

July 16, 2020

The Honorable Gavin Newsom
Governor of California
State Capitol Building
Sacramento, California 95814

Submitted via fax to (916) 558-3160

Dear Governor Newsom:

We are writing on behalf of the Center for Biological Diversity and Sierra Club to urge you take immediate steps to protect the public and workers in the face of what is likely to be a wave of oil and gas company bankruptcies in the coming weeks and months. Any action by oil and gas producers to use bankruptcy proceedings and other cost-cutting and restructuring efforts to evade their environmental obligations will increase the risk that pollution from improperly secured or monitored oil and gas wells will cause environmental damage. Further, the current economics of the oil and gas industry increase the risk that the costs of plugging and cleaning up these wells ultimately will be unfairly passed to the taxpayers. Finally, oil and gas producers must not be allowed to evade their worker pension and healthcare obligations.

By taking the actions described below, you can prevent or mitigate these adverse outcomes. It is paramount that the state:

- 1) Participate directly in bankruptcy proceedings of oil and gas producers to ensure that the producers retain all environmental obligations and that cleanup costs remain the responsibility of the operators—not the public.
- 2) Pursue payment from prior well operators in cases where the current operator is unable to cover the costs of remediation.
- 3) Proactively increase and accelerate well plugging and abandonment requirements to reduce air and water pollution and create jobs. Prioritize remediation of wells in and near communities and in sensitive wildlife habitat.
- 4) Increase bond requirements to ensure that oil and gas companies set aside enough financial resources to cover the full costs of remediation even if they become insolvent.
- 5) Ensure that the oil and gas industry as a whole – not taxpayers – funds the remediation of truly “orphaned” wells, by increasing the administrative fee on well owners as needed.
- 6) Avoid the accrual of additional well cleanup costs by halting approvals and permits for new oil and gas activity, including new wells and fracking permits.
- 7) Take steps to ensure that oil and gas companies satisfy their obligations to workers by honoring their pension and healthcare commitments.

As you are aware, California Resources Corporation (CRC), one of the largest oil and gas producers in the state, has filed for Chapter 11 bankruptcy, leaving the fate of its approximately 18,500 active and idle oil and gas wells uncertain.¹ Properly plugging and abandoning these wells could cost over \$1.2 billion.² Although operators are obligated to plug and abandon their wells, CRC and its creditors will undoubtedly try to shed these substantial legal liabilities wherever possible.

CRC may try to offload its wells by either creating an underfunded subsidiary burdened with these high liability wells, or by transferring the permits to an undercapitalized buyer with even less ability to pay for remediation. CRC may also attempt to use its bankruptcy proceedings to shed its environmental obligations, leaving the state to undertake expensive plugging and abandonment procedures. Allowing CRC to walk away from its cleanup liabilities would be detrimental. It would increase the risk that unattended wells will cause environmental damage and increase the risk that taxpayers would ultimately be left to pay for remediation, despite the laws in place to prevent this.

But your regulators at the California Geologic Energy Management Division (CalGEM) can participate in bankruptcy proceedings to ensure that oil companies remain bound by their safety and environmental obligations.³ The state should advocate for the public during these bankruptcy proceedings by demanding that any reorganization plan set aside adequate resources to cover the cost of meeting CRC's legal obligation to clean up its wells.⁴ Failing to set aside sufficient financial resources—for either CRC itself or for any newly created subsidiary—would render the plan infeasible and therefore legally deficient because CRC or the new company may re-enter bankruptcy if these costs are not considered.⁵ The state should also insist that whenever any wells are transferred, the transferee provide bonding that covers the true full cost of remediating the wells. The state should also assist the bankruptcy court with evaluating whether CRC's reorganization plan meets the Bankruptcy Code's requirement that a plan comply with non-bankruptcy law. For CRC to meet this requirement, the reorganization plan would have to maintain and fully fund remediation requirements under state law.⁶

¹ Williams-Derry, William, "California Schemin": California Resources Corporation's Financial Distress Raises Questions About Cleanup—and What Occidental Petroleum Knew Before the CRC Spin-Off" Institute for Energy Economics and Financial Analysis (Feb. 2020), https://ieefa.org/wp-content/uploads/2020/02/California-Schemin_February-2020.pdf p. 7.

² *Id.*, p. 8.

³ Bankrupt companies are required to operate their businesses in full compliance with all applicable non-bankruptcy laws. 28 U.S.C. § 959(b).

⁴ When confirming a reorganization plan, the bankruptcy court must verify that the plan is consistent with all non-bankruptcy laws and is feasible so as to avoid additional financial reorganization in the future. 11 U.S.C. § 1129; *see also Midlantic Nat'l Bank v. N.J. Dep't of Env'tl. Prot.*, 474 U.S. 494, 507 (1986) (property cannot be abandoned if abandonment would contravene state laws designed to protect public health and safety).

⁵ 11 U.S.C., § 1129(a)(10) (requiring that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.")

⁶ Compliance would include the requirement to properly plug and abandon wells in a manner that will "protect oil and gas zones, [] prevent degradation of usable waters, [] protect surface conditions, and for public health and safety purposes." (Cal. Code Regs. tit. 14, § 1723(a), *see also* Pub. Resources Code, § 3208; the mandate to "isolate all oil-bearing or gas-bearing strata encountered in the well and [] use every effort and endeavor to protect any

In addition, if CRC is ultimately unable to pay for well remediation after the bankruptcy proceedings, the state should pursue payment from previous well operators with more financial resources. In contrast to other states that have struggled to shift environmental clean-up responsibilities back onto coal mining companies that spun off underfunded subsidiaries, California has the express ability to hold previous operators that have financial resources accountable for properly abandoning and plugging wells. The state may pursue funds from prior operators as far back as 1996 to cover the cost of well remediation.⁷ In CRC's case, Occidental Petroleum operated many of CRC's wells until it spun off CRC as a separate entity in 2014.

