



May 3, 2017

Hon. Kevin de Leon
Senate President pro Tem
Chair - California Senate Rules Committee
Members – California Senate Rules Committee
State Capitol, Room 400
Sacramento, CA 95814

Re: Oppose the confirmation of Cliff Rechtschaffen to the PUC

President pro Tem and Senators,

Consumer Watchdog, Aguirre & Severson LLP, Food & Water Watch, Save Porter Ranch, and Rootskeeper write to oppose the confirmation of Governor Jerry Brown's senior aide Cliff Rechtschaffen to the California Public Utilities Commission (PUC). We urge the Senate Rules Committee to vote against this confirmation on the basis of Mr. Rechtschaffen's record of favoring the oil and gas industry under Governor Jerry Brown. Rechtschaffen's record shows that he will pander to the largest energy companies in the state at great expense to the public, to the proper role of government, and to fair play.

Rechtschaffen's dismissal of tough oil and gas regulators in the state on behalf of one of its largest oil companies is one of the saddest chapters in this state's unapologetic obeisance to Big Oil. It should not go without full and complete public disclosure in the confirmation process and thorough questioning of Mr. Rechtschaffen about details yet to be in the public record.

Legal records and investigative reporting have uncovered the fact that Rechtschaffen fired two top oil and gas regulators, Derek Chernow and Elena Miller, who were trying to make oil and gas drilling safer. Following the dismissals and the granting of a Kern fracking permit to Occidental Petroleum, the oil giant donated a total of \$500,000 to Governor Jerry Brown's Prop 30 ballot measure raising taxes. The public has a right to know exactly what happened and why. Rechtschaffen should not be confirmed without explaining himself, especially as he took over for Chernow after his dismissal and weakened well-head standards.

A signed declaration from Derek Chernow, former acting director of the Department of Conservation (DOC), spells out Mr. Rechtschaffen's role in the scandal precipitated by Occidental Petroleum that led to the poisoning of protected aquifers via the drilling of thousands of oil wastewater disposal wells. In the declaration, which is part of a RICO lawsuit brought by Kern farmers against the Brown Administration and oil companies for poisoning aquifers, Chernow describes how he, and his oil and gas supervisor Elena Miller, lost their jobs by trying to do them honestly and in compliance with applicable state and federal laws.¹

¹ See Derek Chernow's declaration here:

<http://www.consumerwatchdog.org/resources/ricolawsuit2ndamendedcomplaint.pdf>

After Brown's election, the oil industry had increased its applications for oil stimulation and wastewater injection permits. Chernow was trying to improve California's compliance with the Safe Drinking Water Act that requires groundwater be protected from oil waste injections that are so filthy they cannot even be used for hydraulic fracturing. He and his oil and gas supervisor, Elena Miller, were requiring oil producers to prove their wells would prevent migration of toxics into aquifers protected by state and federal law before getting permits.

The backlash from the oil industry against the regulators' demand that oil wells be remediated as a condition of obtaining permits—regulations that were on the books but never enforced—was intense. In early October 2011, Chernow described a weekly meeting with Secretary John Laird of the California Natural Resources Agency, under whose purview the DOC falls. "During the meeting, Laird took a call from Governor Brown," he wrote. "Laird finished the call and, when he hung up, he told me the Governor just received a call from Gray Davis who served as counsel for Occidental. Occidental wanted Governor Brown to fire me and the State Oil & Gas supervisor because of the alleged delays in permitting."

On October 19, 2011, media reports appeared in which Occidental Petroleum complained of being hurt by a hold up in permits. Chernow reported that Governor Brown's office and his energy advisor, Cliff Rechtschaffen, scheduled a meeting with him around October 28, 2011. "During the meeting, Rechtschaffen stated that DOGGR [The Department of Conservation's Division of Oil, Gas, and Geothermal Resources] must immediately fast track permit approval," Chernow stated. Rechtschaffen presented a document that resembled a proposal that oil companies had made earlier to allow permits without required engineering studies that Chernow and Miller had already rejected as in violation of federal law.

On November 2, 2011, Miller and Chernow attended a phone meeting with Rechtschaffen in which Miller told him that the proposal to approve permits for injections without complete engineering studies or well casing diagrams violated the Safe Water Drinking Act and that the US EPA had agreed with Miller and Chernow's assessment. Rechtschaffen insisted they must implement the proposal anyway. "Rechtschaffen told us this was an order from Governor Brown and must be followed," Chernow stated.

