

AMENDED IN SENATE AUGUST 17, 2010

AMENDED IN SENATE JULY 15, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

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, to repeal Sections 3352, 3353, 3764, and 3765 of, and to repeal and add Sections 3350, 3351, 3354, 3355, 3356, 3762, 3766, 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 amended, 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, *as determined in a hearing before the director.*

The bill, would also, among other things, require ~~all~~ 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, ~~except for certain emergency orders, and would specify certain procedures for an informal hearing before the director, including the conversion of an informal hearing, and would impose specified requirements with regard to an appeal of an emergency order.~~ *The bill would 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. (a) An order of the supervisor or a district deputy issued
- 4 pursuant to this chapter shall provide a clear and concise recitation
- 5 of the acts or omissions with which the operator is charged. The
- 6 order shall state all penalties and requirements imposed on the
- 7 operator in connection with the acts or omissions charged and the
- 8 order shall provide references to the provisions of this code and
- 9 the regulations that support the imposition of the penalties and
- 10 requirements.
- 11 (b) An order requiring an operator to cease and desist operations
- 12 pursuant to Section 3270.3 shall specify the operations that the
- 13 operator is required to cease and desist and shall provide a detailed
- 14 explanation of the steps that the operator shall take before the
- 15 supervisor will permit the operations to resume.

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

4 (d) When the supervisor or a district deputy issues a written
5 order concerning an operation, an appeal may be made from the
6 order pursuant to the procedures contained in Article 6
7 (commencing with Section 3350). The order shall inform the
8 operator of its right to appeal the order.

9 SEC. 2. Section 3236.5 of the Public Resources Code is
10 amended to read:

11 3236.5. (a) A person who violates this chapter or a regulation
12 implementing this chapter is subject to a civil penalty not to exceed
13 twenty-five thousand dollars (\$25,000) for each violation. An act
14 of God and an act of vandalism beyond the reasonable control of
15 the operator shall not be considered a violation. The civil penalty
16 shall be imposed by an order of the supervisor pursuant to Section
17 3225 upon a determination that a violation has been committed by
18 the person charged. The imposition of a civil penalty under this
19 section shall be in addition to any other penalty provided by law
20 for the violation. When establishing the amount of the civil penalty
21 pursuant to this section, the supervisor shall consider, in addition
22 to other relevant circumstances, all of the following:

23 (1) The extent of harm caused by the violation.

24 (2) The persistence of the violation.

25 (3) The pervasiveness of the violation.

26 (4) The number of prior violations by the same violator.

27 (b) An order of the supervisor imposing a civil penalty shall be
28 reviewable pursuant to Article 6 (commencing with Section 3350).
29 When the order of the supervisor has become final and the penalty
30 has not been paid, the supervisor may apply to the appropriate
31 superior court for an order directing payment of the civil penalty.
32 The supervisor may also seek from the court an order directing
33 that production from the well or use of the production facility that
34 is the subject of the civil penalty order be discontinued until the
35 violation has been remedied to the satisfaction of the supervisor
36 and the civil penalty has been paid.

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

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

1 SEC. 4. Section 3350 is added to the Public Resources Code,
2 to read:

3 3350. (a) The operator of a well or a production facility to
4 whom the supervisor or district deputy has issued an order pursuant
5 to this chapter may file a notice of appeal to the director from that
6 order. The notice of appeal shall be in writing and shall be filed
7 with the supervisor or with the district deputy who issued the order.
8 The operator shall file the appeal within 10 days of the service of
9 the order, or within 10 days of the posting of a copy of an order
10 made pursuant to Section 3308. Failure of the operator to file an
11 appeal from the order within the 10-day period shall be a waiver
12 by the operator of its rights to challenge the order. If the order,
13 other than an order made pursuant to Section 3308, is served by
14 mail, the time for responding shall be determined as provided in
15 Section 1013 of the Code of Civil Procedure.

