

ASSEMBLY BILL

No. 2453

Introduced by Assembly Member Tran

February 19, 2010

An act to amend Sections 3225, 3236.5, 3743, and 3744 of, to add Section 3763 to, and to repeal and add Sections 3350, 3351, 3352, 3353, 3354, 3355, 3356, 3762, 3764, 3765, 3766, 3767, and 3768 of, the Public Resources Code, relating to oil and gas.

LEGISLATIVE COUNSEL'S DIGEST

AB 2453, as introduced, Tran. Oil and gas: operations: enforcement actions.

Under existing law, the Division of Oil, Gas, and Geothermal Resources in the Department of Conservation regulates the operation of oil, gas, and geothermal wells in specified districts of the state. Existing law establishes procedures for an operator of a well or owner of a rig, derrick, or other operating structure to appeal from an order of the State Oil and Gas Supervisor or a district deputy regarding the operation of a well, or drilling or testing operations.

This bill would make numerous changes to the appeal process and procedures. The bill would require an order of the supervisor or a district deputy to state the factual basis for the order, the statutory and regulatory basis of the action, and the penalties and requirements imposed on the operator. The bill would also require a cease and desist order to specify the operations to cease and a detailed explanation of the action to be taken by the operator to permit operations to resume.

The bill would, among other things, provide for review of an order of the supervisor imposing a civil penalty by the director, revise the requirements for filing a notice of appeal, provide that the filing of an

appeal does not stay an order for remedial work or a cease and desist order issued under emergency circumstances and, in these circumstances, require an expedited hearing before the director. The bill requires the division to reimburse an operator for required remedial work if an order is invalidated on appeal.

The bill, would also, among other things, require certain appeals to be heard in a formal hearing process before an administrative law judge, instead of in an informal hearing before the director of the department, specify certain procedures for a hearing before the director, and revise the scope of the judicial review of an appealed order.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3225 of the Public Resources Code is
2 amended to read:

3 3225. ~~Whenever~~ (a) *An order of the supervisor or a district*
4 *deputy issued pursuant to this chapter shall provide a clear and*
5 *concise recitation of the acts or omissions with which the operator*
6 *is charged. The order shall state all penalties and requirements*
7 *imposed on the operator in connection with the acts or omissions*
8 *charged and the order shall provide references to the provisions*
9 *of this code and the regulations that support the imposition of the*
10 *penalties and requirements.*

11 (b) *An order requiring an operator to cease and desist*
12 *operations pursuant to Section 3270.3 shall specify the operations*
13 *that the operator is required to cease and desist and shall provide*
14 *a detailed explanation of the steps that the operator shall take*
15 *before the supervisor will permit the operations to resume.*

16 (c) *An order of the supervisor or a district deputy shall be in*
17 *writing and shall be served on the operator by personal service*
18 *or by certified mail.*

19 (d) *Whenever the supervisor or a district deputy issues ~~any~~ a*
20 *written order concerning ~~any~~ an operation, an appeal may be made*
21 *from ~~such~~ the order pursuant to the procedures contained in Article*
22 *6 (commencing with Section 3350). The order shall inform the*
23 *operator of its right to appeal the order.*

24 SEC. 2. Section 3236.5 of the Public Resources Code is
25 amended to read:

1 3236.5. (a) A person who violates this chapter or a regulation
2 implementing this chapter is subject to a civil penalty not to exceed
3 twenty-five thousand dollars (\$25,000) for each violation. ~~Acts~~
4 ~~An act of God and acts an act of vandalism beyond the reasonable~~
5 ~~control of the operator shall not be considered a violation. The~~
6 ~~civil penalty shall be imposed by an order of the supervisor~~
7 ~~pursuant to Section 3225 upon a determination that a violation has~~
8 ~~been committed by the person charged, following notice to the~~
9 ~~person and an opportunity to be heard. The notice shall be served~~
10 ~~by personal service or certified mail, and shall inform the alleged~~
11 ~~violation of the date, time, and place of the hearing, the activity that~~
12 ~~is alleged to be a violation, the statute or regulation violated, and~~
13 ~~the hearing and judicial review procedures. The notice shall be~~
14 ~~provided at least 30 days before the hearing. The hearing shall be~~
15 ~~held before the supervisor or the supervisor's designee in~~
16 ~~Sacramento or in the district in which the violation occurred. The~~
17 ~~hearing is not required to be conducted pursuant to Chapter 5~~
18 ~~(commencing with Section 11500) of Part 1 of Division 3 of Title~~
19 ~~2 of the Government Code. The imposition of a civil penalty under~~
20 ~~this section shall be in addition to any other penalty provided by~~
21 ~~law for the violation. When establishing the amount of the civil~~
22 ~~penalty pursuant to this section, the supervisor shall consider, in~~
23 ~~addition to other relevant circumstances, (1) the all of the~~
24 ~~following:~~

