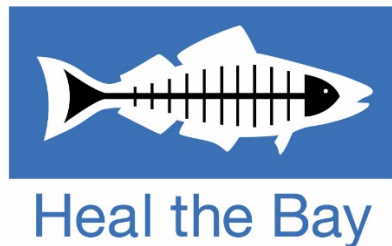


TIDELAND OIL & GAS DRILLING IN CALIFORNIA: IS SANTA MONICA BAY AT RISK?



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EXECUTIVE SUMMARY

Recent developments in Hermosa Beach raise questions about the risk of new oil and gas drilling in the broader Santa Monica Bay. Oil and gas have played a large role throughout California's history, but modern environmental laws have aimed to protect marine resources from the risks of fossil fuel extraction. One such law is the California Coastal Sanctuary Act (CCSA), which bars all new oil and gas leases in submerged tidal lands within state waters. New drilling could only be allowed in Hermosa Beach and Long Beach under the law (as exceptions to the CCSA), but no municipality is completely protected in the present political climate, because the oil industry has proven itself willing and able to influence state and even local elections to reach the oil it desires.

INTRODUCTION

In 2012, the City of Hermosa Beach and E&B Natural Resources Management Corporation settled a contract dispute that began in 1998.¹ As part of the settlement, the City agreed to advance a ballot measure for public vote that would allow voters to decide whether to lift Hermosa's current citywide ban on oil drilling. Lifting the moratorium would allow E&B to move forward with a controversial proposal to slant drill into the Bay.² After great debate, community action, and the lengthy processes of certifying an Environmental Impact Report and issuing a Health Impact Assessment and Cost Benefit Analysis, the Hermosa Beach City Council set a March 3, 2015 date for a special election for

¹ See *Hermosa Beach Stop Oil Coal. v. City of Hermosa Beach*, 86 Cal. App. 4th 534, 547 (2001).

² City of Hermosa Beach, *Frequently Asked Questions*, <http://www.hermosabch.org/index.aspx?page=744>.

the ballot measure, Measure O.³ Despite their local reach, this issue and election have received public attention from the greater Santa Monica Bay region and raised broader concerns about the vulnerability of state tidelands to additional drilling along the entire Los Angeles County coastline. The prospect of increased oil exploration and new leases to slant drill into the submerged tidelands of other coastal municipalities should be analyzed to proactively protect California's coastal environment.

BRIEF HISTORY OF SOUTHERN CALIFORNIA OIL DRILLING & LOCAL MEASURES AGAINST IT

California's oil resources have been coveted since the arrival of the first pioneers on the West Coast. As the state's population steadily increased, so did discoveries of oil seeps up and down the coastline, indicating plentiful reserves below.⁴ In 1893, Edward Doheny drilled the first successful, free-flowing oil well in the Los Angeles City Oil Field, marking the beginning of the Southern California oil boom.⁵ Prospectors flocked to the region, and California would surge to lead the nation in oil production by 1903.⁶ California reached the top of that chart with the help of the emerging practice of offshore drilling, beginning with the 1896 construction of the first offshore oil well in the Summerland Oil Field,

³ Alana Garrigues, *Hermosa Beach City Council approves ballot wording for March 3 vote on oil*, THE BEACH REPORTER (Nov. 20, 2014), http://tbrnews.com/news/hermosa_beach/hermosa-beach-city-council-approves-ballot-wording-for-march-vote/article_1ba88634-70da-11e4-a643-875991ea0a6c.html.

⁴ California Department of Conservation, *Oil and Gas Production History in California*, ftp://ftp.consrv.ca.gov/pub/oil/history/History_of_Calif.pdf.

⁵ Romualdo Valenzuela, The Historical Society of Southern California, *Edward L. Doheny*, <http://www.socalhistory.org/biographies/edward-l-doheny.html>.

⁶ David W. Miller, *The Historical Development of the Oil and Gas Laws of the United States*, 51 CAL. L. REV. 506, 511 (1963).

by way of a pier extending from the coast of Santa Barbara.⁷ With this innovation, the ocean became the oil industry's final frontier.

