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## VIA Personal Delivery and Electronic Mail

July 16, 2021

Department of Conservation  
Director's Office of Appeals  
801 K Street, MS 24-03 (Legal Office, Chief Counsel)  
Sacramento, California 95814-3530  
[CalGEMAppeals@conservation.ca.gov](mailto:CalGEMAppeals@conservation.ca.gov)

Re: Aera Energy LLC – Notice of Appeal of July 8, 2021 Orders Denying Well Stimulation Permit Applications

Dear Director Shabazian:

On behalf of our client, Aera Energy LLC (“Aera”), we hereby submit the attached Notice of Appeal of orders of the State Oil and Gas Supervisor, acting through the California Geologic Energy Management Division (“CalGEM”), in the form of letters issued on July 8, 2021 denying 21 well stimulation treatment (“WST”) permit applications for wells in the North and South Belridge fields (Group Nos. 050-0012 and 052-0060 (mistakenly identified in the July 8 letter as 052-0061)).

As discussed in the Notice of Appeal, CalGEM’s denial of Aera’s WST permit applications is unlawful, violates numerous statutory duties, and impairs Aera’s rights under the federal and state constitutions. Notably, technical staff within CalGEM already recommended the issuance of these WST permits, and several agencies, including the Water Board and California Air Resources Board, have reviewed these applications and found no technical reason to object to the issuance of these permits.

Accordingly, Aera requests that the Director set aside CalGEM’s unlawful orders and approve the 21 WST permit applications forthwith.

Sincerely,



Matthew C. Wickersham

Enclosure

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10 Attorneys for AERA ENERGY LLC

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**STATE OF CALIFORNIA**  
**NATURAL RESOURCES AGENCY**  
**DEPARTMENT OF CONSERVATION**  
**GEOLOGIC ENERGY MANAGEMENT DIVISION**

IN THE MATTER OF:

Aera Energy LLC

**NOTICE OF APPEAL OF JULY 8, 2021  
ORDERS DENYING WELL  
STIMULATION TREATMENT  
PERMIT APPLICATIONS**

**[Public Resources Code §§ 3350 *et seq.*]**

1 Pursuant to Public Resources Code (“PRC”) Section 3350, Aera Energy LLC (“Aera” or  
2 “Petitioner”), by and through legal counsel on its behalf, hereby files this notice of appeal of an  
3 order of the State Oil and Gas Supervisor (“Supervisor”), acting through the California Geologic  
4 Energy Management Division (“CalGEM”) in the form of letters issued on July 8, 2021 denying 21  
5 well stimulation treatment (“WST”) permit applications for wells in the North and South Belridge  
6 oilfields (Group Nos. 050-0012 and 052-0060 (mistakenly identified in the July 8 letter as 052-  
7 0061)), attached hereto as Exhibit A.

8 **I. BACKGROUND**

9 Aera or its predecessors invested significant resources into developing and extracting  
10 valuable mineral resources within Kern County. For several areas within the North and South  
11 Belridge oilfields, Aera cannot economically drill and operate new wells without using WST. Aera  
12 operates its wells and conducts well stimulation in accordance with the strongest technical  
13 requirements in the country.<sup>1</sup> In December 2019, CalGEM hired Lawrence Livermore National  
14 Laboratory to conduct a review of CalGEM’s well stimulation permitting process, which concluded  
15 that Aera’s well stimulation operations properly comply with the regulatory authority and provided  
16 the necessary supporting data and calculations. Despite its compliance with these stringent  
17 technical requirements, Aera has been frustrated in its reasonably held expectation that it could  
18 continue to develop its property by CalGEM’s refusal to grant 21 WST permit applications  
19 submitted by Aera (Group Nos. 050-0012 and 052-0060) without any evidence of actual or  
20 threatened harm that would occur from issuance of the WST permits.

21 On July 8, 2021, CalGEM denied 21 WST permit applications, providing only a vague  
22 explanation that the denial was to protect public health and safety and environmental quality. On  
23 the same day, the Governor applauded CalGEM’s unlawful denial of the WST permit applications,  
24 claiming that CalGEM’s actions would “protect public health and safety and environmental quality  
25 and mitigate greenhouse gas emissions.” Yet CalGEM failed to cite any evidence to support its

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27 <sup>1</sup> California Department of Conservation, *Well Stimulation National Laboratory Scientific Review*,  
28 available at <https://www.conservation.ca.gov/calgem/Pages/Well-Stim-National-Lab-Scientific-Review.aspx>, attached hereto as Exhibit I (“Senate Bill (SB) 4 (Pavley, 2013) established stringent public health, safety and environmental criteria that have been widely described as among the strongest safeguards in the nation”).

1 conclusory assertion that denial of the permits will protect human health and the environment.  
2 Likewise, there is no indication that these applications fail to comply with the technical  
3 requirements of the Public Resources Code and CalGEM’s regulations. In fact, technical staff  
4 within CalGEM already recommended the issuance of these permits, and several agencies,  
5 including the Water Board and CARB, reviewed these applications and found no technical reason  
6 to object to the issuance of these permits.

7 There is substantial evidence to suggest CalGEM’s denial of Aera’s 21 WST permit  
8 applications was in furtherance of CalGEM’s larger policy, or “de facto moratorium” – at the  
9 Governor’s direction – to not approve any new hydraulic fracturing WST. For the last two years,  
10 CalGEM has suspended, delayed, and now entirely denied permitting for WST.<sup>2</sup> On May 21, 2021,  
11 at the Governor’s direction, CalGEM released “pre-rulemaking draft regulations” that would end  
12 permitting for well stimulation treatments in 2024. These actions resulted in a policy or “de facto  
13 moratorium” not to issue any new hydraulic fracturing permits. On July 8, 2021, the Governor’s  
14 office made it crystal clear that CalGEM’s recent denial of Aera’s WST permit applications would  
15 further the administration’s policy, in violation of law, against allowing any new hydraulic  
16 fracturing WST, stating that the Governor “*does not see a role for fracking in the future.*”<sup>3</sup>

17 Notably, the Governor and CalGEM took these actions to impose a ban or “de facto  
18 moratorium” on WST operations despite previously acknowledging that they have no authority to  
19 do so. In July 2019, the Governor was “asked if he was imposing a moratorium on fracking. ‘You  
20 can’t do that unilaterally. Legally you cannot,’ Newsom said.”<sup>4</sup> Likewise, the Governor “said he

21 <sup>2</sup> California Department of Conservation, *California Announces New Oil and Gas Initiatives* (News  
22 Release #2019-05, Nov. 19, 2019), available at  
23 <https://www.conservation.ca.gov/index/Pages/News/California-Establishes-Moratorium-on-High-Pressure-Extraction.aspx>, attached hereto as Exhibit B.

24 <sup>3</sup> John Cox, *State exercises discretion to deny Kern fracking permits ahead of formal ban*, The  
25 Bakersfield California (July 9, 2021), [https://www.bakersfield.com/news/state-exercises-discretion-to-deny-kern-fracking-permits-ahead-of-formal-ban/article\\_cf3905f2-e0e0-11eb-be63-370d54b769b9.html](https://www.bakersfield.com/news/state-exercises-discretion-to-deny-kern-fracking-permits-ahead-of-formal-ban/article_cf3905f2-e0e0-11eb-be63-370d54b769b9.html) (emphasis added), attached hereto as Exhibit C.

26 <sup>4</sup> Ted Goldberg, *Lawmakers Push to Give Newsom Power to Call Fracking Moratorium, Setting  
27 Stage for Oil Industry Battle*, KQED (July 25, 2019),  
28 <https://www.kqed.org/news/11762903/lawmakers-push-to-give-newsom-power-to-call-fracking-moratorium-setting-stage-for-oil-industry-battle>, attached hereto as Exhibit D.

1 does not have the authority to impose a moratorium on permits for fracking.... ‘Legally, the  
2 governor of California cannot do that. I explored that during my transition,’ Newsom said.’<sup>5</sup>  
3 Furthermore, the Well Stimulation Environmental Impact Report (“EIR”) for Senate Bill 4  
4 acknowledged that “DOGGR lacks the authority as an agency in the executive department to  
5 impose a statewide ban of hydraulic fracturing because the Legislature has not delegated this  
6 substantive authority to DOGGR.”<sup>6</sup> CalGEM has made no effort to square its denials of the WST  
7 permit applications with these previous statements.

8 Aera files this appeal because CalGEM’s denial of the 21 WST permit applications is  
9 unlawful and impairs Aera’s rights under the U.S. and California constitutions. Specifically, as  
10 alleged herein, CalGEM’s denial of the permit applications (1) is arbitrary, capricious, and  
11 unsupported by evidence; (2) violates CalGEM’s statutory duties; (3) impairs Aera’s vested rights  
12 and constitutes a taking; (4) violates Aera’s due process rights; (5) infringes on Aera’s rights to  
13 equal protection; (6) violates the Administrative Procedure Act; and (7) violates the separation of  
14 powers doctrine.

15 **II. THE ORDERS ARE ARBITRARY, CAPRICIOUS, AND UNSUPPORTED BY**  
16 **EVIDENCE**

17 CalGEM’s July 8, 2021 letters denying the WST permit applications constitute orders  
18 pursuant to Division 3, Chapter 1 of the Public Resources Code, which are arbitrary, capricious, and  
19 unsupported by evidence. The Orders deny the WST permit applications based on the alleged  
20 “quantifiable risk of the proposed [WSTs]” and vague language that such action was taken to  
21 protect public health, safety, and environment pursuant to Public Resources Code §§  
22 3160(b)(1)(C)(i), 3106(a), and 3011(a). However, the Orders do not identify the “quantifiable risk”  
23 or explain how CalGEM evaluated the “quantifiable risk.” Nor do the Orders attempt to square the  
24 wholesale denial of the 21 permits with CalGEM’s approvals of WST permits for Aera last year.

25 <sup>5</sup> Phil Willon, *Gov. Gavin Newsom Fires Top Official Over Fracking Permits-But Won't Ban the Oil*  
26 *Wells*, L.A. Times (July 12, 2019), [https://www.latimes.com/politics/la-pol-ca-gavin-newsom-oil-  
fracking-20190712-story.html](https://www.latimes.com/politics/la-pol-ca-gavin-newsom-oil-fracking-20190712-story.html), attached hereto as Exhibit E.

27 <sup>6</sup> CalGEM, Well Stimulation Environmental Impact Report (June 2015) , at C.2-23,  
28 [https://www.conservation.ca.gov/calgem/Pages/SB4\\_Final\\_EIR.aspx](https://www.conservation.ca.gov/calgem/Pages/SB4_Final_EIR.aspx) (select “Access SB4 EIR”),  
attached hereto as Exhibit F.

1 Nothing about the health, safety and environmental impacts of WST has changed in the interim.

2       Moreover, the Orders totally lack any evidence to support the inference that issuance of the  
3 WST permits would damage public health, safety, and the environment. Merely citing to various  
4 provisions of the Public Resources Code is not sufficient for CalGEM to carry its burden of  
5 supporting its denial of the WST permit applications with evidence. *Carrancho v. Cal. Air*  
6 *Resources Bd.*, 111 Cal.App.4th 1255, 1265 (2003) (agency decision will be overturned if it is  
7 “arbitrary, capricious, entirely lacking in evidentiary support, or unlawfully or procedurally  
8 unfair”); *Estes v. City of Grover City* (1978) 82 Cal.App.3d 509, 514 (agency abuses its discretion  
9 if findings are “unsupported by the weight of the evidence”). Of course, CalGEM is well-aware  
10 that there is no evidence demonstrating that issuance of the permits would damage public health  
11 and the environment, which is why multiple levels of technical review within CalGEM and other  
12 agencies identified no basis to deny these permits. In fact, in reviewing Aera’s WST permit  
13 applications, CalGEM concluded that “*there is minimal evidence of risk* that any of the wellbores  
14 identified within any” stimulation area of the proposed stimulation wells “would likely serve as a  
15 migration pathway for injected stimulation fluids or displaced formation fluids from the stimulated  
16 wells.” See CalGEM letter to State Water Resources Control Board (“SWRCB”) Oil and Gas  
17 Monitoring Unit 1, May 4, 2021 at pp. 2-3 (emphasis added), attached hereto as Exhibit G;  
18 CalGEM letter to SWRCB Oil and Gas Monitoring Unit 1, April 9, 2021 at pp. 2-3 (emphasis  
19 added), attached hereto as Exhibit H.