- 25 (1) ~~The extent of harm caused by the violation, (2) the.~~
- 26 (2) ~~The persistence of the violation, (3) the.~~
- 27 (3) ~~The pervasiveness of the violation, and (4) the.~~
- 28 (4) ~~The number of prior violations by the same violator.~~

29 (b) ~~Notwithstanding this chapter, an An~~ order of the supervisor
30 imposing a civil penalty shall ~~not~~ be reviewable pursuant to Article
31 6 (commencing with Section 3350). ~~A person upon whom a civil~~
32 ~~penalty is imposed by a final order of the supervisor may obtain~~
33 ~~judicial review of that final order by seeking a writ of mandate~~
34 ~~pursuant to Section 1094.5 of the Code of Civil Procedure within~~
35 ~~30 days of the date of that final order. When the order of the~~
36 ~~supervisor has become final, and the penalty has not been paid,~~
37 ~~the supervisor may apply to the appropriate superior court for an~~
38 ~~order directing payment of the civil penalty. The supervisor may~~
39 ~~also seek from the court an order directing that production from~~
40 ~~the well or use of the production facility that is the subject of the~~

1 civil penalty order be discontinued until the violation has been
2 remedied to the satisfaction of the supervisor and the civil penalty
3 has been paid.

4 (c) Any amount collected under this section shall be deposited
5 in the Oil, Gas, and Geothermal Administrative Fund.

6 SEC. 3. Section 3350 of the Public Resources Code is repealed.

7 ~~3350. The lessor, lessee, or any operator or any well owner, or
8 the owner of any rig, derrick, or other operating structure, or his
9 local agent, shall within 10 days from the date of the service of
10 any order from the supervisor or a district deputy, other than the
11 order contemplated by Section 3308, either comply with the order
12 or file with the supervisor or the district deputy a written statement
13 that the order is not acceptable, and that appeal from the order is
14 taken to the director under the provisions of this chapter.~~

15 ~~Any lessor, lessee, or operator affected by an order made
16 pursuant to Section 3308 may, within 10 days from the posting of
17 the copy of the order, file with the supervisor a written appeal
18 therefrom to the director under the provisions of this chapter.~~

19 ~~Any such appeal shall operate as a stay of any order issued
20 pursuant to this chapter.~~

21 SEC. 4. Section 3350 is added to the Public Resources Code,
22 to read:

23 3350. (a) The operator of a well or a production facility to
24 whom the supervisor or district deputy has issued an order pursuant
25 to this chapter may file a notice of appeal to the director from that
26 order. The notice of appeal shall be in writing and shall be filed
27 with the supervisor or with the district deputy who issued the order.
28 The operator shall file the appeal within 10 days of the service of
29 the order, or within 10 days of the posting of a copy of an order
30 made pursuant to Section 3308. Failure of the operator to file an
31 appeal from the order within the 10-day period shall be a waiver
32 by the operator of its rights to challenge the order. If the order,
33 other than an order made pursuant to Section 3308, is served by
34 mail, the time for responding shall be determined as provided in
35 Section 1013 of the Code of Civil Procedure.

36 (b) The filing of a written notice of appeal shall operate as a
37 stay of the order, except when an order for remedial work or an
38 order to cease and desist operations is issued as an emergency
39 order pursuant to Section 3226. If the order is an emergency order,
40 the operator shall immediately cease and desist the specified

1 operations and shall perform whatever work is required by the
2 order to alleviate the emergency or shall permit the agents
3 appointed by the supervisor to perform that work. If the order is
4 set aside or modified on appeal, the costs incurred by the operator
5 for whatever work is not required by the set aside or modified
6 order shall be refunded to the operator by the supervisor or the
7 costs incurred by the supervisor for the work shall not be imposed
8 on the operator. If the operator believes that it will be irretrievably
9 injured by the performance of the work required to alleviate the
10 emergency pending the outcome of the appeal, the operator may
11 seek an order from the appropriate superior court restraining the
12 enforcement of the order pending the outcome of the appeal.