The next day, Chernow was fired because he and his oil and gas supervisor refused to violate the law that Mr. Rechtschaffen pressured them to break. Rechtschaffen immediately took over Chernow's job and fired Elena Miller as his first course of action. He then oversaw key personnel and policy changes to carry out the Governor's plan and turn the clock back to assisting the oil industry by rubberstamping their permits without environmental review.

He elevated a long-time DOGGR hand, Tim Kustic, to take Miller's place as oil and gas supervisor.² Kustic began his career in the petroleum industry and then spent 30 years at DOGGR at a time when the oil industry was used to the division being nothing more than its handmaiden. The oil and gas supervisor position had long been a career executive position. For Kustic, it was converted to a Governor's appointment that came with a big boost in pay. Kustic retired in 2013 on a generous state pension.³

² For Kustic's biography, see: <http://www.conservation.ca.gov/index/Documents/2011-17-2%20Tim%20Kustic%20named%20DOGGR%20chief.pdf>

³ Kustic was ultimately replaced with Steve Bohlen who quit in 2015 in the wake of directing state workers to investigate the oil and gas potential under Governor Brown's family ranch and

Additionally, Rechtschaffen brought back Jason Marshall from CalRecycle as the DOC's chief deputy director. Marshall had spent 18 years at DOC, including as legislative director, heading up the Office of Governmental and Environmental Relations, and then as chief deputy director overseeing policy.⁴ Rechtschaffen, Kustic and Marshall became a troika steering the rubberstamping of permits without the legally required environmental review and mitigation of wells, particularly for oil stimulation and injections in Kern County, the heart of the state's oil production.

Two months after the firings of Chernow and Miller, Kustic granted Occidental a permit to frack in Kern County without an environmental review to protect aquifers, violating US EPA standards. Four days after that, Occidental contributed \$250,000 to Prop 30, Governor Brown's effort to raise taxes, a legacy defining initiative that gave Brown a national reputation as fiscally responsible. Occidental made a second \$250,000 donation to Prop 30 seven months later.⁵

Once Mark Nechodom was named DOC director in December 2011, Rechtschaffen returned to the Governor's office.⁶ On Nechodom's watch—and with Rechtschaffen back as the point person in the Governor's office—the oil industry drilled more than 2,400 oilfield wastewater disposal wells into federally protected aquifers. Under the following DOC director David Bunn, chief deputy director Jason Marshall is said to continue to call the shots in favor of the oil industry. The DOC is currently asking for federal EPA exemptions to continue injections into protected aquifers and the Trump Administration is likely to be happy to comply.

Rechtschaffen should answer for how he let one of California's largest oil companies undermine oil and gas well safety standards. An appointee designated for the California Public Utilities Commission should be an individual who stands up to industry and protects workers, the public health, and the environment.

Rechtschaffen's undermining of well rules has had huge consequences. Chernow and Miller had begun drafting emergency regulations for cyclic steaming, one of the most prevalent and dangerous forms of fracking used in California. Their work had begun before the death of Chevron worker Robert David Taylor in an oil field in June 2011, which only reinforced the need for the rules that toughened standards, instituted guidelines, and called for accountability and transparency where previously there had been practically none.

on whose watch the Aliso Canyon well blowout began. See:

<http://www.sopr.org/news/2015/12/01/55963/california-s-top-oil-regulator-quits-after-controv/>

⁴ For Marshall's biography, see:

<http://www.conservation.ca.gov/index/AboutUs/Pages/JasonMarshall,ChiefDeputyDirector.aspx>

⁵ For more on oil industry quid pro quos, see:

<http://www.consumerwatchdog.org/resources/BrownsDirtyHands.pdf>

⁶ Nechodom would resign in 2015 days after the filing of the RICO lawsuit on behalf of Kern farmers alleging that Brown, the oil and gas division, and others including Nechodom conspired with oil companies to loosen regulations and allow illegal injections. See:

<http://www.latimes.com/local/lanow/la-me-head-of-oil-regulating-agency-quits-20150605-story.html>

