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Calif. Vows To Fight As Oil-Drilling Ban Ends

By Sara Stefanini

Law360, New York (September 29, 2008) -- The 27-year ban on offshore oil drilling off the California coast is set to expire on Wednesday, but staunch and widespread opposition to tapping the state's shoreline could get in the way of companies preparing to explore.

Since Congress decided not to renew the moratorium on offshore drilling earlier this year, for the first time since 1990, California lawmakers have made clear their intent to keep oil companies from drilling for the 10 billion barrels of oil that the outer continental shelf is believed to hold.

"In California, the issue of offshore oil drilling is very controversial. I don't think you will see anything immediately when the moratorium is lifted," said Peter Hsiao, an environmental law partner at Morrison & Foerster LLP.

California, a leader in pushing for environmentally friendly changes, has been particularly wary of offshore oil drilling since the disastrous 1969 oil spill, in which 80,000 to 100,000 barrels of crude oil flowed into the Santa Barbara Channel over a 10-day span.

Gov. Arnold Schwarzenegger confirmed his opposition to recommencing oil-drilling operations in a speech on Friday, when he recalled walking along the Santa Barbara shore in the aftermath of the spill.

"Every single time I walked around Muscle Beach, my feet were stuck with tar and there were dead birds laying around," Schwarzenegger said. "I think the people of California don't want to go through that again. I think we must protect our pristine coastline."

California has the authority to regulate its shoreline up to three miles out from land; the outer continental shelf that lies beyond that three-mile mark falls under the federal government's jurisdiction. Several oil drilling platforms are still standing since they were set

up before the moratorium, but no new ones have gone up in the last 27 years, according to Hsiao.

Even though oil companies do not need California's approval to begin exploring for oil more than three miles off the coast, state lawmakers have stepped up in an effort to thwart potential developments. Lawmakers have, for instance, argued that they could block tankers or pipelines from carrying oil to shore, Hsiao said.

"There would be a fight about that – there would be litigation over the commerce clause – there already has been in the past," he said.

In addition, the state legislature passed a joint resolution on Aug. 31 that reiterated its intent to resist offshore drilling.

Assembly Joint Resolution 51, requesting that Congress continue the ban on offshore drilling and gas leasing through fiscal 2009 and beyond, expresses the legislature's opposition to new federal energy policy that opens the outer continental shelf up to off-shore drilling and rejects the decision to end the moratorium.

"The California state legislature is sending a strong message that California and our nation's coastline is an international treasure and we're not going to sacrifice it to President Bush and his ill-conceived scheme," said Assemblyman Pedro Nava, the resolution's author. "Offshore drilling will not reduce the price of gasoline. It will put our coastline at risk, and endanger tourism, fisheries and coastal recreation."

The presidential elections could also affect whether, and to what extent, the oil industry begins drilling off California's shores, Hsiao added. Sen. John McCain, the Republican candidate, has been strongly in favor of drilling for oil in an effort to maximize the country's use of domestic energy resources. His opponent, Sen. Barack Obama, has argued for investing in clean and renewable energy sources over drilling.

"There could a be very different outcome depending on who wins the elections," Hsiao said. "What's driving this controversy over lifting the moratorium has a very large political component to it, as well as an energy component."