13 SEC. 5. Section 3351 of the Public Resources Code is repealed.

14 ~~3351. Immediately upon filing of a notice of appeal, the director
15 shall call for a public hearing upon the appeal.~~

16 ~~The hearing upon the appeal before the director shall be de novo
17 and at such place in the district as the director may designate.~~

18 SEC. 6. Section 3351 is added to the Public Resources Code,
19 to read:

20 3351. (a) A hearing shall be provided in accordance with
21 Chapter 5 (commencing with Section 11500) of Part 1 of Division
22 3 of Title 2 of the Government Code only in an appeal from an
23 order in the following circumstances:

24 (1) Issued pursuant to a Section 3237 finding that the operator's
25 wells are deserted and should be plugged and abandoned.

26 (2) Imposing civil penalties totaling more than ten thousand
27 dollars (\$10,000).

28 (3) Rescinding an injection project approval for a project that
29 has already commenced.

30 (4) Imposing a life-of-well bond or a life-of-production facility
31 bond.

32 (b) An order issued pursuant to Section 3225 shall satisfy the
33 requirement of Section 11503 of the Government Code that an
34 accusation be filed.

35 (c) For an appeal of an order that is not described in subdivision
36 (a), a hearing shall be conducted by the director in accordance with
37 Sections 3352 and 3353.

38 (d) For an appeal of an order that is described in subdivision
39 (a) and is also an emergency order for remedial work or to cease
40 and desist operations, a hearing shall be conducted by the director

1 in accordance with Sections 3352 and 3353 for the limited purpose
2 of considering the emergency order for remedial work or to cease
3 and desist operations. All other penalties and requirements imposed
4 by the order shall be considered at a hearing provided in accordance
5 with Chapter 5 (commencing with Section 11500) of Part 1 of
6 Division 3 of Title 2 of the Government Code.

7 SEC. 7. Section 3352 of the Public Resources Code is repealed.

8 ~~3352. Within 10 days from the date of the taking of the appeal,~~
9 ~~a minimum 20 days notice in writing shall be given to the appellant~~
10 ~~of the time and place of the hearing. If the director determines that~~
11 ~~there is an immediate threat to human health and safety or to the~~
12 ~~environment, the director may shorten the notice period to 10 days.~~
13 ~~For good cause, and if the director determines that there is not an~~
14 ~~immediate threat, the director may postpone the hearing, on the~~
15 ~~application of the appellant, the supervisor, or the district deputy,~~
16 ~~for a period not to exceed 30 days.~~

17 SEC. 8. Section 3352 is added to the Public Resources Code,
18 to read:

19 3352. (a) A hearing conducted by the director shall adhere to
20 the following:

21 (1) When an order is not issued as an emergency order, within
22 30 days from the date of the service of the notice of appeal, the
23 director shall provide to the operator notice of the time and place
24 of the hearing. The hearing shall take place within 30 days after
25 the date of the director's notice. The notice shall inform the
26 operator that the director may extend the date of the hearing for
27 up to 60 days for good cause upon application of the operator or
28 the supervisor.

29 (2) When an order has been issued as an emergency order, within
30 10 days from the date of the service of the notice of appeal, the
31 director shall provide to the operator notice of the time and place
32 of the hearing. The hearing shall take place within 20 days after
33 the date of the director's notice. The notice shall inform the
34 operator that the director may extend the date of the hearing for
35 up to 30 days for good cause upon application of the operator or
36 the supervisor.

37 (b) The director shall conduct the hearing within the district
38 where the majority of the wells or production facilities that are the
39 subject of the order are located, or the hearing may be conducted
40 at a location outside of that district upon application of the operator.

1 (c) The notice of hearing shall inform the operator of its right
2 to file a written answer to the charges no later than 10 days before
3 the date of the hearing. The notice also shall inform the operator
4 that it has the right to present oral and documentary evidence at
5 the hearing.