20       Likewise, there is no evidence that these applications failed to comply with the technical  
21 requirements of the Public Resources Code and CalGEM’s regulations, which is why CalGEM  
22 failed to articulate any specific technical reasons for denying the WST permits. The July 8 Orders  
23 lack any evidence supporting denial of the permits and are an arbitrary and capricious abuse of  
24 discretion.

### 25 **III. THE ORDERS VIOLATE CALGEM’S STATUTORY DUTIES**

26       CalGEM’s denials of the WST permit applications directly contradict CalGEM’s statutory  
27 mandate. Under the Public Resources Code, CalGEM has a duty “to *encourage* the wise  
28 *development* of oil and gas resources.” Pub. Res. Code § 3106(d) (emphasis added). Furthermore,

1 in supervising oil and gas drilling, exploration, and production operations, the Legislature also  
2 provided that CalGEM “*shall* . . . permit the owners or operators of the wells to utilize all methods  
3 and practices known to the oil industry for the purpose of increasing the ultimate recovery of  
4 underground hydrocarbons.” Pub. Res. Code § 3106(b) (emphasis added). The Legislature  
5 expressly recognized that WST practices are known to increase the recovery of hydrocarbons. *Id.*  
6 CalGEM’s permit denial to advance political agendas violates law.

7 The Public Resources Code, as amended by Senate Bill 4, expressly authorizes WST,  
8 subject to compliance with minimum regulatory requirements established by statute. Pub. Res.  
9 Code § 3160. Thus, CalGEM’s denial of the WST permit applications violates its statutory duties  
10 and conflicts with the Legislature’s express dictate in Senate Bill 4 that WST permits shall be  
11 reviewed and approved when the regulatory requirements are met.

12 **IV. THE PERMITS WERE DEEMED APPROVED DUE TO CALGEM’S**  
13 **PERMITTING DELAYS**

14 Based on the timing obligations of the Permit Streamlining Act (“PSA”), Gov. Code  
15 § 65920 *et seq.*, the 21 permits at issue here were deemed approved prior to any attempt to deny  
16 them by CalGEM. The PSA provides statutory time limits for determining the completeness of  
17 permit applications for development projects and in making final decisions with respect to permit  
18 issuance. WST operations are development projects under the PSA. Under the PSA, the agency  
19 has 30 days to inform the applicant whether the application is complete or else the application is  
20 deemed complete. Gov. Code § 65943; Cal. Code Regs, tit. 14, §§ 15060(a), 15101. “If the  
21 application is determined to be incomplete, the lead agency shall provide the applicant with an  
22 exhaustive list of items that were not complete.” Gov. Code § 65943(a) (emphasis added). “In any  
23 subsequent review of the application determined to be incomplete, the local agency shall not  
24 request the applicant to provide any new information that was not stated in the initial list of items  
25 that were not complete.” *Id.* Within 30 days after receipt of any amended or supplemental  
26 application, CalGEM must determine in writing whether the application, as supplemented or  
27 amended, is complete. *Id.*, subd. (b). If that determination is not made within 30 days, then the  
28 application “shall be deemed complete.” *Id.* Agencies are prohibited from requiring that applicants

1 waive, or agree to extend, the time limits. *Id.* § 65940.5.

2 The PSA also provides time limitations on when a project must be approved. Responsible  
3 agencies are required to approve or disapprove a development project that has been approved by the  
4 lead agency within 180 days from the later of (1) the date on which the lead agency approved the  
5 project or (2) the date on which the application for the project is accepted as complete by the  
6 responsible agency. *Id.* § 65952. Given Kern County’s approval of an EIR covering the drilling  
7 permits for these wells, CalGEM is a responsible agency with respect to these permits. As such,  
8 CalGEM is required to approve the project within 180 days of when the project has been deemed  
9 complete. If a local agency fails to approve or disapprove the permit within the time limits  
10 specified, the permit is “deemed approved.” *Id.* § 65956(b). “[A] ‘deemed approved’ permit is a  
11 permit which bears all the legal entitlements of a tangible permit issued by the agency.” *Ciani v.*  
12 *San Diego Tr. & Sav. Bank* (1991) 233 Cal.App.3d 1604, 1613. As CalGEM failed to act within  
13 the time periods specified under the PSA, these permit applications were deemed complete and  
14 subsequently deemed approved prior to the issuance of the July 8 letters purporting to deny them.

15 **V. THE ORDERS IMPAIR AERA’S VESTED RIGHTS AND CONSTITUTE A**  
16 **TAKING**

17 The Orders violate Aera’s vested rights and amount to a regulatory taking under the  
18 California and U.S. Constitutions. The Takings Clause of the U.S. Constitution, and its California  
19 counterpart, guarantees that private property shall not be taken for public use (broadly defined as  
20 public benefit) without just compensation. U.S. Const. amend. V; Cal. Const. art I, § 19. This  
21 constitutional protection covers not only physical takings of property, but also regulatory takings.  
22 *See Palazzolo v. Rhode Island*, 533 U.S. 606, 617 (2001) (“there will be instances when  
23 government actions do not encroach upon or occupy property yet still affect and limit its use to such  
24 an extent that a taking occurs.”). “[W]hile property may be regulated to a certain extent, if  
25 regulation goes too far it will be recognized as a taking.” *Lucas v. S.C. Coastal Council*, 505 U.S.  
26 1003, 1014 (1992) (quoting with approval from *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393,  
27 415 (1922)).

28 Aera has substantial vested property rights in oilfields that cannot continue to operate

1 without the issuance of WST permits. Aera objectively manifested its intent to continue operating  
2 and expanding its oil and natural gas extraction activities and engaging in WST in these oilfields.  
3 For example, Aera already obtained drilling permits from Kern County for the 21 WST permit  
4 applications denied by CalGEM, paying significant permitting and mitigation fees for those  
5 permits. Further, Aera installed extensive infrastructure into its fields with the expectation and  
6 intent to continue a regular pattern of drilling and stimulating new wells. Aera’s continued  
7 development of this area is a progression of the extractive activity into all areas of the property.  
8 The “diminishing asset” doctrine allows for Aera’s continued expansion notwithstanding  
9 CalGEM’s unlawful denial of the WST permit applications.

10 CalGEM’s denial of the WST permit applications creates a temporary and permanent  
11 taking of Aera’s private property for public use without prior compensation in violation of the U.S.  
12 and California Constitutions. *First English Evangelical Lutheran Church v. Cnty. of L.A.* (1987)  
13 482 U.S. 304, 318. Without the continued receipt of WST permits, Aera has been and will continue  
14 to have its property rights taken by CalGEM, requiring the payment of just compensation. Further,  
15 by arbitrarily withholding and denying these permits for political reasons unsupported by technical  
16 justifications, CalGEM improperly took Aera’s property rights and deprived it of due process.  
17 Even if the Orders leave Aera with *some* use of its property, the Orders have impinged severely on  
18 Aera’s fundamental vested rights and a taking has occurred. *Kavanau v. Santa Monica Rent*  
19 *Control Bd.*, 16 Cal.4th 761, 774 (1997).

20 **VI. THE ORDERS VIOLATE AERA’S DUE PROCESS RIGHTS**

21 The Orders violate Aera’s right of due process as they neglect to reconcile the facts with the  
22 law to support the denial of the WST permit applications and to adequately apprise Aera of its  
23 appeal rights. “The essence of procedural due process is notice and an opportunity to respond. The  
24 purpose of notice under the Due Process Clause is to apprise the affected individual of, and permit  
25 adequate preparation for, an impending hearing.” *Thornbrough v. W. Placer Unified Sch. Dist.*, 223  
26 Cal.App.4th 169, 183-84 (2013) (internal citations and quotations omitted). The California  
27 Supreme Court recognized an implicit requirement for factual and legal findings based in part on  
28 procedural due process. *Topanga Ass’n for a Scenic Cmty. v. County of Los Angeles*, 11 Cal.3d

1 506, 515 (1974). The *Topanga* court held that an agency rendering an adjudicatory decision must  
2 set forth findings that bridge the analytic gap between raw evidence and the decision to issue the  
3 order. *Id.* As discussed in Section II, the Order does not contain any evidence to support  
4 CalGEM’s denial of the WST permit applications or provide an opportunity for Aera to respond to  
5 the cursory and vague justification CalGEM offered for its decision. On the contrary, CalGEM  
6 provided no ascertainable standard Aera must meet in order to obtain a WST permit, rendering the  
7 permit process illusory and violating Aera’s due process rights.

8 **VII. THE ORDERS VIOLATE AERA’S RIGHT TO EQUAL PROTECTION**

9 The U.S. and California Constitutions guarantee persons equal protections of the laws and  
10 do not allow CalGEM to treat similarly situated businesses differently. *Del Monte Dunes at*  
11 *Monterey, Ltd. v. City of Monterey*, 920 F.2d 1496, 1508 (9th Cir. 1990). CalGEM’s denial of the  
12 WST permit applications violates Aera’s constitutional right to equal protection of the law by  
13 disproportionately imposing burdens on Aera, a local producer of oil, for perceived issues  
14 associated with global consumption of oil. The Orders also provide no justification for targeting  
15 WST permits in furtherance of their purported goals to mitigate greenhouse gas emissions.

16 **VIII. THE ORDERS VIOLATE THE ADMINISTRATIVE PROCEDURE ACT**

17 CalGEM’s policy of denying WST permit applications, including Aera’s 21 WST permit  
18 applications, constitutes an unlawful underground regulation in violation of the Administrative  
19 Procedure Act (“APA”) because CalGEM failed to follow rule-making procedures, including notice  
20 and an opportunity to be heard. If a state agency issues, utilizes, enforces, or attempts to enforce a  
21 rule without following the APA, the rule is an “underground regulation.” *Patterson Flying Serv. v.*  
22 *Dept. of Pesticide Regulation*, 161 Cal.App.4th 411, 429 (2008). State agencies are prohibited from  
23 enforcing underground regulations. Gov. Code § 11340.5(a).

24 **IX. THE ORDERS VIOLATE THE SEPARATION OF POWERS DOCTRINE**

25 The California Constitution “vests each branch of government with certain core or essential  
26 functions that may not be usurped by another branch.” *In re M.C.*, 199 Cal.App.4th 784, 803  
27 (2011) (internal citations and quotations omitted). “The separation of powers doctrine limits the  
28 authority of one of the three branches of government to arrogate to itself the core functions of

1 another branch.” *Id.* (internal citations and quotations omitted).

2 The Orders denying the WST permit applications are part of a concerted effort by the  
3 Governor and CalGEM to effectuate a phaseout of WST without either statutory or regulatory  
4 authority in violation of the separation of powers doctrine. As discussed in Section I, both the  
5 Governor and CalGEM previously conceded that they have no authority to impose a ban or  
6 moratorium on WST operations without legislative action.

7 **X. CONCLUSION**

8 On the basis set forth herein, Aera respectfully files this notice of appeal of the Orders and  
9 requests that they be set aside.

10  
11 Dated: July 16, 2021

JEFFREY D. DINTZER  
MATTHEW C. WICKERSHAM  
ALSTON & BIRD LLP

12  
13 By:



14  
15 Jeffrey D. Dintzer  
Matthew C. Wickersham

16 Attorneys for Aera Energy LLC  
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# **EXHIBIT A**

**in support of Aera's Notice of Appeal  
July 8, 2021 WST Permit Denials**



**July 8, 2021**

**Transmitted Via Email Only**

Jeff Young  
 Aera Energy, LLC  
 10000 Ming Avenue  
 Bakersfield, CA 93311

**RE: WELL STIMULATION TREATMENT DENIALS**

Dear Mr. Young:

The California Geologic Energy Management Division (CalGEM) has received and reviewed Aera's Well Stimulation Treatment (WST) permit applications for the eight (8) wells listed below:

**Group 12 (8 wells, North Belridge)**

Count	API	Well Name
1	03067004	531L3-1
2	03067005	521D4-1
3	03067006	531A2-1
4	03067010	932A1-1
5	03067017	532E2-1
6	03067018	922H1-1
7	03067149	931R2-1
8	03067150	931L1-1

This correspondence serves as notice that Aera's WST permit requests for these eight wells are **denied**.