Given that CRC is likely the first of many oil and gas company bankruptcies that will occur in the coming weeks and months, state regulators should also protect the public by taking decisive action before oil and gas companies go bankrupt.

CalGEM can and should issue permit-specific orders requiring increased and accelerated well remediation now to increase the chances that operators will carry out this urgently needed work. Accelerated well remediation will benefit the environment and create jobs – and existing law requires the oil and gas operators to pay for it. CalGEM should also order operators to provide greater bonding amounts and life-of-well bonds on all existing wells to ensure that adequate financial resources for remediation are set aside before the company files for bankruptcy. In particular, the life-of-well bond requirement should apply to any entity that acquires wells from a bankrupted or near-bankrupt operator.

In addition, when wells do become orphaned, CalGEM must ensure that the industry as a whole pays for the necessary remediation, as required by existing law. The California Legislature has enshrined the “polluter pays” principle in multiple places in the Public Resource Code. Industry oversight is funded by well owner fees and it is “the policy of this state that the cost of carrying out [remediation of orphan wells] be charged to this state's producers of oil and gas.”⁸ State regulators must ensure that the industry pays for orphan well remediation through the fee on well owners (which is currently a mere 56.5 cents per barrel), through civil penalties, and through idle well management fees.⁹ Through these actions, you can ensure that the costs that must be borne by the responsible operators, and in the case of orphan wells, by the industry as a whole. It is absolutely unacceptable to allow these costs to be foisted upon the public.

Many fossil fuel companies have publicly resisted environmental responsibilities, using the threat of bankruptcy to discourage enforcement. But oil production in California is already in long-term decline. If a company cannot afford increased bonding necessary to protect the public, then it is likely already on a path towards insolvency and liquidation. Postponing the eventual just transition away from fossil fuels by propping up bankrupt companies will only worsen the

underground or surface water suitable for irrigation or domestic purposes from the infiltration or addition of any detrimental substances.” (Pub. Resources Code § 3228); and the mandate to restore the well site “to as near a natural state as practicable.” (Cal. Code Regs. Tit. 14, § 1776(a)).

⁷ Pub. Resources Code, § 3237(c).

⁸ Cal. Pub. Res. Code § 3250.

⁹ See generally, Letter to Wade Crowfoot, Secretary, California Natural Resources Agency and Uduak Ntuk, Supervisor, California Geologic Energy Management Division re: The Role of Oil Well Remediation in the State's Recovery and Economic Transition (dated June 23, 2020) (attached); Center for Biological Diversity, Well Remediation in California: Regulatory Authority and Funding Mechanisms (attached).

financial and environmental damage the state will have to face in the future. By contrast, well remediation presents a jobs opportunity and is an important piece of any just transition plan for impacted workers and communities.¹⁰ The same companies that have profited from oil and gas extraction must be held accountable for the costs of required environmental cleanup.

Finally, the state should stop issuing new drilling and fracking permits when so many operators are on the brink of bankruptcy. Continuing to expand oil and gas development only increases the number of wells that operators may walk away from.¹¹ State oil regulators have issued CRC and its affiliates permits to drill nearly 300 new wells so far this year, including 27 new permits in just the first week of July, all without conducting environmental review required by law, and knowing that bankruptcy was imminent. Approving new wells only digs the industry deeper into the hole for cleanup costs – new permits should cease immediately.

The public has subsidized the fossil fuel industry for long enough. We ask that you advocate for the public and workers before and during bankruptcy proceedings and ensure that polluters pay for the environmental degradation they caused and honor their worker pension and healthcare obligations.

Sincerely,

Kassie Siegel, Director, Climate Law Institute
Hollin Kretzmann, Senior Attorney
Center for Biological Diversity

Kathryn Phillips, Director, Sierra Club California
Nathan Matthews, Senior Attorney, Sierra Club

Cc: Wade Crowfoot, Secretary, California Natural Resources Agency
Uduak Ntuk, Supervisor, California Geologic Energy Management Division
Matthew Baker, Deputy Secretary, California Natural Resources Agency
Lisa Halko, Chief Counsel, California Department of Conservation

Enc: June 23, 2020 Letter from 30 public interest organizations with the Last Chance Alliance regarding accelerated remediation of oil and gas wells in California.

¹⁰ A recent national study estimated a total of 15.9 total jobs (direct, indirect, and induced) per million dollars spent on closing orphaned oil and gas wells. Pollin, Robert, and Shouvik Chakraborty, Job Creation Estimates Through Proposed Economic Stimulus Measures, Political Economy Research Institute (2020), <https://www.peri.umass.edu/component/k2/item/1297-job-creation-estimates-through-proposed-economic-stimulus-measures>.

¹¹ The California Council on Science and Technology estimates the total cost of oil and gas well plugging and abandonment to be over \$9.2 billion. (See CCST, Orphan Wells in California: An Initial Assessment of the State's Potential Liabilities (Jan. 2020), p. 28, Table 8, <https://ccst.us/reports/orphan-wells-in-california/publications/>)

June 23, 2020

Wade Crowfoot, Secretary
California Natural Resources Agency
1416 9th St, Ste 1311
Sacramento, California 95814

Uduak Ntuk, Supervisor
California Geologic Energy Management Division
801 K St, MS 18-05
Sacramento, California 95814

Submitted via email

Re: The Role of Oil Well Remediation in the State's Recovery and Economic Transition

Dear Secretary Crowfoot and Supervisor Ntuk,

We appreciate your efforts to date in addressing the tremendous threat posed by the thousands of idle, unsecured oil and gas wells in California. We write to ask you to greatly accelerate the plugging and remediation of idle wells in a way that creates jobs, protects the health of frontline communities, adheres to California law requiring that oil and gas operators pay the costs, and advances a just transition away from fossil fuels.

