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

12
13 **ORDER TO PAY CIVIL PENALTIES**
14 **NO. 1375**
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18 **Operator: Elliot Underground LLC (10367)**
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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, Elliott Underground LLC (**Operator**) is the "operator" (as
9 defined in PRC section 3009) of the wells identified on **Attachment A**, incorporated herein (**the**
10 **Wells**). As described in more detail below, Operator failed to provide CalGEM with written
11 notification verifying whether there have been any changes to its right to operate each of the
12 Wells by July 1, 2023, in violation of PRC section 3202, subdivision (c). For CalGEM to effectively
13 supervise oil and gas production operations, it is critical to have accurate records of the
14 current operator.

15 Therefore, pursuant to PRC sections 3013, 3106, 3202 and 3236.5, the Supervisor is
16 ordering Operator to within thirty (30) days of this Order: (1) provide CalGEM with written
17 notification verifying whether there have been any changes to its right to operate each of the
18 Wells; and (2) pay civil penalties, totaling five hundred dollars (\$500.00), imposed for violation
19 of PRC section 3202, subdivision (c).

20 **II. Definitions**

21 **PRC section 3008, subdivision (a)**, defines "well" to mean, among other things, "any oil
22 or gas well or well for the discovery of oil or gas; any well on lands producing or reasonably
23 presumed to contain oil or gas."

24 **PRC section 3009**, defines "operator" to mean "a person who, by virtue of ownership, or
25 under the authority of a lease or any other agreement, has the right to drill, operate, maintain,
26 or control a well or production facility."

27 **PRC section 3010** defines "production facility" to mean "any equipment attendant to oil
28 and gas production or injection operations including, but not limited to, tanks, flowlines,

1 headers, gathering lines, wellheads, heater treaters, pumps, valves, compressors, injection
2 equipment, and pipelines that are not under the jurisdiction of the State Fire Marshal pursuant
3 to Section 51010 of the Government Code." (See also Regulations, § 1760, subd. (r).)

4 **III. State Oil and Gas Supervisor Authority**

5 **PRC section 3106** authorizes the Supervisor to supervise the drilling, operation,
6 maintenance, and abandonment of oil and gas wells to "prevent, as far as possible, damage
7 to life, health, property, and natural resources; damage to underground oil and gas deposits
8 from infiltrating water and other causes; loss of oil, gas, or reservoir energy, and damage to
9 underground and surface waters suitable for irrigation or domestic purposes by the infiltration
10 of, or the addition of, detrimental substances."

11 **PRC section 3201, subdivision (a)**, requires that "[t]he operator of a well or production
12 facility shall notify the supervisor, in writing ... of the sale, assignment transfer, conveyance,
13 exchange, or other disposition of the well or production facility by the operator of the well or
14 production facility as soon as is reasonably possible, but in no event later than the date that
15 the sale, assignment, transfer, conveyance, exchange, or other disposition becomes final."

16 **PRC section 3202, subdivision (a)**, requires that "[a] person who acquires the right to
17 operate a well or production facility, whether by purchase, transfer, assignment, conveyance,
18 exchange, or other disposition, shall, as soon as it is reasonably possible, but not later than the
19 date when the acquisition of the well or production facility becomes final, notify the supervisor
20 or the district deputy, in writing, of the person's operation."

21 **PRC section 3202, subdivision (c)**, requires that every other year by July 1, any person
22 that has a right to operate a well or production facility must notify CalGEM, in writing, whether
23 any of its rights to its well or production facility have changed.

24 **PRC section 3236.5** authorizes the Supervisor to impose a civil penalty on a person who
25 violates any statutory provision in Chapter 1 of Division 3 of the PRC (sections 3000 through
26 3473), or any regulation that implements those statutory provisions. Subject to the Supervisor's
27 discretion, the penalty amount for a minor violation may be up to two thousand five hundred
28 dollars (\$2,500.00) per violation, per day.

1 **IV. Failure to Provide Timely Written Notification**

2 Based on CalGEM's records, Operator is the operator of the ten (10) wells identified in
3 **Attachment A**. PRC section 3202, subdivision (c), requires that, beginning July 1, 2021, and by
4 July 1 of every other year thereafter, each operator must provide CalGEM with written
5 notification verifying whether there have been any changes to its right to operate each of its
6 wells. Operators are required to provide this notification even if there have been no such
7 changes.

