



Dec. 13, 2022

Gov. Gavin Newsom
 1021 O Street, Suite 9000
 Sacramento, CA 95814
 Phone: (916) 445-2841

Supervisor Uduak-Joe Ntuk
 California Geologic Energy Management Division
 715 P Street, MS 1900
 Sacramento, CA 95814

Re: Kern County Oil and Gas Permitting

Dear Gov. Newsom and Supervisor Ntuk:

Thank you for the historic steps you have taken to protect Californians from oil industry pollution, including launching the health buffer rulemaking on October 21, 2021, and working with the Legislature to pass SB 1137 in September 2022.

Unfortunately, much of that progress is currently under threat. Following a recent state superior court decision, Kern County has resumed oil and gas permitting under its fast-tracking local ordinance, and the oil industry has stated its intention to apply for thousands of new permits. Kern County officials and the oil industry are working hand in hand to expand dangerous oil production and scuttle critical project-specific environmental review.

The oil industry is compounding this threat by spending millions to attempt to dismantle the hard-won protections in SB 1137 via referendum. It is therefore more important than ever for the state to step in to protect frontline communities and the climate by denying applications for state approvals for these dangerous oil and gas projects. On behalf of the undersigned groups, we are writing to urge you and the California Geologic Energy Management Division (CalGEM) to stop approving permits for new oil and gas wells anywhere in California, and cease approving oil and gas permits for further extractive activities at wells already located within 3,200 feet of a home, school, or other sensitive receptor. These steps are necessary to protect people from the many devastating harms of oil extraction.

Given that the superior court has authorized the County to issue local permits while its permitting scheme is being challenged on appeal, it is a critical moment where the state must fulfill its own independent legal obligations under the Public Resources Code and California Environmental Quality Act (CEQA) to ensure residents in Kern County—who have already suffered from decades of oil industry pollution—are not harmed by an avalanche of new oil and gas activity. Pursuant to CalGEM’s duty to prevent harm to public health and the environment, we urge you to adopt an immediate moratorium on approvals for new oil and gas wells, and for all oil and gas permits within the anticipated health and safety buffer of 3,200 feet from a home, school, or other sensitive receptor.

While an immediate permit moratorium is urgently needed to protect community health and our climate, to the degree CalGEM continues to consider permit applications, as described below, it may not approve them without considering important new information, conducting supplemental CEQA review, and complying with all of its CEQA obligations to avoid, minimize, and mitigate the harms of its approvals.

Kern County’s Oil and Gas Permitting

CalGEM historically acted as the primary reviewing agency or “lead agency” for oil and gas permitting in Kern County, which did not require local authorization until recently. CalGEM authorized large numbers of permits for oil and gas development in Kern County, which is by far the largest oil producing county in the state. According to CalGEM, there were over 43,000 active wells in Kern County in 2013, which as of then collectively produced close to 150 million barrels of oil annually.

In 2015, Kern County adopted an Oil and Gas Ordinance in an effort to become the lead permitting agency. Under the 2015 Ordinance, written and paid for by oil industry lobbying groups, the County implemented a permitting scheme under which operators could obtain local permits for oil and gas activities quickly and without the County conducting project-by-project environmental review. The County attempted to meet CEQA's environmental review requirements by adopting a single environmental impact report (EIR) for nearly all oil and gas projects under the County's jurisdiction for decades to come.

Local community organizations and environmental groups challenged the 2015 Ordinance and the EIR, and in 2020, the Fifth District Court of Appeal found that the County's environmental review violated CEQA's requirements in multiple ways, including deficient analyses on harms to health, water, and air. It ordered the County to cease issuing permits under the 2015 Ordinance by March 26, 2020.¹ Unfortunately, by that time, the County had already issued more than 9,000 oil and gas permits under a legally deficient EIR between 2015 and 2020 before it was ordered to stop.²

In March 2021, the County adopted a Supplemental Recirculated Environmental Impact Report (SREIR) and an amended Oil and Gas Ordinance (2021 Ordinance). Shortly thereafter, the County resumed approving permits improperly without first obtaining permission from the court. The Court ordered the County to cease permitting activity in October 2021, but not before the County had improperly issued more than 1,500 new oil and gas permits.³

Local community organizations and environmental groups challenged the SREIR and 2021 Ordinance in court as well, and on June 6 this year, the Kern County Superior Court ruled that the SREIR failed to comply with CEQA in multiple ways.⁴ Despite the County's repeated failures to comply with CEQA, this time, the court ultimately decided to allow the County to issue permits under an SREIR Addendum while the case is reviewed on appeal, opening the door to a flood of permit applications.⁵

According to the Western States Petroleum Association, its member companies are planning to apply for 3,800 to 4,000 oil and gas permits in Kern County over the next 18 months.⁶ Without the state's proper exercise of its oversight authority, this new wave of oil and gas development

¹ See *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 896-97.

