

XAVIER BECERRA
Attorney General

State of California
DEPARTMENT OF JUSTICE



300 SOUTH SPRING STREET, SUITE 1702
LOS ANGELES, CA 90013

Public: (213) 897-2000
Telephone: (213) 897-2702
Facsimile: (213) 897-2801
E-Mail: John.Saurenman@doj.ca.gov

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Ms. Kelly Hammerle
Five Year Program Manager
BOEM (HM-3120)
381 Elden Street
Herndon, VA 20170

RE: July 3, 2017 Request for Information and Comments on Preparation of 2019-2024 Outer Continental Shelf Oil and Gas Leasing Program

Dear Ms. Hammerle:

On July 3, 2017, the Department of the Interior, through its Bureau of Ocean Energy Management, published its Request for Information and Comments on the Preparation of the 2019-2024 National Outer Continental Shelf Oil and Gas Leasing Program. (82 Fed.Reg. 30886.) In that request, Interior seeks information regarding leasing of offshore tracts for all twenty-six planning areas around the nation, including the three planning areas offshore California.

We submit this letter on behalf of California Attorney General Xavier Becerra to express his strong opposition to including California planning areas in the 2019-2024 OCS leasing program. We submit these comments pursuant to the Attorney General's independent power and duty to protect the environment and natural resources of the State. (See Cal. Const., art. V, § 13; Cal. Gov. Code, §§ 12511, 12600-12612; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 14-15, 50 P.2d 10, 20.)

When Congress enacted the Outer Continental Lands Act Amendments in 1978, the energy markets were very different from today. Congress acted in the shadow of OPEC oil embargoes that had driven down the supply of oil and driven up its price. Thus, Congress desired to expedite offshore oil and gas development in order to move the Nation toward energy independence. Today, while the United States is not free of imported oil, it has largely achieved energy security. Indeed, in recent years the United States and Saudi Arabia have been the world's top two oil producers – trading the top position back and forth. In this context, an aggressive federal leasing program does not make sense as OCS oil will not displace the other sources of oil and gas that the industry has developed in the last twenty years.

Also, as you are well aware, Interior last conducted a sale for federal tracts offshore California in 1984, and Interior last included California planning areas in a 5-year program in the 1987-1992 program. This lack of leasing of areas offshore California has not posed an obstacle to the development of plentiful supplies of domestic oil and gas.

Nor are we aware of any evidence that the oil and gas industry has significant interest in again attempting to explore and develop offshore California. The industry has shown this lack of interest in several ways. First, the major oil companies that leased tracts offshore California in the 1980s have largely given up their leases and operations. They sold their assets to much smaller companies such as Aera, Venoco, DCOR, and Freeport-McMoRan (and Venoco recently declared bankruptcy). Second, after the decision in *California v. Norton*, 311 F.3d 1162 (9th Cir. 2002) that suspended leases were subject to consistency review under the Coastal Zone Management Act, the companies holding suspended leases did not seek to develop those leases but instead sued Interior for restitution. (*Amber Resources Co. v. United States*, 538 F.3d 1358 (Fed. Cir. 2008).) The lack of industry interest is not surprising given that offshore oil development is expensive, the current price of oil relatively low, and the quality of the crude produced offshore California is low.

We also oppose including California planning areas on the program because of the environmental risks associated with offshore oil development. The Deepwater Horizon explosion and oil spill in 2010 provided a graphic demonstration of the dangers inherent in offshore oil development. New development in areas offshore Central and Northern California will require both new platforms and new onshore support facilities. New development offshore Southern California likely will require new platforms. Development of these offshore and onshore facilities likely will have adverse impacts both on the coastal environment and on our multi-billion dollar coastal and ocean economy.

California is well aware of the adverse impacts of oil and gas development. From as long ago as the 1969 Santa Barbara Channel oil spill to the 2015 rupture of the Plains All-American Pipeline also near Santa Barbara, we have seen the impact of oil on our environment. Indeed, California's coast is home to dozens of endangered or threatened species that would be put at risk from increased offshore oil and gas development, including the Coho Salmon, Southern Steelhead, Black Abalone, Leatherback Sea Turtle, Guadalupe Fur Seal, Blue Whale, Humpback Whale, Short-tailed Albatross, Western Snowy Plover, and Marbled Murrelet.

In exchange for these threats, Interior can expect only a meager return. In its request for information, Interior noted that the leases offshore California generated \$234 million in oil and gas sales in fiscal year 2016, and generated only \$31.2 million in federal revenue. These numbers are completely insignificant when viewed in the context of California's \$2.5 trillion economy (now the world's sixth largest economy).

Any company seeking to develop offshore of California would also face a challenging regulatory environment. The California Coastal Commission implements California's federally-approved coastal management program and is thus the California state agency with regulatory

authority over offshore leasing, exploration, and development and production. Interior will have to determine that it is conducting lease sales for areas offshore California in a manner that is fully consistent with our coastal management program, and lessees also will have to certify that their activities are consistent with our program. The Coastal Commission has articulated in the past that it is difficult for it to understand how it could find that construction and operation of new hazardous infrastructure both offshore California and along California's splendid coast is consistent with our coastal program. In addition, many coastal local governments have made express their opposition to onshore support facilities.

Finally, we are extremely troubled by the federal administration's emphasis on fossil fuels. California is an international leader in taking steps to address climate change and to reduce emissions of greenhouse gases. Rather than seeking to further develop in federal waters, the federal government should be supporting efforts such as California's to reduce greenhouse gases and to transition to renewable sources of energy. Even though the President has purported to withdraw the United States from the Paris Climate Agreement, that agreement points the way to the future. Fossil fuel development does not.

In 2014 in its request for information for the 2017-2022 program, Interior stated its decision to not include the Pacific planning areas in that program was consistent with the requirements of the Outer Continental Lands Act Amendments. Interior stated that the Act "gives priority leasing consideration to areas where the combination of previous experience; local, state, and national laws and policies; and expressions of industry interest indicate that potential leasing and development activities could be expected to proceed in an orderly manner." (79 Fed.Reg. 34350.) Interior then concluded that the exclusion of the Pacific coast from the 2012-2017 program was "consistent with the long-standing interests of west coast states, as framed in an agreement that the governors of California, Washington, and Oregon signed in 2006. This agreement expressed the governors' opposition to oil and gas development off their coasts." (*Ibid.*) The west coast states continue to be unified in their opposition to oil and gas development off of their coasts. Interior gave deference to the views of those states in the past, and it should do so again.

Interior should do as it did in 2012 and 2017 and exclude the west coast planning areas from the 2019-2024 program. If Interior includes the California planning areas in the program, we will use every tool available to us to prevent leasing of those areas and to prevent exploration and development in those areas.

Sincerely,



JOHN A. SAURENMAN
Senior Assistant Attorney General

For XAVIER BECERRA
Attorney General