8 CalGEM sent a Notice to Operators (NTO) dated June 23, 2023 (NTO 2023-07), alerting
9 Operator of the reporting requirements set forth in PRC sections 3200-3202, including the
10 requirement found in PRC section 3202, subdivision (c). Following NTO 2023-07, on August 4,
11 2023, CalGEM issued an NOV to Operator via U.S. mail for failure to comply with PRC section
12 3202, subdivision (c). **Attachment B**, incorporated herein, is the NOV issued to Operator
13 requiring immediate compliance with PRC section 3202, subdivision (c). CalGEM has also
14 made several additional attempts to contact Operator regarding its continuing violation of
15 PRC section 3202, subdivision (c), with no response.

16 As of the date of this Order, CalGEM has not received the required written notification
17 from Operator in violation of PRC section 3202, subdivision (c). (**Attachment C**; Declaration of
18 Brian Lenz, incorporated herein.)

19 **V. Civil Penalties**

20 Based on information, belief, and a review of CalGEM's records, Operator is the current
21 operator of the Wells. Operator's failure to provide timely written notification verifying whether
22 there have been any changes to its right to operate each of the Wells by July 1, 2023,
23 constitutes a single violation of PRC section 3202, subdivision (c).

24 Because of this violation, and based on consideration of relevant circumstances,
25 consistent with PRC section 3236.5, subdivision (a), by this Order the Supervisor is imposing on
26 Operator civil penalties totaling five hundred dollars (\$500.00). Following is an explanation of
27 how the civil penalty amounts were determined.

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1 **a. Characterization as “major,” “minor,” or “well stimulation” violation**

2 For purposes of this Order, the Supervisor considered relevant circumstances, including
3 whether to characterize the violation as “major,” “minor,” or “well stimulation” (as defined in
4 PRC section 3236.5, subdivision (b)) and setting a penalty amount proportionate to the
5 circumstantial importance of all relevant factors identified in PRC section 3236.5, subdivision
6 (a). In addition, only violations of PRC section 3202, subdivision (c), were considered.

7 In determining the civil penalties amount for Operator's violation, the Supervisor
8 determined the violation to be “minor,” pursuant to PRC section 3236.5, subdivision (b)(3)(A).
9 As described in detail above, Operator's failure to provide timely written notification verifying
10 whether there have been any changes to its right to operate each of the Wells by July 1, 2023,
11 as required by PRC section 3202, subdivision (c), afforded Operator an economic benefit by
12 not employing a consultant, or otherwise utilizing personnel time and resources, to review and
13 confirm its right to operate each of the Wells.

14 The Supervisor determined the violation to be “minor,” because it is neither a well
15 stimulation violation nor a major violation and the economic benefit received by Operator.
16 (PRC, § 3236.5, subds. (a)-(b)(3)(A).) The statutory penalty range for a minor violation is
17 between zero dollars (\$0.00) and two thousand five hundred (\$2,500.00) per violation. (PRC, §
18 3236.5, subd. (b)(3)(B).)

19 **b. PRC section 3236.5 factors analysis**

20 After consideration of all relevant factors, the Supervisor has determined that the
21 appropriate civil penalties for the violation is roughly proportionate to the cost of reviewing
22 and confirming Operator's right to operate each of the Wells and is a balanced and effective
23 incentive for operator compliance. A careful analysis of the eight factors identified in PRC
24 section 3236.5, subdivision (a), did not affect the Supervisor's finding that the cost of
25 compliance is an effective civil penalties amount. Therefore, the Supervisor determined that it
26 is reasonable to impose civil penalties that are proportionate to the cost of preparing written
27 notification pursuant to PRC section 3202, subdivision (c).

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1 CalGEM estimated the cost to review and confirm the right to operate for each
2 notification period to be four hundred dollars (\$400.00) for one (1) to eight (8) wells, and an
3 additional fifty dollars (\$50.00) for each well thereafter. This cost includes the estimated billable
4 time by a consultant charging an estimated one hundred dollars (\$100.00) per hour with a
5 minimum four (4) hour requirement; each additional well would accrue fifty dollars (\$50.00)
6 based on the estimated 0.5 hour of billable time by a consultant charging an estimated one-
7 hundred dollars (\$100.00) per hour. Therefore, the estimated cost of reviewing and confirming
8 the right to operate is based on the number of wells. Working within the zero dollars (\$0.00)
9 and two thousand five hundred (\$2,500.00) statutory penalty range for a minor violation,
10 CalGEM created a sliding scale to assess the civil penalties for each operator based on their
11 number of wells. For operators with one (1) to eight (8) wells, CalGEM estimated a cost of four
12 hundred dollars (\$400.00), and for operators with more than eight (8) wells, fifty dollars (\$50.00)
13 is accrued for each additional well.

