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SJR-12 Oil and gas leases: bankruptcy. (2023-2024)

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Senate Joint Resolution No. 12

CHAPTER 174

Relative to oil and gas leases.

[Filed with Secretary of State August 21, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SJR 12, Min. Oil and gas leases: bankruptcy.

This measure would urge the President of the United States and the United States Congress to modify bankruptcy rules to provide, in the event of liquidation and termination of oil and gas leases under the United States Bankruptcy Code, that priority is given to plug and abandonment and restoration obligations, to protect the environment, over all secured creditor claims.

Fiscal Committee: no

WHEREAS, In 2016, Rincon Island Limited Partnership, a lessee of state oil and gas leases offshore of the County of Ventura, filed for bankruptcy in Texas, and in 2017, quitclaimed their three leases to the state, deliberately ignoring their contractual and statutory obligations to plug and abandon 75 oil and gas wells and decommission two oil production facilities located on public lands; and

WHEREAS, In 2017, Venoco, LLC, a lessee of state oil and gas leases offshore of the County of Santa Barbara, surrendered its leases to the state and then declared bankruptcy in Delaware, without undertaking its legal obligation to plug 32 wells across the leases or to decommission Platform Holly and the associated facilities; and

WHEREAS, At the time of the bankruptcies, the leases operated by Rincon Island Limited Partnership were out of compliance with the lease requirements, creating greater risk of an uncontrolled release of oil or gas into the marine environment, and rather than bring the leases into compliance, as they were legally required to do, and as California governmental agencies were pressing them to do, Rincon Island Limited Partnership chose bankruptcy as a way to avoid the costs of compliance and decommissioning; and

WHEREAS, The leases operated by Venoco, LLC were ultimately deserted on the grounds that the company could no longer afford to operate, risking releases of hydrogen sulfide gas and oil from wells located on Platform Holly; and

WHEREAS, In both instances, the State of California was forced to use its police powers to enter and to manage the abatement of the deserted oil and gas facilities to ensure protection of human health and safety and the environment; and

WHEREAS, The obligations under the leases for both Rincon Island Limited Partnership and Venoco, LLC required each to permanently and safely plug and abandon all wells and restore public property to its natural condition at the lessee's expense, an obligation now forced upon the State of California because of bankruptcy protections provided for in federal law, costing taxpayers more than \$150,000,000; and

WHEREAS, The State of California has statutory obligations, enforced by the Department of Conservation's California Geologic Energy Management Division, for operators to permanently plug and abandon oil wells and decommission oil and gas infrastructure at the end of its useful life; and

WHEREAS, By quitclaiming its leases before filing bankruptcy, Venoco, LLC was allowed to convert the contractual obligations that it agreed to when it became a lessee of the state, including the obligation to plug wells and restore public lands, into an unsecured claim, ensuring that the State of California would receive only a fractional payment of its estimated claim and only after all secured creditors were paid; and

WHEREAS, Despite active and aggressive attempts by the state to pursue Rincon Island Limited Partnership through the bankruptcy process, including traveling to Texas, where Rincon Island Limited Partnership filed bankruptcy, and retention of outside counsel specializing in these matters, Rincon Island Limited Partnership was legally able to dissolve and largely avoid its responsibilities to plug and abandon and decommission by virtue of the United States' debtor-friendly bankruptcy laws; and

WHEREAS, Despite active participation in each bankruptcy, the State of California will likely receive little to no compensation from the debtor's estates for the public monies spent to safely manage and abate the facilities deserted by the debtors; and

WHEREAS, Beyond these two cases, there are over 35,000 oil wells in California categorized as idle, with many owned by companies that could seek bankruptcy protection, requiring future plug and abandonment by the State of California, without recompense; and

WHEREAS, The risk remains that oil and gas companies could, in the future, employ the strategy of filing bankruptcy to circumvent their decommissioning responsibilities, thereby shifting the costs of remediation and abatement to California taxpayers; and

WHEREAS, The people of California believe it is important that the federal government ensure that bankruptcy does not provide a default pathway for oil and gas companies, or their equity owners, to shift critical environmental obligations to decommission oil and gas infrastructure to the public or to otherwise publicly subsidize the operations of these private companies; and

WHEREAS, On January 31, 2019, the Supreme Court of Canada held that, consistent with an order of the Alberta State regulator, a bankruptcy debtor had to comply with end-of-life abandonment obligations prior to any distribution to creditors (*Orphan Well Association v. Grant Thornton Ltd.* (2019) SCC 5); now, therefore, be it

Resolved by the Senate and the Assembly of the State of California, jointly, That the Legislature of the State of California respectfully urges the President of the United States and the United States Congress to modify bankruptcy rules to treat the plug and abandonment and lease restoration obligations for debtor held oil and gas leases, quitclaimed or accepted, as nondischargeable obligations; and be it further

Resolved, That the Legislature of the State of California respectfully urges the President of the United States and the United States Congress to modify bankruptcy rules to provide, in the event of liquidation and termination of oil and gas leases under Chapters 7 and 11 of the United States Bankruptcy Code (11 U.S.C. Sec. 101 et seq.), that priority is given to plug and abandonment and restoration obligations, to protect the environment, over all secured creditor claims; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, the Speaker of the House of Representatives, the Majority Leader of the Senate, and each Senator and Representative from California in the Congress of the United States, and to the author for appropriate distribution.