I have reviewed the applications and evaluated the quantifiable risk of the proposed well stimulation treatments. In the exercise of my discretion under Public Resources Code § 3160(d)(3)(C), I am denying these permit requests "to prevent, as far as possible, damage to life, health, property, and natural

Jeff Young  
June 8, 2021

resources" (*id.* § 3106(a)) and to "protect[] public health and safety and environmental quality, including [the] reduction and mitigation of greenhouse gas emissions associated with the development of hydrocarbon . . . resources" (*id.* § 3011(a)).

If you have any questions or need additional information, please contact Courtney Smith at [Courtney.Smith@conservation.ca.gov](mailto:Courtney.Smith@conservation.ca.gov).

Thank you,



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**Uduak-Joe Ntuk**

State Oil and Gas Supervisor

cc: Courtney Smith, Chief Deputy of Programs  
Baldev Gill, Acting Chief Deputy of Operations  
Lisa Halko, Chief Counsel  
Justin Turner, Assistant Chief Counsel  
May Soe, Supervisor, Well Stimulation Unit



**July 8, 2021**

**Transmitted Via Email Only**

Jeff Young  
 Aera Energy, LLC  
 10000 Ming Avenue  
 Bakersfield, CA 93311

**RE: WELL STIMULATION TREATMENT DENIALS**

Dear Mr. Young:

The California Geologic Energy Management Division (CalGEM) has received and reviewed Aera's Well Stimulation Treatment (WST) permit applications for the thirteen (13) wells listed below:

**Group 61 (South Belridge)**

Count	API	Well Name
1	03067596	954HR3-29
2	03067603	521N1-29
3	03067604	954KR3-29
4	03067605	928DR3-20
5	03067613	521D2-29
6	03067614	955JR3-29
7	03067615	564N2-29
8	03067616	518S2-28
9	03067619	918MR-20
10	03067628	922GR2-29
11	03067630	955GR5-29
12	03067640	918QR-28
13	03067644	521K2-33

Jeff Young  
June 8, 2021

This correspondence serves as notice that Aera's WST permit requests for these thirteen wells are **denied**.

I have reviewed the applications and evaluated the quantifiable risk of the proposed well stimulation treatments. In the exercise of my discretion under Public Resources Code § 3160(d)(3)(C), I am denying these permit requests "to prevent, as far as possible, damage to life, health, property, and natural resources" (*id.* § 3106(a)) and to "protect[] public health and safety and environmental quality, including [the] reduction and mitigation of greenhouse gas emissions associated with the development of hydrocarbon . . . resources" (*id.* § 3011(a)).

If you have any questions or need additional information, please contact Courtney Smith at [Courtney.Smith@conservation.ca.gov](mailto:Courtney.Smith@conservation.ca.gov).

Thank you,



---

**Uduak-Joe Ntuk**

State Oil and Gas Supervisor

cc: Courtney Smith, Chief Deputy of Programs  
Baldev Gill, Acting Chief Deputy of Operations  
Lisa Halko, Chief Counsel  
Justin Turner, Assistant Chief Counsel  
May Soe, Supervisor, Well Stimulation Unit

# **EXHIBIT B**

**in support of Aera's Notice of Appeal  
July 8, 2021 WST Permit Denials**

# California Announces New Oil and Gas Initiatives

Actions reflect expanded mission and vision for regulators

News Release #2019-05  
November 19, 2019

[Versión español](#)

SACRAMENTO – The Department of Conservation’s Division of Oil, Gas and Geothermal Resources – which will be renamed the [Geologic Energy Management Division, or CalGEM](#), effective Jan. 1, 2020 – today announced a series of initiatives to safeguard public health and the environment, advance California’s goal to become carbon-neutral by 2045 and manage the decline of oil production and consumption in the state.

The new actions are being taken under CalGEM’s recently strengthened mission to protect public health and safety while safeguarding the environment, as outlined in legislation (AB 1057 – Limón) signed by Governor Gavin Newsom in October.

“These are necessary steps to strengthen oversight of oil and gas extraction as we phase out our dependence on fossil fuels and focus on clean energy sources,” said Governor Newsom. “This transition cannot happen overnight; it must advance in a deliberate way to protect people, our environment, and our economy.”

“These actions reflect an evolution in CalGEM’s mission that emphasizes public health and safety, environmental protection and reducing climate impacts associated with oil production,” said Natural Resources Secretary Wade Crowfoot.

The Natural Resources Agency oversees the Department of Conservation and CalGEM.

Three actions were announced today:

- 1. A halt of approvals of new oil extraction wells that use high-pressure steam to break oil formations below the ground, a process linked to recent oil leaks in Kern County**

This moratorium prohibits new extraction wells that use a high-pressure cyclic steaming process to break apart a geological formation to extract oil. During the moratorium, regulators will consult with experts to examine records from recent leaks of oil and water, known as surface expressions, in the Cymric oil field in Kern County to determine whether high-pressure cyclic steaming can be done safely and in compliance with recent

regulations that make surface expressions illegal. Oil and gas regulators could require certain safety practices, update regulations to impose new rules, or prohibit the practice altogether.

Surface expressions are illegal under new regulations that took effect April 1. CalGEM has issued several [notices of violation](#) for spills in the Cymric field, and is partnering with independent experts from the Lawrence Livermore and Sandia National Laboratories to assess underlying conditions in the Cymric formation. Simultaneous to this moratorium, CalGEM is also proactively assessing the safety of existing wells using high-pressure steaming above the fracture pressure of a formation. Wells that use cyclic steaming at lower pressures are not affected by the moratorium.

## **2. Rules for public health and safety protections near oil and gas extraction facilities will be updated and strengthened**

Regulations to strengthen protections for public health and safety will be put in place. The intent of the rulemaking is to establish a transparent set of rules designed to protect residents and communities near oil and gas extraction sites. The rulemaking process will consider the best available science and data to inform new protective requirements. It will involve consulting with environmental and public health advocates, as well as public health authorities, including the California Department of Public Health, the California Environmental Protection Agency, and other health experts.

The first step of this process will be a series of pre-rulemaking workshops with interested parties to seek input on the best ways to protect human health through new rules. The efforts will include proactive outreach that will begin in the coming weeks to communities near oil and gas operations, oil and gas companies, and other stakeholders, including local governments, environmental leaders and advocates, as well as academics.

The rulemaking will consider a range of protective measures, including prohibiting oil and gas activities within close proximity of homes, schools, hospitals, and parks. The pre-regulatory process will begin in 2020, with new/modified rules anticipated later that year.

“We are updating rules to better ensure that public health and safety are protected as we continue the transition away from carbon extraction to a renewable energy future,” Crowfoot said.

## **3. Pending applications to conduct hydraulic fracturing and other well stimulation practices will be independently reviewed**

The state’s process for approving well stimulation permits has been under review by CalGEM since mid-July 2019. Moving forward, CalGEM has requested an independent audit of its permitting processes for well stimulation and underground injection control by the California Department of Finance’s Office of State Audits and Evaluations. The audit will focus on whether the current permitting processes comply with state regulations and policies and will develop recommendations to strengthen operational processes and procedures.

While this audit is being completed in the coming months, the division is instituting a third-party scientific review of pending well stimulation permit applications to ensure the state’s technical standards for public health, safety and environmental protection are met prior to approval of each permit. The review will be conducted by independent experts from the Lawrence Livermore National Laboratory.

### **Other recent and ongoing actions**

These actions are the latest steps by Governor Newsom's Administration to strengthen regulatory oversight of oil and gas production in California. These actions are also part of a broader state effort to manage the decline in fossil fuel production and consumption in California in a way that is economically responsible and sustainable, improves public health and safety, and protects the environment. This is in line with the state's overall climate goals of achieving carbon neutrality by 2045.

The 2019 Budget Act appropriated \$3 million in funding for two studies. One is a first-ever study to identify strategies for managing the decline in the demand and supply for fossil fuels. The second study will examine ways to significantly reduce emissions from vehicles, including transitioning to zero emission vehicles and reducing vehicle miles traveled. The California Environmental Protection Agency is developing the scope for these studies together with other state agencies and the University of California, with input gathered through a public process.

In recent months, the Governor also has:

- Made the state's first major workforce investment of \$165 million over five years to help enable economic transition away from dependence on fossil fuels.
- Changed leadership overseeing oil and gas policy at CalGEM and the Department of Conservation.
- Signed five bills to improve regulatory oversight of oil and gas extraction in the state.
- Strongly opposed President Trump's effort to expand oil and gas extraction on federal lands within California.
- Initiated the most comprehensive air monitoring campaign in the country in communities located near oil and gas operations.
- Protected the state's clean car standards against efforts by the Trump Administration to roll back greenhouse gas emission standards that protect public health and combat climate change.
- Supported a series of regulations and incentives directed at supporting zero emission transportation alternatives to facilitate the transition from petroleum.

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# **EXHIBIT C**

**in support of Aera's Notice of Appeal  
July 8, 2021 WST Permit Denials**

[https://www.bakersfield.com/news/state-exercises-discretion-to-deny-kern-fracking-permits-ahead-of-formal-ban/article\\_cf3905f2-e0e0-11eb-be63-370d54b769b9.html](https://www.bakersfield.com/news/state-exercises-discretion-to-deny-kern-fracking-permits-ahead-of-formal-ban/article_cf3905f2-e0e0-11eb-be63-370d54b769b9.html)

## State exercises discretion to deny Kern fracking permits ahead of formal ban

BY JOHN COX [jcox@bakersfield.com](mailto:jcox@bakersfield.com)  
Jul 9, 2021



In this July 2015 file photo, Patrick Niebuhr, district technology manager for Halliburton, explains the information on monitors inside the command center during a hydraulic fracturing operation for Chevron.

Californian file

California's top oil regulator, acting ahead of a proposed statewide ban on fracking, this week denied a series of applications to use the controversial oilfield technique in western Kern — a decision the Newsom administration said was taken "to reduce and mitigate greenhouse gas emissions and respond to the climate emergency."

The rejection of 21 applications filed by Bakersfield-based Aera Energy LLC appears to signal a significant shift away from the administration's earlier policy of basing individual frack-job decisions on technical reviews by state engineers and federal scientists. By contrast, denial letters sent Thursday cite non-specific concerns about health, safety and environmental quality.

Fracking has taken center stage as Gov. Gavin Newsom, facing a recall election Sept. 14, has come under intensifying pressure from environmental groups to slow or cease oilfield permitting as drought, record-breaking heat and other likely effects of climate change become more dire across the Golden State.

Meanwhile, Newsom's toughening stance against fracking has become a flashpoint in the governor's fraught relationship with Kern political leaders who frequently note the oil industry generates thousands of good local jobs while paying millions of dollars per year in taxes that fund county services.

"The governor and CalGEM's denial of much needed and vital in-state energy production goes against established technical and scientific data," Assemblyman Vince Fong, R-Bakersfield, said in an emailed statement. "It will not only force California to be more reliant on foreign sources of energy, but it does direct harm to Central Valley families. We need more affordable and reliable energy produced in California by Californians."

Washington, D.C.-based climate-change activism group Food & Water Watch, on the other hand, called for still more drastic action against California oil production.

"CalGEM is following the science and adhering to its regulatory purpose in denying these fracking permits, but Governor Newsom needs to follow through and instruct his agency to deny all new oil and gas permits immediately," the group's California director, Alexandra Nagy, said in a statement posted on Facebook. "Frontline communities have just been spared the public health hazards and devastating environmental impact that would have come with the 21 fracking wells under consideration. Unfortunately, CalGEM continues to permit all other oil and gas wells that further harm public health, water and climate."

The procedure also known as hydraulic fracturing injects water, sand and small concentrations of sometimes toxic chemicals deep underground to break open underground oil and gas deposits. It is used more frequently in Kern than anywhere else in the state.

Consuming less water on average per procedure in California than elsewhere in the country, fracking has been performed in the state for decades without any documented instance of groundwater contamination. But it has gained infamy nationwide as a source of methane releases and as a prolific producer of petroleum at a time when climate activists are looking to end petroleum production altogether.

