State Legislative Report

CIPA Questions New Laws' Wisdom

By Dan Larson
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SACRAMENTO, CA.–In his first year as governor of the nation's most populous and seventh ranked oil producing state, Gavin Newsom is following through on a pledge to further tighten regulations on oil and gas, the leader of a state trade group contends.

According to California Independent Petroleum Association President Rock Zierman, the governor sent a clear message when he signed a bill prohibiting oil and gas leasing on state lands: "California will not produce its own oil," Zierman characterizes. "However, there is no prohibition on importing Saudi oil or sending our wealth to foreign governments."

CIPA's response to that, Zierman says, is to keep pointing out the facts. "We are at a tipping point where California is facing forced power outages and drivers are paying record-high prices at the pumps," he observes. "Californians demand and deserve reliable, affordable energy, which our members are proud to deliver. This stark reality should make it clear to policymakers that oil consumed in California should come from California, where it is produced responsibly and affordably under the world's strictest environmental protections, as opposed to being tankered in from foreign countries."

Nevertheless, while CIPA was disappointed to see the six bills Newsom signed on Oct. 10 become law, Zierman notes that the association's advocacy helped beat back nearly three-quarters of the anti-industry bills that surfaced in 2019.

And as opposition groups cheer Newsom's crusade against oil and gas, the industry warns of the potential for lasting damage to the state's economy. Zierman cites a study from this summer that highlights the key role oil and gas plays in the state's economy. Produced by the Institute for Applied Economics in Los Angeles, the study notes the industry contributes $152.3 billion to the California economy, returns $21.6 billion in local, state and federal taxes, employs 152,100 workers and pays those workers $12 billion in wages.

That economic engine may sputter under the continued assault from Newsom and his allies in the state legislature, Zierman warns.

Regulatory Shakeup

Although the 2019 session opened with 25 bills that CIPA opposed as negative for oil and gas, the association's efforts helped whittle that number to six, Zierman reports. The association's top priority in 2019 was to defeat AB 1057, which he describes as a significant change of the state's regulatory approach to oil and gas.

Sponsored by Assemblywoman Monique Limón, D-Santa Barbara, the bill renames and changes the mandate of the Division of Oil, Gas and Geothermal Resources within the Department of Conservation. Effective Jan. 1, 2020, the state's primary oil and gas regulator will be known as the Geologic Energy Management Division, or CalGEM.

Among its chief responsibilities, CalGEM is tasked with "protecting public health and safety and environmental quality, including reduction and mitigation of greenhouse gas emissions."

Under the new law, the division adds to its mission the task of reducing GHG emissions in accordance with the goals of the California Global Warming Solutions Act of 2006. This requires the oil and gas supervisor to "coordinate with other state agencies in support clean energy goals" and eventually help the state run entirely on renewable energy.

Of greater concern, however, is the section of AB 1057 that gives wide discretion to CalGEM for determining operators' required bonding amounts, Zierman assesses. Now the division will evaluate "the risk that the operator will desert its wells, and the potential threats the operator's wells pose to life, health, property and natural resources."

The new law grants CalGEM authority to require operators to post additional bonds or other financial assurance capped at $30 million. Zierman says the additional bonding authority is unlikely to be applied until the state finishes collecting and analyzing liability reports from each operator for well plugging and abandonment costs and site decommissioning. The new liability reporting requirement is a product of SB 551, sponsored by Senator Hannah-Beth Jackson, D-Santa Barbara, which was also among the six oil-and-gas-related bills Newsom signed.

Bonding Cap

The original version of AB 1057 did not cap bonding requirements because the administration and lawmakers kept citing the state's experience decommissioning an offshore platform several years ago, for which costs exceeded $100 million.

"The author did not have a handle on true liability costs and the difference between offshore and onshore wells," Zierman explains. "If an onshore operator goes out of business, ownership can be traced back. And if the state inherits an orphan well, the cost to plug and abandon is paid from operator assessments, not the taxpayer."

California's operator assessment is $0.56 a barrel and has been in place for years, Zierman notes. "The assessment goes into the DOGGR operating account and it has increased dramatically over the last 10 years," he observes. "The money to plug and abandon wells is included."

