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STATE OF CALIFORNIA

NATURAL RESOURCES AGENCY

DEPARTMENT OF CONSERVATION

GEOLOGIC ENERGY MANAGEMENT DIVISION

ORDER TO PAY IDLE WELL FEE AND PAY CIVIL PENALTY NO. 1176

Operator: G.H. Preuitt

I. Introduction

The State Oil and Gas Supervisor (**Supervisor**), acting through the Geologic Energy Management Division (**CalGEM**), and under the authority of Division 3 of the Public Resources Code (**PRC**; commencing with PRC section 3000), may impose a civil penalty on any person who violates a requirement of the various statutes and regulations that comprise the oil and gas law overseen by CalGEM. (PRC, § 3236.5.)

Based on CalGEM's records, G.H. Preuitt (**Operator**) is the "operator" (as defined in PRC section 3009) of the well identified on **Attachment A**, incorporated herein (**the Well**). CalGEM's records indicate that, under applicable provisions of PRC section 3206, Operator was required to timely pay the idle well fee for the Well for 2018, and that Operator has not done so. Operator's failures to timely pay the required idle well fee for the Well constitute violations of PRC section 3206. Therefore, pursuant to PRC sections 3013, 3206, and 3236.5, the Supervisor is ordering Operator: (1) to pay the overdue idle well fee for the Well, totaling one thousand five hundred dollars ($1,500), and; (2) to pay a civil penalty, totaling six hundred and twenty five dollars ($625), imposed for violations of the requirement to timely pay the idle well fee for the Well.

II. Definitions

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

PRC section 3008, subdivision (d), defines "idle well" as any well that for a period of 24 consecutive months has not either produced oil or natural gas, produced water to be used in production stimulation, or been used for enhanced oil recovery, reservoir pressure management, or injection. For the purpose of determining whether a well is an idle well, production or injection is subject to verification by the division. An idle well continues to be an idle well until it has been properly abandoned in accordance with Section 3208 or it has been shown to the division's satisfaction that, since the well became an idle well, the well has for a continuous six-month period either maintained production of oil or natural gas, maintained production of water used in production stimulation, or been used for enhanced oil recovery, reservoir pressure management, or injection. An idle well does not include an active observation well."

PRC section 3008, subdivision (e), defines "long-term idle well" to mean "any well that has been an idle well for eight or more years."

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

III. <u>State Oil and Gas Supervisor Authority</u>

PRC section 3013 states that the oil and gas conservation laws (commencing with PRC section 3000) "shall be liberally construed to meet its purposes" and grants the Supervisor "all powers" that may be necessary to carry out those purposes.

PRC section 3206, subdivision (a), requires "[t]he operator of any idle well shall do either of the following:

> (1) No later than May 1 of each year, for each idle well that was an idle well at any time in the last calendar year, file with the supervisor an annual fee equal to the sum of the following amounts:
>
> > (A) One hundred fifty dollars ($150) for each idle well that has been an idle well for three years or longer, but less than eight years.
> >
> > (B) Three hundred dollars ($300) for each idle well that has been an idle well for eight years or longer, but less than 15 years.
> >
> > (C) Seven hundred fifty dollars ($750) for each idle well that has been an idle well for 15 years or longer, but less than 20 years.
> >
> > (D) One thousand five hundred dollars ($1,500) for each idle well that has been an idle well for 20 years or longer.
>
> (2) File a plan with the supervisor to provide for the management and elimination of all long-term idle wells."

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PRC section 3236.5 authorizes the Supervisor to impose a civil penalty on a person who violates any statutory provision in Chapter 1 of Division 3 of the PRC (PRC sections 3000 through 3473), or any regulation that implements those statutory provisions. Subject to the Supervisor's discretion, the penalty amount may be up to $25,000 per violation, per day.