## EXERCISING DISCRETION

State Oil and Gas Supervisor Uduak-Joe Ntuk informed Aera in a pair of letters Thursday that he has reviewed and "evaluated the quantifiable risk" of the company's applications to frack in the North and South Belridge oilfields.

"In the exercise of my discretion under (state codes)," Ntuk wrote, "... I am denying these permit requests 'to prevent, as far as possible, damage to life, health, property and natural resources' ... and to 'protect public health and safety and environmental quality, including [the] reduction and mitigation of greenhouse gas emissions associated with the development of hydrocarbon ... resources.'"

Ntuk added Friday in an email to The Californian, "In the face of the effects of the climate emergency, the risks to everyday Californians are too high to approve these permits."

## GOVERNOR'S STATEMENT

A spokeswoman for the governor, Erin Mellon, issued this statement by email Friday regarding the permit denials:

"The governor has been clear that we need to do more to combat the climate crisis and create a healthier future. He has also been clear that he does not see a role for fracking in that future. In April, the Governor directed CalGEM to prepare a regulations to ban new fracking permits by 2024. And the need for change is only more urgent as California is now experiencing accelerated impacts of climate change, from drought to extreme heat events to larger and more intense wildfires.

"The Governor applauds (Thursday's) action by the State Oil and Gas Supervisor to use his discretion under statute to deny 21 pending fracking permits, which will protect public health and safety and environmental quality and mitigate greenhouse gas emissions. This is one of many actions the Administration is taking to reduce and mitigate greenhouse gas emissions and respond to the climate emergency."

## AERA'S RESPONSE

Aera spokeswoman Cindy Pollard said Friday the company has received indications from the state that no further permits for well-stimulation treatments — a category of procedures that includes fracking — will be issued by CalGEM under the Newsom administration despite the oil producer's adherence to the same scientific standards that led to its receipt of 53 California fracking permits last year.

"The governor's latest actions to deny Aera WST permits and banning all WST permits until the rulemaking to end WST is complete are disappointing though not surprising," she said. "This is the latest decision attacking the oil and gas industry that is based solely on politics rather than sound data or science."

"Scientific studies commissioned by the state and conducted by some of the brightest minds in the world have deemed that hydraulic fracturing is safe and that it does not release hazardous chemicals to surface waters or cause groundwater contamination," she continued. "Banning hydraulic fracturing will only put hard-working people of California out of work and threaten our energy supplies by making the state more dependent on foreign oil. The state should be focused on protecting the economy and people of California while we produce all forms of energy in a manner that protects public health and the environment. The people of California deserve nothing less."

"In the meantime," she went on, "we will evaluate all of our available legal options to ensure the preservation of the WST process as currently allowed by state law under what are already the most stringent regulations in the nation. We will remain focused on protecting the jobs of thousands of men and women who safely and responsibly produce the energy that Californians demand and that powers the economy."

## CONTENTIOUS HISTORY

For more than a decade fracking has been the most politically delicate issue facing California's oil industry. A long process involving rigorous scientific review produced the state's first law specific to fracking in 2013. Among other things, the law required oil producers to institute new measures such as well cementing, groundwater testing and seismic monitoring prior to or during frack jobs.

Under Newsom the process has become even more stringent. He has reorganized and renamed CalGEM, including giving it a new mandate to prioritize human health and environmental safety. The division now requires that permits be independently reviewed by scientists at Lawrence Livermore National Laboratory prior to final approval for frack jobs.

But environmental activists arguing the procedure is unsafe and promotes global warming have pushed for an end to the practice in California. They have continued to apply pressure on Newsom, who last fall called on the state Legislature to ban fracking altogether.

This spring a bill was introduced in Sacramento that would have prohibited fracking along with several other commonly used procedures. The legislation died after running into opposition from labor groups and others.

Then, in April, Newsom announced the state would ban fracking by Jan. 1, 2024. A month later a draft rule was unveiled to do just that.

## POLITICAL PUSHBACK

State Sen. Shannon Grove, R-Bakersfield, issued a news release Friday critical of Thursday's permit denials.

"The attack on oil must end," she wrote in the release. "A California without oil is an implausible dream being pushed by progressive politicians. The governor should protect quality careers and vital tax funding while ensuring Californians have access to affordable and reliable energy."

"By prioritizing locally produced energy that is generated under the toughest environmental protections on the planet," she continued, "you can maintain California's climate leadership and protect our economy. Phasing out fracking in the state of California only increases our dependence on foreign oil and many of the abysmal regimes that produce it. Kern County produces over 50% of the state's renewable energy and 70% of our fossil fuels, which keeps California moving with fuel and clean energy. The governor needs to quit trying to fix what isn't broken and immediately instruct CalGem to approve these 21 fracking permits so we can protect our domestic oil production."

Kern County Administrative Officer Ryan Alsop also criticized the administration's permitting action in an emailed statement.

"Newsom administration energy policies are absolutely crushing the life out of our county, one stunningly egregious decision after another," he wrote. "All of the state's energy goals lead through Kern and our residents are heavily burdened paying the full cost for it all, and the governor knows this, but doesn't seem to care."

"For most at the state capital," he added, "these decisions are merely paperwork, back slapping and political box scores, at the end of the day. For the people living and working here in Kern County, it's long-haul loss of quality of life, the loss of tens of thousands of well-paying jobs and hundreds of millions in annual local government revenue."

Added Rock Zierman, CEO of the California Independent Petroleum Association trade group: "I'm not sure why this governor is obsessed with enriching Saudi Arabia, but all he did today was put more Californians out of work and increase our dependence on foreign crude, which by the way, is exempt from reporting and complying with the state's greenhouse-gas cap and trade program like in-state producers."

#### MORE INFORMATION



Kern supervisors vote to oppose Newsom administration's proposed fracking ban

State issues proposal to ban fracking

Newsom orders end to fracking in California by 2024, work toward phasing out all in-state oil production by 2045

Committee vote all but kills California anti-oil bill

State lawmakers debut bill to ban oilfield techniques common in Kern

Biden's oil leasing moratorium renews local fight

State takes credit for issuing 23% fewer oil drilling permits

# **EXHIBIT D**

**in support of Aera's Notice of Appeal  
July 8, 2021 WST Permit Denials**



THE CALIFORNIA REPORT

# Lawmakers Push to Give Newsom Power to Call Fracking Moratorium, Setting Stage for Oil Industry Battle

By [Ted Goldberg](#)  Jul 25, 2019

 Save Article



Pump jacks and wells are seen in an oil field on the Monterey Shale formation in 2014 near McKittrick, California. *(David McNew/Getty Images)*

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## 'I don't think it's our responsibility to be expanding oil production and well stimulation in California.'

—Laura Friedman, chair of the Assembly Committee on Natural Resources

Now, two key lawmakers — the chairs of the state Senate and Assembly committees overseeing large parts of the oil industry — say they're open to giving Newsom the power to bring new fracking operations to a halt in California, setting up what could be a significant battle with the powerful oil industry.

"I believe that there would be support in the Legislature to provide him with that legal authority," said Assemblywoman Laura Friedman, D-Glendale, the chair of the Assembly Committee on Natural Resources.

"I don't think it's our responsibility to be expanding oil production and well stimulation in California," Friedman added.

"I'm absolutely up for that partnership with this governor," said Henry Stern, D-Ventura, chairman of the Senate Natural Resources and Water Committee.

**Hydraulic fracturing** is an oil well stimulation method aimed at getting fuel out of the ground by using water and chemicals to crack open geological formations, allowing oil and water under the ground to flow more freely.

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### THE KERN COUNTY OIL SPILL

The oil industry says the technique helps provide the nation with a consistent source of domestic energy.

Environmentalists say the chemicals used in the technique lead to air and water pollution and the potential contamination of drinking water. The work has also been blamed for causing earthquake activity.

The energy industry plans to increase its use of hydraulic fracturing, according to Deborah Sivas, a Stanford professor of environmental law who directs the school's Environmental Law Clinic and is a critic of the practice.

"It's on the horizon that the oil companies want to increasingly use fracking in Southern California, where it's a technique that could potentially get more oil out of the ground. That's ramping up," said Sivas.

To use the method, oil companies have to obtain permits from the state Division of Oil, Gas, and Geothermal Resources (DOGGR), an agency that's been under increasing scrutiny.

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Gov. Gavin Newsom is briefed by Billy Lacobie, of Chevron (right), and Jason Marshall (center), acting supervisor of the state Division of Oil, Gas and Geothermal Resources (DOGGR), on Wednesday while touring the Chevron oil field near Bakersfield where a spill of at least 974,400 gallons of fluid have flowed into a dry creek bed. (*Irfan Khan/Los Angeles Times/Pool*)

Two weeks ago, the advocacy groups Consumer Watchdog and FracTracker Alliance released data showing that DOGGR had been issuing fracking permits at twice the rate this year compared to 2018. The groups also revealed that several agency employees owned stock in the companies they regulate.

The governor then **ordered the firing of Ken Harris**, the head of DOGGR. Jason Marshall was appointed as acting supervisor of the division.

Newsom was asked about the change in leadership the following day.

"There were conflicts that came to our attention. Those conflicts were real and very concerning," the governor said.

He was then **asked if he was imposing a moratorium on fracking**.

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Representatives of the governor's office did not return a request for comment on what led Newsom to come to that determination. A spokeswoman for the Department of Conservation, which oversees DOGGR, also did not respond to a request for comment.

The governor was asked about the issue again on Wednesday after he took a tour of the Chevron oil spill site in the area of the town of McKittrick.

"The Legislature is going to need to make that determination. I certainly am inclined to investigate that and move in that direction," Newsom said.

Friedman said she's open to working with Newsom to make sure he has the authority to issue a moratorium on new fracking permits.

"We look forward to having a clean economy, using renewable sources of fuel. We have to start setting ourselves seriously on the road to accomplishing that. If the governor thinks he needs the Legislature's help ... to make that vision happen, I stand willing and able to do that," she said.

Stern said the governor may already have the authority to issue a moratorium.

"He's got a lot on his plate. Now this one has got to move to the top of the agenda. It's an urgent situation," said Stern.

Stern was an aide to then-state Sen. Fran Pavley when she wrote SB 4, state legislation that led to **new rules regulating hydraulic fracturing** in California.

The Western States Petroleum Association, which represents the region's oil industry, told KQED that a halt in new fracking operations would hurt the economy.

"Shutting down oil and gas production would increase dependence on foreign oil from the Middle East, eliminate hundreds of thousands of good-paying careers — including opportunities for blue collar and labor workers — and make energy less affordable for middle and working class Californians," Catherine Reheis-Boyd, the association's president, said in an emailed statement.

"Historically, our industry has shown a willingness to collaboratively work with regulators and elected officials toward landmark environmental legislation like the Cap-and-Trade program and the (SB4), and we'll continue to work together to drive the most immediate improvements in carbon reductions, economic security, and reliable access to energy for all," Reheis-Boyd said.

Stanford's Sivas said DOGGR has the power currently to stop issuing fracking permits.

"We are committed to working with the Governor and the Legislature to ensure that California's energy future is secure and sustainable," Sivas said. "We will continue to work with the Governor and the Legislature to ensure that California's energy future is secure and sustainable."

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# **EXHIBIT E**

**in support of Aera's Notice of Appeal  
July 8, 2021 WST Permit Denials**

POLITICS

## Gov. Gavin Newsom fires top official over fracking permits — but won't ban the oil wells



Gov. Gavin Newsom discusses his decision to fire state Oil and Gas Supervisor Ken Harris while talking with reporters at his office in Sacramento on Friday. (Rich Pedroncelli / AP)

By PHIL WILLON | STAFF WRITER

JULY 12, 2019 2:42 PM PT



Reporting from Sacramento — Gov. Gavin Newsom on Friday defended firing California's top oil industry regulator for issuing too many hydraulic fracturing permits, but offered no details on whether he plans to ban or limit the oil extraction process in the state.

Newsom's chief of staff fired Ken Harris, the head of the state Division of Oil, Gas and Geothermal Resources, on Thursday after revelations that, during the governor's first six months in office, the

state approved fracking permits at twice the rate it did in the year before under former Gov. Jerry Brown.