Well remediation is an important part of a just transition to a clean, renewable energy economy and is a way to meet your stated goal of creating jobs and providing support to communities that are hit hard when fossil fuel companies fail them. Accelerating the remediation of idle wells will also provide critical environmental, public health, and fiscal benefits to California.

CalGEM should accelerate well remediation in line with the principles summarized below and that are outlined in more detail in the summary of regulatory authority and funding mechanisms attached as Exhibit A.

Remediation of Oil and Gas Wells Must be Accelerated in Tandem with a Halt on Permitting New Wells and a Managed Phaseout of Oil and Gas Extraction

Remediating oil and gas wells will yield tremendous benefits, but it must be accomplished along with a managed phaseout of oil and gas extraction in California.

California faces a tremendous threat from the toxic legacy of oil and gas drilling, according to the California Council on Science and Technology's recent report on idle and orphan wells. The report identified more than 5,500 oil and gas wells that are orphaned or highly likely to become orphaned. It would cost \$550 million to plug and abandon just these old wells. Almost 70,000 other wells are either currently idle or economically marginal and are at increased risk of becoming orphaned, bringing the total cost to \$5 billion. To plug and abandon all 107,000 active and idle wells in California would cost more than \$9 billion. Yet, the bonds posted by the operators legally obligated to pay for the work total just over \$100 million. Unless CalGEM acts,

fossil fuel companies will continue to succeed in dumping their cleanup obligations while handing taxpayers the bill.

While the fiscal risks to the state are daunting, these numbers also illustrate the scale of potential job creation in well remediation in the regions of California that have historically produced oil and gas. As described below, CalGEM can greatly accelerate the pace of well remediation in California and ensure that the oil industry fulfills its obligations. These actions will put people to work today plugging toxic wells that threaten the health and safety of frontline communities.

Given the climate, health, and environmental justice implications of oil and gas extraction, as well as the massive scale of the clean-up needed, CalGEM can only begin to catch up and solve the problem by pairing well clean-up with a halt to permitting new wells and phasing out existing extraction over time. People of color make up nearly 92 percent of the 1.8 million people living within a mile of oil and gas development and in communities already heavily burdened by pollution.¹ Delaying proactive measures to wind down extraction will only increase the risk that oil companies will successfully offload their financial obligations onto the public while deepening the climate emergency and further harming the health of Black and Brown communities.

CalGEM Should Order Oil Companies to Remediate Idle Wells

The majority of idle wells in California have not yet been designated as orphan wells. CalGEM should use its full authority to accelerate the remediation of idle wells by the existing operators.

First, CalGEM can order remediation when an operator fails to pay idle well fees or file an idle well management plan. In 2018, then-DOGGR identified 957 operators that failed to file idle well fees for 2,555 idle wells. But only 14 of these operators were issued orders, addressing 55 wells. CalGEM acknowledged that it has a backlog of pending orders for 943 operators to plug a total of 2,500 idle wells. Simply by issuing orders to plug wells that CalGEM has *already determined should be plugged*, CalGEM could begin rapidly reducing the number of idle wells in the state.

CalGEM should also utilize its authority to order operators to plug and abandon wells that have been idle for 25 years or longer, and wells that are leaking methane. There may currently be over 15,000 wells in these categories that should be prioritized for immediate plugging and remediation.

CalGEM Should Remediate Orphan Wells and Recoup the Costs from the Oil Industry as Required by Law

Remediating oil and gas wells is the legal obligation of the oil and gas companies that profit from them. When wells become “orphaned” the costs of remediation must be borne by the industry as a whole, not by the public.

¹ Srebotnjak, Tanja, and Miriam Rotkin-Ellman, *Drilling in California: Who’s At Risk?* (2014), available at <https://www.nrdc.org/sites/default/files/california-fracking-risks-report.pdf>.

The California Legislature has enshrined this “polluter pays” principle into state law. For orphan wells, the Legislature has declared it “the policy of this state that the cost of carrying out [remediation of orphan wells] be charged to this state’s producers of oil and gas [through the fee on well owners].”

For wells that have become orphaned, CalGEM should carry out or contract the plugging and remediation of wells and recoup the costs from industry through three funding mechanisms. The first mechanism is the assessment fee on existing well owners that CalGEM collects to pay for all costs necessary to protect the public and environment from this inherently dangerous industry. Currently, CalGEM collects a mere 56 cents per barrel of oil. The other two funding sources are idle well fees and civil penalties through the Oil and Gas Environmental Remediation Account.

For orphan well remediation work that CalGEM carries out or hires contractors to do, the agency should guarantee strong labor standards for the workers, including a prevailing wage guarantee, Local Hire Agreements (with preference given to fossil fuel industry workers who have been laid off since March 1, 2020), apprenticeship standards, and Project Labor Agreements where available by law.

CalGEM has all the funding tools it needs right now to accelerate well remediation in communities hit hard by the economic crisis and to make polluters pay for it as required by law.