6 SEC. 9. Section 3353 of the Public Resources Code is repealed.

7 ~~3353. (a) The director, after hearing, shall affirm, set aside,
8 or modify the order from which the appeal is taken.~~

9 ~~(b) Within 20 days from the date of hearing the evidence, the
10 director shall make a written decision with respect to the order
11 appealed from, unless the appellant and the director agree to a
12 longer period within which the decision may be made. The decision
13 of the director shall forthwith be filed with the supervisor, and
14 upon that filing shall be final. In case the order is affirmed or
15 modified, the director shall retain jurisdiction until such time as
16 the work ordered to be done by the order is finally completed.~~

17 ~~(c) The written decision shall be served upon the appellant and
18 shall supersede the previous order of the supervisor or district
19 deputy. In case no written decision is made by the director pursuant
20 to subdivision (b), the order of the supervisor or district deputy
21 shall be effective and subject only to review by writ of
22 administrative mandamus from the superior court as provided in
23 this article.~~

24 SEC. 10. Section 3353 is added to the Public Resources Code,
25 to read:

26 3353. (a) Within 30 days after the close of a hearing conducted
27 by the director, the director shall issue a written decision affirming,
28 setting aside, or modifying the order from which the appeal was
29 taken. The director's written decision shall be based upon the
30 preponderance of the evidence and shall set forth the director's
31 factual findings, legal conclusions, and rationale for the result. The
32 director may extend the 30-day period for issuing the written
33 decision if the extension is agreed to by the operator.

34 (b) The director shall file the written decision with the supervisor
35 and serve it on the operator as soon as it has been completed, at
36 which time the decision shall be deemed final. The director's
37 decision shall supersede the order of the supervisor from which
38 the appeal was made. If the director affirmed or modified the order,
39 the director shall retain jurisdiction until the operator has completed
40 the work required to be performed by the order.

1 SEC. 11. Section 3354 of the Public Resources Code is
2 repealed.

3 ~~3354. The decision of the director may be reviewed by writ of~~
4 ~~administrative mandamus from the superior court of the county in~~
5 ~~which the district is situated, if taken within 10 days from the date~~
6 ~~of the service of the decision upon the appellant, as provided in~~
7 ~~Section 3353.~~

8 SEC. 12. Section 3354 is added to the Public Resources Code,
9 to read:

10 3354. (a) Following a hearing conducted by the director
11 pursuant to Sections 3352 and 3353, the operator may obtain
12 judicial review of the decision of the director by filing a petition
13 for writ of administrative mandamus in the superior court of the
14 county where the division’s district office from which the order
15 was issued is located. The operator shall file the petition within
16 30 days after the date the operator was served with the decision.

17 (b) Following a hearing conducted in accordance with Chapter
18 5 (commencing with Section 11500) of Part 1 of Division 3 of
19 Title 2 of the Government Code, the operator may obtain judicial
20 review of the decision pursuant to Section 11523 of the
21 Government Code.

22 SEC. 13. Section 3355 of the Public Resources Code is
23 repealed.

24 ~~3355. No new or additional evidence shall be introduced in the~~
25 ~~court, but the cause shall be heard upon the record of the director.~~
26 ~~The review shall not be extended further than to determine whether~~
27 ~~or not:~~

- 28 ~~(a) The director acted without or in excess of his jurisdiction.~~
- 29 ~~(b) The order, decision, or award was procured by fraud.~~
- 30 ~~(c) The order, decision, rule, or regulation is unreasonable.~~
- 31 ~~(d) The order, decision, regulation, or award is clearly~~
32 ~~unsupported by the evidence.~~

33 SEC. 14. Section 3355 is added to the Public Resources Code,
34 to read:

35 3355. When an operator seeks judicial review of a decision of
36 the director, including a decision following a hearing conducted
37 in accordance with Chapter 5 (commencing with Section 11500)
38 of Part 1 of Division 3 of Title 2 of the Government Code, the
39 court shall hear the cause on the record before the director or an
40 administrative law judge. New or additional evidence shall not be

1 introduced in court. The court's inquiry shall extend to whether
2 the director acted without or in excess of jurisdiction, whether
3 there was a fair hearing, and whether there is any prejudicial abuse
4 of discretion. Abuse of discretion is established if the administrative
5 proceeding has not been conducted in the manner required by law,
6 the decision is not supported by the findings, or the findings are
7 not supported by substantial evidence in light of the whole record.