16 (b) (1) The filing of a written notice of appeal shall operate as
17 a stay of the order, except when an order for remedial work or an
18 order to cease and desist operations is issued as an emergency
19 order pursuant to Section 3226. If the order is an emergency order,
20 the operator shall immediately cease and desist the specified
21 operations and shall perform whatever work is required by the
22 order to alleviate the emergency or shall permit the agents
23 appointed by the supervisor to perform that work. ~~If the order is~~
24 ~~set aside or modified on appeal, the costs incurred by the operator~~
25 ~~for whatever work is not required by the set aside or modified~~
26 ~~order shall be refunded to the operator by the supervisor or the~~
27 ~~costs incurred by the supervisor for the work shall not be imposed~~
28 ~~on the operator. If the operator believes that it will be irretrievably~~

29 (2) *If the emergency order is set aside or modified on appeal,*
30 *the supervisor shall refund the reasonable costs incurred by the*
31 *operator for whatever work is not required by the set-aside or*
32 *modified order or shall not impose costs for work performed by*
33 *the supervisor or the supervisor's agents if the work is excluded*
34 *from the modified order or the order is set aside.*

35 (3) (A) *The costs to be refunded pursuant to paragraph (2) by*
36 *the supervisor shall be determined in a hearing before the director*
37 *after the exhaustion of appeals. The operator shall have the burden*
38 *of proving the amount of costs to be refunded.*

1 (B) A determination by the director as to the amount of costs
2 to be refunded pursuant to paragraph (2) may be appealed by the
3 operator pursuant to subdivision (a) of Section 3354.

4 (4) If the operator believes that it will be irretrievably injured
5 by the performance of the work required to alleviate the emergency
6 pending the outcome of the appeal, the operator may seek an order
7 from the appropriate superior court restraining the enforcement of
8 the order pending the outcome of the appeal.

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

10 SEC. 6. Section 3351 is added to the Public Resources Code,
11 to read:

12 ~~3351. (a) Except as provided in subdivision (e), a hearing shall~~
13 ~~be provided in accordance with Chapter 5 (commencing with~~
14 ~~Section 11500) of Part 1 of Division 3 of Title 2 of the Government~~
15 ~~Code for an appeal from any order.~~

16 3351. (a) A hearing shall be provided in accordance with
17 Chapter 5 (commencing with Section 11500) of Part 1 of Division
18 3 of Title 2 of the Government Code only in an appeal from an
19 order in the following circumstances:

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

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

24 (3) Rescinding an injection project approval for a project that
25 has already commenced.

26 (4) Imposing a life-of-well bond or a life-of-production facility
27 bond.

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

31 ~~(e) For an appeal of an order that is also an emergency order~~
32 ~~for remedial work or to cease and desist operations, a hearing shall~~
33 ~~be conducted in accordance with Article 13 (commencing with~~
34 ~~Section 11460.10) of Chapter 4.5 of Part 1 of Division 3 of Title~~
35 ~~2 of the Government Code for the limited purpose of~~

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

39 (d) For an appeal of an order that is described in subdivision
40 (a) and is also an emergency order for remedial work or to cease

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

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

9 SEC. 8. *Section 3352 is added to the Public Resources Code,*
10 *to read:*

11 3352. (a) *A hearing conducted by the director shall adhere to*
12 *the following:*

13 (1) *When an order is not issued as an emergency order, within*
14 *30 days from the date of the service of the notice of appeal, the*
15 *director shall provide to the operator notice of the time and place*
16 *of the hearing. The hearing shall take place within 30 days after*
17 *the date of the director's notice. The notice shall inform the*
18 *operator that the director may extend the date of the hearing for*
19 *up to 60 days for good cause upon application of the operator or*
20 *the supervisor.*

21 (2) *When an order has been issued as an emergency order,*
22 *within 10 days from the date of the service of the notice of appeal,*
23 *the director shall provide to the operator notice of the time and*
24 *place of the hearing. The hearing shall take place within 20 days*
25 *after 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 30 days for good cause upon application of the operator or*
28 *the supervisor.*

29 (b) *The director shall conduct the hearing within the district*
30 *where the majority of the wells or production facilities that are*
31 *the subject of the order are located, or the hearing may be*
32 *conducted at a location outside of that district upon application*
33 *of the operator. The hearing shall be reported by a stenographic*
34 *reporter and may, in addition, be electronically recorded by either*
35 *party.*

36 (c) *The notice of hearing shall inform the operator of its right*
37 *to file a written answer to the charges no later than 10 days before*
38 *the date of the hearing. The notice also shall inform the operator*
39 *that it has the right to present oral and documentary evidence at*
40 *the hearing.*

1 (d) Upon a verified and timely petition of the operator, the
2 director may order the testimony of a witness at the hearing. The
3 petition shall be served upon the director and the other party within
4 5 days after the filing of an appeal and shall set forth the name
5 and address of the witness whose testimony is requested, to the
6 extent known; a showing of the materiality of the testimony; and
7 a showing that the witness cannot be compelled to testify absent
8 an order of the director. The supervisor may file an opposition to
9 the petition within 5 days after the petition is served. The director
10 shall either deny or grant the petition within 10 days after receipt
11 of the petition and receiving any opposition to the petition. Upon
12 granting a petition, the director shall issue a subpoena pursuant
13 to Section 3357 compelling the testimony of the witness at the
14 hearing.