IV. Idle Well Requirements

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

As the operator of the Well, following the process for idle well management set forth in PRC section 3206, subdivision (a), Operator did not submit an Idle Well Management Plan. As such, Operator was required to pay an idle well fee for each of its idle wells that were idle in 2018 by May 1, 2019, as provided in the 2019 Idle Well Fee Invoice prepared by CalGEM. (PRC, § 3206, subd. (a).) (**Attachment B**, incorporated herein.) As of the date of this order, Operator has not paid its idle well fees for the Well idle in 2018.

V. Civil Penalty

Operator's failure to timely pay the required idle well fee for the Well for 2018 is in violation of PRC section 3206, subdivision (a), generally, and specifically subdivision (a)(1). Each instance of failure to pay the required idle well fee, for each idle well, each year, constitutes a separate violation. Here, there is one violation because Operator failed to timely pay the idle well fee due in 2019 and required for Operator's one idle well that was idle in 2018. Because of this violation, and based on consideration of relevant circumstances, consistent with PRC section 3236.5, by this order the Supervisor is imposing on Operator a civil penalty totaling six hundred and twenty-five dollars ($625). **Attachment C**, incorporated herein, is an itemized list of the specific penalty amount assigned to the violation. Following is an explanation of how the civil penalty amount was determined.

Summary of Penalty Determination Methodology

The Supervisor exercises discretionary civil penalty authority to incentivize compliance. The Supervisor's fundamental policy objective is to set a penalty amount that is appropriately proportioned to the violation at issue. PRC section 3236.5 provides that, in establishing a civil penalty amount, "the supervisor shall consider, in addition to other relevant circumstances, all of the following: (1) The extent of harm caused by the violation; (2) The persistence of the violation; (3) The pervasiveness of the violation; (4) The number of prior violations by the same violator; (5) The degree of culpability of the violator; (6) Any economic benefit to the violator resulting from the violation; (7) The violator's ability to pay the civil penalty amount, as determined based on information publicly available to the division; and (8) The supervisor's prosecution costs."

For purposes of this order, the Supervisor considered relevant circumstances, including: characterizing the violations as "major," "minor," or "well stimulation" (as defined in PRC section 3236.5, subdivision (b)); setting a penalty amount proportionate to the idle well fees owed; and setting a penalty amount proportionate to the circumstantial importance of the remaining factors identified in PRC section 3236.5, subdivision (a). (PRC, § 3236.5, subd. (a).)

For each violation, determination of the penalty followed a basic formula:

Step One: A maximum possible penalty amount was determined based on characterization of the violation as "major," "minor," or "well stimulation."

Step Two: The maximum possible penalty amount determined in Step One was multiplied by a fraction to scale the penalty amount down in proportion to the amount of the actual idle well fee owed. This fraction is equal to the actual idle well fee owed divided by the maximum idle well fee provided in statute (i.e., $1500). For every violation, the fraction had a value of either 1/10, 1/5, 1/2, or 1.

Step Three: The number resulting from Step Two was multiplied by another fraction to further scale the penalty amount down in proportion to how many of the other eight factors identified in PRC section 3236.5, subdivision (a), were determined to be important for purposes of setting an appropriately incentivizing penalty. This fraction is equal to the total count of how many of the eight factors the Supervisor determined to be "important" divided by eight. For the unpaid 2018 idle well fee, that fraction is two eighths, as the only two important factors were the degree of culpability and the economic benefit of the violation.

Discussion of Supervisor's Considerations

Characterization: "major," "minor," or "well stimulation"

The Supervisor determined that of the violation addressed by this order is a "minor violation" as defined in PRC section 3236.5, subdivision (b)(3)(A); consequently, the range of the potential penalty amount for the violation is between $0 and $2,500.

Idle Well Fee Owed

When an idle well fee is required, the amount of the fee owed for each well each year is set by statute and ranges from $150 to $1500, depending on how long the well in question has been an idle well. (PRC, § 3206, subd. (a).) Here, because the Well has been idle for more than 20 years, CalGEM determined the amount of required idle well fee owed by Operator was $1500. The specific idle well fee owed for the Well is presented in the idle well fee invoice attached hereto as Attachment B, and is also presented as a summary list in Attachment C.