² See Kern County Planning and Natural Resource Department's "Oil and Gas Permitting Program Annual Progress Report (December 1, 2020 to November 30, 2021)" (Dec. 2021) (the 2021 Annual Report) https://psbweb.co.kern.ca.us/planning/pdfs/oil_gas/kern_oil_gas_annual_progress_report_2021.pdf (p. 7, Table 1)

³ *Id.*

⁴ *Vaquero Energy Inc v. County of Kern* Case No. BCV-15-101645, June 7, 2022 Ruling.

⁵ *Id.*, Nov. 4, 2022 Ruling. Petitioners in the case have filed a motion to stay the decision under Code of Civil Procedure section 918; the court's decision is pending.

⁶ *Vaquero Energy Inc v. County of Kern* Case No. BCV-15-101645, Declaration of Catherine Reheis-Boyd in Support of Respondent's Proposed Remedy and in Opposition to Petitioners' Proposed Remedy (Reheis-Boyd Decl., ¶ 13) (filed Aug. 5, 2022).

will cause significant public health and environmental harm to Kern County residents, particularly to low-income communities and communities of color, which suffer disproportionate harms from oil industry pollution.

CalGEM's Duty to Protect the Public, Environment, and Climate

CalGEM has a duty under section 3106 of the Public Resources Code to “prevent, as far as possible, damage to life, health, property, and natural resources.”⁷ The legislature recently clarified that CalGEM’s mission is “protecting public health and safety and environmental quality, including reduction and mitigation of greenhouse gas emissions associated with the development of hydrocarbon and geothermal resources in a manner that meets the energy needs of the state.”⁸ Relatedly, CalGEM is tasked with advancing California’s statutory goal to become carbon neutral by 2045.⁹

CalGEM has the discretion to approve, condition, or deny oil and gas permits¹⁰ and must exercise this discretion to meet these statutory goals. Given the dangers of oil and gas development, the well-documented harms to frontline communities, and the ever-growing climate crisis, CalGEM should be using this discretion to deny permits for new drilling, and cease approving oil and gas permits for further extractive activities at wells already located within 3,200 feet of a home, school, or other sensitive receptor.

While the case for an immediate permit moratorium is clear, to the degree CalGEM is considering approving permit applications, it cannot do so without meeting all of its independent obligations under CEQA to fully assess the harms of oil and gas production. When another agency has conducted an evaluation under CEQA, as is the case with Kern County, CalGEM must still conduct its own review of the permit application and previous CEQA document. Further, when new information of substantial importance emerges or when circumstances have changed, CalGEM must proceed as the lead agency, and regardless of whether it proceeds as the lead or responsible agency, *must* conduct supplemental CEQA review prior to approving the permit application.¹¹

There is a tremendous amount of new information that was not known and could not have been known at the time the 2015 EIR was certified, as well as changed circumstances. These issues have not been addressed in Kern County’s 2021 Supplemental Recirculated EIR either and in many cases could not have been known when the underlying review was completed.

⁷ Pub. Resources Code, § 3106(a).

⁸ *Id.*, § 3011(a).

⁹ Health and Safety Code, § 38562.2(c)(1).

¹⁰ In *Aera Energy LLC v. California Geologic Energy Management Division*, the court affirmed that notices of intent to drill “fall within the scope of CalGEM’s proper exercise of discretion.” (Case No. BCV-22-100141, Decision at p. 10 [Sept. 20, 2022].)

¹¹ 14 Cal. Code Regs., §§ 15052, 15096(e), 15162.

For example, CalGEM has recently acknowledged that California has 2,734 confirmed or potentially orphan wells, and close to 3,000 oil and gas facilities that are also potentially orphan.¹² These wells with no solvent operator represent only a small subset of the tens of thousands that may become orphan over the coming years if the state does not take aggressive steps to require higher amounts of bonding and forcing current and previous operators to begin plugging activity before they run out of financial resources. The legislature amended the Public Resources Code in 2019¹³ to allow CalGEM to require operators to set aside additional bonding, up to \$30 million, towards plugging and abandoning costs, which by one estimate is conservatively \$9.2 billion.¹⁴ CalGEM must fully analyze all environmental risks from idle and orphan wells and ensure that all feasible avoidance and mitigation measures have been adopted, including by utilizing its full bonding authority. CalGEM must ensure that the applicant has filed adequate bonding to cover the full cost of plugging its wells, remediating water and soil contamination, and restoring the surface to its natural state – for both the applicant’s existing and proposed new wells.¹⁵