Newsom, who opposes fracking, said he was unaware that so many permits had been issued by the agency, known as DOGGR. The Democratic governor said his administration is still in the process of reshaping California's executive agencies, adding that he has been consumed with [crafting his first state budget](#), dealing with the aftermath of the [Pacific Gas & Electric bankruptcy](#), and other pressing issues.

“There’s a lot of things that, unfortunately, come to your attention with a government as large as ours,” Newsom told reporters during a morning news conference inside his Capitol office. “I don’t think anyone who was paying attention, including the individual that’s no longer there, is unaware of my position on fracking. I’ve been very explicit about it.”

Newsom’s actions follow a report by two environmental and consumer advocacy groups, FracTracker Alliance and Consumer Watchdog, which found that along with the increase in fracking permits, a number of [California’s top oil regulators and officials held investments in major oil companies](#), including Exxon Mobil and Chevron. The findings were first reported by the Desert Sun newspaper.

“We support the governor’s decision to eliminate the regulators who have these conflicts of interest, so the regulators are able to act in the best interests of the public health of Californians,” Kyle Ferrar of FracTracker Alliance told The Times.

During his campaign for governor, Newsom vowed to “tighten” state oversight of fracking and oil extraction in California, [which is the fifth-largest crude oil producer among the nation’s 50 states](#). When he took office he also promised to accelerate California’s transition to 100% renewable energy.

Newsom has not taken action to curtail fracking. On Friday, the governor said he does not have the authority to impose a moratorium on permits for fracking, a process that uses drilling and large volumes of high-pressure water to extract gas and oil deposits.

“Legally, the governor of California cannot do that. I explored that during my transition,” Newsom said. “What we have done is we fired the person responsible for signing those permits at DOGGR,

and I'll be appointing a replacement that shares my values and not the values that were expressed in his actions.”

He declined to say if he issued a directive to DOGGR to curtail fracking permits.



Pumpjacks used to lift liquid oil out of the well fill Oildale in north Bakersfield in 2016. (AI Seib / Los Angeles Times)

### [Will Newsom end oil drilling in California? Many environmentalists are betting yes »](#)

The governor said the conflict-of-interest allegations against oil regulators cannot be excused. Newsom said he was “very angry” about the number of fracking permits approved but acknowledged that they were properly issued.

“To the extent that they did things legally, apparently, that was the one thing there they did legally,” he said. “But there were questions about ethical lapses and conflicts of interest and people owning stock in companies they were overseeing.”

Since his election in November, Newsom has been [pressured by environmental advocates](#) to ban new oil and gas drilling in California and completely phase out fossil fuel extraction in the state.

Newsom also said that, despite his strong support for putting California on a path to a 100% renewable energy supply, it would be unrealistic to think that California can just stop its dependence on oil and gas.

“I know some people just want to turn things off and not deal with the consequences, and I get that. But you can’t do that,” Newsom said.

Newsom noted that his recently approved budget includes \$1.5 million to study ways to reduce petroleum demand and production in the state, taking into consideration the effects on the economy, jobs and Californians.

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POLITICS



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Phil Willon covers Gov. Gavin Newsom and California politics for the Los Angeles Times. Willon grew up in Southern California and previously worked for the Tampa Tribune and the Capital in Annapolis, Md.

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MORE FROM THE LOS ANGELES TIMES

CALIFORNIA

**Critics say physicians ‘cartel’ obstructing efforts to punish bad doctors**

1 hour ago

# **EXHIBIT F**

**in support of Aera's Notice of Appeal  
July 8, 2021 WST Permit Denials**

## C.2 Global Responses to Major Comments

Several comments received on the Draft EIR addressed topics with common themes. To facilitate the responses to comments process, the following section presents answers to these comments, referred to as global comments and responses. The global responses to comments address the following topics:

- GR-1: Whether proposed mitigation measures are “underground regulations”
- GR-2: Whether mitigation measures will be feasible and enforceable
- GR-3: Use of the EIR for programmatic level of analysis and future environmental reviews
- GR-4: Governor’s authority to prohibit well stimulation treatments
- GR-5: DOGGR lacks authority to prohibit well stimulation treatments
- GR-6: Project Resource Protection Standards have been eliminated or changed into mitigation measures
- GR-7: Various water use issues, including water recycling in well stimulation treatments
- GR-8: Overlapping jurisdictions of DOGGR and Federal Agencies
- GR-9: How DOGGR will work with local agencies in implementing mitigation measures
- GR-10: Concurrent preparation of the Draft EIR and completion and adoption of the permanent regulations for well stimulation treatments
- GR-11: Concurrent preparation of the Draft EIR and Final EIR and completion of the California Council on Science and Technology’s Independent Scientific Study
- GR-12: The SB 4 EIR analyzes well stimulation treatments, not all oil and gas drilling activities
- GR-13: Indirect impacts of well stimulation treatments
- GR-14: Cumulative impacts and foreseeable future projects
- GR-15 Identification of the “Environmentally Superior Alternative”
- GR-16: Alternative 6 is the appropriate No Project Alternative and does not involve a Statewide moratorium on future well stimulation treatments
- GR-17: Evaluation of wastewater disposal and the Underground Injection Control program
- GR-18: Scope and analysis of Environmental Justice considerations
- GR-19: How well stimulation treatments relate to California’s climate change goals
- GR-20: Impacts found potentially significant in this programmatic EIR may not be significant in all contexts
- GR-21: Use of performance standards is not required in every mitigation measure
- GR-22: Principles governing responses to comments
- GR-23: Induced seismicity related to well stimulation treatments
- GR-24: Water supply, contamination, and drought
- GR-25: Public Participation
- GR-26: Preparation of a Health Risk Assessment
- GR-27: Preparation of an economic analysis

Where such other agencies are acting as lead agencies<sup>60</sup> for larger oil or gas projects involving well stimulation treatment, DOGGR will not rely on Draft EIR Appendix D, but will act as a responsible agency with respect to the other agencies' CEQA documents. In responding to Notices of Preparation, Draft EIRs, and proposed Negative Declarations, DOGGR will actively seek outcomes in which mitigation measures for environmental effects subject to overlapping agency jurisdictions are developed in coordination between or among the agencies involved.

#### **Global Response GR-4: Governor's authority to prohibit well stimulation treatments**

Some commenters have argued that the Governor should impose, throughout California, an immediate moratorium on all well stimulation treatments, and especially hydraulic fracturing, in order to protect water resources and to avoid various risks to public health, safety, and the environment. Although DOGGR cannot speak for the Governor, DOGGR nonetheless offers the following observations in response to these comments. For reasons explained below, DOGGR does not believe that existing circumstances warrant the imposition of a moratorium by the Executive Branch of California government.

Well stimulation treatments, including hydraulic fracturing, are currently lawful activities, and have been for many decades.<sup>61</sup> PRC Section 3106(b) provides that:

The supervisor shall also supervise the drilling, operation, maintenance, and abandonment of wells so as to permit the owners or operators of the wells to utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of underground hydrocarbons and...it is hereby declared as a policy of this state that the grant in an oil and gas lease or contract to a lessee or operator of the right...to explore for and remove all hydrocarbons from any lands in the state...is deemed to allow the lessee or contractor...[to use] the injection of air, gas, water, or other fluids into the productive strata, the application of pressure heat or other means for the reduction of viscosity of the hydrocarbons, the supplying of additional motive force, or the creating of enlarged or new channels for the underground movement of hydrocarbons into production wells, when these methods or processes employed have been approved by the supervisor....

In enacting SB 4 in 2013, the Legislature supplemented, but did not repeal, this explicit long-standing legislative directive to DOGGR "to permit" the use of methods, such as hydraulic fracturing, that involve the "injection of air, gas, water, or other fluids" into oil and gas wells. Instead of imposing a temporary moratorium on well stimulation treatment activities during the time period in which, pursuant to SB 4, DOGGR was developing permanent well stimulation regulations and preparing this EIR, the Legislature chose to provide in PRC Section 3161 that "interim activities" were allowed as long as certain requirements were met.<sup>62</sup> As of July 1, 2015, moreover, well stimulation will be subject to new permanent regulations, making California the national leader in the regulation of this subject matter. In other words, the Legislature has recently authorized the increased regulation of an activity that had been occurring lawfully for decades rather than outlawing the practice altogether. The Legislature did so despite the fact that many organizations and individuals had advocated an outright ban of the practice. The

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<sup>60</sup> See GR-9 for discussion of Kern County.

<sup>61</sup> PRC, Sections 3106(b), 3161(b).

<sup>62</sup> *Id.*, Section 3161(b); see also *id.*, Sections 3160(d)(3)(A) [giving DOGGR discretion to approve or deny well stimulation permits after review].

Legislature's decision in this regard was legislative in character, and thus comported with the normal division of labor between the three branches of state government within California.<sup>63</sup>

There are three main scenarios relevant here under which, in theory, a Governor might act to negate the recent legislative judgment of the legislative branch: (1) acting with reliance on general authority provided to Governors by the California Constitution; (2) issuing an Executive Order pursuant to substantive authority delegated to the Governor by the Legislature in existing statutes; and (3) proclaiming a State of Emergency pursuant to the Emergency Services Act<sup>64</sup>. As explained in more detail below, none of these sources of law provides the Governor with authority to impose a statewide ban of well stimulation activities or hydraulic fracturing under circumstances as they currently exist.

The first option will not work because any attempt by the Governor to overturn or negate an act of the Legislature would exceed the normal *executive* functions of his office. Just five years ago, the California Supreme Court disapproved a far less ambitious move by former Governor Arnold Schwarzenegger, who had attempted to order many employees of State government to take furloughs as a means of saving taxpayers' dollars.<sup>65</sup> In reaching this result in *Professional Engineers in Cal. Government v. Schwarzenegger*, the court cited Article V, Section 1, of the California Constitution, which provides that "[t]he supreme executive power of this State is vested in the Governor. The Governor shall see that the law is faithfully executed."<sup>66</sup> The Court held that, absent some sort of authority delegated by the Legislature, this constitutional provision did *not* give the Governor "authority to institute a mandatory furlough of represented state employees."<sup>67</sup> The matter was legislative in character, and thus beyond the power of the Governor: "[u]nder the California Constitution it is the Legislature, rather than the Governor, that generally possesses the ultimate authority to establish or revise the terms and conditions of State employment through legislative enactments, and (2) any authority that the Governor or an executive branch entity ... is entitled to exercise in this area emanates from the Legislature's delegation of a portion of its legislative authority to such executive officials or entities through statutory enactments."

Similarly, here, the language in Article V, Section 1, of the Constitution by itself is not enough to provide the Governor with legal authority to essentially nullify the legislative outcome embodied in SB 4. If the Governor's executive authority is insufficient to allow him to set the work hours of State employees who report to him, that same authority is surely insufficient to allow the Governor to simply decree that a long-standing, now heavily regulated economic activity must cease immediately, regardless of the fallout.

Nor is there legal authority justifying the use of an Executive Order to impose a statewide ban on well stimulation treatments generally, or hydraulic fracturing specifically. This is because the power to issue Executive Orders derives either from Article V, Section 1, itself or from legislative authority delegated to the Governor by the Legislature.<sup>68</sup> Notably, the commenters who have advocated a moratorium have

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<sup>63</sup> California Constitution, Article III, Section 3 ["[t]he powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution"].

<sup>64</sup> California Emergency Services Act (Government Code Section 8550 et seq.).

<sup>65</sup> *Professional Engineers in Cal. Government v. Schwarzenegger* (2010) 50 Cal.4th 989, 1015 (*Professional Engineers*).

<sup>66</sup> California Constitution, Article V, Section 1.

<sup>67</sup> *Professional Engineers, supra*, 50 Cal.4th at p. 1000.

<sup>68</sup> *Id.* at p. 1039 ["unless the Governor...had been granted the authority unilaterally to impose a mandatory unpaid furlough on affected represented employees by the terms of an applicable MOU, the Governor ... lacked authority unilaterally to institute such a furlough through the December 19, 2008, executive order with respect

provided no citations to existing statutes that demonstrate the Legislature has delegated to the Governor the legislative authority to impose a statewide moratorium on hydraulic fracturing. Indeed, there are none. SB 4 certainly contains no such delegated authority. In that legislation, the Legislature gave the Executive Branch very specific duties, including the enactment of new regulations and the preparation of an EIR. Noticeably absent from these duties is any authority to trump the legislative compromise embodied in SB 4 by simply outlawing well stimulation treatments. In short, the Governor lacks the authority to simply issue an Executive Order banning well stimulation treatments.

