

Secret Agreement on T-Ridge Revealed

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A secret agreement between PXP oil company and a Santa Barbara environmental group sheds new light on aspects of the controversial Tranquillon Ridge offshore oil plan that are central to Governor Schwarzenegger's latest bid to win approval for the project.

A hard copy of the previously undisclosed agreement provided to Calbuzz offers an inside look at the terms of the pact that gained the Houston-based PXP the key political support of the influential Environmental Defense Center, which has been prominent in the decades-long fight against offshore drilling in California.

The group's endorsement of PXP's application for a lease to slant drill into state waters, from an existing platform under federal jurisdiction, more than three miles offshore, has bitterly divided California's environmental community.

Financially at stake are billions of dollars in new revenue for PXP, plus as much as several billion more for the state treasury from royalties on the lease, which the governor insists are needed to address the state's budget mess.

Despite Schwarzenegger's aggressive push for the lease last year, the State Lands Commission rejected PXP's lease application. After a raucous battle, the Assembly later defeated a bill to overturn that decision. Now, Schwarzenegger is pushing for the lands commission to rehear the lease deal, which is framed by the confidential PXP-EDC agreement.

As a political matter, the environmental issue boils down to this: the EDC and its allies argue that trade-offs made by PXP in the confidential agreement in exchange for environmental support ultimately will end some offshore oil drilling; environmental foes of the deal say it is absurd to attempt to end offshore drilling by allowing more of it, and say the deal inevitably will advance oil industry efforts to expand the practice.

PXP and EDC representatives told Calbuzz they have recently amended their original agreement, reached in April 2008, in order to beat back major arguments used to defeat the deal twice before. A spokesman for PXP and an attorney for EDC both said the revised agreement would be made public if PXP gets a new hearing.

Our own review of the original agreement, which was obtained from sources who requested anonymity because of concerns about retribution, meanwhile provides the first definitive look at a host of issues that, for nearly two years, have been the focus of political gossip, rumor, speculation, charges and counter-charges.

Today we're publishing a post of unusual length and detail because we think the PXP matter, along with the AB32 climate change controversy, represent the most important environmental issues facing California.

Our research for this piece includes the previously secret document, a face-to-face about its terms with Linda Krop, chief counsel for the Environmental Defense Center, who negotiated it, and an email exchange with Scott Winters, PXP spokesman and vice president of corporate communications. Here is a look at key issues:

I - Secrecy: “Negotiated behind closed doors”

PXP and EDC have declined to make their agreement public, saying it contains proprietary information that could aid the company’s competitors. Their insistence on confidentiality was a major factor in the twin defeats of the deal last year.

If granted, the requested lease would be the first by the state since Union Oil’s disastrous 1969 Santa Barbara oil spill, and opponents of the deal successfully argued that it is outrageous even to consider such a change without a full public airing of its conditions.

“The fate of public lands cannot be decided in contracts negotiated behind closed doors,” Controller John Chiang, a lands commission member, said in explaining his vote against it last year.

Our review of the document showed there is no formal confidentiality clause to legally prevent its release to the public. Linda Krop, lead attorney for EDC, who negotiated the agreement, told us in an interview:

PXP asked if the agreement could be confidential because it explains how they do business with their partners and such, and they didn’t want the rest of the industry to see that. We said, ‘sure, that’s not a problem’ ... That was just the agreement going in (to negotiations).

PXP and EDC said they recently incorporated amendments to the agreement to address criticisms raised at the initial State Lands Commission hearing by strengthening written assurances that the promised benefits of the agreement will materialize.

PXP spokesman Winters said, “We recognize the concern the confidential nature of the agreement generated” and pledged that the revised agreement will be made public — if and when the lands commission schedules a new T-Ridge hearing.

Krop said she was surprised by the vociferousness of the criticism about the lack of transparency, claiming it is not unusual for environmental groups to keep private the legal agreements or settlements it makes with corporations applying for permits or leases before public agencies. Said Krop:

It caught us off guard. The reason we did not think that was an issue (was) because the project was going to be decided at public hearings before the county, the State Lands Commission and the Coastal Commission... Had we known it was going to be an issue, we would have talked about it up front, but it caught us by surprise... If we get a second chance, it will be a public agreement, and we will never have a private agreement again.