8 SEC. 15. Section 3356 of the Public Resources Code is
9 repealed.

10 ~~3356. If a review is not taken within 10 days, or if taken, in~~
11 ~~case the decision of the director is affirmed, any charge, including~~
12 ~~penalty and interest thereon, imposed by the director shall~~
13 ~~constitute a lien which upon recordation or filing pursuant to~~
14 ~~Section 7171 of the Government Code, attaches to real or personal~~
15 ~~property. The lien upon the property shall be enforced in the same~~
16 ~~manner as are other liens on real property and personal property~~
17 ~~of the debtor. Upon the request of the supervisor, the State~~
18 ~~Controller shall bring an action for the enforcement of the lien in~~
19 ~~the manner provided in this chapter.~~

20 SEC. 16. Section 3356 is added to the Public Resources Code,
21 to read:

22 3356. If the operator does not appeal an order, if the operator
23 does not timely seek judicial review of a decision affirming or
24 modifying an order within the time provided in Section 3354, or
25 if the operator has timely sought and obtained judicial review and
26 the court has affirmed the decision, then any charge, including
27 penalty and interest, that the decision permits the supervisor to
28 impose on the operator for work performed by the supervisor or
29 the supervisor's agents shall constitute a state tax lien against the
30 real and personal property of the operator pursuant to Section 3423.

31 SEC. 17. Section 3743 of the Public Resources Code is
32 amended to read:

33 ~~3743. Whenever~~ *(a) An order of the supervisor or a district*
34 *deputy issued pursuant to this chapter shall provide a clear and*
35 *concise recitation of the acts or omissions with which the operator*
36 *is charged. The order shall state all penalties and requirements*
37 *imposed on the operator in connection with the acts or omissions*
38 *charged and the order shall provide citations to the provisions of*
39 *this code and the regulations that support the imposition of the*
40 *penalties and requirements.*

1 **(b)** *An order of the supervisor or a district deputy shall be in*
2 *writing and shall be served on the operator by personal service*
3 *or by certified mail.*

4 **(c)** *Whenever the supervisor or a district deputy makes or gives*
5 *any written direction concerning the drilling, testing, or other*
6 *operations in any well drilled, in process of drilling, or being*
7 *abandoned, and the operator, owner, or representative of either,*
8 *serves written notice, either personally or by mail, addressed to*
9 *the supervisor, or to the district deputy at his or her office in the*
10 *district, requesting that a definite order be made upon ~~such~~ the*
11 *subject, the supervisor or the district deputy shall, within five days*
12 *after receipt of the notice, deliver a final written order on the*
13 *subject matter.*

14 **(d)** *Whenever the supervisor or a district deputy issues any*
15 *written order concerning an operation, an appeal may be made*
16 *from the order pursuant to Sections 3762 to 3768, inclusive. The*
17 *order shall inform the operator of its right to appeal the order.*

18 SEC. 18. Section 3744 of the Public Resources Code is
19 amended to read:

20 3744. (a) Within 30 days from the date of service of an order
21 made pursuant to Section 3743, *or if there has been an appeal*
22 *from the order to the director, within 30 days after service of the*
23 *decision of the director, or if a review has been taken of the order*
24 *of the director, within 10 days after the affirmance of the order,*
25 the operator shall commence in good faith the work ordered and
26 continue it until completion. If the work has not been commenced
27 and continued to completion, the supervisor may appoint necessary
28 agents to enter the premises and perform the work. An accurate
29 account of the expenditures shall be kept. Any amount so expended
30 constitutes a lien against the real or personal property of the
31 operator upon which the work is done and the lien has the force,
32 effect, and priority of a judgment lien pursuant to Section 3772.

33 **(b)** Notwithstanding Section 3741, 3743, or 3755, if the
34 supervisor determines that an emergency exists, the supervisor
35 may make formal or emergency orders or undertake any other
36 action that the supervisor determines to be necessary for the
37 protection of life, health, property, or natural resources.