The most plausible basis for imposing a moratorium would be under the Emergency Services Act. Through that statute, the Legislature has delegated broad authority to the Governor, but has only done so with respect to very clearly defined circumstances. Without “conditions of disaster” that present “extreme peril”<sup>69</sup> to life and property, such as a major earthquake, the Governor lacks the authority under the Emergency Services Act to impose a statewide ban of hydraulic fracturing. Government Code Section 8558(b) defines a “state of emergency” to mean:

the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by such conditions as air pollution, *fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease*, the Governor’s warning of an earthquake or volcanic prediction, or an *earthquake* or other conditions...which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county...or city and require the combined forces of a mutual aid region or regions to combat....<sup>70</sup>

As the California Supreme Court explained, the “power to declare and abate a public emergency” is “without a doubt, the single most compelling and absolute exercise of sovereign authority that the State, acting through its chief executive, may pursue.”<sup>71</sup> The Emergency Services Act “concentrates considerable power in the Governor to control and coordinate the efforts of all various State agencies and local governments to ensure the most efficient and effective response ‘in conditions of disaster or ... extreme peril.’”<sup>72</sup> For example, during a state of emergency, the Governor may: (1) “suspend any regulatory statute or the orders, rules or regulations of any state agency if these would ‘prevent, hinder, or

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to those employees”]; Cal. Const., art. IV, Section 1 [“The legislative power of this State is vested in the California Legislature which consists of the Senate and Assembly ....”].

<sup>69</sup> Government Code Section 8558(b).

<sup>70</sup> Government Code Section 8558(b), italics added; see also Cal. Code Regs., tit. 14, Section 15359 [definition of “emergency” as used in the State CEQA Guidelines: “a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage”]; and 42 USC Section 5122(2) [defining “major disaster” to mean “any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion...which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance...to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby”].

<sup>71</sup> *Macias v. State of California* (1995) 10 Cal.4th 844, 856.

<sup>72</sup> *Ibid.*

delay the mitigation of the effects of the emergency”;<sup>73</sup> (2) “expend any appropriation”;<sup>74</sup> (3) “commandeer or utilize any private property or personnel deemed by him necessary in carrying out the responsibilities hereby vested in him...and the state shall pay the reasonable value thereof”;<sup>75</sup> (4) “make expenditures from any fund legally available”;<sup>76</sup> and (5) “reimburse any state agency for funds expended in the performance of any and all activities.”<sup>77</sup>

These are extraordinary powers. Consequently, the declaration of an emergency is not to be made lightly.<sup>78</sup> By the plain language of the Emergency Services Act and by all reasonable definitions of “extreme peril” and “disaster,” there simply does not currently exist a condition that would justify the Governor’s use of his powers to declare a state of emergency involving well stimulation treatments. Although this EIR identified a number of significant, unavoidable effects from well stimulation treatments, the EIR also identified mitigation measures for most of these impacts, with the result that, as comprehensively regulated under these measures and the permanent regulations, well stimulation treatments in California should be no less damaging to the environment than a number of other highly regulated resource extraction activities that produce negative environmental effects while simultaneously providing economic and social benefits.

In sum, based generally on the separation of powers doctrine<sup>79</sup> and more specifically on the factors discussed above, DOGGR believes that the Governor lacks the authority to impose an immediate moratorium on hydraulic fracturing.

DOGGR understands that commenters are concerned about the protection of water resources in particular. As explained in the Draft EIR and the Final EIR, DOGGR is committed to undertaking further rulemaking to impose additional measures that govern the underground injection control program and that protect surface and groundwater resources. And, as explained in Global Response GR-2, the EIR’s mitigation measures that are not incorporated into future rulemaking packages will be imposed, as needed and where relevant, during site-specific environmental review, though perhaps with some modifications. Moreover, existing statutes and regulations already contain numerous measures to mitigate potential impacts to water resources.<sup>80</sup>

Finally, pursuant to Government Code Section 8574.7, a detailed oil spill contingency plan has already been prepared “to provide for the best achievable protection of waters of the state.” Further, Government Code Section 8574.8 requires an amended oil spill contingency plan that addresses marine and inland oil spills to be submitted to the Governor and Legislature on or before January 1, 2017. Similarly,

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<sup>73</sup> *Id.* at p. 854; Government Code Section 8571.

<sup>74</sup> Government Code Section 8566.

<sup>75</sup> *Id.*, Section 8572.

<sup>76</sup> *Id.*, Section 8645.

<sup>77</sup> *Id.*, Section 8648.

<sup>78</sup> See, e.g., *Cal. Correctional Peace Officers’ Assn. v. Schwarzenegger* (2008) 163 Cal.App.4th 802, 807 [declaration of a prison overcrowding state of emergency]; *City of Morgan Hill v. Bay Area Air Quality Management Dist.* (2004) 118 Cal.App.4th 861, 876 [state of emergency due to electricity shortage]; *Martin v. Municipal Court* (1983) 148 Cal.App.3d 693, 695 [declaration of state of emergency of Mediterranean fruit fly, or medfly, infestation].

<sup>79</sup> California Constitution, Article III, Section 3.

<sup>80</sup> Draft EIR, pp. 10.14-7 to 10.14-14, pp. 10.15-3 to 10.15-10.

Government Code Section 8574.17 required the establishment of a State toxic disaster contingency plan to respond to toxic disasters, including highway toxic spills.<sup>81</sup>

Although, as noted earlier, DOGGR does not purport to speak for the Governor, DOGGR notes that the Governor has publicly stated that he sees no grounds for a “ban on fracking.” Earlier this year on NBC’s “Meet the Press” in response to a question about the possible need for such a ban, Governor Brown stated:

No, not at all. First, fracking in California has been going on for more than 50 years and uses a fraction of the water of fracking on the east coast for gas particularly. This is vertical fracking for the most part. It is different. California imports 70 percent of our petroleum products; our cars drive over 330 billion miles mostly on petroleum. If we reduce our oil drilling on California, which a ban on fracking would do, we’ll import more oil by train or by boat, that doesn’t make a lot of sense. What we need to do is to move to electric cars, more efficient buildings and more renewable energy and in that respect, California is leading the country and some would say even the world and we’re going to continue moving down that path.<sup>82</sup>

These sentiments hold true to DOGGR. Even if the Governor possessed the authority to impose a state-wide moratorium on hydraulic fracturing, which DOGGR does not believe he does based on the facts as they currently exist, the wiser course of action will be to continue to implement and strengthen regulations and permit conditions for future well stimulation treatments.

#### **Global Response GR-5: DOGGR lacks authority to prohibit well stimulation treatments**

Under the separation of powers doctrine,<sup>83</sup> DOGGR does not have the authority to single-handedly prohibit hydraulic fracturing in the State of California. As explained in more detail below, DOGGR lacks the authority as an agency in the executive department to impose a statewide ban of hydraulic fracturing because the Legislature has not delegated this substantive authority to DOGGR.

Several commenters argue that PRC Section 3106 gives DOGGR all the authority it needs to impose a statewide moratorium on hydraulic fracturing and well stimulation treatments. These commenters reference in particular subdivisions (a) and (b). Their arguments are not supported by the plain language of the statute. Section 3106 states:

(a) The supervisor shall so supervise the drilling, operation, maintenance, and abandonment of wells and the operation, maintenance, and removal or abandonment of tanks and facilities attendant to oil and gas production, including pipelines not subject to regulation pursuant to Chapter 5.5 (commencing with Section 51010) of Part 1 of Division 1 of Title 5 of the Government Code that are within an oil and gas field, so as to prevent, as far as possible, damage to life, health, property, and natural resources; damage to underground oil and gas deposits from infiltrating water and other causes; loss of oil,

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<sup>81</sup> See Government Code Section 8574.18 [citing definition of “toxic substances” under 49 C.F.R. Section 172.101, Appen. A].

<sup>82</sup> See Energy In Depth, “Gov. Jerry Brown: Fracking Ban ‘Doesn’t Make a Lot of Sense,’” March 23, 2015, available at <http://energyindepth.org/california/gov-jerry-brown-fracking-ban-doesnt-make-sense/> (last visited April 27, 2015).

<sup>83</sup> California Constitution, Article III, Section 3 “[T]he powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution”].

gas, or reservoir energy, and damage to underground and surface waters suitable for irrigation or domestic purposes by the infiltration of, or the addition of, detrimental substances.

(b) The supervisor shall also supervise the drilling, operation, maintenance, and abandonment of wells so as to permit the owners or operators of the wells to utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of underground hydrocarbons and which, in the opinion of the supervisor, are suitable for this purpose in each proposed case. To further the elimination of waste by increasing the recovery of underground hydrocarbons, it is hereby declared as a policy of this state that the grant in an oil and gas lease or contract to a lessee or operator of the right or power, in substance, to explore for and remove all hydrocarbons from any lands in the state, in the absence of an express provision to the contrary contained in the lease or contract, is deemed to allow the lessee or contractor, or the lessee's or contractor's successors or assigns, to do what a prudent operator using reasonable diligence would do, having in mind the best interests of the lessor, lessee, and the state in producing and removing hydrocarbons, including, but not limited to, the injection of air, gas, water, or other fluids into the productive strata, the application of pressure heat or other means for the reduction of viscosity of the hydrocarbons, the supplying of additional motive force, or the creating of enlarged or new channels for the underground movement of hydrocarbons into production wells, when these methods or processes employed have been approved by the supervisor, except that nothing contained in this section imposes a legal duty upon the lessee or contractor, or the lessee's or contractor's successors or assigns, to conduct these operations.

When reading subdivisions (a) and (b) together, it is clear that the Legislature intended to give DOGGR two different mandates of equal importance. Under the current version of Section 3106, DOGGR is to “supervise the drilling, operation, maintenance, and abandonment of wells...attendant to oil and gas production...so as to prevent, as far as possible, damage to life, health, property, and natural resources” but also so as “to permit the owners or operators of the wells to utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of underground hydrocarbons,” including hydraulic fracturing.<sup>84</sup> Significantly, SB 4 did not change this directive. Indeed, instead of imposing a temporary moratorium on well stimulation activities during the preparation of the EIR, the Legislature chose to provide in PRC Section 3161 that “interim activities” were allowed as long as certain requirements were met.<sup>85</sup> As of July 1, 2015, moreover, well stimulation will be subject to new permanent regulations.<sup>86</sup>

Therefore, SB 4 does not give DOGGR new authority to prohibit all future well stimulations, which are currently allowed under State law.<sup>87</sup>

Some commenters wish DOGGR to focus on the first mandate (“to prevent...damage to life, health...natural resources”) in Section 3106 to the exclusion of the second mandate (“to permit...operators of the wells to utilize all methods”). But DOGGR does not have the luxury of selecting which sections of existing

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<sup>84</sup> PRC, Section 3106(a) and (b).

<sup>85</sup> *Id.*, Section 3161(b).

<sup>86</sup> *Id.*, Section 3160(b).

<sup>87</sup> *Id.*, Sections 3106(b), 3161(b).

statutes it will follow and implement. As “an executive agency created by statute,” DOGGR “has only as much rulemaking power as is invested in it by statute.”<sup>88</sup> As the California Supreme Court has explained:

“[a]dministrative action that is not authorized by, or is inconsistent with, acts of the Legislature is void.” [Citation.] And, as another court has announced, “the rulemaking authority of an agency is circumscribed by the substantive provisions of the law governing the agency.... [R]egulations that alter or amend the statute or enlarge or impair its scope are void.” [Citation.] An executive agency lacks power, for example, to order the disbursement of funds for a purpose contrary to that stated in a legislative enactment. [Citation.]<sup>89</sup>

While DOGGR has the authority to deny or condition individual well stimulation permits based on environmental or public health considerations, DOGGR is not authorized to adopt a complete ban of future well stimulation treatments throughout California. PRC Section 3160 provides that the “supervisor or district deputy shall review the well stimulation treatment permit application and may approve the permit if the application is complete, and “[a]n incomplete application shall not be approved.”<sup>90</sup> This statutory language, which contemplates that individual permit applications will be considered on their own merits, does not expressly or impliedly authorize DOGGR to deny all future well stimulation permit applications without first reviewing them.