If production well casings are damaged, cyclic steaming in one location can affect nearby wells, destabilizing the porous earth and opening up sinkholes. For example, Chevron's idle well Number 20 in a field west of Taft was known for spewing geysers of scalding hot oil, water, and rocks, and it was steaming when Chevron worker Robert David Taylor went to check on it in June 2011. As the Center for Public Integrity reported, "As Taylor approached the site, the ground gave way.⁷ He was sucked feet first into a burbling cauldron of fluids and poison gas. He screamed. A co-worker rushed to reach him with a piece of pipe, but it was too short. Within seconds, Taylor disappeared in the muck. It took 17 hours to recover what remained of his body." Chevron paid a fine of a mere \$350 for what amounted to avoidable murder.⁸

After the regulators were fired by Rechtschaffen and Governor Brown, Chernow and Miller's rules never saw the light of day.⁹ Without the regulations in place, oil companies carried on the dangerous practice of cyclic steaming without having to report everything from well pressures and conditions to proper posting of when and where cyclic steaming was taking place.

By undermining well rules as the Governor's point person on oil and gas issues, Rechtschaffen put public health and safety at risk. He blatantly ignored long-standing state and federal laws and regulations that help identify risks associated with aging and compromised wells through annual inspections, pathways for contamination of sub-surface aquifers, soil, and the air we breathe, and that allow for public comment and participation through requirements under the California Environmental Quality Act in Kern County, the state's largest oil producing county. Following these laws and regulations may have identified mitigation measures *before* damage occurred, as well as provided pertinent information to communities and workers facing these dangers.

A recent special report "Parched: Toxic Waters" by the National Geographic Channel (March 28, 2017) aired two important pieces of footage. In the first, Governor Brown makes his infamous claim that there will be setbacks, and deaths, but we will continue to move forward with oil and natural gas extraction. In the second clip, the Governor lays claim to the jump in permits issued since Chernow and Miller were fired. As the point person for oil and gas in the Governor's office, Cliff Rechtschaffen must be held accountable for both of those exclamations.

Rechtschaffen's willingness to carry out administration policies that directly endangered public health and safety is a key strike against his fitness to be a PUC commissioner, and flies in the face of his background as author of a leading textbook, *Environmental Justice: Law, Policy & Regulation*, and his role in co-founding the Environmental Law and Justice Clinic at Golden Gate University School of Law.

⁷ To read the Center for Public Integrity report on how Big Oil has captured Sacramento, see: <https://www.publicintegrity.org/2017/02/13/20685/big-oil-s-grip-california>

⁸ For more on the case of Robert David Taylor and well safety standards, see: <http://articles.latimes.com/2012/apr/14/local/la-me-oil-death-20120412>

⁹ For the failed effort to reform steam injection, see: <http://www.allgov.com/usa/ca/news/controversies/promised-reform-of-dangerous-steam-injection-oil-drilling-never-happened-151204?news=857975>

and

<http://www.latimes.com/local/california/la-me-oil-steam-20151129-story.html>

How are we to trust Rechtschaffen to sit as a PUC commissioner and do the right thing in regulating major investor-owned utilities? Will he back the PUC staff and its ratepayer advocates and hold these utilities to account, or will he instead buckle to political pressure from Southern California Edison, Sempra, or Pacific Gas & Electric? The Senate Rules Committee should pose these questions to him.

Southern California Gas And The Aliso Canyon Natural Gas Reserve

Rechtschaffen should also answer questions about Aliso Canyon and his role in the largest methane well blowout in US history – both what caused it and how it was dealt with. Rechtschaffen was part of an Administration cover up that kept information from the public and endangered their health.

Rechtschaffen’s ignoring of DOGGR standards may have directly led to the failure of injection well SS 25 in Aliso Canyon. As noted earlier, it is believed DOGGR did not make the required annual inspections of the wells in that storage field where some wells are a century old. Nor, does it appear DOGGR performed the required Area of Review on any injection wells that had been permitted since 1982, when the agency received primacy from the US EPA. This would have provided detailed information on well casings within a one-quarter mile radius of injection wells, and identified possible problems like those at SS 25.

When Rechtschaffen went to the December 2015 Paris climate summit, he stayed clear of the one all-consuming environmental issue back home—the Aliso Canyon natural gas reserve’s methane well blowout that became the largest in US history and the second largest oil and gas disaster after the BP oil spill. Methane is 86 times stronger a heat-trapping gas than carbon dioxide is over 20 years—and we may already be out of time to avoid the worst effects of global warming.