CalGEM Should Prioritize Plugging Wells within 5,000 feet of Sensitive Areas

CalGEM must protect the health of frontline communities by plugging orphan and idle wells within 5,000 feet of sensitive receptors. CalGEM should implement a priority list for well clean-up, guided by CalEnviroScreen and community input. Prioritizing wells that pose the greatest threat to community health, safety, and the environment will reduce the risks and harms that frontline communities experience every day. CalGEM should also prioritize the plugging of wells and habitat restoration in natural areas.

CalGEM Should Require Operators to Post Bonds that Fully Cover all the Costs of Remediating Their Wells

Currently, only a small fraction of the costs of actually remediating the state’s oil and gas wells has been bonded, creating an unconscionable risk of shifting this liability from the responsible operators to the public.

In recent years, the California Legislature had expanded CalGEM’s authority to increase the bonding on existing wells to fully cover the cost of remediation. CalGEM must fully utilize this authority to minimize the environmental, safety, and fiscal risks of abandoned oil and gas wells. CalGEM must act immediately to ensure oil companies facing low oil prices set aside enough money to cover the cleanup costs of their operations.

CalGEM Should Increase the Administrative Fee on Well Owners to Cover All Necessary Inspection, Oversight, and Enforcement Duties

With its current funding, CalGEM has been unable to adequately supervise oil and gas development. CalGEM and its sister agencies must specify the staffing and funding levels

necessary to effectively regulate the oil and gas industry, and increase the administrative fee on well owners accordingly. For example, increased funding should be used to detect fugitive methane emissions, and the findings should serve as the basis for immediate plugging orders for wells leaking methane. Tests on well integrity and water degradation should also prompt more immediate action on the state's idle wells.

The economic downturn has hurt regions across California, especially communities historically reliant on fossil fuel production for jobs and local tax revenue. Your administration has all the authority it needs to create new jobs in these regions, clean up toxic sites in frontline communities, and ensure that fossil fuel companies pay for it as required by law. With our local budgets in crisis, our hard earned taxpayer dollars should go to our community priorities like healthcare, schools, public employee pensions, and other vital social services, not lining the pockets of oil company CEOs who have driven their companies off a cliff. We urge you to act now on well remediation and jump-start a just and equitable transition away from fossil fuels.

Sincerely,

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Well Remediation in California: Regulatory Authority and Funding Mechanisms

Prepared by the Center for Biological Diversity

The plugging and remediation of oil and gas wells is an important part of a just transition away from fossil fuels to an economy based entirely on clean, renewable energy sources, and can be a significant source of jobs in the oil and gas sector during the transition. Accelerating the remediation of idle oil and gas wells will also provide extremely important environmental, health, climate, safety, and fiscal benefits to California. The California Geological Energy Management Division (“CalGEM”) within the Department of Conservation in the California Resources Agency has primary regulatory authority for well remediation in California. CalGEM should use its regulatory authority to accelerate the pace of well remediation in California and ensure that the costs are borne by oil and gas operators in California, as required by law.

CalGEM Should:

- Accelerate idle well remediation by ordering operators to plug and abandon deserted wells and wells that leak methane and cause an unreasonable waste of gas;
- Carry out or contract the remediation of orphaned wells and recoup the costs from industry through well assessment fees, idle well fees, and civil penalties;
- Ensure that remediation of orphan wells is adequately funded through existing funding mechanisms to uphold the polluter pays principle enshrined in California law and to enable federal stimulus funds to be used for other urgent public needs like healthcare, investment in the low income and communities of color that have been most harmed by fossil fuel extraction, and clean energy infrastructure;
- Prioritize remediation of idle and orphan wells closest to vulnerable communities and in important wildlife habitat areas;
- Require operators to post bonds that fully cover the cost of well remediation; and
- Increase assessment fees to cover necessary inspection, oversight, and enforcement duties.

Remediation of Oil and Gas Wells in California Must Be Accelerated in Tandem with a Halt on Permitting New Wells and a Managed Phaseout of Oil and Gas Extraction

The plugging and abandonment of oil and gas wells and the remediation of well sites, done correctly, will yield tremendous benefits, but it must be accomplished along with a managed phaseout of oil and gas extraction in California. Oil and gas wells threaten the environment in many ways including water contamination, air pollution, and safety risks. Risks typically increase as wells age, and deserted oil and gas wells pose a particularly grave problem, including leaking tremendous quantities of climate-damaging methane emissions.¹

¹ See, e.g. Groom, Nichola, “Special Report: Millions of abandoned oil wells are leaking methane, a climate menace,” Reuters (June 16, 2020), available at <https://www.reuters.com/article/us-usa-drilling-abandoned->

California also faces a tremendous fiscal threat from the toxic legacy of oil and gas drilling, according to the California Council on Science and Technology's recent report on orphaned wells.² The report identified more than 5,500 oil and gas wells that are likely orphaned (i.e., idle for five years and belonging to an operator with no California production or injection in the last five years) and highly likely to become orphaned (idle for five years with a smaller, partially active operator). It would cost \$550 million to plug and abandon just these old wells. Almost 70,000 other wells are either currently idle or economically marginal (producing less than 5 barrels of oil per day) and are at increased risk of becoming orphaned, bringing the total cost to \$5 billion. To plug and abandon all of the approximately 107,000 active and idle wells in California would cost more than \$9 billion. Tens of thousands of other wells may need to be replugged. Yet the bonds collected to cover the cost of plugging wells currently total just over \$100 million.