15 (e) The director may convert a hearing pursuant to this section
16 to a formal hearing conducted in accordance with Chapter 5
17 (commencing with Section 11500) of Part 1 of Division 3 of Title
18 2 of the Government Code in any of the following circumstances:

19 (1) The operator makes a showing satisfactory to the director
20 that the order being appealed is likely to result in termination of
21 an established oil or gas producing or injection operation.

22 (2) It appears to the director that the hearing will involve
23 complex evidentiary or procedural issues that will cause more
24 than minimal delay or burdens.

25 (3) The operator and the supervisor agree and stipulate to
26 convert the hearing to a formal hearing.

27 (f) The conversion of a hearing pursuant to this section to a
28 formal hearing shall be conducted in accordance with Article 15
29 (commencing with Section 11470.10) of Chapter 4.5 of Part 1 of
30 Division 3 of Title 2 of the Government Code.

31 ~~SEC. 8.~~

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

33 SEC. 10. Section 3353 is added to the Public Resources Code,
34 to read:

35 3353. (a) Within 30 days after the close of a hearing conducted
36 by the director, the director shall issue a written decision affirming,
37 setting aside, or modifying the order from which the appeal was
38 taken. The director's written decision shall be based upon the
39 preponderance of the evidence and shall set forth the director's
40 factual findings, legal conclusions, and rationale for the result.

1 *The director may extend the 30-day period for issuing the written*
2 *decision if the extension is agreed to by the operator.*

3 *(b) The director shall file the written decision with the supervisor*
4 *and serve it on the operator as soon as the decision is complete,*
5 *at which time the decision shall be deemed final. The director’s*
6 *decision shall supersede the order of the supervisor from which*
7 *the appeal was made. If the director affirms or modifies the order,*
8 *the director shall retain jurisdiction until the operator completes*
9 *the work required to be performed by the order.*

10 ~~SEC. 9.~~

11 *SEC. 11.* Section 3354 of the Public Resources Code is
12 repealed.

13 ~~SEC. 10.~~

14 *SEC. 12.* Section 3354 is added to the Public Resources Code,
15 to read:

16 ~~3354. Following a hearing conducted in accordance with~~
17 ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division~~
18 ~~3 of Title 2 of the Government Code, or a hearing conducted in~~
19 ~~accordance with Article 13 (commencing with Section 11460.10)~~
20 ~~of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government~~
21 ~~Code, the operator may obtain judicial review of the decision~~
22 ~~pursuant to Section 11523 of the Government Code.~~

23 *3354. (a) Following a hearing conducted by the director*
24 *pursuant to Sections 3352 and 3353 or subdivision (b) of Section*
25 *3350, the operator may obtain judicial review of the decision of*
26 *the director by filing a petition for writ of administrative mandamus*
27 *in the superior court of the county where the division’s district*
28 *office from which the order was issued is located. The operator*
29 *shall file the petition within 30 days after the date the operator*
30 *was served with the decision.*

31 *(b) Following a hearing conducted in accordance with Chapter*
32 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
33 *2 of the Government Code, the operator may obtain judicial review*
34 *of the decision pursuant to Section 11523 of the Government Code.*

35 ~~SEC. 11.~~

36 *SEC. 13.* Section 3355 of the Public Resources Code is
37 repealed.

38 ~~SEC. 12.~~

39 *SEC. 14.* Section 3355 is added to the Public Resources Code,
40 to read:

1 3355. When an operator seeks judicial review of a decision of
2 the director, *including a decision* following a hearing conducted
3 in accordance with Chapter 5 (commencing with Section 11500)
4 of Part 1 of Division 3 of Title 2 of the Government Code, the
5 court shall hear the cause on the record before the director or an
6 administrative law judge. New or additional evidence shall not be
7 introduced in court. The court's inquiry shall extend to whether
8 the director acted without or in excess of jurisdiction, whether
9 there was a fair hearing, and whether there is any prejudicial abuse
10 of discretion. Abuse of discretion is established if the administrative
11 proceeding has not been conducted in the manner required by law,
12 the decision is not supported by the findings, or the findings are
13 not supported by substantial evidence in light of the whole record.

14 ~~SEC. 13.~~

15 *SEC. 15.* Section 3356 of the Public Resources Code is
16 repealed.