The separation of powers doctrine is relevant here. The California Supreme Court has said that the “separation of powers doctrine articulates a basic philosophy of our constitutional system of government; it establishes a system of checks and balances to protect any one branch against the overreaching of any other branch.”<sup>91</sup> It “limits the authority of one of the three branches of government to arrogate to itself the core functions of another branch,” with the primary purpose being to “prevent the combination in the hands of a single person or group of the basic or fundamental powers of government.”<sup>92</sup>

The exercise of legislative power encompasses “[a]cts constituting a declaration of public purpose, and making provision for ways and means of its accomplishment.”<sup>93</sup> In contrast, “[a]cts which are to be deemed as acts of administration, and classed among those governmental powers properly assigned to the executive department, are those which are necessary to be done to carry out legislative policies and purposes already declared by the legislative body, or such as are devolved upon it by the organic law of its existence.”<sup>94</sup> While the Legislature “may delegate authority to administrative boards to adopt and enforce reasonable rules for carrying into effect the expressed purpose of a statute,” it is a “well-established principle of law that the Legislature may not delegate authority to a board or commission to adopt rules which abridge, enlarge, extend or modify the statute creating the right.”<sup>95</sup> Here, the Legislature has made it clear that it is reserving for itself, as a matter of public policy, the decision as to whether well stimulation treatments should be allowed in California. DOGGR, therefore, may not “abridge, enlarge, extend or modify” existing statutes to impose a statewide moratorium on hydraulic fracturing.

<sup>88</sup> *Carmel Valley Fire Protection Dist. v. State* (2001) 25 Cal.4th 287, 299.

<sup>89</sup> *Id.* at p. 300.

<sup>90</sup> See PRC, Sections 3160(d)(3)(A), 3106.

<sup>91</sup> *Bixby v. Pierno* (1971) 4 Cal.3d 130, 141 [citing Cal. Const., arts. IV, V and VI].

<sup>92</sup> *Carmel Valley Fire Protection Dist. v. State* (2001) 25 Cal.4th 287, 297.

<sup>93</sup> *Mefford v. City of Tulare* (1951) 102 Cal.App.2d 919, 926.

<sup>94</sup> *Ibid.*

<sup>95</sup> *Blatz Brewing Co. v. Collins* (1945) 69 Cal.App.2d 639, 645.

Some commenters argue that DOGGR should read the phrase “methods...which, in the opinion of the supervisor, are suitable for this purpose” in Section 3106(b), in context with subdivisions (a) and (d) to justify a conclusion that all well stimulation treatments are *not* “suitable.” DOGGR disagrees. Subdivision (d) requires the supervisor to “administer this division so as to encourage the wise development of oil and gas resources.” Further, and as explained above, subdivision (a), which states one of two co-equal mandates, requires DOGGR “to prevent, as far as possible, damage to life, health, property, and natural resources.” Based on the analysis and mitigation proposed in the SB 4 EIR and in planned rulemaking packages, DOGGR believes that, with the new permanent regulations and mitigation measures in place, well stimulation treatments can be “suitable” for the “wise development of oil and gas resources” and can be done so as “to prevent, as far as possible, damage to life, health...and natural resources.” As directed by statute, DOGGR will continue to exercise its discretion in the review of individual well stimulation permit applications and will impose permit conditions as needed when approving such permits.

### **Global Response GR-6: Project Resource Protection Standards have been eliminated or changed into mitigation measures**

In addition to mitigation measures, the Draft EIR included four sets of “Project Standards for Resources Protection,” which were “proposed standards [that] would be implemented as part of the project to avoid and minimize impacts to sensitive resources”: the Water Recycling Standards, the Habitat Protection Standards, the Surface Water Protection Standards, and the Groundwater Protection Standards.<sup>96</sup> In describing the use of the four “Project Standards,” the Draft EIR stated:

Except where site-specific circumstances require refinement in the specific approaches and language set forth below, DOGGR would incorporate the standards without change into conditions of approval for well stimulation treatment permits, or would encourage other agencies that are acting as Lead Agencies to adopt or to recommend that DOGGR adopt mitigation measures or conditions of approval that meet or are substantially consistent with the standards. Where modifications to the standard language are necessary to address site-specific circumstances, DOGGR would ensure that the resulting conditions of approval will be at least as environmentally protective as conditions that did not diverge at all from the standard language set forth below.<sup>97</sup>

DOGGR is no longer proposing to implement any of the “Project Standards for Resources Protection” as *part of* the “project.” Rather, two of the former standards will be converted into proposed regulations to be run through a formal rulemaking process, as discussed in Global Response GR-1. The former proposed Standard for Water Recycling is now found in new MM GW-1a. The former proposed standard for Surface Water Protection is now found in new MM SWR-1b. These measures will remain in DOGGR’s Mitigation Policy Manual (see Global Response GR-2 and discussion below) until such time as they take the form (perhaps with modifications) of duly adopted regulations. The original Resource Protection Standard for habitat has been eliminated, and has not been replaced. DOGGR has determined that, taken together, the package of mitigation measures addressing impacts to terrestrial biological resources (MMs BIOT-1a through BIOT-9a) will be sufficient to protect the specific habitat types mentioned in the former proposed standard. Regarding the original proposed Resource Protection Standard for groundwater (Draft EIR Section 7.5.4), DOGGR has determined that the environmental concerns at issue will be adequately addressed by a combination of existing laws and regulations and the other miti-

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<sup>96</sup> Draft EIR, pp. 7-48 to 7-55.

<sup>97</sup> Draft EIR, p. 7-48.

# **EXHIBIT G**

**in support of Aera's Notice of Appeal  
July 8, 2021 WST Permit Denials**



## MEMORANDUM

**DATE:** May 4, 2021

**To:** State Water Resources Control Board (SWRCB), Oil and Gas Monitoring Unit 1

**FROM:** California Geologic Energy Management Division

**SUBJECT: ADSA Review and Approval of 8 out of 11 Wells for WST in the North Belridge Field**

**Operator:** Aera Energy LLC

**Field:** North Belridge

WellSTAR Application Form ID #	API #	Well Name
94069	03066998	922D-1N
91176	03067004	531L3-1N
91177	03067005	521D4-1N
91178	03067006	531A2-1N
94179	03067008	932AR-1N
91180	03067010	932A1-1N
91181	03067016	521D3-1N
91182	03067017	532E2-1N
91183	03067018	922H1-1N
91184	03067149	931R2-1N
91185	03067150	931L1-1N

### I. BACKGROUND:

The California Geologic Energy Management Division (Division) has reviewed the operator’s axial dimensional stimulation area (ADSA) data analysis and information submitted as part of the well stimulation treatment (WST) application for the wells shown above, and hereby approves of the planned ADSA of 8 out of 11 of the proposed well stimulation treatment. The remaining 3 proposed wells are placed on-hold due to potential high risk ADSA wells identified following the Division’s ADSA analysis. Additional requested data to support adequate geologic and hydrologic isolation of stimulated formation located within immediate vicinity of the potential high risk ADSA wellbores is needed for further review and consideration.

In accordance with WST regulation (CCR Title 14, Section 1784), ADSA analysis includes the following:

1. Identification and review of well bores located completely or partially within 2 times the ADSA (2xADSA) of each proposed stimulation stage to ensure geologic and hydrologic isolation of well stimulation fluids.

2. Review, evaluation and risk assessment of all geologic features, including known faults (active or inactive) within 5 times the ADSA (5xADSA).
3. If a 5xADSA extends beyond the productive horizon being evaluated, then the mechanical rock properties of the adjacent formation must be evaluated to determine whether the rock properties will ensure geologic and hydrologic isolation of the stimulated formation.
4. Identification of all water within the 2xADSA.

**II. REVIEW SUMMARY:**

1. **14 CCR 1784(a)(2)** – review of well bores within the 2xADSA to ensure hydrologic and geologic isolation

The Division’s evaluation of well documents, including directional drilling data supplied by the operator, indicate that other oil and gas wellbores intersect a 2xADSA of the wells proposed for stimulation. A summary of these wells, with a count of each well type, is shown in the following table.

Summary of Wells Identified within the 2x-ADSA						
WST Well API #	Well Name	Production Wells	Injection Wells	Idle Wells	Abandoned Wells	Total
03067004	531L3-1N	3	0	0	1	4
03067005	521D4-1N	2	2	3	4	11
03067006	531A2-1N	0	0	0	1	1
03067010	932A1-1N	1	0	0	3	4
03067017	532E2-1N	0	0	0	3	3
03067018	922H1-1N	1	0	0	1	2
03067149	931R2-1N	1	0	0	2	3
03067150	931L1-1N	2	1	1	0	4

Utilizing a risk-based evaluation methodology developed by the Division, wells within the 2xADSA of a stimulation stage, determined by the Division to present the highest potential for risk as a migration pathway for injected stimulation fluids or displaced formation fluids, were further evaluated. The Division determined that there is minimal evidence of risk that any of the wellbores identified within any 2xADSA of the 8 proposed stimulation wells would likely serve as a migration pathway for injected stimulation fluids or displaced formation fluids from the stimulated wells. However, the following WST permit conditions will be included as a precautionary measure:

**Prior to the proposed WST Operations, the operator shall plug and abandon the following offset well(s) associated with the proposed WST well as shown below:**

WST Well API#	Associated Offset Well(s) to Plug and Abandon API#
03067005	02975609 and 03051937

**During WST Operations, the operator shall pressure monitor the following offset well(s) associated with the proposed WST well as shown below:**

<b>WST Well API#</b>	<b>Associated Offset Well(s) to Monitor API#</b>
03067005	03051997

**2. 14 CCR 1784(a)(3) – evaluate/assess geologic features within 5xADSA**

Based on review of drilling records, well log correlations and seismic data, the operator verified that there are no faults within the 5xADSA. In addition, the data suggest a low risk that WST fluids will communicate with geologic features. The Reef Ridge-Diatomite above the WST interval is composed of low-permeability zones (0.1 – 5 millidarcies) that historically has provided a barrier to the vertical fluid migration.

**3. 14 CCR 1784(a)(4) – assess the mechanical rock properties of the geological formations adjacent to the productive horizon when the 5xADSA extends beyond the productive horizon**

The 5xADSA for all subject wells extends vertically above the productive Diatomite horizon (Reef Ridge Formation), into the overlying undifferentiated San Joaquin/ Etchegoin Formations and extends into overlying heavy oil producing Tulare Formation. Comparative mechanical rock properties of the formations were assessed and provided by the operator as part of the operator’s fracture modeling.

**14 CCR 1784(1)(5) – identify all water within 2xADSA**

Water within the 2xADSA of all the subject wells are formation water from the productive horizons of the Reef Ridge Formation except well 03067017, which extends vertically into the undifferentiated San Joaquin and Etchegoin formations, which are non-oil productive and do not contain protected water (>10,000 mg/L Total Dissolved Solids).

**III. REVIEW CONCLUSION:**

The Division has determined that there is minimal evidence of risk that the wellbores identified within 2xADSA of the 8 proposed stimulation wells would likely serve as a migration pathway for injected stimulation fluids or displaced formation fluids from the stimulated wells.

Based on the documents submitted, Aera has evaluated the 5xADSA for the presence of faults and assessed the risk of WST fluid communication with geologic features in accordance with CCR Title 14, Section 1784 (a) (3). No faults were identified passing through the 5xADSA of all the subject wells proposed for stimulation. The presence of low permeable sediments of the Belridge/Reef Ridge Diatomite, and overlying formations, will act as effective barriers to vertical fluid migration.