These numbers illustrate the scale of potential job creation in well remediation in the regions of California that have historically produced oil and gas. All of California's unplugged wells will need to eventually be plugged. As described below, CalGEM has the authority to accelerate well remediation in California and ensure that the oil industry fulfills its obligations. These actions will put people to work today plugging orphan wells. Proper policy design can ensure that well remediation jobs are hired now, as the industry is facing a downturn, and that those programs will be expanded as the managed phase out progresses.

The CCST report offers one explanation for the growing risk these wells pose:

Near the end of a well's productive life, it generates little revenue that can be used to pay for plugging and decommissioning. Consistent with the mature status of California's oil and gas fields, the figure also shows that wells have become less productive in recent decades. For wells drilled in recent years, initial production is lower and declines are steeper than for wells drilled during the 1980s. Production in the fifth year of the life of a well drilled during the 2000s or 2010s is about half of fifth-year production of a well drilled during the 1980s or 1990s.³

The oil and gas industry has deliberately slow-walked its remediation obligations for many years. While the operators are legally obligated to pay for the costs of clean up,⁴ many companies have no intention of doing so and have in fact pursued spinoff strategies to attempt to remove cleanup liabilities from their books, pushing those obligations onto newly formed, undercapitalized companies designed for failure. One analysis demonstrates how Occidental Petroleum's spinoff

[specialreport/special-report-millions-of-abandoned-oil-wells-are-leaking-methane-a-climate-menace-idUSKBN23N1NL](https://www.ccst.us/wp-content/uploads/2018/08/specialreport/special-report-millions-of-abandoned-oil-wells-are-leaking-methane-a-climate-menace-idUSKBN23N1NL)

² Information in this paragraph is from: California Council on Science and Technology, *Orphan Wells in California: An Initial Assessment of the State's Potential Liabilities to Plug and Decommission Orphan Oil and Gas Wells* 15-17, 28 (2018), <https://ccst.us/wp-content/uploads/2018/08/specialreport/special-report-millions-of-abandoned-oil-wells-are-leaking-methane-a-climate-menace-idUSKBN23N1NL> (CCST Orphan Well Study).

³ CCST Orphan Well Study at 14.

⁴ Cal. Pub. Res. Code, § 3237(c).

of California Resources Corporation fits this mold.⁵ And while environmental obligations are supposed to supersede most other costs in bankruptcy proceedings, legal scholars have documented how the coal industry successfully weaponized bankruptcy proceedings to evade its obligations both for environmental cleanup and to its workers for their salaries, pensions and healthcare.⁶ The oil industry in California is operating from the same playbook and is poised to once again deliberately dump its obligations onto the public.

For all of these reasons, California must act quickly to address its orphan and idle well problem. CalGEM can begin to catch up and solve this problem only by pairing accelerated well plugging and remediation with a halt to permitting new wells and phase out of existing extraction over time. In addition to all the other policy reasons that the Last Chance Alliance has advanced for these actions, this is the only way to address the looming fiscal risk that industry has created for our state. Delaying proactive measures will increase the risk that oil companies will successfully offload their financial obligations onto the public. It has also never been more urgent to halt the issuance of permits to drill new oil and gas wells in California.

CalGEM Should Fully Utilize Its Existing Authority to Accelerate Idle Well Remediation

The majority of idle wells in California are not yet likely orphaned as defined by the CCST (i.e., inactive for five years and belonging to an operator that has also been inactive in California for five years), and CalGEM has broad authority to require operators to accelerate plugging and remediation work, thus reducing the number of wells that will become orphaned in the future. CalGEM should fully use the authority described below to accelerate this important work.

First, CalGEM can order remediation when there is “credible evidence” that a well has been “deserted” — such as a failure to pay idle well management fees.⁷ In 2018, then-DOGGR identified 957 operators that failed to file idle well fees for 2,555 idle wells. But only 14 of these operators were issued orders, addressing 55 wells.⁸ CalGEM acknowledged that it has a backlog of pending orders for 943 operators to plug a total of 2,500 idle wells that “may be deserted.”⁹ It is unclear why the vast majority of plugging and abandonment orders were not issued. Simply by issuing orders to plug wells CalGEM has *already determined should be plugged*, CalGEM could begin rapidly reducing the number of idle wells in the state. CalGEM should also prioritize

⁵ Institute for Energy Economics and Financial Analysis, California Schemin’: California Resources Corporation’s Financial Distress Raises Questions About Cleanup (2020), <https://ieefa.org/ieefa-report-california-schemin/>.

⁶ Harvard Law School Forum on Corporate Governance, Bankruptcy as Bailout: Coal Company Insolvency and the Erosion of Federal Law (2019), <https://corpgov.law.harvard.edu/2019/05/22/bankruptcy-as-bailout-coal-company-insolvency-and-the-erosion-of-federal-law/>.

⁷ Cal. Pub. Res. Code § 3237(a) (discussing orders for plugging and abandoning “deserted wells”), (d) (discussing orders for plugging and abandoning wells that have been idle for 25 years or more where the operator fails to meet bonding or well management plan requirements or fails to meet idle well testing requirements). Failure to file the idle well fee is “conclusive evidence of desertion.” California Department of Conservation, Idle Well Program Report on Idle & Long-Term Wells in California, 18 (July 2019). CalGEM may also order abandonment of “hazardous” wells, as that term is defined by Cal. Pub. Res. Code § 3251. *Id.* § 3255.

⁸ California Department of Conservation, Idle Well Program Report on Idle & Long-Term Wells in California, 18 (July 2019).

⁹ *Id.* at 13, 18 (July 2019)

review of all idle wells in the state for credible evidence of desertion. The number of deserted wells is likely to rise precipitously with today’s low oil prices.