Other PRC Section 3236.5, subdivision (a), Factors

The Supervisor also considered the eight statutory factors under identified in PRC section 3236.5, subdivision (a), to determine which were important for setting a penalty amount calibrated to incentivize compliance in a manner appropriately proportional to the circumstances:

1) "Extent of harm" was not an important factor in setting the penalty amount. The Supervisor determined the violations did not pose a significant threat of harm to life, health, property, or natural resources.
2) "Persistence" was not an important factor in setting the penalty amount. The Supervisor determined that Operator's failure to pay its 2018 idle well fees was not persistent because when this violation occurred, effective May 1, 2019, this was the first instance of failure to comply with the idle well fee requirement.
3) "Pervasiveness" was not an important factor in setting the penalty amount. The Supervisor determined that Operator's failure to pay its 2018 idle well fees was not pervasive because the violation occurred at one well and not throughout an area.

4) "Prior violations" was not an important factor in setting the penalty amount. In calculating the civil penalty for Operator's failure to pay its 2018 idle well fees, the Supervisor determined prior violations were not an important factor because this was the first instance of Operator failing to comply with the requirement to pay idle well fees.

5) **"Culpability" was an important factor in setting the penalty amount.** The Supervisor determined that Operator is culpable for failing to pay its idle well fees, because where as Operator has previously complied with idle well fee requirements, Operator failed to pay the required idle well fees for its Well idle in 2018.

6) **"Economic benefit" was an important factor in setting the penalty amount.** The Supervisor determined that Operator received an economic benefit by not timely paying the $1,500 owed for 2018 idle well fees.

7) "Ability to pay" was not an important factor in setting the penalty amount. The Supervisor determined that adjustment of the penalty amount based on ability to pay is not applicable in this instance. This determination was informed by an analysis of Operator's future earning potential.

8) "Prosecution costs" was not an important factor in setting the penalty amount. The Supervisor determined that adjustment of the penalty amount based on prosecution costs is unnecessary in this instance.

VI. Operator's Required Actions

For the reasons stated herein, pursuant to PRC sections 3013, 3206, and 3236.5, **IT IS HEREBY ORDERED** that Operator:

1) pay its 2018 idle well fees in the amount of one thousand five hundred dollars ($1,500); and

2) pay a civil penalty in the amount of six hundred and twenty-five dollars ($625).

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Operator is required to pay these amounts immediately. A continuing failure to pay the overdue idle well fee, for 2018, may subject Operator to additional civil penalties even if this order is appealed.

VII. Operator's Appeal Rights

Operator may appeal this Order by filing a timely written notice of appeal with the Director as described in Article 6 (Appeals and Review) of Division 3 of the PRC, commencing with PRC section 3350. (PRC, §§ 3225, subd. (d); 3236.5, subd. (c).) If this Order is mailed to you, the Director must receive the appeal within (15) days from the date the Supervisor mails the Order. To file an appeal, a written notice of appeal may be sent via U.S. mail to:

Department of Conservation
Director's Office of Appeals
801 K Street, MS 24-03 (Legal Office, Chief Counsel)
Sacramento, California 95814-3530

Or via electronic mail:

CalGEMAppeals@conservation.ca.gov

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

VIII. Other Potential Actions to Enforce This Order

Failure to comply with Section VI (Operator's Required Actions) of this order could subject Operator to further enforcement action, including additional civil penalties, as appropriate, and a plugging and abandonment order. PRC section 3236 makes it a misdemeanor for any person who violates, fails, neglects, or refuses to comply with any of the provisions of the oil and gas conservation laws commencing at PRC section 3000. PRC section 3359 makes it a misdemeanor to fail or neglect to comply with an order of the Supervisor. Each day's further failure, refusal, or neglect is a separate and distinct offense. (PRC, §3359).

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DATED: May 29, 2020

Uduak-Joe Ntuk
State Oil and Gas Supervisor