It did not take long for the offshore success in Summerland to spread to Ventura, Los Angeles, and Orange Counties, and offshore drilling units began appearing in waters throughout the Southern California Bight. Ongoing technological improvements, especially through the 1950's and 60's, supported a continued expansion of offshore drilling, as floating drilling rigs and permanent, man-made oil islands provided platforms for increased production and higher revenues.⁸ Beginning in the late 1970's, a new technology surged in popularity: slant drilling, also known as "directional drilling."⁹ Slant drilling is a system of oil recovery that uses wells drilled at horizontal angles to recover resources from deposits that do not lie beneath the well pad and could not otherwise be accessed by way of a standard vertical well. In fact, because slanted wells can be drilled at multiple angles or in multiple directions from any given place, this technology has the added advantage of allowing operators to reach multiple deposits from a single offshore platform or onshore site. This technology is relevant to the California coast because slant drilling allows offshore mineral resources to be extracted from an onshore location, and slant drilling is already commonly used in California.¹⁰

Amidst the popularity of slant drilling in the 1970's and 80's, two notable plans to drill in and around the Santa Monica Bay emerged. Heated disputes over these proposals in Torrance and Pacific

⁷ American Oil & Gas Historical Society, *Offshore Petroleum History*, <http://aoghs.org/offshore-history/offshore-oil-history/>.

⁸ PetroWiki, SPE International, *History of Offshore Drilling Units*, http://petrowiki.org/History_of_offshore_drilling_units. Some of those man-made islands still lie in the Long Beach Harbor. City of Long Beach, *Historical - Oil Operations*, <http://www.longbeach.gov/oil/about/historical.asp>.

⁹ U.S. EPA, *Directional Drilling Technology*, <http://www.epa.gov/cmop/docs/dir-drilling.pdf>.

¹⁰ *Id.*

Palisades were a watershed moment for anti-drilling community activism: for the first time, residents took a stand against oil drilling in their communities.

In 1988, Kelt Energy Inc. proposed to directionally drill for oil underneath 560 acres of residential area in southeast Torrance.¹¹ The Delaware-based company proposed to the Torrance City Council a plan to harvest 27 million barrels of oil via 108 slant wells and the use of salt-water injections. Residents voiced concerns over quality of life issues such as fumes, pollutants, and toxic wastes, and the mayor expressed that the proposed plan seemed inappropriate for the area of the project site.¹² In a unanimous decision, the Torrance City Council voted to deny Kelt's plan on November 29, 1988, signaling what many believe to have been the end of an era for the once heavily industrialized city.¹³

In that same year, two rival measures regarding the future of oil drilling in the affluent, coastal neighborhood of Pacific Palisades were considered on the November 8 ballot in the City of Los Angeles. Proposition O, sponsored by then-Los Angeles City Councilmembers Zev Yaroslavsky and Marvin Braude, included two elements: 1) repealing three previous ordinances granting Occidental Petroleum Corporation authority to drill as many as 60 wells for up to 30 years on a two-acre site across the Pacific Coast Highway from Will Rogers State Beach, and 2) prohibiting new drilling within 1,000 yards of any City of Los Angeles beach.¹⁴ Through Proposition P, Occidental proposed a competing measure

¹¹ Jeffrey L. Rabin, *No to Oil Plan Spells Dawn of a New Day in Torrance*, LA TIMES (Dec. 4, 1988), available at http://articles.latimes.com/1988-12-04/local/me-1591_1_oil-drilling-project.

¹² *Id.*

¹³ *Id.*

¹⁴ Kevin Roderick, *Controller Davis Joins Opposition to Oil Drilling in Pacific Palisades*, LA TIMES (Oct. 7, 1988), available at http://articles.latimes.com/1988-10-07/local/me-3517_1_pacific-palisades; Ted Vollmer, *The Local Elections: Outcome May Mark the End of Oil Fight*, L.A. TIMES (Nov. 10, 1988), available at http://articles.latimes.com/1988-11-09/news/mn-301_1_oil-drilling.

promising funds for police and schools while protecting the coastal drilling project.¹⁵ The heightened risk of landslides, seismic effects of drilling near earthquake fault lines, and increased air pollution and odors were some of the community's most urgent concerns. There was also a fear that allowing the Occidental project would open the door for slant drilling into adjacent Santa Monica Bay tidelands.¹⁶ Despite the diverse and decentralized nature of the City of Los Angeles, voters passed Proposition O by a margin of 52.3%, effectively banning drilling throughout the City of Los Angeles within 1,000 yards of the mean high tide line.¹⁷ Proposition P failed, with only 34.3% of the city electorate.¹⁸

Both of these cases occurred before the California Coastal Sanctuary Act, legislation that would not be enacted until 1994, which would affect all future oil and gas leases within the state tidelands.