Recent events have also revealed the financial precarity of oil producers. In 2020, California Resources Corporation, one of the state’s largest oil producers, filed for Chapter 11 bankruptcy.¹⁶ Major oil companies like ExxonMobil and Shell are selling off their operations to smaller, riskier companies, increasing the danger that oil companies will use bankruptcy to try to escape the costs of remediating these dangerous wells.¹⁷

New information has also become available regarding harms to health. Since 2015, a large number of scientific studies have demonstrated the causal connection between oil and gas production and adverse health outcomes.¹⁸ New leaks and spills have also come to light, further demonstrating the dangers of California’s aging oil and gas production infrastructure. More than 40 wells in Bakersfield, many near homes, were confirmed to be leaking methane in 2022. A recent study estimated that two-thirds of California’s idle wells are leaking methane.¹⁹ In addition, the number of reported large-scale spills has increased since 2019. “Surface

¹² CalGEM 2021 Idle Well Program Report, p. 25

¹³ Pub. Resources Code § 3205.3

¹⁴ Cal. Council on Science & Technology (CCST), *Orphan Wells in California: An Initial Assessment of the State’s Potential Liabilities to Plug and Decommission Orphan Oil and Gas Wells* (Jan. 23, 2020) at p. 28, Table 8., <https://ccst.us/wp-content/uploads/CCST-Orphan-Wells-in-California-An-Initial-Assessment.pdf>.

¹⁵ *Id.*, § 3205.3 (authorizing CalGEM to require up to \$30 million in bonding); 14 Cal. Code Regs., § 1776.

¹⁶ *In re Cal. Resources Corp.*, Case No. 20-33568 (DRJ) (S.D. Tex. Bnkr. 2020)

¹⁷ See Mark Olalde, Big oil companies are selling their wells. Some worry taxpayers will pay to clean them up, *ProPublica*, (Oct. 27, 2022) <https://www.propublica.org/article/california-oil-wells-shell-exxonmobil>

¹⁸ See, e.g., David Gonzales, et al., Upstream Oil and Gas Production and Ambient Air Pollution in California, *Science of the Total Environment* 806 (2022) 150298, <https://www.sciencedirect.com/science/article/pii/S0048969721053754?via%3Dihub>

¹⁹ Lebel, E.D., Methane Emissions from Abandoned Oil and Gas Wells in California, *Environmental Science & Technology*, 2020 54 (22), 14617-14626 <https://pubs.acs.org/doi/abs/10.1021/acs.est.0c05279>

expressions” in the millions of gallons have been reported in Kern County. Some of these spills have flowed for decades.

CalGEM must also consider new information on the harm to species. The Temblor legless lizard, for example, is being considered for endangered species status because almost all of its remaining habitat (98%) is vulnerable to oil and gas operations.²⁰

Finally, new studies have demonstrated how fossil fuel production is pushing the world toward catastrophic and irreversible climate change. It is clear that new and continued oil and gas production undermines the state’s climate goals. California’s reliance on extreme and energy-intensive extraction techniques like cyclic steam and other forms of enhanced oil recovery make California’s oil more carbon intensive than almost anywhere in the world.²¹ New oil and gas drilling would emit 360 million metric tons of CO2 equivalent between now and 2030.²²

New statutory provisions added by the legislature have confirmed and expanded CalGEM’s authority to protect public health and the climate. CalGEM must use its authority to the fullest extent to protect Californians from the dangers of oil and gas production.

To the degree CalGEM wishes to consider permit applications for approval, the agency must proceed in the lead agency role, given the many problems with Kern County’s review and the fact that it is now severely outdated. But even if it were to act as a responsible agency, and even if there were a rare instance where supplemental review was not required, CalGEM must still conduct an independent analysis, record independent findings, and adopt all feasible mitigation measures and alternatives to minimize the direct and indirect impacts of any permit approvals.²³

And regardless of whether CalGEM acts as a lead or responsible agency, its central duty remains to “prevent, as far as possible” the oil industry’s severe harms to public health, the environment and the climate.²⁴ Accordingly, CalGEM should exercise its discretion to deny permits for oil and gas production even where Kern County has authorized such activity under its 2021 Ordinance.²⁵ At a minimum, CalGEM must review these projects thoroughly, conduct the