“While in Paris, Gov. Brown and members of his administration gave one self-congratulatory presentation after another that held up California as a model of climate leadership for the world to emulate—including how the state manages emissions from manure. (Manure and landfills were the topics senior advisor to the governor, Cliff Rechtschaffen, chose to discuss as a member of a COP21 panel on methane),” observed one environmentalist.¹⁰ “But not a word was spoken about the Aliso Canyon natural gas storage facility in Porter Ranch near Los Angeles...”

It was not until January 2016, that Governor Jerry Brown issued an emergency proclamation on the Aliso Canyon well blowout.¹¹ That proclamation swept aside any public investigation into the causes of the blowout that only the PUC has the authority to open, and gave SoCalGas cover to hire and direct consultants to determine the cause of the debacle, and to control when and what the public learns about it. As Brown’s trusted energy advisor, Rechtschaffen would have had to be a party to the proclamation’s nuances.

¹⁰ To read the blog, see: <http://www.ecowatch.com/and-the-climate-pretender-award-goes-to-1882132088.html>

¹¹ For Governor Brown’s Aliso Canyon proclamation, see: <https://www.gov.ca.gov/news.php?id=19264>

In the wake of the blowout's plugging, Rechtschaffen largely dismissed sickened Porter Ranch residents who remain subject to ongoing off-gassing from the broken well and who want the facility shuttered. The community has also reported cases of leukemia among members that may have been exposed to carcinogenic benzene during the well blowout, including a 7-year old child and a 62-year-old marathon runner.

At a meeting in the Governor's office in August 2016 between Save Porter Ranch, which represents the sickened community near Aliso Canyon, and Food & Water Watch, Rechtschaffen claimed that the Governor's office was "laser-focused on safety, making sure nothing happens until it's absolutely safe, has the highest safety standards."¹² But he refused to engage their request that the facility be permanently shuttered.

Indeed, Sempra uses Aliso Canyon as a piggybank to enable big commercial customers and traders to buy natural gas low and pay to store it there until they can sell it high. Core customers of SoCalGas pay tens of millions of dollars annually to maintain the facility that has been proven not to be necessary to ensure power reliability in the Los Angeles area where ample supply can be taken directly off of pipelines a day ahead of time to meet demand.¹³

A recent report commissioned by the County of Los Angeles on the need for Aliso Canyon confirms that the area can easily do without it as long as mitigation measures are made permanent. Those include ordering gas off of pipelines a day in advance. The report, produced by EES Consulting Inc., confirms that Aliso Canyon is not necessary to ensure power reliability through 2018, that the reserve has enough gas to meet any emergency supply issues without more gas injections, and that SoCalGas's January withdrawals from Aliso Canyon were unjustified. The report, which points out that the permanent closure of Aliso could spur energy efficiency and other innovations, calls for an investigation of the unjustified withdrawals, which we have twice petitioned Attorney General Xavier Becerra to undertake himself because of evidence of market manipulation and the PUC's dismal enforcement record.

SoCalGas and its regulators, including the PUC which did nothing to discipline SoCalGas for ignoring ordered mitigation measures that would have avoided the January withdrawals from Aliso, are underestimating supply and inflating demand to justify the facility's reopening. The Division of Oil, Gas, and Geothermal Resources is not requiring subsurface safety valves on Aliso wells. In January 2017, the Governor's Oil and Gas Supervisor Ken Harris reported in a briefing to the legislature that his regulators wouldn't be "holding up that decision" to reopen Aliso until a root-cause analysis was finished.¹⁴

¹² For more on Rechtschaffen's meeting with Save Porter Ranch, see: <https://www.evernote.com/shard/s217/sh/9b070f24-9ee4-43c6-b8b8-168da82c3901/cdf0e2b7d173a849>

¹³ For an independent assessment of the need for Aliso Canyon, see: http://www.foodandwaterwatch.org/sites/default/files/powersegr_assessment_reliability_aliso_canyon_webfinal160411.pdf

¹⁴ For more on Ken Harris and Aliso Canyon, see: <http://capitolwatchdog.org/article/reopening-aliso-canyon-without-knowing-what-caused-blowout-not-smart>

Final passage of Senator Henry Stern's legislation to keep Aliso closed until a root cause analysis of the well blowout is complete would make Harris's remark moot. But these administration actions fly in the face of Rechtschaffen's assurances to the community that under no circumstances would the facility be reopened without meeting the highest safety standards. If the public and state don't know what caused the blowout, then it is impossible to assure the safety of the facility at all, let alone assert that the facility meets the highest safety standards. Porter Ranch residents, and indeed all Californians, deserve better.