CalGEM should also utilize its authority to order operators to plug and abandon the more than 5,300 wells that have been idle for 25 years or longer and fail to meet other conditions.¹⁰ Further, CalGEM should order operators to plug and abandon wells leaking methane to prevent an unreasonable waste of gas, a category that could encompass more than 11,000 additional wells.¹¹ These authorities and well numbers are summarized in Table 1 below.

Table 1: Summary of CalGEM Authority to Accelerate Remediation of Idle Wells in California

Action	Legal Authority	Number of Wells Remediated
Clear backlog of plugging orders for wells CalGEM has already determined to be “deserted” for operator’s failure to pay idle well management fees	Pub. Res. Code § 3237.	2,500
Prioritize review of all idle wells for evidence of desertion	Pub. Res. Code § 3237.	Unknown but likely many thousands in the next few years
Issue order to plug all wells idle for 25 years or longer and failing to meet statutory criteria	Pub. Res. Code § 3237(d).	Up to 5,307
Issue order to halt unreasonable waste of gas	Pub. Res. Code §§ 3307, 3308	Unknown. Estimate of 11,700 or more wells

CalGEM Should Accelerate the Remediation of Orphan Wells and Fund the Work from Oil Industry Fees as Required by California Law

Plugging and remediation of oil and gas wells is the legal obligation of the oil and gas operators who profit from them. California regulators must do everything possible to hold existing

¹⁰ California Geologic Energy Management Division, Department of Conservation, Idle Well Inventory (2020), available at https://www.conservation.ca.gov/calgem/idle_well, filtered for wells that have been idle for 25 or more years; Cal. Pub. Res. Code § 3237(d) (discussing orders for plugging and abandoning wells that have been idle for 25 years or more where the operator (1) fails to meet bonding or well management plan requirements or (2) fails to meet idle well testing requirements).

¹¹ Cal. Pub. Res. Code §§ 3307, 3308. Data from other states suggests 40 percent of idle wells leak gas. See, e.g., Townsend-Small, A. et al., Emissions of coalbed and natural gas methane from abandoned oil and gas wells in the United States. *Geophys. Res. Lett.* 43,2283-2290 (Feb. 2016), <https://agupubs.onlinelibrary.wiley.com/doi/full/10.1002/2015GL067623> (study of 138 abandoned wells in Wyoming, Colorado, Utah, and Ohio finding that over 40% of unplugged wells leaked methane). California has 29,292 idle wells. California Department of Conservation, Idle Well Program Report on Idle & Long-Term Wells in California, 6 (July 2019). 40% of 29,292 is 11,717 wells.

operators responsible for their obligations. When CalGEM nonetheless finds wells have become “orphaned,”¹² pursuant to the statutory criteria because the responsible operators have become insolvent or otherwise have walked away from their obligations, the costs of remediation must be borne by the industry, not by taxpayers.

The California Legislature has enshrined this “polluter pays” principle in multiple places in the Public Resource Code. First, overall oversight of this dangerous industry is to be funded by a fee on well owners, not by taxpayers, as discussed further below. As to orphan wells, the Legislature has also declared it “the policy of this state that the cost of carrying out [remediation of orphan wells] be charged to this state’s producers of oil and gas [through the fee on well owners].”¹³

When CalGEM determines that a well has become orphaned, CalGEM should itself carry out or contract the plugging and remediation of orphaned wells, and recoup the costs from industry through three primary funding mechanisms. The first mechanism is the assessment fee on well owners that CalGEM collects to pay for all costs necessary to protect the public and environment from this inherently dangerous industry. The assessment fee is for all necessary oversight of industry activities “that may affect air quality, public health, or public safety” by CalGEM (as well as the State Water Resources Control Board, regional water quality control boards, State Air Resources Board and the Office of Environmental Health Hazard Assessment), clearly encompassing the plugging and remediation of orphan wells.¹⁴ The fee is set proportionally to the previous year’s production, and CalGEM currently collects a mere 56.5 cents per barrel of oil or 10,000 cubic feet of gas.¹⁵ There is no limitation on the amount CalGEM can spend on orphan well remediation and recoup from the industry.

The second funding mechanism is through the funds collected through idle well fees, which are deposited in the Hazardous and Idle-Deserted Well Abatement Fund.¹⁶ For this particular fund, CalGEM is limited to expenditures of \$3 million per year.¹⁷ The third funding mechanism is civil penalties through the Oil and Gas Environmental Remediation Account established by California Public Resources Code §§ 3260-62. These funding mechanisms are summarized below in Table 2.

CalGEM must ensure that the oil and gas industry funds the plugging and remediation of orphan oil and gas wells in California through these mechanisms, as required by law.

¹² Cal. Pub. Res. Code § 3206.3(a)(1)(C); § 3251(d)&(e) (“hazardous” and “idle-deserted” wells having no responsible operator).

¹³ *Id.* §3250.

¹⁴ Cal. Pub. Res. Code § 3401(a).

¹⁵ California Department of Conservation, *Assessment Process*, https://www.conservation.ca.gov/calgem/for_operators/Pages/Assessments.aspx (last visited Mar. 12, 2020).

¹⁶ Cal. Pub. Res. Code § 3206 (an operator of an idle well must pay an annual fee for each of its idle wells or file a plan that provides for the management and elimination of all its long-term idle wells; these fees are deposited in the Hazardous and Idle-Deserted Well Abatement Fund).

¹⁷ *Id.* § 3258 (expenditures made pursuant to article 4.2 of the public resources code, concerning hazardous and idle-deserted wells, are limited to \$3 million per year until the 2022-2023 fiscal year, when they are limited to \$1 million per year).

