

June 25, 2020

The Honorable Gavin Newsom  
Governor of California  
State Capitol Building  
Sacramento, California 95814

*Submitted via fax to (916) 558-3160*

**Re: Economic Recovery, Public Transparency, Participation, and Oil and Gas Production**

Dear Governor Newsom,

Thank you for your leadership in your ongoing efforts to see our state through the unprecedented public health crisis of COVID-19. We appreciate the decisive steps you have taken to protect Californians' health and lives, and your commitment to a fair and equitable recovery that can contribute to a cleaner, sustainable future for all Californians.<sup>1</sup> We write to offer the expertise of our organizations—with respective focuses on environmental, environmental justice, labor, and public health issues—on the transparency in government that is vital to achieving these goals.

Our state faces an unprecedented challenge from the existing interlinked climate, health, and environmental justice crises coupled with the COVID-19 related economic downturn. The economic recovery investments and other public policy decisions made today will determine whether our state transitions to a healthier, more equitable, just, and climate safe future—or whether continued “business as usual” decisions doom us to climate catastrophe and continued injustice. To effectively and constructively participate at this critical moment, we need a meaningful level of public transparency into the actions the state is considering.

While transparency in government serves many purposes, one of the most important goals is to facilitate better policy outcomes. This is particularly important in the oil and gas regulatory arena, where regulatory decisions can quite literally be a matter of life and death for those most vulnerable to this dangerous industry. We greatly appreciate the steps you have taken toward protecting Californians, including the launch of a regulatory process to protect public health from drilling near communities, and the imposition of a nine-month moratorium on the issuance of fracking permits. Yet at the same time we are alarmed by what appears to be an emerging and confounding trend: an increase in permitting of new wells and new fracking, a continued failure to comply with the California Environmental Quality Act (CEQA), our community-right-to-know law, and a decrease in the amount of information available on the California Geologic Energy Management Division (CalGEM's) website. In short, we are suffering an increase in the damage from this industry coupled with a decrease in public information about it. This is unacceptable.

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<sup>1</sup> Office of Governor Gavin Newsom, Press Release: Governor Newsom Taps California Business, Labor, Health Care and Community Leaders for New Task Force on Business and Jobs Recovery (Apr. 17, 2020), <https://www.gov.ca.gov/2020/04/17/governor-newsom-taps-california-business-labor-health-care-and-community-leaders-for-new-task-force-on-business-and-jobs-recovery/>.

We request and strongly recommend the following actions the state can easily take that would greatly expand the public transparency of its actions.

**We request that membership of the subcommittees of the Task Force on Business and Jobs Recovery be made public, and the meetings of the Task Force and all subcommittees be made open to public viewing.**

The work of the Task Force is intended to reflect communities across the state, emphasize a fair and equitable recovery, and promote diversity and innovation, and the ideas generated in the Task Force will serve as the basis for public policies that affect all of California. For these reasons, public disclosure of the membership of the subcommittees is necessary to provide minimum levels of disclosure, and public access to view the proceedings is critical to providing oversight. Because the meetings are occurring via video conferencing, this requires only granting public access to the proceedings. In addition, we request that any measures developed by the Task Force be made public on an ongoing basis, as the Task Force works throughout the year.

This transparency would not only help build public confidence in the process and results of the Task Force, it would also allow public interest organizations and experts outside the Task Force to identify potential gaps or opportunities that the Task Force may otherwise overlook. With the importance and urgency of the Task Force's work, such input can be invaluable. However, in order to be meaningful and useful, such input must be timely, which is only possible if the proceedings are made accessible as they occur.

**We request that CalGEM make all oil and gas regulatory information publicly available on its website, including all oil and gas industry requests for regulatory exemptions as well as CEQA documents.**

CalGEM has announced that it will consider requests from oil and gas operators seeking the extension or waiver of regulatory requirements if the request is based on hardship specifically related to the COVID-19 crisis.<sup>2</sup> Administration officials have told us they are currently considering approximately thirty such requests, but have to date failed to provide copies of them absent submission of a California Public Records Act Request, despite requests from our organizations to make the industry letters available on CalGEM's website as a matter of course. Other states are making such requests available on a rolling basis as they are received.<sup>3</sup> We urge CalGEM to do the same immediately.

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<sup>2</sup> California Department of Conservation, Geologic Energy Management Division, Notice to Operators 2020-04: COVID-19 Pandemic Guidance (May 1, 2020), [ftp://ftp.consrv.ca.gov/pub/oil/Notice\\_to\\_Operators/NTO-2020-04.pdf](ftp://ftp.consrv.ca.gov/pub/oil/Notice_to_Operators/NTO-2020-04.pdf).