CALIFORNIA COASTAL SANCTUARY ACT OVERVIEW

The California Coastal Sanctuary Act (CCSA) has been in effect for two decades. It bans all new oil and gas leases, with some noted exceptions, throughout the statutorily defined Sanctuary. Because the CCSA likely applies to slant drilling, oil and gas exploration within or directionally into the Santa Monica Bay is limited to the Santa Monica National Recreation Area (SMNRA), the cities of Long Beach and Hermosa Beach, and other areas only with unlikely direct Presidential intervention in a declared

¹⁵ Bill Boyarsky, *Digging for Facts in the Palisades Oil Dispute*, L.A. TIMES (Sept. 18, 1988), available at http://articles.latimes.com/1988-09-18/local/me-3444_1_oil-drilling.

¹⁶ *Id.*

¹⁷ Steve Scauzillo, *Environmental Groups, State Conservancies Say Whittier Oil Project Could Open Other Preserves to Oil Drilling*, SAN GABRIEL VALLEY TRIBUNE (June 1, 2012) available at <http://www.sgvtribune.com/20120602/environmental-groups-state-conservancies-say-whittier-oil-project-could-open-other-preserves-to-oil-drilling>.

¹⁸ Ted Vollmer, *The Local Elections: Outcome May Mark the End of Oil Fight*, L.A. TIMES (Nov. 10, 1988) available at http://articles.latimes.com/1988-11-09/news/mn-301_1_oil-drilling.

time of national need. These exceptions are mainly the vestiges of the preceding, localized coastal oil regulations.

On January 1, 1994, there were multiple bans on tideland oil development in Santa Barbara, Los Angeles, and Orange Counties that were set to expire by 1995.¹⁹ Another set of bans in San Mateo, San Francisco, Marin, Sonoma, Mendocino, Humboldt, Del Norte, Napa, Contra Costa, and Alameda Counties was set to expire by 2003.²⁰ In an effort to replace the “confusing hodgepodge” of separate restrictions with a uniform ban on new oil exploration leases along the California coast, and because offshore oil and gas leasing purported to present “a significant hazard for marine resources,” in particular the tourism and fishing industries,²¹ Assembly Member Jack O’Connell (D-Carpinteria) introduced Assembly Bill 2444.²² The bill passed both chambers, with some minor revisions and exceptions added for specified new oil and gas leases, and became law as the California Coastal Sanctuary Act on September 28, 1994.²³ Although there were earlier efforts to preserve Santa Monica Bay, this legislation became and remains the principal framework today.²⁴

¹⁹ S. 41-26, 72 Sess., at 5953 (Cal. 1994).

²⁰ *Id.*

²¹ Assembly Committee on Natural Resources, Bill Analysis of AB 2444, 72d Sess. (Cal. 1994); Carl Ingram, *Offshore Oil Drilling Ban OKd by Senate*, L.A. TIMES (Aug. 28, 1994), http://articles.latimes.com/1994-08-28/news/mn-32266_1_offshore-oil-drilling.

²² See Assembly Bill 2444, 1994 Leg., 72d Sess. (Cal. 1994).

²³ Cynthia Craft, *Ban on New Offshore Oil Drilling Signed*, L.A. TIMES (Sept. 29, 1994), http://articles.latimes.com/1994-09-29/news/mn-44385_1_offshore-oil-drilling.

²⁴ The CCSA preceded other efforts to protect the Santa Monica Bay as a natural resource, including establishment of the Santa Monica Bay Restoration Project in the National Estuary Program in 1988, that program’s transformation into the Santa Monica Bay Restoration Commission in 2003, and California’s Marine Life Protection Act in 1999, designating critical marine environments as marine protected areas and resulting in the implementation of marine protected areas at Santa Monica Bay’s Palos Verdes and Point Dume headlands in 2012. See U.S. Environmental Protection Agency, National Estuary Program Coastal Condition Report at 376 (June 2007), available at http://water.epa.gov/type/oceb/nep/upload/2007_05_09_oceans_nepccr_pdf_nepccr_nepccr_west_partg.pdf; see also Bay Foundation, *Long History of Protecting the Santa Monica Bay*,

