Our Ocean Backyard

Article No. 403

Gary Griggs

Oil Companies in the Courtroom

A short time ago, Governor Newsom made a presentation to the United Nations General Assembly meeting on climate and I want to start this column with a few cogent lines from that talk: “This climate crisis is a fossil fuel crisis. This climate crisis persists. It’s not complicated. It’s the burning of oil. It’s the burning of gas. It’s the burning of coal. And we need to call that out. For decades and decades, the oil industry has been playing each and every one of us in this room for fools. They’ve been buying off politicians. They’ve been denying and delaying science and fundamental information that they were privy to that they didn’t share or they manipulated. Their deceit and denial, going back decades, has created the conditions that persist here today.”

A lawsuit filed in September of this year by the state of California argues that the oil companies have known as least since the 1960s that burning of fossil fuels would change the climate and harm the planet. This posed a threat to their business, selling fossil fuels. Decades ago, Exxon even directed its scientists to develop mathematical models that calculated how rising carbon dioxide in the atmosphere would change the Earth in the decades ahead – and they were surprisingly accurate. Their own scientists had warned the leadership of Exxon that continuing to burn fossil fuels would lead to “catastrophic” and “irreversible” consequences.

Within a few years, however, Exxon publicly dismissed its own scientists’ conclusions. Corporate leaders cast doubt on the credibility of climate science, criticizing models and emphasizing how uncertainty made them essentially worthless. It’s part of a bigger story of how the energy companies misled the public for decades about climate change while their executives continued to downplay the impacts of rising carbon dioxide emissions while their profits soared. The emerging evidence of this deception has become the foundation for dozens of lawsuits against the big energy companies with cities, counties and states going to court to hold the companies and governments responsible for the damages from climate change.

In recent years, the energy companies have become more subtle in their advertising and actions. They finally realized that most of the public were feeling the direct impacts of climate change so that it was no longer credible to rely on denial. Instead they have focused on four D’s, downplay, delay, division, and deflection.

Exxon Mobil and others were advertising to downplay the impacts of the climate crisis and playing up technological solutions, like geoengineering, which is still nowhere near being feasible on any significant scale and may never be. They have also used deflection, giving homeowners instructions on how to change their lifestyles to lower their own personal carbon footprint so you don’t think about theirs.

As the climate crisis has become more obvious and severe, here and globally, government agencies at all levels, as well as individual groups, have decided enough is enough and began filing lawsuits against the energy companies for the environmental impacts that they created.

The lawsuit filed by California is not the first, however. As of a year ago, there were at least 20 pending lawsuits filed by cities and states across the U.S. alleging that major fossil fuel corporations misled the public on climate change with devastating effects. While the specific claims vary, most center on an argument that these companies failed to disclose what they knew about potential environmental impacts.

There are two analogous corporate products that had very similar histories of denial, years of public response, and finally legal action: the health risks of smoking with decades of denial by the tobacco industry; and the impacts of DDT on birds, particularly two species close to home, the peregrine falcon and the brown pelican. But ultimately the truth came out and DDT was banned in the US and all tobacco products now carry warnings.

Beginning in 2018 with Rhode Island, attorney generals from Massachusetts, Connecticut and Minnesota filed lawsuits citing violations of consumer-protection laws by the oil and gas industry. The defendants in these and similar legal actions are usually Exxon Mobil, Chevron, BP, Shell, ConocoPhillips, and the lobby organization, the American Petroleum Institute (API).

Five California cities – San Francisco, Oakland, Santa Cruz, Richmond, and Imperial Beach – and the counties of San Mateo, Marina and Santa Cruz, have also filed climate lawsuits against the big fossil fuel corporations. Some of these cases are now proceeding to trial in state courts.

The city of Oakland and the city and county of San Francisco jointly filed suit against the fossil fuel companies back in 2018 in the U.S. District Court in San Francisco and wanted the defendants – including BP, Chevron, ConocoPhillips, ExxonMobil and Royal Dutch Shell – to help pay for projects like protecting their coastlines from flooding due to climate driven sea-level rise. The presiding judge, William Alsup, made the decision before the suit proceeded any further to have what he termed a tutorial, to provide him with the information needed to assess whether the U.S. District Court was the appropriate place for this major legal issue.

The judge gave San Francisco and Oakland two hours to explain their case and the oil companies two hours. The courtroom was packed and it was televised outside in the courthouse hallways. The media was well represented due to the obvious significance of the outcome.

The oil companies only used a single witness, an attorney, who stated that the oil companies admitted some responsibility for the role of fossil fuels in climate change, but argued that this shouldn’t be decided in a courtroom but was a decision that should be decided in Washington D.C. by congress. The oil companies knew that they had a much better chance with the many pro-fossil-fuel representatives and senators in D.C. than in California.

The attorneys for San Francisco and Oakland brought in three scientists. One was a carbon dioxide expert from the UK whose work was focused on the importance of this key molecule in atmospheric warming. The second was a climate scientist from a midwestern University who had served on the UN’s Intergovernmental Panel on Climate Change, who was selected to speak about the science of climate change and impacts. I was asked to be the third witness to speak to sea-level rise and impacts on shorelines, specifically San Francisco Bay.

There were two unfortunate incidents that occurred during my presentation. I used a short video that showed how the ocean intruded into San Francisco Bay as the last ice age ended and sea levels rose, sending ocean water all the way to Sacramento. I was assured by the AV person that this video would work on their computer – well, it didn’t, and in this courtroom, packed with media, oil company attorneys, and tension, this was unfortunate. The other incident took place about halfway through my presentation when a fire alarm went off in the courthouse. So a major interruption as the entire courtroom had to be evacuated. I finished after this 15-minute disruption, but it was clearly not what I could call my finest moment. That happened the next day on Fox news when Rush Limbaugh called me out by name as a “climate change wacko”.