38 SEC. 19. Section 3762 of the Public Resources Code is
39 repealed.

1 ~~3762. The lessor, lessee, or any operator or any well owner, or~~
2 ~~the owner of any rig, derrick, or other operating structure, or his~~
3 ~~local agent, shall, within 10 days from the date of the service of~~
4 ~~any order from the supervisor or a district deputy, either comply~~
5 ~~with the order or file with the supervisor or the district deputy a~~
6 ~~written statement that the order is not acceptable, and that appeal~~
7 ~~from the order is taken to the director under the provisions of this~~
8 ~~chapter.~~

9 ~~The appeal shall operate as a stay of any order issued pursuant~~
10 ~~to this chapter.~~

11 SEC. 20. Section 3762 is added to the Public Resources Code,
12 to read:

13 3762. (a) The operator of a well to whom the supervisor or
14 district deputy has issued an order pursuant to this chapter may
15 file a notice of appeal to the director from that order. The notice
16 of appeal shall be in writing and shall be filed with the supervisor
17 or with the district deputy who issued the order. The operator shall
18 file the appeal within 10 days of the service of the order. Failure
19 of the operator to file an appeal from the order within the 10-day
20 period shall be a waiver by the operator of its rights to challenge
21 the order. If the order is served by mail, the time for responding
22 shall be determined as provided in Section 1013 of the Code of
23 Civil Procedure.

24 (b) The filing of a written notice of appeal shall operate as a
25 stay of the order, except when an order for remedial work is issued
26 as an emergency order pursuant to Section 3744. If the order is an
27 emergency order, the operator shall immediately perform whatever
28 work is required by the order to alleviate the emergency or shall
29 permit the agents appointed by the supervisor to perform that work.
30 If the order is set aside or modified on appeal, the costs incurred
31 by the operator for whatever work is not required by the set aside
32 or modified order shall be refunded to the operator by the
33 supervisor or the costs incurred by the supervisor for the work
34 shall not be imposed on the operator. If the operator believes that
35 it will be irretrievably injured by the performance of the work
36 required to alleviate the emergency pending the outcome of the
37 appeal, the operator may seek an order from the appropriate
38 superior court restraining the enforcement of the order pending
39 the outcome of the appeal.

1 SEC. 21. Section 3763 is added to the Public Resources Code,
2 to read:

3 3763. (a) A hearing shall be provided in accordance with
4 Chapter 5 (commencing with Section 11500) of Part 1 of Division
5 3 of Title 2 of the Government Code only in an appeal from an
6 order in the following circumstances:

7 (1) Issued pursuant to a Section 3755 finding that the operator’s
8 wells are deserted and should be plugged and abandoned.

9 (2) Rescinding an injection project approval for a project that
10 has already commenced.

11 (b) An order issued pursuant to Section 3743 shall satisfy the
12 requirement of Section 11503 of the Government Code that an
13 accusation be filed.

14 (c) For an appeal of an order that is not described in subdivision
15 (a), a hearing shall be conducted by the director in accordance with
16 Sections 3764 and 3765.

17 (d) For an appeal of an order that is described in subdivision
18 (a) and is also an emergency order for remedial work, a hearing
19 shall be conducted by the director in accordance with Sections
20 3352 and 3353 for the limited purpose of considering the
21 emergency order for remedial work. All other penalties and
22 requirements imposed by the order shall be considered at a hearing
23 provided in accordance with Chapter 5 (commencing with Section
24 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

25 SEC. 22. Section 3764 of the Public Resources Code is
26 repealed.

27 ~~3764. Within 10 days from the taking of the appeal, 10 days’~~
28 ~~notice in writing shall be given to the appellant of the time and~~
29 ~~place of the hearing. For good cause, the director may postpone~~
30 ~~the hearing, on the application of the appellant or the supervisor,~~
31 ~~or the district deputy, for a period not to exceed 10 days.~~

32 SEC. 23. Section 3764 is added to the Public Resources Code,
33 to read:

34 3764. (a) A hearing conducted by the director shall adhere to
35 the following:

36 (1) When an order is not issued as an emergency order, within
37 30 days from the date of the service of the notice of appeal, the
38 director shall provide to the operator notice of the time and place
39 of the hearing. The hearing shall take place within 30 days after
40 the date of the director’s notice. The notice shall inform the

1 operator that the director may extend the date of the hearing for
2 up to 60 days for good cause upon application of the operator or
3 the supervisor.

4 (2) When an order has been issued as an emergency order, within
5 10 days from the date of the service of the notice of appeal, the
6 director shall provide to the operator notice of the time and place
7 of the hearing. The hearing shall take place within 20 days after
8 the date of the director's notice. The notice shall inform the
9 operator that the director may extend the date of the hearing for
10 up to 30 days for good cause upon application of the operator or
11 the supervisor.

