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8 **STATE OF CALIFORNIA**
9 **NATURAL RESOURCES AGENCY**
10 **DEPARTMENT OF CONSERVATION**
11 **GEOLOGIC ENERGY MANAGEMENT DIVISION**

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14 **ORDER TO PAY A CIVIL PENALTY**
15 **NO. 1365**

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18 **Operator: O'Brien-Sill (O0400)**
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1 **I. Introduction**

2 The State Oil and Gas Supervisor (**Supervisor**), acting through the Geologic Energy
3 Management Division (**CalGEM**), and under the authority of Division 3 of the Public Resources
4 Code (**PRC**; commencing with PRC section 3000) and title 14 of the California Code of
5 Regulations (**Regulations**), may impose a civil penalty on a person who violates any statutory
6 provision of the PRC, or any regulation that implements those statutory provisions. (PRC, §
7 3236.5)

8 Based on CalGEM's records, O'Brien Sill (**Operator**) is or was an "operator" (as defined
9 in PRC, § 3009) and is responsible for the well "Unspecified" 1, API No. 040-293-8930 (the **Well**).
10 The Well is an idle well as of October 1, 1982. Under applicable provisions of Regulations
11 section 1772.1.4, Operator was required to file an Idle Well Testing Compliance Work Plan by
12 June 1, 2019, and to timely comply with annual testing benchmarks for the Well according to
13 that Plan, and Operator has not done so. Operator's failure to timely submit an Idle Well
14 Testing Compliance Work Plan and to comply with annual testing benchmarks according to
15 that Plan constitute violations of Regulations sections 1772.1 and 1772.1.4. Therefore, pursuant
16 to PRC sections 3013, 3106, 3206.1, 3224, 3236.5, 3270, and Regulations sections 1772.1 and
17 1772.1.4, the Supervisor is ordering Operator to bring the Well into compliance with idle well
18 requirements and to pay a civil penalty for each violation.

19 **Attachment A**, incorporated herein, contains a list of definitions and authorities that are
20 applicable to this order.

21 **II. Failure to Submit an Idle Well Testing Compliance Work Plan**

22 Based on CalGEM's records, at all times relevant to this order, Operator was the
23 operator, as defined in PRC section 3009, of the Well. At all times relevant to this order, the Well
24 was an idle well as defined in PRC section 3008, subdivision (d).

25 As the operator of the Well, Operator was required to submit an Idle Well Testing
26 Compliance Work Plan for the Well by June 1, 2019, as required by Regulations section
27 1772.1.4, subdivision (a), and Operator failed to do so. CalGEM issued a Notice of Violation to
28 Operator on March 16, 2023, regarding the outstanding Plan. (**Attachment B**, incorporated

1 herein.) As of the date of this order, Operator has not submitted an Idle Well Testing
2 Compliance Work Plan for the Well.

3 As the operator of the Well, Operator was required to comply with annual testing
4 benchmarks of the Well under an Idle Well Testing Compliance Work Plan, as required by
5 Regulations section 1772.1.4, subdivision (b), and operator failed to do so. CalGEM issued a
6 Notice of Violation to Operator on September 20, 2023, regarding the failure to meet testing
7 benchmarks. (**Attachment C**, incorporated herein.) Operator was required to complete testing
8 on the Well by April 1, 2020, which includes a pressure test and a clean out tag on the Well.
9 (Regulations, § 1772.1.4, subd. (b).) As of the date of this order, Operator has not remedied the
10 outstanding violations for the Well which is overdue for testing.

11 III. Civil Penalty

12 Operator's failure to timely submit an Idle Well Testing Compliance Work Plan for the
13 Well by June 1, 2019, is a violation of Regulations section 1772.1.4, subdivision (a). Operator's
14 failure to comply with required annual testing benchmarks is a violation of Regulations section
15 1772.1.4, subdivision (b). Operator's failure to submit the required Idle Well Testing Compliance
16 Work Plan constitutes one violation. Operator's failure to complete the required testing on the
17 Well to meet the annual benchmarks for the Idle Well Testing Compliance Work Plan
18 constitutes one violation, for the well Operator failed to test.

19 Because of these violations, and based on consideration of relevant circumstances,
20 consistent with PRC section 3236.5, by this order the Supervisor is imposing on Operator civil
21 penalties totaling \$3,000. Following is an explanation of how the civil penalty amount was
22 determined.

23 For purposes of this order, the Supervisor considered relevant circumstances, including:
24 characterizing the violations as "major," "minor," or "well stimulation" (as defined in PRC
25 section 3236.5, subdivision (b)) and setting a penalty amount proportionate to the
26 circumstantial importance of all relevant factors, including the eight factors identified in PRC
27 section 3236.5, subdivision (a). (PRC, § 3236.5, subd. (a).)