The CCSA created and protects the Sanctuary, which is defined as including “all state waters subject to tidal influence.”²⁵ The Sanctuary includes the entire Santa Monica Bay because it meets that definition. Under the CCSA, all new oil and gas leases²⁶ are prohibited within the Sanctuary with five exceptions.²⁷ First, any waters east of Carquinez Bridge on Interstate 80, outside Vallejo, CA, are not included in the Sanctuary. Second, those state waters subject to oil or gas lease “in effect on January 1, 1995, unless the lease is deeded or otherwise reverts to the state after that date”²⁸ are excluded from the Sanctuary. Third, the coastline running from Newport Beach south to the southern border of California is also not included in the Sanctuary’s boundaries.²⁹ Fourth, oil and gas exploration can occur within the Sanctuary if the President finds that there is a “severe energy supply interruption” and orders a distribution of the Strategic Petroleum Reserve, but both the California Legislature and Governor must also agree and amend the CCSA accordingly.³⁰ Fifth and finally, the State Lands Commission (SLC) may allow oil and gas leases in the Sanctuary “if the commission determines that those oil or gas deposits are

<http://www.santamonicabay.org/about-us/history/>; California Department of Fish & Wildlife, *California Marine Protected Areas (MPAs)*, <http://www.dfg.ca.gov/marine/mpa/>.

²⁵ Cal. Pub. Res. Code § 6242 (1994).

²⁶ Although the CCSA does not directly address slant drilling, its restrictions likely apply to slant as well as vertical drilling, as this is the only interpretation supported by the statutory text and legislative intent. The language of the CCSA clearly states that “no state agency or state officer shall enter into *any* new lease for the extraction of oil or gas from the California Coastal Sanctuary.” *Id.* § 6243 (emphasis added). If “any” is understood to mean literally any type of oil and gas lease, including slant drilling or any other drilling technique, then slant drilling is included within the CCSA’s purview. See *In re A.M.*, 225 Cal. App. 4th 1075, 1082 (2014) (interpreting “any local detention facility” to mean “any”). As for intent, the CCSA was enacted to protect coastal areas from offshore drilling, which posed “a significant hazard for marine resources.” Assembly Committee on Natural Resources, Bill Analysis of AB 2444, 72d Sess. (Cal. 1994). Additionally, the legislature overtly found that “offshore oil and gas production in certain areas of state waters poses an unacceptably high risk of damage and disruption to the marine environment of the state.” Cal. Pub. Res. Code § 6241 (1994).

²⁷ Cal. Pub. Res. Code § 6242 (1994).

²⁸ *Id.*

²⁹ See *Id.* § 6872.2 (1969).

³⁰ *Id.* § 6243 (1994).

being drained by means of producing wells upon adjacent federal lands and the lease is in the best interests of the state.”³¹

LOCAL GRANTED LANDS & MINERAL RIGHTS

As a matter of its sovereign statehood, California originally owned, in trust, all of the submerged lands beneath navigable waters, including rivers and tidelands.³² The trust ownership means that disposal of the lands is subject to the state’s power and must not interfere with navigation and other public needs.³³ Minerals embedded in those submerged lands are included in California’s trust ownership.³⁴ California’s claim to submerged land previously excluded lands and minerals beneath the Pacific Ocean lying seaward of the average low-tide line, but the Submerged Lands Act of 1953 returned to the state ownership of all coastal tidelands out to three nautical miles offshore.³⁵

Despite state ownership, California has granted its tidelands to adjacent coastal municipalities for purposes of economic development both before and since the Submerged Lands Act.³⁶ Under state

³¹ *Id.* § 6244 (1994).

³² *United States v. California*, 332 U.S. 19, 30, *supplemented sub nom. United States v. California*, 332 U.S. 804 (1947); *City of Long Beach v. Marshall*, 11 Cal. 2d 609, 614 (1938).

³³ *Illinois Central Railroad Company v. Illinois*, 146 U.S. 387, 435 (1892).

³⁴ *City of Long Beach v. Morse*, 31 Cal. 2d 254, 262 (1947); *Boone v. Kingsbury*, 206 Cal. 148, 170 (1928).

³⁵ *United States v. California*, 436 U.S. 32, 37 (1978).

