federal law pre-empted significant portions of Measure Z, Wills allowed the fracturing ban to stand, as both sides acknowledged the county's lack of fracturing operations, Zierman explains (see story, page 27).

"The judge ruled that the state and federal government regulated downhole operations and that the county couldn't get involved down hole; it can focus only on surface impacts," Zierman notes.

True Believers

Ever since a spill north of Santa Barbara, Ca., shut down an oil pipeline, opposition surfaces alongside any plan to supply crude oil to refineries the pipeline served, Zierman notes. In Santa Barbara County, ExxonMobil's efforts to gain

permission to begin transporting crude by truck from its three shut-in offshore platforms continues to face county government delays, according to published reports. A proposal by the company to operate 70 truckloads daily from a coastal facility to an inland pipeline station in Kern County, Ca., was delayed when county officials requested additional information on traffic, air emissions and qualitative risks.

In San Luis Obispo County, Ca., protesters held marches and rallies to oppose a proposal by Phillips 66 to increase rail deliveries to its Santa Maria refinery on the Nipomo Mesa in the southern part of the county. Such delays have forced refiners to pull supply from more distant sources, with predictable results, Zierman observes.

"The irony in all this is that more trucks are driving more miles to keep the refineries running," Zierman notes. "Opponents were willing to ruin the environment, damage highways, decimate school budgets and put people out of work simply to say they shut down offshore production.

"Shutting down oil production in Southern California has become a religious belief for these people," he muses.

According To Plan

After heading the Denver-based Western Energy Alliance for five years, Tim Wigley joined the Oklahoma Independent Petroleum Association in 2016 and became its president in 2017. In that short time, he says, opposition groups have looked to secure a foothold in the Sooner State with the Colorado playbook.

"They have a plan," Wigley warns. "Sometimes, they put candidates up for local elections. Other times they organize students in a college town, or they show up at planning commission meetings and push for zoning changes. But it's always at the town or county level."

"They have not succeeded anywhere in Oklahoma yet, but you can hear chirping in the background," he describes. "It is a discussion our Board of Directors is having because we cannot afford to ignore the chatter."

In 2015, the Oklahoma Legislature passed a bill to prohibit local governments from banning fracturing, which was modeled after similar legislation passed in Texas, Wigley notes. Shortly thereafter, the town council in Stillwater, home of Oklahoma State University, passed an ordinance regulating new drilling in the city.

According to published reports, the ordinance establishes a 660-foot setback from "protected use" buildings, including

homes, churches and schools. It also prohibits new houses from being built within 400 feet of an existing oil and gas well, and set a 69 decibel noise limit.

The ordinance remains in place, indicates A.J. Ferate, OIPA vice president of regulatory affairs. "We were not prepared to legally challenge the case, since we would not have standing," Ferate explains. Nevertheless, he adds, the ordinance "is certainly challengeable and we would like to see an operator pursue that case."

Wigley says he has asked the OIPA Board of Directors to consider hiring a community relations director to establish face-to-face contact with communities across Oklahoma. The position would involve "staying in tune with what is happening at the local level," Wigley describes. "There is also an information and education role about what neighbors can expect to see and hear."

Oklahoma communities differ in many ways from those in Colorado, Wigley assesses. "When there are jobs, the schools are funded and there is money to fix the roads, protests are less likely," he relates. "But that comes with a price and we have to do a better job of connecting drilling with positive community impacts."

Another lesson Wigley attributes to his Western Energy Alliance tenure is that demographics drive opposition, even in oil-friendly Oklahoma.

"Our population is changing," he notes. "Cities are spreading out and we must manage the rural/urban interface. Oklahoma has companies that understand the importance of keeping in touch. It is more than simply supporting schools and local charities. You have to hold town hall meetings and keep in regular contact with local elected officials."

The Long Game

Ultimately, numerous industry leaders agree, local oil and gas opposition will not go quietly, even after defeats at the polls and in the courtroom.

"Some of these people organized after the 1969 Santa Barbara oil spill and they are still at it," Zierman considers.

"I tell my board that stuff rolls downhill and that we have to pay attention to what happens in Colorado because it can happen here," Wigley says.

"What we have exposed about CELDF makes it clear that isn't happening only in Ohio," Stewart warns. "This is a highly coordinated national effort. It is like a game of whack-a-mole that keeps going. One of the most important things we can do is expose the ultimate goal and the cost it will exact from a community." □