Henry Iwuh  
Associate Oil & Gas Engineer  
California Geologic Energy Management Division  
Well Stimulation Program

# **EXHIBIT H**

**in support of Aera's Notice of Appeal  
July 8, 2021 WST Permit Denials**



## MEMORANDUM

**DATE:** April 09, 2021

**To:** State Water Resources Control Board (SWRCB), Oil and Gas Monitoring Unit 1

**FROM:** California Geologic Energy Management Division

**SUBJECT: ADSA Review and Approval of 13 out of 17 Wells for WST in the South Belridge Field**

**Operator:** Aera Energy LLC

**Field:** South Belridge

WellSTAR Application Form ID #	API #	Well Name
129884	03067596	954HR3-29
129885	03067603	521N1-29
129886	03067604	954KR3-29
129887	03067605	928DR3-20
129888	03067613	521D2-29
129889	03067614	955JR3-29
129890	03067615	564N2-29
129891	03067616	518S2-28
<del>129892</del>	<del>03067617</del>	<del>564E2-29</del>
<del>129893</del>	<del>03067618</del>	<del>564C3-29</del>
129894	03067619	918MR-20
129895	03067628	922GR2-29
<del>129896</del>	<del>03067629</del>	<del>983JR2-33</del>
129897	03067630	955GR5-29
129898	03067640	918QR-28
129899	03067644	521K2-33
<del>129900</del>	<del>03067646</del>	<del>953ZR2-29</del>

**I. BACKGROUND:**

The California Geologic Energy Management Division (Division) has reviewed the operator’s axial dimensional stimulation area (ADSA) data analysis and information submitted as part of the well stimulation treatment (WST) application for the wells shown above, and hereby approves of the planned ADSA of 13 out of 17 of the proposed well stimulation treatment. The remaining 4 proposed wells are placed on due to potential high risk ADSA wells identified following the Division’s ADSA analysis. Additional requested data to support adequate geologic and hydrologic isolation of stimulated formation located within the vicinity of the potential high risk ADSA wellbores is needed for further review and consideration.

In accordance with WST regulation (CCR Title 14, Section 1784), ADSA analysis includes the following:

1. Identification and review of well bores located completely or partially within 2 times the ADSA (2xADSA) of each proposed stimulation stage to ensure geologic and hydrologic isolation of well stimulation fluids.
2. Review, evaluation and risk assessment of all geologic features, including known faults (active or inactive) within 5 times the ADSA (5xADSA).
3. If a 5xADSA extends beyond the productive horizon being evaluated, then the mechanical rock properties of the adjacent formation must be evaluated to determine whether the rock properties will ensure geologic and hydrologic isolation of the stimulated formation.
4. Identification of all water within the 2xADSA.

**II. REVIEW SUMMARY:**

1. **14 CCR 1784(a)(2)** – *review of well bores within the 2xADSA to ensure hydrologic and geologic isolation*

The Division’s evaluation of well documents, including directional drilling data supplied by the operator, indicate that other oil and gas wellbores intersect a 2xADSA of the wells proposed for stimulation. A summary of these wells, with a count of each well type, is shown in the following table.

<b>Summary of Wells Identified within the 2x-ADSA</b>						
<b>WST Well API #</b>	<b>Well Name</b>	<b>Production Wells</b>	<b>Injection Wells</b>	<b>Idle Wells</b>	<b>Abandoned Wells</b>	<b>Total</b>
03067596	954HR3-29	1	3	0	9	13
03067603	521N1-29	1	3	1	8	13
03067604	954KR3-29	2	3	1	14	10
03067605	928DR3-20	2	0	1	3	6
03067613	521D2-29	2	4	0	5	11
03067614	955JR3-29	2	0	0	12	6
03067615	564N2-29	1	3	1	6	2
03067616	518S2-28	1	4	0	6	11
03067619	918MR-20	0	1	3	5	9
03067628	922GR2-29	2	0	0	3	5
03067630	955GR5-29	2	2	1	13	9
03067640	918QR-28	2	0	0	3	5
03067644	521K2-33	2	1	0	8	10

Utilizing a risk-based evaluation methodology developed by the Division, wells within the 2xADSA of a stimulation stage, determined by the Division to present the highest potential for risk as a migration pathway for injected stimulation fluids or displaced formation fluids, were further

evaluated. The Division determined that there is minimal evidence of risk that any of the wellbores identified within any 2xADSA of the 13 proposed stimulation well would likely serve as a migration pathway for injected stimulation fluids or displaced formation fluids from the stimulated well. However, the following WST permit conditions will be included as a precautionary measure:

**Prior to the proposed WST Operations, the operator shall plug and abandon the following offset wells associated with the proposed WST well as shown below:**

WST Well API#	Associated Offset Well to Plug and Abandon API#
03067614	03049911
03067615	03033373
03067644	03005974

**During WST Operations, the operator shall pressure monitor the following offset wells associated with the proposed WST well as shown below:**

WST Well API#	Associated Offset Well to Monitor API#
03067604	03052254
03067605	03047912
03067613	03005704, 03048416, 03048417 and 03049348
03067616	03022416
03067628	03014368
03067630	03061147 and 03061665
03067640	03005954
03067644	03045460

**2. 14 CCR 1784(a)(3) – evaluate/assess geologic features within 5XADSA**

Based on review of drilling records, well log correlations and seismic data, the operator identified a normal fault (NG Yellow 31) that passes through the 5xADSA of 5 out of 13 of the subject wells including wells 0403067596, 0403067615, 03067616, 03067640 and 03067644. Data suggests a low risk that WST fluids will communicate with geologic features. The Belridge Diatomite (Reef Ridge Formation) above the WST interval is composed of low permeability zones (0.1 – 5 millidarcies) that have historically provided a barrier to the vertical fluid migration.

**3. 14 CCR 1784(a)(4) – assess the mechanical rock properties of the geological formations adjacent to the productive horizon when the 5xADSA extends beyond the productive horizon**

The 5xADSA of subject wells extends vertically above the productive Diatomite horizon (Reef Ridge Formation), into the overlying undifferentiated San Joaquin/ Etchegoin Formations and extends into overlying heavy oil producing Tulare Formation. Comparative mechanical rock properties of the formations were assessed and provided by the operator as part of the operator’s fracture modeling.

**14 CCR 1784(1)(5) – identify all water within 2xADSA**

Water within the 2xADSA is formation water from the productive horizons of the Reef Ridge Formation and non-protected water of the undifferentiated San Joaquin/Etchegoin Formations (>10,000 mg/L TDS).

**III. REVIEW CONCLUSION:**

The Division has determined that there is minimal evidence of risk that the wellbores identified within 2xADSA of the 13 proposed stimulation wells would likely serve as a migration pathway for injected stimulation fluids or displaced formation fluids from the stimulated wells.

Based on the documents submitted, Aera has evaluated the 5xADSA for the presence of faults and assessed the risk of WST fluid communication with geologic features in accordance with CCR Title 14, Section 1784 (a) (3). A normal fault was identified passing through the 5xADSA of 5 out of 13 wells proposed for stimulation. The presence of low permeable sediments of the Belridge/Reef Ridge Diatomite, and overlying formations, will act as effective barriers to vertical fluid migration.

Henry Iwuh  
Associate Oil & Gas Engineer  
California Geologic Energy Management Division  
Well Stimulation Program

# **EXHIBIT I**

**in support of Aera's Notice of Appeal  
July 8, 2021 WST Permit Denials**

## CALGEM MENU

# Well Stimulation National Laboratory Scientific Review

Hydraulic fracturing, commonly referred to as “fracking,” is the most common type of well stimulation treatment (WST). It is a relatively uncommon completion technique in California, responsible for about 2% of total in-state oil production. Governor Newsom has expressed his commitment to work with the Legislature to change state law to prohibit the practice of hydraulic fracturing by 2024. For the remaining time that hydraulic fracturing is expressly permitted under state law, the process for reviewing permits for WST continues to be the strongest in the country.

In November 2019, the Geologic Energy Management Division (CalGEM) requested a third-party scientific review of pending well stimulation permit applications to ensure the state's technical standards for public health, safety, and environmental protection are met prior to approval of each permit. Experts at the Lawrence Livermore National Laboratory (LLNL) are in the process of assessing CalGEM's permit review process. LLNL experts are also evaluating the completeness of operators' application materials and CalGEM's engineering and geologic analyses' processes and adherence to California Code of Regulations.

The Newsom administration prioritized strengthening regulatory oversight of oil and gas production in California. In addition to LLNL's reviews, the Department of Finance Office of Audits and Evaluation (OSAE) has completed a broader audit of CalGEM's permitting process for well stimulation and underground injection control (UIC.)

The audit complements LLNL's work and validates many of CalGEM's revised practices and process improvements, several of which have already been implemented. CalGEM will submit a Corrective Action Plan early in 2021, as required by OSAE, that will detail how CalGEM has implemented, or is working to implement, the audit's constructive recommendations.

- November 6, 2020, letter to OSAE with CalGEM's comments on an earlier draft of the audit report (<https://esd.dof.ca.gov/reports/report.html>)

LLNL's scientific review of the permit applications and process found that the permitting process met statutory and regulatory requirements. LLNL found, however, that CalGEM could improve its evaluation of the technical models used in the permit approval process. As a result, CalGEM now requires all operators to provide an axial

Dimensional Stimulation Area Narrative Report for each oilfield and fracture interval which must be validated by LLNL and conform to the new CalGEM permitting process. This will improve CalGEM's ability to independently validate applicants' fracture modeling.

As noted, current state law allows for hydraulic fracturing and other forms of well stimulation. Senate Bill (SB) 4 (Pavley, 2013) established **stringent** public health, safety and environmental criteria that have been widely described as among the strongest safeguards in the nation.

- Extensive engineering and geologic review and well integrity evaluations in order to ensure that WSTs are confined to the intended geologic zone.
- Neighboring parties must receive [advance notification](#) of projects and can request that their water quality be tested to establish a baseline.
- Comprehensive [post-stimulation reports](#) must be filed, including the amount of water used and the source of that water.
- Seismic monitoring must take place during well stimulation operations. If a magnitude 2.7 or larger earthquake occurs nearby, the project must halt while an evaluation is conducted by CalGEM and the California Geological Survey.

Key Figures to Date (as of March 8, 2021):

- CalGEM has issued 12 WST permits in 2021.
- CalGEM issued 83 WST permits in 2020 following review by LLNL.
- CalGEM denied 57 permit applications in 2020.

WST permit approvals and resulting hydraulic fracturing activity is at its lowest level since the Legislature enacted SB 4 in 2014 to expressly permit hydraulic fracturing under the nation's strongest regulatory conditions.

By comparison, during the same time period last year (2019), approximately 220 permits were approved, an amount roughly consistent with annual permit approvals in the three years since SB 4 regulations took effect. All the permits issued in 2020 were for operations in established Kern County oil fields.

Lawrence Livermore National Laboratory Assessment Reports:

- [Aera - Belridge](#)
- [Aera - Lost Hills](#)
- [Chevron - Lost Hills](#)

ADSA Model and Calibration Narrative:

- [Aera - Belridge](#)
- [Aera - Lost Hills](#)
- [California Resources Production Company-Buena Vista Nose](#)
- [Chevron - Lost Hills](#)



Approved Permits:

- Chevron – Lost Hills: Approved 02/23/2021 (1 permit)
- [Aera – Belridge: Approved 02/09/2021](#) (11 permits)
- [Aera – Belridge: Approved 12/31/2020](#) (14 permits)
- [Aera - Lost Hills: Approved 12/3/2020](#) (3 permits)
- [Aera - Belridge: Approved 11/24/2020](#) (4 permits)
- [Chevron - Lost Hills: Approved 11/20/2020](#) (8 permits)
- [Aera - Belridge: Approved 10/16/2020](#) (6 permits)
- [Chevron - Lost Hills: Approved 7/2/2020](#) (12 permits)
- [Aera - Lost Hills: Approved 5/28/2020](#) (12 permits)
- [Aera - Belridge: Approved 4/3/2020](#) (24 permits)

The approved WST permits can also be found in WellSTAR:

<https://wellstar-public.conservation.ca.gov/WellStimulation/WellStimulation/Index>

Documents (Application files, CEQA, and MOA comments) pertaining to the approved permits can be found at the link below. Please search by API number or by Date Modified.

[Documents \(Application files, CEQA, and MOA comments\)](#).

Denied Permits:

- [Chevron – Lost Hills \(6 WST Applications\)](#).
- [Chevron – Lost Hills \(48 WST Applications\)](#).
- [Aera – Belridge \(3 WST Applications\)](#).
- [Aera - North Belridge \(8 WST Applications\)](#).
- [Aera - South Belridge \(13 WST Applications\)](#).