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1 **a. Civil Penalty Calculation – Nonsubmittal of a Testing Compliance Work Plan**

2 In determining the civil penalty amount for Operator's first violation, the Supervisor
3 determined the violation to be "minor." The statutory penalty range for a minor violation is
4 between \$0 and \$2,500. After consideration of all relevant factors, the Supervisor determined
5 that a balanced and effective incentive for operator compliance would be a civil penalty
6 which includes an estimate of the cost of preparing a Testing Compliance Work Plan, with a
7 sliding scale to account for the pervasiveness of the violation, with an increasing penalty
8 based on the number of idle wells belonging to Operator. A careful analysis of the eight
9 factors identified in PRC section 3236.5, subdivision (a), did not affect the Supervisor's finding
10 that a sliding scale including the cost of compliance and increasing to reflect the number of
11 idle wells is an effective civil penalty formula. Therefore, the Supervisor determined that it is
12 reasonable to impose a civil penalty which is proportionate to the cost of preparing a Testing
13 Compliance Work Plan, with an increasing penalty based on the number of idle wells in the
14 Plan. (PRC, § 3236.5, subd. (a).)

15 CalGEM estimated the cost to prepare a Testing Compliance Work Plan is
16 approximately \$500. This cost includes the administrative task of assembling the Plan, with
17 historical operation, well status, and location information operators should already possess. To
18 account for the pervasiveness of the violation by operators with multiple idle wells, CalGEM
19 calculated an additional penalty that corresponds with the number of idle wells which should
20 be included in the Plan. Working within the \$0 and \$2,500 statutory penalty range for a minor
21 violation, CalGEM created a sliding scale that includes the cost of preparing the Plan, and
22 increases incrementally to assess civil penalties for each operator based on the number of idle
23 wells in the Plan. For operators with five or fewer idle wells, CalGEM established a penalty of
24 \$500.

25 Based on the one idle well belonging to Operator, CalGEM estimates that Operator
26 gained an economic benefit of \$500 by not preparing a Testing Compliance Work Plan. As
27 such, based on the above allegations, and with appropriate consideration of relevant factors
28 as described in PRC section 3236.5, the Supervisor hereby imposes a civil penalty of five

1 hundred dollars (\$500) for the first violation, failure to submit an Idle Well Testing Compliance
2 Work Plan.

3 **b. Civil Penalty Calculation – Failure to Complete Testing Required to Meet Annual**
4 **Testing Benchmarks Under a Testing Compliance Work Plan**

5 In determining the civil penalty amount for Operator's failure to complete the required
6 testing on the Well to meet the annual benchmarks for the Idle Well Testing Compliance Work
7 Plan, the Supervisor determined each violation to be "minor." Each of the Wells that Operator
8 failed to test constitutes a separate violation. (Regulations, § 1772.1.4, subd. (f).) The statutory
9 penalty range for a minor violation is between \$0 and \$2,500. After consideration of all
10 relevant factors, the Supervisor determined that a civil penalty which is roughly proportionate
11 to the cost of performing the testing required is a balanced and effective incentive for
12 operator compliance. A careful analysis of the eight factors identified in PRC section 3236.5,
13 subdivision (a), did not affect the Supervisor's finding that the economic benefit from avoiding
14 the cost of compliance is the primary consideration for determining an effective civil penalty
15 amount. Idle wells that lack integrity have the potential to harm air quality and groundwater,
16 in light of which the Supervisor calculated a significant risk of harm. Additionally, an economic
17 analysis of the costs of performing a casing pressure test and clean out tag substantially
18 exceeded the upper limit of the statutory penalty range for a minor violation. CalGEM
19 estimated the cost to perform a casing pressure test and a clean out tag between \$2,871 and
20 \$15,946 per well, depending on the location and condition of the well. Avoidance or deferral
21 of this cost is a significant economic benefit to Operator. Therefore, the Supervisor determined
22 that it is reasonable to impose a civil penalty of \$2,500 per well which is overdue for testing.
23 (PRC, § 3236.5, subd. (a).)

24 Based on Operator's one idle well which is overdue for testing as of April 1, 2020, and
25 with appropriate consideration of relevant factors as described in PRC section 3236.5, the
26 Supervisor hereby imposes a civil penalty totaling two thousand five hundred dollars (\$2,500)
27 for the one violation for failing to complete the required testing.

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1 Taken together, the Supervisor imposes a total civil penalty of three thousand dollars
2 (\$3,000).

3 **IV. Remediation of Violations**

4 Regulations section 1772.1.4, subdivision (f), provides that each well Operator failed to
5 test under a Testing Compliance Work Plan is subject to the requirements of Regulations
6 section 1772.1, subdivision (b). Regulations section 1772.1, subdivision (b), requires Operator to
7 do one of the following within 12 months of failing to successfully complete testing on a well:

- 8 1) Bring the well into compliance by performing and passing a casing pressure test
9 and, if the well has been idle for two or more years as of April 1, 2019, performing
10 and passing a clean out tag, as directed in Regulations section 1772.1.4;
- 11 2) Partially plug and abandon the well in accordance with Regulations section
12 1752;
- 13 3) Plug and abandon the well in accordance with PRC section 3208; or
- 14 4) Schedule the well for plugging and abandonment under an approved Idle Well
15 Management Plan or an approved Testing Waiver Plan.