17 ~~SEC. 14.~~

18 *SEC. 16.* Section 3356 is added to the Public Resources Code,
19 to read:

20 3356. If the operator does not appeal an order, if the operator
21 does not timely seek judicial review of a decision affirming or
22 modifying an order within the time provided in Section 3354, or
23 if the operator has timely sought and obtained judicial review and
24 the court has affirmed the decision, then any charge, including
25 penalty and interest, that the decision permits the supervisor to
26 impose on the operator for work performed by the supervisor or
27 the supervisor's agents shall constitute a state tax lien against the
28 real and personal property of the operator pursuant to Section 3423.

29 ~~SEC. 15.~~

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

32 3743. (a) An order of the supervisor or a district deputy issued
33 pursuant to this chapter shall provide a clear and concise recitation
34 of the acts or omissions with which the operator is charged. The
35 order shall state all penalties and requirements imposed on the
36 operator in connection with the acts or omissions charged and the
37 order shall provide citations to the provisions of this code and the
38 regulations that support the imposition of the penalties and
39 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 or
3 by certified mail.

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

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

17 ~~SEC. 16.~~

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 from
22 the order to the director, within 30 days after service of the decision
23 of the director, or if a review has been taken of the order of the
24 director, within 10 days after the affirmance of the order, the
25 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. 17.~~

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

1 ~~SEC. 18.~~

2 *SEC. 20.* Section 3762 is added to the Public Resources Code,
3 to read:

4 3762. (a) The operator of a well to whom the supervisor or
5 district deputy has issued an order pursuant to this chapter may
6 file a notice of appeal to the director from that order. The notice
7 of appeal shall be in writing and shall be filed with the supervisor
8 or with the district deputy who issued the order. The operator shall
9 file the appeal within 10 days of the service of the order. Failure
10 of the operator to file an appeal from the order within the 10-day
11 period shall be a waiver by the operator of its rights to challenge
12 the order. If the order is served by mail, the time for responding
13 shall be determined as provided in Section 1013 of the Code of
14 Civil Procedure.

15 (b) (1) The filing of a written notice of appeal shall operate as
16 a stay of the order, except when an order for remedial work is
17 issued as an emergency order pursuant to Section 3744. If the order
18 is an emergency order, the operator shall immediately perform
19 whatever work is required by the order to alleviate the emergency
20 or shall permit the agents appointed by the supervisor to perform
21 that work. ~~If the order is set aside or modified on appeal, the costs~~
22 ~~incurred by the operator for whatever work is not required by the~~
23 ~~set aside or modified order shall be refunded to the operator by~~
24 ~~the supervisor or the costs incurred by the supervisor for the work~~
25 ~~shall not be imposed on the operator. If the operator believes that~~

26 (2) *If the emergency order is set aside or modified on appeal,*
27 *the supervisor shall refund the reasonable costs incurred by the*
28 *operator for whatever work is not required by the set-aside or*
29 *modified order or shall not impose costs for work performed by*
30 *the supervisor or the supervisor's agents if the work is excluded*
31 *from the modified order or the order is set aside.*

32 (3) (A) *The costs to be refunded pursuant to paragraph (2) by*
33 *the supervisor shall be determined in a hearing before the director*
34 *after the exhaustion of appeals. The operator shall have the burden*
35 *of proving the amount of costs to be refunded.*

36 (B) *A determination by the director as to the amount of costs*
37 *to be refunded pursuant to paragraph (2) may be appealed by the*
38 *operator pursuant to subdivision (a) of Section 3354.*

39 (4) *If the operator believes that it will be irretrievably injured*
40 *by the performance of the work required to alleviate the emergency*

1 pending the outcome of the appeal, the operator may seek an order
2 from the appropriate superior court restraining the enforcement of
3 the order pending the outcome of the appeal.