12 (b) The director shall conduct the hearing within the district
13 where the majority of the wells that are the subject of the order
14 are located, or the hearing may be conducted at a location outside
15 of that district upon application of the operator.

16 (c) The notice of hearing shall inform the operator of its right
17 to file a written answer to the charges no later than 10 days before
18 the date of the hearing. The notice also shall inform the operator
19 that it has the right to present oral and documentary evidence at
20 the hearing.

21 SEC. 24. Section 3765 of the Public Resources Code is
22 repealed.

23 ~~3765. The director, after hearing, shall affirm, set aside, or~~
24 ~~modify the order from which the appeal is taken.~~

25 ~~Within 10 days after hearing the evidence, the director shall~~
26 ~~make a written decision with respect to the order appealed from.~~
27 ~~The decision of the director shall forthwith be filed with the~~
28 ~~supervisor and upon such filing shall be final. In case the order is~~
29 ~~affirmed or modified, the director shall retain jurisdiction until~~
30 ~~such time as the work ordered to be done by the order is finally~~
31 ~~completed.~~

32 ~~The written decision shall be served upon the lessor, lessee, or~~
33 ~~any operator or any well owner, or the owner of any rig, derrick,~~
34 ~~or other operating structure, or his local agent, and shall supersede~~
35 ~~the previous order of the supervisor. In case no written decision~~
36 ~~is made by the director within 30 days after the date of notice of~~
37 ~~hearing as provided in Section 3764, the order of the supervisor~~
38 ~~shall be effective upon the supervisor's notifying any such person~~
39 ~~that the director has failed to make a decision and subject only to~~

1 review by writ of certiorari from the superior court as provided in
2 this chapter.

3 SEC. 25. Section 3765 is added to the Public Resources Code,
4 to read:

5 3765. (a) Within 30 days after the close of a hearing conducted
6 by the director, the director shall issue a written decision affirming,
7 setting aside, or modifying the order from which the appeal was
8 taken. The director's written decision shall be based upon the
9 preponderance of the evidence and shall set forth the director's
10 factual findings, legal conclusions, and rationale for the result. The
11 director may extend the 30-day period for issuing the written
12 decision provided that the extension is agreed to by the operator.

13 (b) The director shall file the written decision with the supervisor
14 and serve it on the operator as soon as it has been completed, at
15 which time the decision shall be deemed final. The director's
16 decision shall supersede the order of the supervisor from which
17 the appeal was made. If the director affirmed or modified the order,
18 the director shall retain jurisdiction until the operator has completed
19 the work required to be performed by the order.

20 SEC. 26. Section 3766 of the Public Resources Code is
21 repealed.

22 ~~3766. The decision of the director may be reviewed by writ of~~
23 ~~certiorari from the superior court of the county in which the well,~~
24 ~~or wells, affected by the order is situated, if taken within 10 days~~
25 ~~after the service of the decision upon the lessor, lessee, or any~~
26 ~~operator or any well owner, or the owner of any rig, derrick, or~~
27 ~~other operating structure, or his local agent, as provided in Section~~
28 ~~3765, or within 10 days after the decision upon petition by the~~
29 ~~supervisor. If no written decision is made by the director as~~
30 ~~specified in Section 3765, the order of the supervisor may be~~
31 ~~reviewed by writ of certiorari from the superior court of that county~~
32 ~~within 10 days after the supervisor notifies any such person of that~~
33 ~~fact. The writ shall be made returnable not later than 10 days after~~
34 ~~its issuance and it shall direct the director to certify the director's~~
35 ~~record in the cause to the court. On the return day the cause shall~~
36 ~~be heard by the court unless for good cause it is continued, but no~~
37 ~~continuance shall be permitted for a longer period than 30 days.~~

38 SEC. 27. Section 3766 is added to the Public Resources Code,
39 to read:

1 3766. (a) Following a hearing conducted by the director
2 pursuant to Sections 3764 and 3765, the operator may obtain
3 judicial review of the decision of the director by filing a petition
4 for writ of administrative mandamus in the superior court of the
5 county where the division's district office from which the order
6 was issued is located. The operator shall file the petition within
7 30 days after the date the operator was served with the decision.