Moreover, Zierman adds, the number of unplugged orphan wells has been reduced to a handful under the current orphan well program, in contrast to more than 100 when he arrived at CIPA 17 years ago.

The lack of a cap on bonding amounts prompted CIPA and other industry groups to oppose AB 1057, Zierman recounts, but once the sponsor agreed to cap bonds at $30 million, opposition receded from some representing larger oil companies.

Nevertheless, he says, that cap is way too high for many independents. "For many of our members, a $30 million bond is simply not commercially available," Zierman declares. "A bond at that level can be the difference between

whether or not a company operates in California."

Zierman predicts the state will not begin assessing additional bonds until it collects and analyzes the plug-and-abandon reports operators are required file under SB 551.

"Realistically, that won't happen until early 2022," he concludes.

Poking The President

Another bill to get a governor's signature on Oct. 10 was AB 342, sponsored by Assemblyman Al Muratsuchi, D-Los Angeles, which prohibits any state agency from leasing state lands for oil and gas pipelines or infrastructure. The legislation was reported in local news media accounts as a counterpunch to the Trump administration's efforts to resume leasing on federal lands in California.

A few weeks after the bill passed, Santa Barbara County Supervisors approved a resolution by a 3-2 vote "opposing the leasing of federal public lands in Santa Barbara County for oil and gas development as part of the Bureau of Land Management's Resource Management Plan."

The RMP was litigated during the Obama administration and returned to BLM for further study. In October, BLM announced it would open for lease 720,000 acres along the Central Coast region and release 14 existing leases that were subject of environmental lawsuits, according to published reports (see story, pg XX).

"That is exactly what the bill was intended for: to poke the Trump administration," Zierman relates. "The settlement agreement with the environmental groups, which was entered into by the Obama administration, directed BLM to study hydraulic fracturing on federal lands, despite the fact that no hydraulic fracturing is occurring on those lands. BLM did the study and found nothing wrong, so it resumed lease sales," he said.

"The California media then reported that Trump opened millions of acres to 'fracking.' Unfortunately, nothing in that sentence is true," he adds.

According to Zierman, CIPA opposed the other bills that Newsom signed in mid-October, but not with the same vigor. Zierman describes AB 1328 and SB 463 as "study bills" that collect well plugging and abandonment data for analysis and eventual publication on the CalGEM website.

Contractor or Employee

In September Newsom also signed a far-reaching bill that will reclassify many of California's contract workers as company employees when it takes effect on Jan. 1, 2020.

AB 5, sponsored by Assemblywoman Lorena Gonzalez, D-San Diego, will impact most companies operating in California that use contract workers. Following a California Supreme Court ruling in April that declared many contract workers to be employees, the assembly approved AB 5 to codify the court ruling and expand it beyond compensation into the broader labor code.

Oil and gas companies in California and states with similar labor laws will be wise to review their contractor policies, advises Kathryn Carlson, vice president of product management of KPA, an Environment, Health and Safety compliance management and software services company based in Lafayette, Co.

"Making a determination on the appropriate status for workers can be especially tricky in California," Carlson said. "There are multiple state agencies involved in the determination (of contractor status) and different rules may apply depending on the unique situation of the employer."

The California law expressly excludes a list of professions whose workers are not classified as employees even though there are plenty of similarities. Those with exemptions include physicians and other medical professionals, lawyers, securities brokers, private investigators, architects, direct salespersons, engineers, licensed insurance agents, accountants and commercial fisherman.

Not excluded are temporary workers, truck drivers, service technicians, clerical workers and others commonly brought in to keep an operator's business running.

The new law adopts an established, three-part criteria for determining if a worker is classified an employee or an independent contractor.

To be considered an independent contractor, a worker:

- Is not under the direct control of the employer when doing their work;
- Performs work that is outside the employer's general course of business; and
- Has been and continues to operate as an independent business, doing the same type of work for others that is being done for the employer.

However, such an assessment is merely a starting point, Carlson warns. ❐

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