4 ~~SEC. 19.~~

5 *SEC. 21.* Section 3763 is added to the Public Resources Code,
6 to read:

7 ~~3763. (a) Except as provided in subdivision (e), a hearing shall~~
8 ~~be provided in accordance with Chapter 5 (commencing with~~
9 ~~Section 11500) of Part 1 of Division 3 of Title 2 of the Government~~
10 ~~Code for an appeal from any order.~~

11 *3763. (a) A hearing shall be provided in accordance with*
12 *Chapter 5 (commencing with Section 11500) of Part 1 of Division*
13 *3 of Title 2 of the Government Code only in an appeal from an*
14 *order in the following circumstances:*

15 *(1) Issued pursuant to a Section 3755 finding that the operator's*
16 *wells are deserted and should be plugged and abandoned.*

17 *(2) Rescinding an injection project approval for a project that*
18 *has already commenced.*

19 *(b) An order issued pursuant to Section 3743 shall satisfy the*
20 *requirement of Section 11503 of the Government Code that an*
21 *accusation be filed.*

22 ~~(e) For an appeal of an order that is also an emergency order for~~
23 ~~remedial work, a hearing shall be conducted in accordance with~~
24 ~~Article 13 (commencing with Section 11460.10) of Chapter 4.5~~
25 ~~of Part 1 of Division 3 of Title 2 of the Government Code for~~

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

29 *(d) For an appeal of an order that is described in subdivision*
30 *(a) and is also an emergency order for remedial work, a hearing*
31 *shall be conducted by the director in accordance with Sections*
32 *3764 and 3765 for the limited purpose of considering the*
33 *emergency order for remedial work. All other penalties and*
34 *requirements imposed by the order shall be considered at a hearing*
35 *provided in accordance with Chapter 5 (commencing with Section*
36 *11500) of Part 1 of Division 3 of Title 2 of the Government Code.*

37 ~~SEC. 20.~~

38 *SEC. 22.* Section 3764 of the Public Resources Code is
39 repealed.

1 SEC. 23. Section 3764 is added to the Public Resources Code,
2 to read:

3 3764. (a) A hearing conducted by the director shall adhere to
4 the following:

5 (1) When an order is not issued as an emergency order, within
6 30 days from the date of the service of the notice of appeal, the
7 director shall provide to the operator notice of the time and place
8 of the hearing. The hearing shall take place within 30 days after
9 the date of the director's notice. The notice shall inform the
10 operator that the director may extend the date of the hearing for
11 up to 60 days for good cause upon application of the operator or
12 the supervisor.

13 (2) When an order has been issued as an emergency order,
14 within 10 days from the date of the service of the notice of appeal,
15 the director shall provide to the operator notice of the time and
16 place of the hearing. The hearing shall take place within 20 days
17 after the date of the director's notice. The notice shall inform the
18 operator that the director may extend the date of the hearing for
19 up to 30 days for good cause upon application of the operator or
20 the supervisor.

21 (b) The director shall conduct the hearing within the district
22 where the majority of the wells that are the subject of the order
23 are located, or the hearing may be conducted at a location outside
24 of that district upon application of the operator. The hearing shall
25 be reported by a stenographic reporter and may, in addition, be
26 electronically recorded by either party.

27 (c) The notice of hearing shall inform the operator of its right
28 to file a written answer to the charges no later than 10 days before
29 the date of the hearing. The notice also shall inform the operator
30 that it has the right to present oral and documentary evidence at
31 the hearing.

32 (d) Upon a verified and timely petition of the operator, the
33 director may order the testimony of a witness at the hearing. The
34 petition shall be served upon the director and the other party within
35 5 days after the filing of an appeal and shall set forth the name
36 and address of the witness whose testimony is requested, to the
37 extent known; a showing of the materiality of the testimony; and
38 a showing that the witness cannot be compelled to testify absent
39 an order of the director. The supervisor may file an opposition to
40 the petition within 5 days after the petition is served. The director

1 shall either deny or grant the petition within 10 days after receipt
2 of the petition and receiving any opposition to the petition. Upon
3 granting a petition, the director shall issue a subpoena pursuant
4 to Section 3357 compelling the testimony of the witness at the
5 hearing.

6 (e) The director may convert a hearing pursuant to this section
7 to a formal hearing conducted in accordance with Chapter 5
8 (commencing with Section 11500) of Part 1 of Division 3 of Title
9 2 of the Government Code in any of the following circumstances:

10 (1) The operator makes a showing satisfactory to the director
11 that the order being appealed is likely to result in termination of
12 an established oil or gas producing or injection operation.

13 (2) It appears to the director that the hearing will involve
14 complex evidentiary or procedural issues that will cause more
15 than minimal delay or burdens.

16 (3) The operator and the supervisor agree and stipulate to
17 convert the hearing to a formal hearing.

18 (f) The conversion of a hearing pursuant to this section to a
19 formal hearing shall be conducted in accordance with Article 15
20 (commencing with Section 11470.10) of Chapter 4.5 of Part 1 of
21 Division 3 of Title 2 of the Government Code.