16 Following the testing benchmarks listed in Regulations section 1772.1.4, subdivision (b),
17 the Well was due for testing by April 1, 2020, or earlier, and, as 12 months has already passed
18 since that date, this well must be brought into compliance immediately. Pursuant to PRC
19 section 3224, the Supervisor hereby orders Operator to complete this work to remedy these
20 violations and come into compliance with Regulations sections 1772.1.4, subdivision (f), and
21 1772.1, subdivision (b).

22 **V. Operator's Required Actions**

23 For the reasons stated herein, pursuant to PRC sections 3013, 3106, 3206, 3206.1, 3224,
24 and 3236.5, and Regulations sections 1772.1 and 1772.1.4, **IT IS HEREBY ORDERED** that Operator:

- 25 **1) Pay a civil penalty totaling three thousand dollars (\$3,000);**
- 26 **2) Submit an Idle Well Testing Compliance Work Plan, prepared as directed in**
27 **Regulations section 1772.1.4; and**

1 **3) In accordance with 1772.1.4, subdivision (b)(3), and 1772.1, subdivision (f), bring**
2 **the Well into compliance by doing one of the following immediately:**

- 3 **a. Bring the well into compliance by performing and passing a casing**
4 **pressure test and performing and passing a clean out tag if required, as**
5 **directed in Regulations section 1772.1.4;**
6 **b. Partially plug and abandon the well in accordance with Regulations**
7 **section 1752;**
8 **c. Plug and abandon the well in accordance with PRC section 3208; or**
9 **d. Schedule the well for plugging and abandonment under an approved Idle**
10 **Well Management Plan or an approved Testing Waiver Plan.**

11 Operator is required to submit a Testing Compliance Work Plan and remedy the
12 violations immediately. A continuing failure to submit a Testing Compliance Work Plan and
13 bring the Well into compliance with Regulations section 1772.1, subdivision (b), may subject
14 Operator to additional civil penalties even if this order is appealed.

15 To remit payment of the civil penalty online, please visit
16 <https://www.govone.com/PAYCAL/Home/SelectAgency> and select "California Department
17 of Conservation Geologic Energy Management Division," then follow the instructions on the
18 screen.

19 To remit payment of the civil penalty by mail, please send a check payable to
20 "Department of Conservation" to the following address:

21 Department of Conservation
22 CalGEM, Attn: Operational Management Unit
23 715 P Street, MS 1803
24 Sacramento, California 95814

25 Please include the Operator name, Order number, and phrase "Oil and Gas
26 Environmental Remediation Account" on the check itself.

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1 **VI. Operator's Appeal Rights**

2 Operator may appeal this Order by filing a timely written notice of appeal with the
3 Director as described in Article 6 (Appeals and Review) of Division 3 of the PRC, commencing
4 with PRC section 3350. (PRC, §§ 3225, subd. (d).) If this order is mailed to you, the Director must
5 receive the appeal within (15) days from the date the Supervisor mails the order. To file an
6 appeal, a written notice of appeal may be sent via U.S. mail to:

7 Department of Conservation
8 Director's Office of Appeals
9 715 P Street, MS 19-06 (Legal Office, Chief Counsel)
10 Sacramento, California 95814

11 Or via electronic mail:

12 CalGEMAppeals@conservation.ca.gov

13 If Operator files a timely written notice of appeal, Operator will be informed of the
14 appeal hearing date, time, and place. Following the hearing, Operator will receive a written
15 decision that affirms, sets aside, or modifies the appealed order.

16 If Operator does not file a timely written notice of appeal, or if the order is affirmed
17 following an appeal, this order will become a final order and CalGEM may contract for
18 performance of the work, pursuant to PRC section 3226, if, within 30 days of this order,
19 Operator has not, in good faith, commenced the work ordered. Any costs incurred by
20 CalGEM to obtain compliance with this order (which may include penalties and interest) will
21 constitute a lien against Operator's real or personal property per PRC section 3423. (PRC, §
22 3356.)

23 **VII. Other Potential Actions to Enforce This Order**

24 Failure to comply with Section V (Operator's Required Actions) of this order could
25 subject Operator to further enforcement action. PRC section 3236 makes it a misdemeanor for
26 any person who violates, fails, neglects, or refuses to comply with any of the provisions of the
27 oil and gas conservation laws commencing at PRC section 3000. PRC section 3236.5 authorizes
28 the Supervisor to impose a civil penalty on a person who violates any provision in Chapter 1 of

1 Division 3 of the PRC or any regulation that implements those statutes, and the Supervisor may
2 in the future impose further civil penalties based on the facts and omissions underlying this
3 order. PRC section 3237 authorizes the Supervisor to order the plugging and abandonment of
4 a well or the decommissioning of a production facility if an operator has failed to comply with
5 an order of the Supervisor within the time provided by the order or has failed to challenge the
6 order on a timely basis. PRC section 3359 makes it a misdemeanor to fail or neglect to comply
7 with an order of the Supervisor. Each day's further failure, refusal, or neglect is a separate and
8 distinct offense. (PRC, § 3359.)
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11 DATED: March 7, 2024

Douglas Ito

Doug Ito
State Oil and Gas Supervisor