14 Based on Operator's ten (10) wells, CalGEM estimates that Operator gained an
15 economic benefit of five hundred dollars (\$500.00) by not providing timely written notification
16 verifying whether there have been any changes to its right to operate each of the Wells. As
17 such, based on the above allegations, and with appropriate consideration of the relevant
18 factors as described in the PRC section 3236.5, the Supervisor is imposing on Operator civil
19 penalties of five hundred dollars (\$500.00).

20 **VI. Operator's Required Actions**

21 For the reasons stated herein, pursuant to the PRC sections 3013, 3106, 3202, and 3236.5,
22 **IT IS HEREBY ORDERED** that Operator:

- 23 1) Submit written notification verifying whether there have been any changes to its
24 right to operate each of the Wells, as directed by PRC section 3202, subdivision
25 (c); and
- 26 2) Pay civil penalties in the amount of five hundred dollars (\$500.00).

27 Operator is required to submit written notification verifying whether there have been
28 any changes to its rights to operate the Wells and pay the civil penalties amount within **thirty**

1 **(30) days** from the date this Order is issued. A continuing failure to submit the required written
2 notification or pay the civil penalties may subject Operator to additional civil penalties.

3 Please submit the written notification to CalGEM's Enterprise Risk Unit via electronic mail:
4 CalGEMEntRiskUnit@conservation.ca.gov.

5 To remit payment of the civil penalties online, please visit:
6 <https://www.govone.com/PAYCAL/Home/SelectAgency> and select "California Department
7 of Conservation Geologic Energy Management Division," then follow the instructions on the
8 screen.

9 To remit payment of the civil penalties by mail, please send a check payable to
10 "Department of Conservation" to the following address:

11 Department of Conservation
12 CalGEM, Attn: Operational Management Unit
13 715 P Street, MS 18-03
14 Sacramento, California 95814

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

17 If Operator's right to operate the Wells differs from what is listed in CalGEM's records,
18 then Operator is also required to notify CalGEM in writing of any changes pursuant to PRC
19 section 3201, subdivision (a).

20 **VII. Operator's Appeal Rights**

21 Operator may appeal this Order by filing a timely written notice of appeal with the
22 Director as described in Article 6 (Appeals and Review) of Division 3 of the PRC, commencing
23 with the PRC section 3350. (PRC, § 3225, subd. (d).) If this Order is mailed to you, the Director
24 must receive the appeal within fifteen (15) days from the date the Supervisor mails the Order.

25 To file an appeal, a written notice of appeal may be sent via U.S. mail to:

26 Department of Conservation
27 Director's Office of Appeals
28 715 P Street, MS 19-06 (Legal Office, Chief Counsel)
Sacramento, California 95814

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1 Or via electronic mail:

2 CalGEMAppeals@conservation.ca.gov.

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

6 **VIII. Other Potential Actions to Enforce This Order**

7 Failure to comply with Section VI (Operator's Required Actions) of this Order could
8 subject Operator to further enforcement action. PRC section 3236 makes it a misdemeanor for
9 any person who violates, fails, neglects, or refuses to comply with any of the provisions of the
10 oil and gas conservation laws commencing at the PRC section 3000. PRC section 3236.5
11 authorizes the Supervisor to impose a civil penalty on a person who violates any provision in
12 Chapter 1 of Division 3 of the PRC or any regulation that implements those statutes, and the
13 Supervisor may in the future impose further civil penalties based on the facts and omissions
14 underlying this Order. PRC section 3237 authorizes the Supervisor to order the plugging and
15 abandonment of a well or the decommissioning of a production facility if an operator has
16 failed to comply with an order of the Supervisor within the time provided by the order or has
17 failed to challenge the order on a timely basis. PRC section 3359 makes it a misdemeanor to
18 fail or neglect to comply with an order of the Supervisor. Each day's further failure, refusal, or
19 neglect is a separate and distinct offense. (PRC, § 3359.)

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22 DATED: March 18, 2024

Douglas Ito

Doug Ito
State Oil and Gas Supervisor