22 ~~SEC. 24.~~

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

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

27 3765. (a) Within 30 days after the close of a hearing conducted
28 by the director, the director shall issue a written decision affirming,
29 setting aside, or modifying the order from which the appeal was
30 taken. The director's written decision shall be based upon the
31 preponderance of the evidence and shall set forth the director's
32 factual findings, legal conclusions, and rationale for the result.
33 The director may extend the 30-day period for issuing the written
34 decision if the extension is agreed to by the operator.

35 (b) The director shall file the written decision with the supervisor
36 and serve it on the operator as soon as the decision is complete,
37 at which time the decision shall be deemed final. The director's
38 decision shall supersede the order of the supervisor from which
39 the appeal was made. If the director affirms or modifies the order,

1 *the director shall retain jurisdiction until the operator completes*
2 *the work required to be performed by the order.*

3 ~~SEC. 22.~~

4 *SEC. 26.* Section 3766 of the Public Resources Code is
5 repealed.

6 ~~SEC. 23.~~

7 *SEC. 27.* Section 3766 is added to the Public Resources Code,
8 to read:

9 ~~3766. Following a hearing conducted in accordance with~~
10 ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division~~
11 ~~3 of Title 2 of the Government Code, or a hearing conducted in~~
12 ~~accordance with Article 13 (commencing with Section 11460.10)~~
13 ~~of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government~~
14 ~~Code, the operator may obtain judicial review of the decision~~
15 ~~pursuant to Section 11523 of the Government Code.~~

16 *3766. (a) Following a hearing conducted by the director*
17 *pursuant to Sections 3764 and 3765 or subdivision (b) of Section*
18 *3762, the operator may obtain judicial review of the decision of*
19 *the director by filing a petition for writ of administrative mandamus*
20 *in the superior court of the county where the division's district*
21 *office from which the order was issued is located. The operator*
22 *shall file the petition within 30 days after the date the operator*
23 *was served with the decision.*

24 *(b) Following a hearing conducted in accordance with Chapter*
25 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
26 *2 of the Government Code, the operator may obtain judicial review*
27 *of the decision pursuant to Section 11523 of the Government Code.*

28 ~~SEC. 24.~~

29 *SEC. 28.* Section 3767 of the Public Resources Code is
30 repealed.

31 ~~SEC. 25.~~

32 *SEC. 29.* Section 3767 is added to the Public Resources Code,
33 to read:

34 *3767. When an operator seeks judicial review of a decision of*
35 *the director, including a decision following a hearing conducted*
36 *in accordance with Chapter 5 (commencing with Section 11500)*
37 *of Part 1 of Division 3 of Title 2 of the Government Code, the*
38 *court shall hear the cause on the record before the director or an*
39 *administrative law judge. New or additional evidence shall not be*
40 *introduced in court. The court's inquiry shall extend to whether*

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

7 ~~SEC. 26.~~

8 *SEC. 30.* Section 3768 of the Public Resources Code is
9 repealed.

10 ~~SEC. 27.~~

11 *SEC. 31.* Section 3768 is added to the Public Resources Code,
12 to read:

13 3768. If the operator does not appeal an order, if the operator
14 does not timely seek judicial review of a decision affirming or
15 modifying an order within the time provided in Section 3766, or
16 if the operator has timely sought and obtained judicial review and
17 the court has affirmed the decision, then any charge, including
18 penalty and interest, that the decision permits the supervisor to
19 impose on the operator for work performed by the supervisor or
20 the supervisor's agents shall constitute a state tax lien against the
21 real and personal property of the operator pursuant to Section 3772.

22 ~~SEC. 28.~~

23 *SEC. 32.* The director may adopt emergency regulations for
24 the purposes of implementing Sections 3225, 3236.5, 3350, 3351,
25 3352, 3353, 3354, 3355, 3356, 3743, 3744, 3762, 3763, 3764,
26 3765, 3766, 3767, and 3768. Any emergency regulations, if
27 adopted, shall be adopted in accordance with Chapter 3.5
28 (commencing with Section 11340) of Part 1 of Division 3 of Title
29 2 of the Government Code, and for the purposes of that chapter,
30 including Section 11349.6 of the Government Code, the adoption
31 of these regulations is an emergency and shall be considered by
32 the Office of Administrative Law as necessary for the immediate
33 preservation of the public peace, health and safety, and general
34 welfare. Notwithstanding Chapter 3.5 (commencing with Section
35 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
36 including subdivision (e) of Section 11346.1 of the Government
37 Code, any emergency regulations adopted pursuant to this section
38 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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