²⁰ Center for Biological Diversity, Petition to List the Temblor Legless Lizard (*Anniella alexanderae*) as an Endangered or Threatened Species under the California Endangered Species Act (CESA), Nov. 18, 2021. <https://www.biologicaldiversity.org/species/reptiles/pdfs/21-11-18-Temblor-Legless-Lizard-CESA-Petition.pdf>

²¹ Fleming, John C. PhD, Killer Crude: How California Produces Some Of The Dirtiest, Most Dangerous Oil In The World, Center for Biological Diversity (June 2021), https://www.biologicaldiversity.org/programs/climate_law_institute/pdfs/June-2021-Killer-Crude-Rpt.pdf

²² Oil Change International, The Sky’s Limit: California, May 2018, p. 18.

http://priceofoil.org/content/uploads/2018/05/Skys_Limit_California_Oil_Production_R2.pdf

²³ 14 Cal. Code Regs., §§ 15091, 15096(g)&(h); see also *We Advocate Thorough Environmental Review v. City of Mount Shasta* (2022) 78 Cal.App.5th 629, 640; Note that even were there no new information, CalGEM would still be required to consider and adopt all feasible alternatives, avoidance, and mitigation measures, and to adopt the required findings.

²⁴ Pub. Resources Code, § 3106(a); see also id., § 3011(a).

²⁵ We are concerned that CalGEM has issued dozens of “conditional approvals” for permits in Kern County. These conditional approvals rely completely on the Kern SREIR even though that environmental document has been

required supplemental CEQA review, and ensure that all feasible mitigation measures are imposed on operators.

CalGEM Must Prioritize Public Health and Safety at This Critical Time

Kern County is acting, at least temporarily, as the lead agency for oil and gas projects in the county under its 2021 Oil and Gas Ordinance and amended 2021 SREIR, despite the potential that an appellate court will rule the latest SREIR legally deficient. Oil companies that have been unable to obtain local permits from Kern County for the last year due to the court's prohibition are likely to apply for these fast-tracked permits at a rapid rate. Kern County could approve 4,000 or more oil and gas permits over the next 18 months,²⁶ even while the validity of its environmental review is in question. Moreover, SB 1137, this year's landmark legislation requiring a 3,200 ft. setback between wells and sensitive receptors such as homes and schools, has not yet taken effect, and the oil industry is spending millions of dollars to qualify a statewide referendum that would delay SB 1137's implementation before it begins, providing the industry a window to apply for permits in residential neighborhoods.

But the County's adoption of its own permitting process for oil and gas development does not relieve operators of their obligation to obtain separate discretionary permits from CalGEM. As the state oil and gas regulator, CalGEM can step in to provide crucial protections where the County has failed. It can do so by adopting an immediate moratorium on new wells, and a halt to all permits, such as rework permits, for within the expected setback zone.

We hope you will prioritize frontline communities, our climate, and environment over the oil industry at this critical time.

Signed,

350 Bay Area Action
350 Santa Barbara
Alliance of Nurses for Healthy Environments
Breast Cancer Action
CA Youth Versus Big Oil
California Nurses for Environmental Health and Justice
Center for Biological Diversity
Center on Race, Poverty & the Environment
Central California Environmental Justice Network
Climate First: Replacing Oil & Gas
Climate Hawks Vote
Communities for a Better Environment

deemed legally deficient. These approvals should be voided and CalGEM should not issue any such conditional approvals going forward.

²⁶ Reheis-Boyd Decl. *supra*, ¶ 13.

Consumer Watchdog
Environmental Democrats of Sacramento
Extinction Rebellion San Francisco Bay Area
Food and Water Watch
Fossil Free California
Fridays For Future El Cerrito
Fridays for Future Fresno
Greenpeace USA
Kern-Kaweah Chapter Sierra Club
Labor Network for Sustainability
Let's Green CA!
Mothers Out Front California
Oil and Gas Action Network
Pacific Environment
Physicians for Social Responsibility-Los Angeles
Physicians for Social Responsibility/Sacramento
Presente.org
San Diego 350
San Francisco Bay Physicians for Social Responsibility
Santa Barbara County Action Network
Santa Barbara Standing Rock Coalition
Sierra Club CA
SoCal 350 Climate Action
Social Justice Ministry, Live Oak Unitarian Universalist Congregation
Stand.earth
Sunflower Alliance
Sunrise Movement Santa Barbara
The Climate Center
VISIÓN (Voices in Solidarity Against Oil in Neighborhood)
Women's March Santa Barbara
Youth Vs Apocalypse

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