³⁶ Because the state retains many of the rights to coastal minerals, California has imposed certain restrictions and procedures on oil and gas development on granted lands. The CCSA provides that regulatory structure and bars slant drilling on granted lands to access adjacent oil reserves until the requirements of Public Resources Code sections 7058.5 and 7060 are met. Those provisions require a city government petitioning the SLC to approve a resolution declaring the city’s intent to enter into an oil and gas lease. Cal. Pub. Res. Code § 7060(a) (1959). If the SLC approves that resolution, the city government must then formally adopt the resolution in an “open meeting.” *Id.* § 7058.5 (1959). Once the resolution is adopted, the city may then issue a lease, but any subsequent modification or amendments are still subject to the SLC’s prior approval. *Id.* § 7060(b). However, a city may escape

law, after a municipality is granted tidelands, “such grantee may enter into agreements for the purpose of bringing about the cooperative development and operation of all or a part or parts of the oil and gas field in which such lands are located,”³⁷ unless the grant reserves mineral right ownership to the state, in which case the city in question may not provide oil and gas leases.³⁸ Even in the former case, however, grantee cities hold tidelands subject to trust and other conditions unless the grant explicitly states otherwise.³⁹ Only three municipalities have their mineral rights reserved to the state: Palos Verdes Estates, Manhattan Beach, and the City of Los Angeles (including the coastal areas of Pacific Palisades, Venice, Playa del Rey, Westchester, San Pedro, and Wilmington). Unincorporated coastal areas in Los Angeles County (essentially Topanga Canyon and Marina del Rey) also have their mineral rights reserved to the state.⁴⁰ Because the aforementioned areas do not exercise control over the development of their own mineral resources, individual municipalities within those areas cannot currently enter into mineral leases to develop their tidelands and are otherwise protected by the CCSA.

CURRENT OIL PROPOSALS IN SOUTHERN CALIFORNIA

The exceptions in the CCSA have allowed two ongoing oil disputes to take place in the greater Southern California area. This section outlines the history of those two proposals, in Hermosa Beach (as mentioned previously) and at Vandenberg Air Force Base in Santa Barbara County, and describes how they fall under the exceptions to the CCSA.

this entire procedure if the SLC finds that sections 7058.5 and 7059’s requirements would be impractical “by reason of the small size of the property or drainage, actual or imminent. . . .” *Id.* § 7061 (1963).

³⁷ Cal. Pub. Res. Code § 6879 (1957).

³⁸ *Id.* § 6871 (1955).

³⁹ *City of Berkeley v. Superior Court*, 26 Cal. 3d 515, 528 (1980).

⁴⁰ California State Lands Commission, *Granted Lands: Los Angeles County*, http://www.slc.ca.gov/Granted_Lands/Los_Angeles.html.

HERMOSA BEACH

In 1984, the residents of Hermosa Beach approved an exception to the City's total ban on oil and gas extraction to raise funds for more open space and parkland.⁴¹ That exception allowed Macpherson Oil Company to slant drill on specified coastal lands with a lease it received from the City in 1986, which was amended in 1992 to include granted tidelands.⁴² If the 1986 lease is still valid, drilling in Hermosa Beach would be allowed under the second CCSA exception: leases granted prior to 1995.⁴³

Opponents of the drilling started the Hermosa Beach Stop Oil Coalition and undertook a campaign to qualify a ballot initiative to end the Macpherson project by reinstating the City's blanket oil drilling prohibition.⁴⁴ Voters approved the resulting Proposition E in 1995, but fearing a lawsuit, Hermosa Beach continued to perform its contract with Macpherson until 1998, when the Stop Oil Coalition sought an injunction in light of Proposition E and the City Council determined that Macpherson's drilling posed a public health risk.⁴⁵ Macpherson promptly sued, alleging a violation of its vested right to drill and hundreds of millions of dollars in damages stemming from that lost opportunity.⁴⁶ The trial court entered judgment for the City and Macpherson.⁴⁷ A California Court of Appeal reversed, determining that Macpherson did not have a vested right to drill and Proposition E was a valid exercise of Hermosa Beach's police power. The appellate court remanded the case for a further

⁴¹ *Hermosa Beach Stop Oil Coal. v. City of Hermosa Beach*, 86 Cal. App. 4th 534, 540 (2001).

⁴² *Id.*

⁴³ Cal. Pub. Res. Code § 6242 (1994).

⁴⁴ *Hermosa Beach Stop Oil Coalition*, 86 Cal. App. 4th at 543-44.

⁴⁵ *Id.* at 544-45.

⁴⁶ *Id.* at 547.