8 (b) Following a hearing conducted in accordance with Chapter
9 5 (commencing with Section 11500) of Part 1 of Division 3 of
10 Title 2 of the Government Code, the operator may obtain judicial
11 review of the decision pursuant to Section 11523 of the
12 Government Code.

13 SEC. 28. Section 3767 of the Public Resources Code is
14 repealed.

15 ~~3767. No new or additional evidence shall be introduced in the~~
16 ~~court, but the cause shall be heard upon the record of the director.~~
17 ~~The review shall not be extended further than to determine whether~~
18 ~~or not:~~

19 ~~(a) The director or supervisor acted without or in excess of~~
20 ~~jurisdiction.~~

21 ~~(b) The order, decision, or award was procured by fraud.~~

22 ~~(c) The order, decision, rule, or regulation is unreasonable.~~

23 ~~(d) The order, decision, regulation, or award is clearly~~
24 ~~unsupported by the evidence.~~

25 SEC. 29. Section 3767 is added to the Public Resources Code,
26 to read:

27 3767. When an operator seeks judicial review of a decision of
28 the director, including a decision following a hearing conducted
29 in accordance with Chapter 5 (commencing with Section 11500)
30 of Part 1 of Division 3 of Title 2 of the Government Code, the
31 court shall hear the cause on the record before the director or an
32 administrative law judge. New or additional evidence shall not be
33 introduced in court. The court's inquiry shall extend to whether
34 the director acted without or in excess of jurisdiction, whether
35 there was a fair hearing, and whether there is any prejudicial abuse
36 of discretion. Abuse of discretion is established if the administrative
37 proceeding has not been conducted in the manner required by law,
38 the decision is not supported by the findings, or the findings are
39 not supported by substantial evidence in light of the whole record.

1 SEC. 30. Section 3768 of the Public Resources Code is
2 repealed.

3 ~~3768. If a review is not taken within 10 days, or if taken, in~~
4 ~~case the decision of the director, or, if there is no decision, the~~
5 ~~order of the supervisor, is affirmed, any charge, including penalty~~
6 ~~and interest thereon, imposed by the director or supervisor shall~~
7 ~~constitute a lien which, upon recordation or filing pursuant to~~
8 ~~Section 7171 of the Government Code, attaches to real or personal~~
9 ~~property. The lien upon the property shall be enforced in the same~~
10 ~~manner as are other liens on real property and personal property~~
11 ~~of the debtor. Upon the request of the supervisor, the Controller~~
12 ~~shall bring an action for the enforcement of the lien in the manner~~
13 ~~provided in this chapter.~~

14 SEC. 31. Section 3768 is added to the Public Resources Code,
15 to read:

16 3768. If the operator does not appeal an order, if the operator
17 does not timely seek judicial review of a decision affirming or
18 modifying an order within the time provided in Section 3766, or
19 if the operator has timely sought and obtained judicial review and
20 the court has affirmed the decision, then any charge, including
21 penalty and interest, that the decision permits the supervisor to
22 impose on the operator for work performed by the supervisor or
23 the supervisor's agents shall constitute a state tax lien against the
24 real and personal property of the operator pursuant to Section 3772.

25 SEC. 32. The director may adopt emergency regulations for
26 the purposes of implementing Sections 3225, 3236.5, 3350, 3351,
27 3352, 3353, 3354, 3355, 3356, 3743, 3744, 3762, 3763, 3764,
28 3765, 3766, 3767, and 3768. Any emergency regulations, if
29 adopted, shall be adopted in accordance with Chapter 3.5
30 (commencing with Section 11340) of Part 1 of Division 3 of Title
31 2 of the Government Code, and for the purposes of that chapter,
32 including Section 11349.6 of the Government Code, the adoption
33 of these regulations is an emergency and shall be considered by
34 the Office of Administrative Law as necessary for the immediate
35 preservation of the public peace, health and safety, and general
36 welfare. Notwithstanding Chapter 3.5 (commencing with Section
37 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
38 including subdivision (e) of Section 11346.1 of the Government
39 Code, any emergency regulations adopted pursuant to this section
40 shall be filed with, but not be repealed by, the Office of

- 1 Administrative Law and shall remain in effect until revised by the
- 2 director.

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