Will Rechtschaffen work on behalf of SoCalGas and its parent Sempra to reopen this commercially profitable but unnecessary natural gas reserve, or will he question assumptions and work to protect the public's health and their wallets? He should be closely questioned on his views and role in the undermining of safety standards that led to Aliso, his role keeping information about the disaster from public view, and his fealty to SoCalGas and Sempra during and after the crisis.

The "Western Grid"

Rechtschaffen is also the Governor's point man and chief advocate on turning over California's electricity grid to a regional board to the advantage of major investor-owned utilities allowed to overbuild natural gas power plants under Brown. During workshops on the subject at the California EPA, Rechtschaffen advocated for the plan as a "priority" for Governor Brown. "This a really big deal, and it's getting the attention that it deserves," he said.¹⁵

The push to fold California into a Western grid risks opening it up to imports of dirty coal power from Warren Buffett's PacifiCorp, which owns more coal-fired power plants than any other US company, and also subjects California to the same possible swindle of consumers and the environment as we had during the California electricity crisis caused by a thoroughly discredited experiment in deregulation at the turn of the century.¹⁶ A regional grid puts the system into the regulatory hands of the notoriously anti-consumer Federal Energy Regulatory Commission, taking away the state's ability to control its own energy destiny. Whether California, a net importer of electricity, wins or loses in terms of renewable energy flowing into or out of the state is based on hazy or nonexistent models and assumptions.¹⁷

Last April, for example, the US Supreme Court put limits on Maryland's ability to regulate energy in its own territory because it belongs to a regional grid. A confidential memo drawn up by The Utility Reform Network has warned that California could easily wind up in the crosshairs of hostile federal regulators

¹⁵ For more on Rechtschaffen's advocacy on behalf of Governor Brown, see: http://docketpublic.energy.ca.gov/PublicDocuments/16-RGO-01/TN211652_20160525T155659_Transcript_of_the_Lead_Commissioner_Workshop_RE_Regional_Grid_O.pdf

¹⁶ For more on PacifiCorp, see: <http://www.latimes.com/business/la-fi-pacificcorp-electric-grid-20160706-snap-story.html>

¹⁷ For more analysis about the pitfalls of the Western Grid, see: <https://www.iid.com/home/showdocument?id=11815>

and courts that could force the state to buy dirty coal power from Warren Buffett's PacifiCorp, and override its renewable energy requirements.¹⁸

Senate President pro Tem de Leon, you have said, "California will not follow Trump's destructive path" on rolling back environmental protections.¹⁹ California lawmakers have introduced legislation to enshrine existing federal air, water, and endangered species standards in state law. Yet, Rechtschaffen's stands would help the oil and gas industry and fossil fuel reliant investor-owned utilities undermine California's environmental protections, its quicker transition away from fossil fuels, and the public's right to clean water and air.

The PUC is an independent, quasi-judicial body with virtually no way to fire commissioners and with no brake on its power save legislative oversight. Citizens cannot bring suit against the PUC in Superior Court, something that Governor Brown ensured when he vetoed PUC reform legislation in 2016. It is vital that any commissioner appointed to the PUC bring a strong record of acting in the public interest, and not of acting on behalf of major industry, be it oil and gas producers, or investor-owned utilities pushing fossil fuels at the expense of ratepayers and the public health. Cliff Rechtschaffen has no such demonstrated record.

For all the above-explained reasons, we urge you not to confirm Rechtschaffen to the PUC. We look forward to testifying at his confirmation hearing.

Sincerely,

Liza Tucker
Consumer Watchdog

Matt Pakucko
Save Porter Ranch

Mike Aguirre and Maria Severson
Aguirre & Severson LLP

Adam Scow
Food & Water Watch

David Braun, Rootskeeper
cc: Senator Toni Atkins, Senate Rules Committee
Senator Tom Berryhill, Senate Rules Committee
Senator Anthony Cannella, Senate Rules Committee
Senator Connie Leyva, Senate Rules Committee

¹⁸ Find the TURN memo here:
http://www.consumerwatchdog.org/resources/how_green_is_brown.pdf, footnote 64.

¹⁹ For more on California's legislation to protect the environment, see:
<http://www.politico.com/states/california/story/2017/02/california-moves-to-pre-empt-trump-on-environment-endangered-species-109820>