<sup>3</sup> The Minnesota Pollution Control Agency posts requests for waivers on a public website with cumulative figures and a mapping tool. (Minnesota Pollution Control Agency, Request for MPCA regulatory flexibility due to COVID-19, <https://www.pca.state.mn.us/covid-19/requests-mPCA-regulatory-flexibility-due-covid-19> (last visited June 18,

As justification for this lack of transparency, CalGEM has noted that the industry requests are not received in a form that complies with California Government Code Section 11546.7, which requires that state agencies, by July 2019, ensure that their websites comply with state law relating to internet accessibility in order to increase the successful employment of individuals with disabilities.<sup>4</sup> This response is inadequate and unproductive, as there is great public interest in these documents, which have significant implications for operations that impact public health and the environment. It is outrageous for CalGEM to claim it cannot find the time to convert industry's extension requests into a format that complies with the requirements of California's important internet accessibility statute, while the agency does find the time to consider and grant industry's actual requests for rollbacks and extensions. CalGEM's first charge is to protect the air we breathe, the water we drink, our climate, and public safety, yet the agency continues to prioritize the industry's requests for special treatment above these important public interests and above the need for transparency.

In another alarming development, CalGEM's website announces that "As of **March 10, 2020**, CEQA Notices and Documents will no longer be posted onto the CalGEM CEQA website."<sup>5</sup> It makes no sense for the agency to eliminate its own portal for CEQA documents and force the public to affirmatively search the CEQAnet database each day in order to track CalGEM's CEQA documents for its projects. We urge CalGEM to immediately begin posting all of its CEQA documentation in an easily accessible format on its website.

We urge CalGEM to make all oil and gas regulatory information freely available in a user friendly format on its website, including all idle well management plans and all reports regarding the drilling of new wells ("spud data"). There is tremendous need for information about the regulation of the oil and gas industry and the agency should work to increase public access to all available information.

### **We strongly urge the state to stop issuing permits to drill new wells and permits to frack.**

After a nine-month moratorium on fracking permits, CalGEM issued two dozen fracking permits in early April and twelve more on June 1, 2020. These fracking permits add to the hundreds of permits for new wells CalGEM has issued since the February 2020 California Court of Appeal ruling that set aside Kern County's certification of the Kern County Oil and Gas EIR and

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2020)). The Pennsylvania Department of Environmental Protection posts details on waiver requests, along with a list of approved requests with operator names and links to the applications and approvals. (Pennsylvania Department of Environmental Protection, Alert Details, <https://www.dep.pa.gov/Pages/AlertDetails.aspx> (last visited June 18, 2020)). Texas is posting details of waivers in a public spreadsheet online. (Texas Commission on Environmental Quality, COVID-19, <https://www.tceq.texas.gov/downloads/response/covid-19> (last visited June 18, 2020)).

<sup>4</sup> Cal. Gov. Code §11546.7 (a) Before July 1, 2019, and before July 1 biennially thereafter, the director of each state agency or state entity...shall post on the home page of the state agency's or state entity's Internet Web site a signed certification from the state agency's or state entity's director and chief information officer that they have determined that the Internet Web site is in compliance with Sections 7405 and 11135...(Added by Stats. 2017, Ch. 780, Sec. 1. (AB 434) Effective January 1, 2018.).

<sup>5</sup> California Department of Conservation, CEQA Projects, <https://www.conservation.ca.gov/calgem/CEQA/Pages/CEQANotices.aspx> (last visited on June 18, 2020).

approval of the Oil and Gas Ordinance.<sup>6</sup> These permits violate CEQA, as they rely on the faulty and decertified Kern EIR. At the same time, the expansion of oil operations made possible by the fracking permits, and the air pollution associated with oil operations, is linked to heightened risk during the COVID-19 pandemic.

We ask that CalGEM halt new oil and gas permitting and comply with CEQA. We further request that CalGEM rescind all permits to drill new wells and to frack issued in Kern County after March 26, 2020. As there has never been an adequate CEQA review of CalGEM's oil and gas permitting statewide, now is the ideal time for the agency to halt the issuance of new permitting and evaluate the full panoply of risk from the state's oil permitting program. Any fair review of the devastating harms from oil and gas production would result in the denial of new permits in order to protect our health and environment and address environmental injustice.

We look forward to working with you in these challenging circumstances to achieve the goals of protecting California and working toward a more equitable and sustainable economy. The issues raised in these requests are critical to that work.

Thank you for your consideration.