Table 2: Summary of Funding Mechanisms for Orphan Well Remediation

Fund	Auth.	Money comes from	Money Spent on	Other notes
Hazardous and Idle-Deserted Well Abatement Fund	Pub. Res. Code §§ 3206; 3258	Idle well fees.	Limited to Plugging “hazardous” and “idle-deserted” wells and facilities.	§ 3258 limits expenditures to \$3 million
Oil and Gas Env’l Remediation Account	§ 3261	Civil penalties; requires CalGEM budget request to withdraw from the Account	Plug and abandon oil and gas wells with no responsible operator	Part of the Oil, Gas, and Geothermal Administrative Fund
Well Assessment Fee	§§ 3400-03.	\$0.565 fee per barrel or 10,000 cubic feet of gas.	“support and maintenance of the department charged with the supervision of oil and gas operations” and funds related work for water boards, air districts, and OEHHA.	CalGEM can and should increase the well assessment fee.

The Oil and Gas Industry Should Not Receive Further Bailouts or Subsidies Through the Use of Public Funds for Well Remediation

Pursuant to state law and policy, the remediation of orphaned wells should be funded through the mechanisms outlined above. State law does not countenance spending scarce budget dollars to relieve the oil and gas industry of its remediation obligations. As one of only two oil producing states without an extraction tax to partially pay for the many costs that the oil industry imposes on the state, California already heavily subsidizes the oil and gas industry. It is asking remarkably little for the industry to pay for the needed plugging and remediation work through a small increase in the extraordinarily low well fee.

During recent conversations, administration officials have raised the possibility of using federal stimulus funds to pay for well remediation. We strongly oppose the use of scarce public funds to further subsidize the oil and gas industry in California. Giving stimulus funds to the oil industry means those dollars cannot be spent on other urgent needs, such as healthcare, protecting frontline workers, investment in the low income and communities of color that have been most harmed by fossil fuel extraction, and clean energy infrastructure. The promise made to Californians has always been that the oil industry itself would fund the necessary oversight and clean-up activities. To take money away from other urgent needs and use it for work that the oil and gas industry is supposed to pay for is unacceptable. Ensuring that the oil and gas industry pays for the remediation of orphan wells will maximize the overall economic stimulus

opportunity for California because the remediation work will be self-funded by industry and public funds can be used for other urgent clean energy, job-creating priorities.

Administration officials have also indicated reluctance to raise the extraordinarily low assessment fee paid by the oil and gas industry due to its precarious financial status. The industry's precarious financial state—brought on by its own mismanagement and external factors—cannot justify a failure to move forward with necessary fees, oversight and remediation work. Undoubtedly, many oil and gas operators will declare bankruptcy in the coming months, however, CalGEM's job is to ensure that all well owners remain subject to all the necessary fees and oversight, regardless of bankruptcies or other industry restructuring. Some of the world's largest oil companies operate in California and it is absurd to suggest they are unable to bear any needed fee increase. It is also absurd to suggest that taxpayers, rather than these multinational corporations and other well owners in California, should pay for industry's clean-up. Continuing to allow oil companies to evade their obligations will only make a bad situation worse.

California policy should focus on protecting workers and communities rather than bailing out a declining industry. Accelerating industry-funded well remediation can drive job creation in regions hit hard by the economic downturn.

CalGEM Should Prioritize Plugging Orphan & Idle Wells Closest to Vulnerable Communities and in Important Wildlife Habitat Areas

CalGEM must protect the health of impacted communities by plugging orphan and high-risk idle wells and decommissioning attendant facilities that are within 5,000 feet of sensitive receptors. CalGEM should implement a priorities list, guided by CalEnviroScreen analysis and community input, to establish the order and deadline for well cleanup and environmental remediation. Communities that live, work, and recreate in close proximity to oil and gas extraction sites are at increased risk for adverse health outcomes. Prioritizing wells that pose the greatest threat to community health, safety, and the environment will meaningfully reduce the risks and harms that frontline communities experience every day and begin the process of redressing environmental justice concerns.

CalGEM must also prioritize the plugging of wells and habitat restoration in important wildlife habitat areas.

CalGEM Should Fully Utilize Its Existing Authority to Require Operators to Post Bonds that Fully Cover all the Costs of Remediating Their Wells

Under state law, operators are required to submit a bond for varying amounts, depending on the characteristics of the well or the compliance history of the operator.¹⁸ Yet currently, only a small fraction of the costs of actually remediating the state's oil and gas wells has been bonded,

¹⁸ Cal. Pub. Rec. Code §§ 3204-3205.2.

creating an unconscionable risk of shifting this liability from the operators responsible to the public.¹⁹

In recent years the California Legislature has expanded CalGEM's authority to increase the bonding on existing wells to fully cover the cost of remediation.²⁰ CalGEM must fully utilize this authority to minimize the environmental, safety, and fiscal risks of abandoned oil and gas wells. California must act immediately to ensure oil companies facing low oil prices set aside enough money to cover the cleanup costs of their operations. The longer regulators wait, the more likely oil companies' financial resources will be depleted, and the greater the risk that these wells will become orphaned.