⁴⁷ Superior Court of Los Angeles County, No. BC172546, Kurt W. Lewin, Judge.

determination of whether the voters' adoption of Proposition E caused Macpherson's alleged damages, but also held that Macpherson could still sue for contractual damages.⁴⁸

Instead of fully litigating, Hermosa Beach settled with Macpherson in 2012. In that agreement, Macpherson agreed to limit the City's maximum liability to \$17.5 million in exchange for the two concessions from the City: 1) an agreement to pay Macpherson 3.3% of any and all future City royalties from oil drilled at the lease site, and 2) a promise to put a ballot measure before the voters on allowing the long-proposed drilling project to advance.⁴⁹ Following the settlement, Macpherson assigned all of its rights to the project to E&B Natural Resources Management Corporation for \$30 million, so E&B has stepped into Macpherson's position moving forward.⁵⁰ The overall effect of this settlement is that if Hermosa Beach residents reject the measure, entitled Measure O, then no drilling will occur but Hermosa Beach must pay E&B the full \$17.5 million settlement liability. If Measure O passes, then drilling will be allowed and E&B will cancel the City's settlement liability—if a drilling permit is successfully issued, which requires prior approval from a number of local and state agencies. Additionally, E&B's offer to pay "Public Benefits" to the community, most of which would be advances against future royalties, is similarly conditioned upon the receipt of a drilling permit and subject to termination at any time based on "lack of commercial production."⁵¹ Moreover, while the City would receive royalties and E&B has agreed to waive the \$3.5 million payment originally required by the settlement even if the initiative passes (again so long as the drilling permit is issued), the City would

⁴⁸ *Id.* at 571-72.

⁴⁹ City of Hermosa Beach, *Frequently Asked Questions*, <http://www.hermosabch.org/index.aspx?page=744>.

⁵⁰ *Id.*

⁵¹ *Id.*

incur millions of dollars in direct costs if drilling is allowed to proceed, as identified in the Cost Benefit Analysis.⁵² The vote on Measure O is set for March 3, 2015.⁵³

VANDENBERG AIR FORCE BASE

Another ongoing battle over offshore slant drilling is taking place in Santa Barbara County, specifically at Vandenberg Air Force Base, located onshore directly across from the highly coveted Tranquillon Ridge oil reserve that extends into both state and federal waters.⁵⁴ Companies have extracted oil from the federal lands via Platform Irene since 1986, but access to the state-owned portion of this reserve has eluded operators to date. Three different operators have sought access to state-owned oil from this platform in federal waters over the last two decades, without success. Of the attempts, Plains Exploration and Production Company (PXP) came closest by negotiating with a local environmental group to not only pay significant sums to the state and county, but also to offer a substantial environmental mitigation package, including 100% greenhouse gas offsets and a promise to not only shut down the platform in 2022, but to cease operations at many other wells and even two major processing plants as well. The plan would essentially end both oil drilling and production in Santa Barbara County. Yet even with that package and some environmentalists' support, the State Lands Commission rejected the plan on a 2-1 vote in 2009.⁵⁵ Having consistently failed to win approval to drill

⁵² Hermosa Beach Development Agreement, *available at* http://stophermosabeachoil.com/?page_id=9426.
http://hermosabeach.granicus.com/MetaViewer.php?view_id=6&clip_id=3407&meta_id=166554.

⁵³ Alana Garrigues, *Hermosa Beach City Council approves ballot wording for March 3 vote on oil*, THE BEACH REPORTER (Nov. 20, 2014), http://tbrnews.com/news/hermosa_beach/hermosa-beach-city-council-approves-ballot-wording-for-march-vote/article_1ba88634-70da-11e4-a643-875991ea0a6c.html.

⁵⁴ Karen Pelland, *The Quest for Tranquillon Ridge*, MISSION AND STATE (July 30, 2014), <http://www.missionandstate.org/features/the-quest-for-tranquillon-ridge/>.

⁵⁵ *Id.*

from Platform Irene, Sunset Exploration has recently proposed to access these reserves from an onshore location via slant drilling.⁵⁶ In response, Vandenberg Air Force Base surprised many observers in July 2013 by reversing course and agreeing to reconsider an application for slant drilling from its land. Officials are currently assessing available land for a possible project site.⁵⁷

The proposal to drill from Vandenberg appear to fall under the fifth statutory exception to the CCSA, allowing new oil and gas leases for “producing wells upon adjacent federal lands.”⁵⁸ Thus, companies like Sunset Exploration can drill down from federal property and then, via slant drilling technology, directionally tap into the state-owned Tranquillon Ridge reserves that would otherwise be protected in the Sanctuary. Although this proposal would not directly affect the Santa Monica Bay, it offers an example of how the CCSA federal lands exception can circumvent state protections. Some environmental and community groups that oppose coastal oil drilling have been exploring legislation and other solutions to close this loophole and strengthen the CCSA.