II - Money: Who gets what

EDC legally represents in the matter two other Santa Barbara non-profits, Citizens Planning Association (CPA) and Get Oil Out! (GOO). Amid the bitter debate within California’s environmental community, one of the charges leveled by T-Ridge foes is the suggestion that the non-profit EDC benefits financially from the agreement, and from its public support of PXP.

On this point, Section 1.6 of the agreement (“Reimbursement of Expenses of Environmental Parties”) states that:

Upon all Parties’ execution of this Agreement, PXP shall pay \$50,000, and upon the State Lands Commission’ approval and PXP’s written acceptance of all the leases necessary for the Tranquillon Ridge Project, PXP shall pay an additional \$50,000, for a total of \$100,000, to the Environmental Defense Center, as reasonable compensation for work performed by EDC on behalf of GOO! and CPA pertaining to the environmental and permitting review for the Tranquillon Ridge Project, and the negotiations leading up to and implementation of this Agreement.

The oil company also made other financial commitments, in addition to the terms about oil drilling, which are discussed below.

These include ceding for conservation nearly 4,000 acres of onshore lands in Santa Barbara County now used for production and processing of oil yielded by offshore operations. These land transactions, per the agreement, are to be managed primarily through the non-profit Trust for Public Land. The agreement does not state the value of the land.

The company further agreed to pay a maximum of \$298,507, at a rate of \$20 per ton, to offset any new greenhouse gas commissions from the T-Ridge project, to the Santa Barbara County Air Pollution Control District. PXP also promised to pay the air quality district \$1.5 million, over 14 years, to “administer a transit bus technology program” within the county to help reduce greenhouse emissions.

PXP’s potential royalty payments to the state are estimated at several billion dollars, according to Winters, who said the county of Santa Barbara could receive several hundred million in property tax revenue on oil produced from new T-Ridge operations.

In exchange for these commitments, among others, EDC and its clients made promises of public support for PXP’s efforts to obtain the lease and all necessary approvals, saying they would:

...in a timely manner communicate...support for the granting of all approvals required for the Tranquillon Ridge Project pursuant to the agreement. These communications shall be in writing (with copies contemporaneously delivered to PXP), and include oral testimony at public hearings of Santa Barbara County, the State Lands Commission, and California Coastal Commission...

In the event PXP requests the Environmental Parties to communicate their support...to any other governmental agencies with entitlement jurisdiction, EDC shall do so on behalf of (CPA and GOO!), in which event PXP shall pay EDC’s reasonable fees, together with reimbursement for any of EDC’s reasonable and actual out-of-pocket costs incurred.

Krop termed “ridiculous” the notion that this contractual arrangement could support the perception that EDC was due a \$50,000 bonus payment once PXP secured approval from the lands commission. Noting that “every settlement has a reimbursement,” she stated that PXP has now paid the full \$100,000 to EDC, which she said actually “shortchanged” the many hours she and her staff devoted to the project. Krop:

For environmentalists, it's never been about the money, it really has been about ending current oil production and stopping future oil production... We did get paid the full \$100,000...because we put twice that (amount of time) by the time we were done...The reason we advocated for this is because we want the end dates (for offshore oil drilling). We want the benefits of the agreement.

As for PXP's profit, Winters claimed "the state stands to gain as much, or more in all price scenarios, than PXP." He characterized speculative reports that the company stands to gain upwards of \$20 billion from the deal "not even remotely realistic" but declined to say how much increased income the project could mean for PXP.

III - An End to Drilling: How, When, Whether

As a policy matter, the most important issue raised by the PXP agreement is whether or not the negotiated "end dates" — when the company promises to stop drilling both at Tranquillon Ridge and from three other platforms located in coastal waters under federal jurisdiction — can be legally enforced.

