June 27, 2024

Honorable Wendy Carrillo
1021 O Street, Suite 7710
Sacramento, CA 95814

Dear Assemblymember Carrillo,

Thank you for your letter to the Department of Conservation, dated June 11, 2024, regarding the implementation of Assembly Bill (AB) 1167 (Carrillo, Chapter 359, Statutes of 2023). This letter provides an overview of how the Department is implementing AB 1167.

The Department is aware that in February 2024, California Resources Corporation (CRC) announced in a press release and in a report to the Securities and Exchange Commission (SEC) its agreement to merge with Aera Energy LLC, a subsidiary of Aera Energy Holding Companies, "in an all-stock transaction." Based on the SEC filings and materials provided to the Department, it is evident that only ownership of Aera Energy LLC is being transferred, not any of Aera's assets. A vote by CRC's shareholders approving this merger was held June 26th.

The bonding requirements under Public Resources Code (PRC) section 3205.8, added by AB 1167, do not apply to stock transfers, nor does the law make any mention of such transactions. PRC section 3205.8 requires enhanced bonding for a well producing less than 15 barrels of oil per day or 60,000 cubic feet of natural gas during the 12 months preceding the date of acquisition or a natural gas storage well when a new operator acquires the right to operate the well pursuant to PRC section 3202.

An important part of the Department's California Geologic Energy Management Division's (CalGEM) regulatory work includes identifying the operator of each well and requiring the operator to post appropriate indemnity bonds. PRC section 3009 defines the operator of a well as "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." CalGEM's regulations, inspections, notices, and orders are directed at operators

because operators have the ability to comply with them. This is how CalGEM prevents harm to life, health, property, and natural resources, protects public health, and promotes the state's climate goals.

A corporation's business and affairs are managed under the direction of their Board of Directors.[1] While shareholders have rights to attend annual meetings,[2] elect members of the Board,[3] inspect records,[4] and, in some circumstances, bring civil actions on the corporation's behalf[5] or vote on a proposed transaction,[6] a shareholder has no right to control corporate assets. Shareholders who lack the power to operate the wells cannot be required to operate the wells safely or be held responsible for plugging and abandoning them.

The statutes added by AB 1167 includes references to the duties of "the operator" and "the new operator" of regulated wells and facilities. The stated legislative intent is to limit transfers of wells and facilities to other owners. Publicly traded corporations, including CRC, change ownership every day as shareholders buy and sell their shares. None of those new corporate owners have any power to control the corporation's assets or to operate its wells and facilities. Even where a new corporate owner purchases a majority stake in the corporation, ownership of the corporation's assets—and most relevant, the right to operate those assets—remains with the purchased corporation. Reading PRC sections 3205.8 and 3009 together indicates that if the operator of the well remains constant, changes in ownership of the operator's holding company do not require new bonds. CalGEM does not have explicit statutory authority over stock transfers that change the ownership of an operator's holding company and AB 1167 did not change or enhance CalGEMs authority in this area.

The Department will continue to monitor the records once the merger is complete. If Aera, CRC, or any other company transfers wells or the right to operate wells to a new owner of record, then the provisions of AB 1167 would apply. However, as explained above, this is not the case with the proposed merger between Aera and CRC. Additonally statutory changes would be needed to affirmatively subject this type of merger to the bonding requirements pursuant to AB 1167.

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[1] Corp. Code section 300, subd. (a).
[2] Corp. Code section 600.
[3] Corp. Code section 301, subd. (a).
[4] Corp. Code section 1601.
[5] Corp. Code section 800, subd. (b).
[6] Corp. Code section 1001, subd. (a).

Nonetheless, we share the signatories' concerns about idle and orphan wells and continue to implement financial assurance requirements and our idle well program, as well as take enforcement action against operators at risk of desertion. Holding operators accountable for the proper plugging and decommissioning of their facilities as production declines is one of my highest priorities.

Sincerely,

David Shabazian
Director, Department of Conservation