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Evaluation of the California Department of Finance AB 1167 Bill Analysis

SACRAMENTO, Calif. – AB 1167 would ensure that the State of California receives an adequate cash bond or other financial security equal to the full cost of a site cleanup when an oil well is sold. In response to a statement from Carbon Tracker addressing the California Department of Finance (DOF) bill analysis for AB 1167, FracTracker Alliance has chosen to provide additional critique of the DOF analysis.

If California does not institute AB 1167, it will result in less funds available for the inevitable future. California is in a dire situation, where the future costs of plugging and abandoning orphaned wells has the potential to severely degrade the financial health of the state, environmental health of frontline communities and the climate. The state must increase bonding requirements, and doing so at the point of sale or transfer will assure that the "big oil to insolvent operator, orphan well pipeline" will not continue to be taken advantage of, at the cost of the taxpayer, and the worker. Well plugging is the only oil and gas development activity that does not lead to direct profits, but well plugging does provide jobs to hundreds of California workers. By not plugging their wells, operators are denying those workers their wages, and instead stealing the wages as corporate profits.

Furthermore, California is not the only government entity taking steps to protect itself. The U.S. Department of Interior has also recently taken steps to modernize their oil and gas bonding requirements, increasing minimum bond amounts to $150,000 for an individual lease, and $500,000 for minimum statewide bonds, in addition to eliminating nationwide and unit bonds altogether. California needs to follow this precedent.

It is clear that this DOF bill analysis was poorly crafted, and could be used as a possible excuse for Governor Newsom to not sign AB 1167 into law. The biggest mistake the DOF makes in their assessment is ignoring the fact that the majority of unplugged wells in California are already likely to be orphaned to the state. The entire DOF analysis rests on the false assumption that likely insolvent operators will have the capacity to plug their wells. The recent CarbonTracker report, "There Will Be Blood," clearly demonstrated that California's oil and gas industry will not have the ability to cover statewide plugging and remediation costs, even if they save all future cash flows.

Specific issues of concern with the DOF bill analysis for AB 1167:

1. Implementation of AB 1167 will protect California from the ultimate costs of plugging oil and gas wells when they do become orphan, a figure estimated by Carbon Tracker at $13.2 billion. This is an issue in part because the DOF has repeatedly failed to call out the multi-billion dollar

liabilities California oil and gas operators have accumulated over the last decades, which will come to bear in the near future. The DOF's analysis begins with a summary of direct costs, but does not even address the return on investment that will result from the implementation of AB 1167. In 2022, California alloted over $125 million for plugging and reclamation orphaned oil and gas wells, with an additional $140 million in planned federal funds. The costs associated with the implementation of AB 1167 pale in comparison to the cost savings of AB 1167, in protecting the state against future orphan well plugging costs.

2. As it currently stands, the majority of unplugged wells in California are already likely to be orphaned to the state. The DOF's statement in the comments section that AB 1167 could increase the number of orphan wells is mere speculation and is based on two false assumptions. First, that wells likely to be orphaned will be purchased by larger operators, and second that the majority of transferred oil and gas wells are not likely to be orphaned. The fact is that the California oil and gas industry is nearing the end of its productive lifespan, and large multinational oil and gas operators are looking to shed liabilities and leave the California market. The early exit of Occidental and the recent exit of Aera (Exxon and Shell) paint a clear picture for the future. Research shows that the vast majority of well transfers are from larger operators to smaller, likely insolvent operators, who are likely to orphan wells to the state. The fact is, California operators do not have the cash flows to plug the current inventory of wells.

3. In the comments, the DOF fails to recognize that litigative recourse will be difficult or impossible to enforce where entire companies were transferred, leaving no legal "predecessor" and when prior owners have since dissolved. Additionally, it is of no use for transfers prior to 1996. It is also the case that without "piercing the corporate veil," parent companies are generally not liable for their subsidiaries. The DOF analysis also completely ignores the costs of litigation to pursue state reimbursement of plugging and abandonment costs under PRC 3237.

Additionally, we are unaware of instances where the Joint Severance Liability Clause referred to by the DOF has actually been invoked in California court. While the State Lands Commision has attempted to pursue reimbursement for plugging and reclamation costs at Rincon Island, those proceedings, which should have been an open and shut case against multiple responsible operators including ARCO and the Greka group of companies, came up far short. California taxpayers have paid over $27 million for the clean up costs at just this one site. Had these wells been properly bonded, as required by AB 1167, these costs would be covered.

4. The mode of well transfers is most often from larger operators to smaller, likely insolvent operators. While DOF provides one example of a larger operator also purchasing wells from smaller operators, this scenario is rare, and by far the outlier. Additionally, larger operators who actually plug and reclaim purchased/transferred wells can quickly eliminate the wells from their bond sheets. While the DOF highlights this issue as the main deterrent for the implementation of AB 1167, the costs will be minimal for larger operators, if they plug these wells. Additionally, California will be protected from the future sales of marginal wells that are not plugged.

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