CALIFORNIA COASTAL SANTUARY ACT APPLICABILITY TO SANTA MONICA BAY

New oil and gas leases for slant drilling in the Santa Monica Bay are theoretically possible, though presently unlikely. For a Santa Monica Bay municipality to create a new lease, it must first have been granted tidelands, subject to no state reservation of mineral rights, and follow the procedures discussed above. Because the lease would still need to comport with the CCSA, a potential project must also fall within one of the five exceptions to the statute. None of the Santa Monica Bay’s waters lie east

⁵⁶ *Id.*

⁵⁷ Nick Welsh, *Slant Drilling from Vandenberg?*, SANTA BARBARA INDEPENDENT (July 25, 2013), <http://www.independent.com/news/2013/jul/25/slant-drilling-vandenberg/>.

⁵⁸ California Coastal Sanctuary Act, *codified at* Cal. Pub. Res. Code § 6244.

of the Carquinez Bridge, and there is no evidence to suggest that presidential involvement of the type contemplated in the second exception is needed or expected in the near future. The only federal land near the Santa Monica Bay is the Santa Monica Mountains National Recreation Area (SMMRNA), but the Santa Monica Mountains Comprehensive Planning Commission emphasizes the SMMNRA's undeveloped nature, noting that "the preservation and protection of this resource is in the public interest."⁵⁹ Consequently, it is unlikely that oil and gas development would occur or be prioritized for this area. The statutory exception for tidelands from Newport Beach southward does not involve the Santa Monica Bay,⁶⁰ and only Hermosa Beach and Long Beach (which is in Los Angeles County, south of Santa Monica Bay) have leases that are known to be in effect before January 1, 1995.⁶¹ As for the other municipalities bordering the Santa Monica Bay, our research indicates that there do not appear to have been any leases in effect by the cut-off date.⁶² Therefore, under the CCSA, aside from possibly the SMMNRA, Long Beach, and Hermosa Beach, unless the President intervenes, slant drilling appears to be prohibited in the tidelands off Los Angeles County's coast at this time.⁶³

NO LOCAL GOVERNMENT IS COMPLETELY PROTECTED FROM FUTURE OIL DRILLING

⁵⁹ Cal. Pub. Res. Code § 33001 (1999).

⁶⁰ See *id.* § 6872.2.

⁶¹ See *Stop Oil Coalition*, 86 Cal. App. 4th at 541-43; see also California State Lands Commission, *State Oil and Gas Leases (A Report to the California State Lands Commission)*, http://www.slc.ca.gov/Reports/Offshore_Oil_and_Gas_Home_Page.html.

⁶² See California State Lands Commission, *State Oil and Gas Leases (A Report to the California State Lands Commission)*, http://www.slc.ca.gov/Reports/Offshore_Oil_and_Gas_Home_Page.html. The city of Santa Monica even barred oil and gas exploration within its boundaries as early as 1939. See *Higgins v. City of Santa Monica*, 62 Cal. 2d 24, 28 (1964).

⁶³ This analysis is limited to those cities where tidelands were not expressly granted free of any trust responsibility, those not being known presently.

Because the preceding analysis only describes the situation as it stands for the present and immediate future, this policy brief should not be read to mean that the Santa Monica Bay is protected into perpetuity. Although slant drilling only has the present potential to be allowed in three coastal areas within Los Angeles County, and many municipalities currently enjoy at least some layers of protection, any untapped reserves will remain attractive in the future and are therefore likely to continue to generate interest. Continued interest means continued threats to the Santa Monica Bay, because the oil industry has proven time and again that it is willing and able to invest in eliminating political and regulatory obstacles to accessing lucrative oil fields.

Today's oil companies are some of the most profitable businesses in history, so they can tap virtually unlimited resources and easily dwarf local and even state political forces opposing them. Oftentimes this influence takes the traditional form of money, and oil companies have spent more than \$70 million lobbying in California since 2009.⁶⁴ Oil companies have even proven willing to spend heavily in order to elect a more favorable city council when the present body will not vote in their favor: just this year, Chevron spent more than \$3 million trying to oust the City Council of Richmond, California, a city of just 100,000 people that is home to an oil refinery.⁶⁵

Yet companies can also convert financial resources into less direct forms of support and influence that are more difficult to track. For example, NRDC has identified at least eight front groups that appear to be grassroots organizations speaking for consumers or broad coalitions, but that actually have strong ties to the oil industry.⁶⁶ These "Astroturf" groups can have a major impact when oil

⁶⁴ Natural Resources Defense Council, *Unmasked: The Oil Industry Campaign to Undermine California's Clean Energy Future*, <http://www.nrdc.org/energy/oil-industry-undermining-california-clean-energy.asp>.