(A bit of complicated, but unfortunately relevant, waaay in-the-weeds history:

Coastal waters up to three miles from shore are formally known as "[California State Tidelands](#)."

Since 1938, oil leases in them have been under the jurisdiction of the State Lands Commission. The three-member body includes the Lieutenant Governor, the state Controller and a representative of the governor's Department of Finance.

Until the 1969 Santa Barbara oil spill, which galvanized the start of the global environmental movement, the state had granted 35 leases for tidelands. Since then it has granted none.

In 1994, former state legislator, and current state schools chief, Jack O'Connell of Santa Barbara, successfully passed the California Coastal Sanctuary Act, which allows new state leases only under a few conditions. Two of these include: a) areas where oil in state waters drains into federal waters and b) cases in which the lands commission determines it is "in the best interest of the state" to allow such a lease.

The U.S. government has authority over oil leases in [Outer Continental Shelf waters](#) beyond three miles from shore. Starting in 1981, there was a federal moratorium on new leases off the California coast, which expired in 2008.

Under an pre-existing federal lease, PXP now operates Platform Irene, just outside the three-mile limit. That operation sucks oil out of the sea at a point near an underwater geological formation known as Tranquillon Ridge, where oil drains from state into federal waters).

Because PXP's state lease application apparently meets condition a), the key question for the lands commission, in deciding whether to grant a state lease at T-Ridge, is whether the project meets condition b), by being "in the best interest of the state."

Schwarzenegger says it does, because the state needs the money; project opponents say it does not, because it would set a dangerous political and environmental precedent. The State Lands Commission backed the latter view last year, when it turned down the project, 2-to-1.

PXP first applied for a state lease in 2004; during the EIR process, EDC opposed that effort. At the suggestion of then-Lieutenant Governor John Garamendi, according to attorney Krop, the company came to EDC in 2007 seeking a compromise.

Within a few months, Krop said, they had offered to include in a possible deal three other platform operations now under federal lease, in an area known as the **Pt. Arguello Project**, south of T-Ridge (if you're still with us, remember this name). The result of those negotiations was the confidential pact signed in April 2008, under which EDC now supports PXP's application to the lands commission.

IV - What are "end dates"?

The no-longer confidential agreement calls for PXP, if granted the state lease, to end operations in both federal and state waters near Tranquillon Ridge by the end of 2022. The company also promises to shut down its onshore production facilities connected to those operations, ceding the land for public use. PXP also agrees to remove permanently, not just decommission, the infrastructure known as Platform Irene.

Recall the aforementioned **Pt. Arguello Project**. PXP operates it through a majority partnership it has with other oil companies.

The EDC pact says PXP will ensure the end of drilling operations from three platforms — known as Harvest, Hermosa and Hidalgo — in that federal project area, within nine years of the company receiving the T-Ridge **state** lease. The PXP-EDC agreement also calls for turnover for public use of onshore lands where Pt. Arguello-related production facilities now operate.

Caveat: the agreement states that unnamed "third parties are responsible for the abandonment of the three Pt. Arguello platforms." While PXP promises not to oppose any effort to remove the actual platforms, it does not promise or guarantee they would be removed.

Will it ever end?

The so-called "end dates" for drilling are described in the agreement, variously, as "irrevocable and non-modifiable," and "pre-determined and absolute."

As a legal and political matter, however, the key question in the T-Ridge debate is whether these dates would be enforceable. Both the lands commission staff and the attorney general's office reported to commissioners last year that they were not, a crucial factor in the defeat of the lease application.

Opponents of the deal say there are simply too many future unknowns and unknowables — market conditions, the price and availability of oil and who controls the state and federal governments, for example — to assure that the promised end dates would be honored.

One key factor here is that federal leases — including those for platforms Harvest, Hermosa and Hidalgo — are under authority of the Department of Interior’s Minerals Management Service (MMS), which ensures that federal leases generate income for the U.S. government.