Sincerely,

Matt Leonard, Special Projects Manager, 350.org

[matt@350.org](mailto:matt@350.org)

Kathy Dervin, Co-chair Legislative Committee, 350 Bay Area Action

[dervin.kathy@gmail.com](mailto:dervin.kathy@gmail.com)

Mary Kay Benson, Steering Council Manager, 350 Butte County

[350buttecounty@gmail.com](mailto:350buttecounty@gmail.com)

Barbara Sattler, Board Member, Alliance of Nurses for Healthy Environments

[bsattler@usfca.edu](mailto:bsattler@usfca.edu)

Marj Plumb, Interim Executive Director, Breast Cancer Action

[mplumb@bcaction.org](mailto:mplumb@bcaction.org)

Kassie Siegel, Climate Law Institute Director, Center for Biological Diversity

[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)

Nayamin Martinez, Director, Central California Environmental Justice Network

[nayamin.martinez@ccejn.org](mailto:nayamin.martinez@ccejn.org)

RL Miller, Political Director, Climate Hawks Vote

[rlm@climatehawksvote.com](mailto:rlm@climatehawksvote.com)

Cynthia Mahoney, MD, Climate Health Now

[Cam8ross@comcast.net](mailto:Cam8ross@comcast.net)

Liza Tucker, Consumer Advocate, Consumer Watchdog

[liza@consumerwatchdog.org](mailto:liza@consumerwatchdog.org)

Bahram Fazeli, Director of Research and Policy, Communities for A Better Environment

[Bfazeli@cbecal.org](mailto:Bfazeli@cbecal.org)

Colin O'Brien, Staff Attorney, Earthjustice

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<sup>6</sup> *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 897, fn. 50.

[cobrien@earthjustice.org](mailto:cobrien@earthjustice.org)

Tara Messing, Staff Attorney, Environmental Defense Center

[tmessing@environmentaldefensecenter.org](mailto:tmessing@environmentaldefensecenter.org)

Nancy Halpern Ibrahim, Executive Director, Esperanza Community Housing Corporation

[rabeya@esperanzacommunityhousing.org](mailto:rabeya@esperanzacommunityhousing.org)

Alexandra Nagy, California Director, Food & Water Action

[anagy@fwwatch.org](mailto:anagy@fwwatch.org)

Lauren Ornelas, Founder/President, Food Empowerment Project

[lauren@foodispower.org](mailto:lauren@foodispower.org)

Sandy Emerson, Board President, Fossil Free California

[sandy@fossilfreeca.org](mailto:sandy@fossilfreeca.org)

Dr. Suzanne De Benedittis, Executive Director, Frack Free LA County

[Suzanne@frackfreela.org](mailto:Suzanne@frackfreela.org)

Liat Meitzenheimer, President, Fresh Air Vallejo

[camdon@aol.com](mailto:camdon@aol.com)

Ronald Martin, President, Fresnoans Against Fracking

[Martinrj93638@yahoo.com](mailto:Martinrj93638@yahoo.com)

Nicole Ghio, Senior Fossil Fuels Program Manager, Friends of the Earth

[nghio@foe.org](mailto:nghio@foe.org)

Patricia McPherson, President, Grassroots Coalition

[patriciamcpherson1@verizon.net](mailto:patriciamcpherson1@verizon.net)

Caroline Henderson, Senior Climate Campaigner, Greenpeace USA

[chenderson@greenpeace.org](mailto:chenderson@greenpeace.org)

Sandy Naranjo, California Organizing Manager, Mothers Out Front

[Sand.naranjo@mothersoutfront.org](mailto:Sand.naranjo@mothersoutfront.org)

Elizabeth Bast, Executive Director, Oil Change International

[collin@priceofoil.org](mailto:collin@priceofoil.org)

Martha Dina Arguello, Executive Director, Physicians for Social Responsibility-Los Angeles

[marguello@psr-la.org](mailto:marguello@psr-la.org)

Matt Nelson, Executive Director, Presente.org

[matt@presente.org](mailto:matt@presente.org)

Dr. Laura Solorio, President, Protect Monterey County

[Lmsolorio9@gmail.com](mailto:Lmsolorio9@gmail.com)

David Braun, Director, Rootskeeper

[thedavidbraun@gmail.com](mailto:thedavidbraun@gmail.com)

Joyce Lane, Public Policy Co-Chair, San Diego 350

[joycelane75@gmail.com](mailto:joycelane75@gmail.com)

Lauren Cullum, Policy Advocate, Sierra Club California

[Lauren.cullum@sierraclub.org](mailto:Lauren.cullum@sierraclub.org)

Jack Eidt, Co-founder, SoCal 350 Climate Action

[Jack.eidt@wilderutopia.com](mailto:Jack.eidt@wilderutopia.com)

Wilder Zeiser, US Oil & Gas Climate Campaigner, Stand.earth

[zeiser@stand.earth](mailto:zeiser@stand.earth)

Shoshana Wechsler, Coordinator, Sunflower Alliance

[swechs@sonic.net](mailto:swechs@sonic.net)

Ellie Cohen, CEO, The Climate Center

[ellie@theclimatecenter.org](mailto:ellie@theclimatecenter.org)

Julie Levine, Co-Director, Topanga Peace Alliance

[info@topangapeacealliance.org](mailto:info@topangapeacealliance.org)

Cc: Wade Crowfoot, Secretary, California Natural Resources Agency

Uduak Ntuk, Supervisor, California Geologic Energy Management Division

Matthew Baker, Deputy Secretary, California Natural Resources Agency