⁶⁵ Madeline Ostrander, *Richmond: The little town that beat big oil*, AL JAZEERA AMERICA (Nov. 7, 2014), <http://america.aljazeera.com/blogs/scrutineer/2014/11/7/richmond-chevronelectionmoney.html>.

⁶⁶ *Id.*

industries try to change the law through ballot measures—especially when supported by substantial funding. This type of influence plays a larger role in California’s current political landscape given the surge of oil-related ballot propositions.

In just the recent 2014 elections, there were oil-related (anti-fracking) ballot propositions in three California counties: Santa Barbara, San Benito, and Mendocino. Major oil companies pumped more than \$7.7 million into those local elections.⁶⁷ San Benito and Mendocino Counties voted to adopt the bans, but in Santa Barbara—where the vast majority of the industry money was spent—voters rejected the proposition.⁶⁸ Oil companies know they can influence local elections and have little reason to halt this practice in the future.

Additionally, oil companies can exert influence even by leveling the threat of spending their money: oil industry financial resources further complicate the regulatory landscape by raising the specter of costly litigation. For example, the City of Compton rescinded a hastily enacted ban on hydraulic fracturing for oil following an equally swift lawsuit by the industry trade group Western States Petroleum Association.⁶⁹ And it is telling that the Planning Department in the City of Los Angeles specifically cited aggressive legal challenges as a rationale for its recommendation that Los Angeles not move forward with a fracking moratorium.⁷⁰

⁶⁷ Amanda Covarrubias, *Results are mixed on soda tax and anti-fracking ballot measures*, L.A. TIMES (Nov. 5, 2014), available at <http://www.latimes.com/local/california/la-me-pol-california-other-20141105-story.html>.

⁶⁸ Timothy Cama, *Mixed results for local anti-fracking measures*, THE HILL (Nov. 5, 2014), <http://thehill.com/policy/energy-environment/223072-mixed-results-for-local-anti-fracking-measures>.

⁶⁹ AllGov, *L.A. City Planner Reject Council Request for Fracking Ordinance* (Nov. 12, 2014), <http://www.allgov.com/usa/ca/news/top-stories/la-city-planners-reject-council-request-for-fracking-ordinance-141112?news=854797>.

⁷⁰ Southern California Public Radio, *LA planning officials recommend no moratorium on fracking ‘at this time,’* (Nov. 12, 2014), <http://www.scpr.org/news/2014/11/12/48019/la-planning-officials-recommend-no-moratorium-on-f/>.

Therefore, given all the ways the oil industry can alter the regulatory landscape, even cities not currently at risk of offshore drilling have an interest in working together as a united front to protect the Santa Monica Bay from oil drilling.

CONCLUSION AND RECOMMENDATIONS

The CCSA prohibits oil and gas leasing in specified coastal tidelands, with five limited exceptions. The Act was created to consolidate multiple, conflicting laws, and to protect California's marine resources. The CCSA likely applies to slant drilling, as the statutory language unambiguously bans "any" oil or gas leasing, regardless of the technique or technology used. The possibility of slant drilling on granted lands in Los Angeles County is currently limited to 1) Hermosa Beach and Long Beach, where there were leases in effect as of January 1, 1995, 2) federal land in the Santa Monica Mountains National Recreation Area, or 3) other areas upon direct Presidential intervention. However, the regulatory landscape is always susceptible to change, and the oil industry has demonstrated an increased willingness to use its resources in state and local politics to protect and increase access to valuable oil reserves, of which there is no shortage in the Santa Monica Bay.

The most immediate threats are to Hermosa Beach and Long Beach. Still, community groups that wish to maintain and expand the CCSA's protection of the Santa Monica Bay should ensure that slant drilling does not occur in the Santa Monica Mountains National Recreation Area, and engage in efforts to enact local anti-drilling measures in Long Beach, Hermosa Beach, and beyond. Moreover, since an oil spill could easily cross jurisdictional boundaries, and because the oil industry can apply overwhelming influence in any local election, every community around the Santa Monica Bay has an

interest in presenting a united front against slant drilling and providing whatever support it can to its neighbors confronting more direct threats in the short term.