In explaining his opposition to a state lease for PXP, Controller Chiang wrote this in a post for the [California Progress Report](#):

My concerns also include the enforceability of ending the Tranquillon Ridge oil drilling operations in 2022 and the Point Arguello operations in 2017. The support of environmentalists for this project would not exist without dates certain on which drilling would stop, but neither the proposed State Lands Commission lease nor the PXP agreement can provide certainty about these end dates.

The federal Minerals Management Service receives royalties from the oil production in federal waters and is compelled by law to encourage drilling until it is no longer economically viable.

The state cannot interfere with the contracts between PXP and MMS. Because the MMS will not agree to the proposed end dates, and because we are continuing to experience severe volatility in the energy market, there is likelihood that market forces in 2022 would dictate whether or not the federal government would continue seeking revenue from this project.

V -- The ultimate leverage

But Krop told Calbuzz the Controller is “not correct” in his statements about the position of the federal government.

She said she met in Washington last fall with federal officials. At that time, MMS officials told her, she said, “we want to make this happen” She added that if and when state lands commissioners rehear PXP’s application, she will present evidence the federal issue should be “off the table.”

“When we met with MMS folks back in D.C. in September, they said, ‘that’s a viable option,’” Krop told us.

Winters said the the scenarios about difficulty enforcing end dates are not realistic, because the onshore facilities to support future drilling at the sites would be removed. He also said the new agreement would make California’ attorney general a party to the pact, to give specific authority over the deal to the state. He also told Calbuzz that in the amended agreement:

...a new provision has been added that requires PXP to forfeit 100% of any profits the project generates if it operates beyond 14 years for any reason. In addition, the agreement includes a clause that requires PXP to waive its rights to apply for any extension at the end of the life of the project.

As for the other enforceability issues, Krop strenuously argued that the original agreement she negotiated was ironclad:

Under our agreement, those (onshore) facilities cannot be used for production of oil and gas after the end dates...

By everybody's prediction there's going to be hardly any oil and gas left in these fields. If (MMS) were to lease them, all the new platforms, pipelines, processing facilities would have to be built. It's just not going to happen...

You've got a .0000001 percent chance, (of offshore drilling taking place on the sites after the end dates). Right now you have a 100 percent chance they're going to keep producing. That's what's frustrating to me, is that people in Sacramento don't get that... We're not supporting a new project, we're supporting a project that is going to shut down production.

In this exchange during the interview, however, Krop acknowledged that if unforeseen circumstances led to leasing arrangements and drilling past the end dates, enforcement of the EDC-PXP essentially would be left to her group, by filing a lawsuit:

***Calbuzz:** So what you're saying is, the enforceability is ultimately the legal leverage that you would have as one of the parties to this agreement.*

***Krop:** Right.*

***Calbuzz:** In other words, if they violated this agreement, you would have to go to court to sue to enforce it.*

***Krop:** Right. We would go to court, (Trust for Public Lands) would go to court...*

As for the political argument by opponents that granting PXP a state lease would send a powerful political message that California's long-held consensus opposing offshore drilling is crumbling, the EDC attorney claimed that any such perception "is based on people telling untruths."

The politics is the truth. If everyone would stick to the facts, I'm saying, if everyone would quit twisting the truth, the perception would be the truth. The truth is, the drilling's happening and we're shutting it down.

VI -- And Now, a Word from Your Sponsors

We've done our best to present the facts of this as fairly as possible, but figuring out who's right among environmentalists on this one requires an ability to foresee and forecast the future — about the oil market and shifts in government leadership, among other things — which we admit we lack.

Amid the passion and strained relationships within the environmental community, it seems to us that some people on both sides of this complicated issue share the same policy goal — to protect California's precious coastal environment. It's sad to watch them attack each other's motives.

That said, as innovative, perhaps visionary, as the EDC proposal may be as an environmental policy matter, the group's appreciation for hardball politics in Sacramento and Washington seems to us at times naive. Moreover, four decades of principled opposition to new offshore oil drilling is precedent we'd be loathe to see California forfeit on a risky bet that oil companies would willingly stop drilling for oil.