First, CalGEM can require operators to file additional upfront bonding, up to \$30,000,000, in order to reflect the true costs of plugging and abandonment.²¹ In determining whether to apply the higher bonding requirement, CalGEM must examine multiple factors, including the financial health of the oil company and the risk the wells pose to life, health, property, and natural resources.²²

Second, CalGEM can also adjust the amount of bonds on file. Bonds can be adjusted on the basis of new information: "The division shall increase or decrease the amount of additional security required under this section to account for changed circumstances or new information."²³ New information regarding the cost of cleanup, the financial condition of the operator, and the dangers to public health and safety and the environment would provide evidentiary support for increasing the bond requirements for operators that previously filed a blanket bond. Moreover, the factors CalGEM must consider in assessing the amount of the increased bond presume that it applies to companies with existing facilities. For example, CalGEM is directed to consider the "condition of the well or wells," "the level of current production," "the past record of compliance," and "whether the operator's well or wells are already subject to additional bond coverage by the division."²⁴

Third, CalGEM is authorized, at any time, to require higher "life of well" bonds from an operator "with a history of violating [environmental and safety laws], or that has outstanding liabilities to the state associated with a well or production facility."²⁵ Life of well bonds "cover the cost to properly plug and abandon each well, including site restoration, and the cost to finance a spill response and incident cleanup."²⁶ CalGEM must also review and adjust the bond amount

¹⁹ CCST Orphan Well Study at 28.

²⁰ California Department of Conservation, Idle Well Program Report on Idle & Long-Term Wells in California, 8 (July 2019).

²¹ CalGEM has the discretion to levy higher bonding requirements at the time an operator is filing a bond for "drilling, redrilling, deepening, or in any operation permanently altering the casing, of a well, or who acquires a well." Cal. Pub. Res. Code § 3204; *see also* § 3205.3.

²² Cal. Pub. Res. Code § 3205.3(a)-(c).

²³ *Id.* § 3205.3(e).

²⁴ *Id.* § 3205.3(b) & (c).

²⁵ *Id.* § 3270.4(a); Cal. Code Regs. tit. 14, § 1722.8(b).

²⁶ Cal. Pub. Res. Code § 3270.4; Cal. Code Regs. tit. 14, § 1722.8(c).

annually to ensure that the bond is adequate.²⁷ The same requirements may apply to ancillary production facilities in the form of a “life of production” bonding requirement.²⁸

Despite the availability of these stricter life of well bonding requirements, to our knowledge CalGEM has yet to require a single operator to comply with these regulations.²⁹ There are many operators, large and small, that have a history of violations and should be required to cover a life of well bond. For example, Chevron and Sentinel Peak Resources caused multiple spills in the Cymric and Midway-Sunset oilfields,³⁰ constituting violations of the regulatory prohibition against surface expressions.³¹

CalGEM Should Greatly Increase the Administrative Fee in Order to Cover Vitally Necessary Inspection, Oversight, and Enforcement Duties

As noted above, CalGEM currently collects a mere 56.5 cents per barrel of oil or 10,000 cubic feet of gas.³² Under its current funding levels, CalGEM has been unable to adequately supervise oil and gas development. For example, in 2016, the agency had committed to reviewing each of the 900 underground injection control projects by mid-2018.³³ Yet more than 18 months past the original date of completion, the agency has only been able to review nine projects.³⁴ And as discussed above, in 2018, then-DOGGR identified 957 operators that failed to file idle well fees for 2,555 idle wells, which gives the agency authority to order remediation.³⁵ But only 14 of these operators were issued orders, addressing 55 wells, while CalGEM sits on a backlog of pending orders for 2,500 idle wells.³⁶

CalGEM and its sister agencies must specify the staffing and funding levels necessary to undertake effective regulation of the oil and gas industry, and the fee should be increased to address any gap in funding that materializes. For example, increased funding could be used to detect fugitive air emissions. Those findings could serve as the basis for immediate plugging

²⁷ Cal. Code Regs. tit. 14, § 1722.8(c)(3).

²⁸ *Id.* § 1722.8(d). “‘Production facility’ means any equipment attendant to oil and gas production or injection operations including, but not limited to, tanks, flowlines, headers, gathering lines, wellheads, heater treaters, pumps, valves, compressors, injection equipment, production safety systems, separators, manifolds, and pipelines that are not under the jurisdiction of the State Fire Marshal” *Id.* § 1760(r).

²⁹ CCST Orphan Well Report at 10.

³⁰ CalGEM, Oil Field Surface Expressions, <https://www.conservation.ca.gov/calgem/Pages/Chevron-Cymric-oil-spill.aspx>, (last visited June 15, 2020).

³¹ Cal. Code Regs. tit. 14, § 1724.11(a).

³² California Department of Conservation, Assessment Process, https://www.conservation.ca.gov/calgem/for_operators/Pages/Assessments.aspx (last visited Mar. 12, 2020).

³³ Letter from Steve Bohlen, State Oil and Gas Supervisor, California Division of Oil, Gas and Geothermal Resources, to U.S. Environmental Protection Agency Region IX, dated July 15, 2015, attachment 2, p. 9.

³⁴ Uduak-Joe Ntuk, CalGEM Supervisor, testimony at Joint Committee Hearing on Joint Hearing Senate Natural Resources and Water and Assembly Natural Resources (January 27, 2020), *video available at* <https://antr.assembly.ca.gov/content/2020-hearings-1>.

³⁵ California Department of Conservation, Idle Well Program Report on Idle & Long-Term Wells in California, 18 (July 2019).

³⁶ *Id.*

orders. Tests on well integrity and water degradation could also prompt more immediate action on the state's idle wells.

Finally, we reiterate that CalGEM's regulation of the oil and gas industry, including the plugging and remediation of orphan wells, should never be funded through appropriation of state or federal recovery funds. It would be inappropriate to direct public funds to subsidize activities that are explicitly the responsibility of the oil and gas industry. Instead, these programs should be funded, as intended, by fees on well owners and operators.