

JAN 19 2017

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22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
23 **IN AND FOR THE COUNTY OF KERN**

24 WESTERN STATES PETROLEUM)
25 ASSOCIATION,)
26 CALIFORNIA INDEPENDENT)
27 PETROLEUM ASSOCIATION, and)
28 INDEPENDENT OIL PRODUCERS)
AGENCY,)

Plaintiffs,)

vs.)

29 CALIFORNIA DEPARTMENT OF)
30 CONSERVATION, DIVISION OF OIL,)
31 GAS, AND GEOTHERMAL RESOURCES;)
32 DAVID BUNN, in his capacity as the)
33 Director of the Department of Conservation;)
34 and KENNETH HARRIS, in his capacity as)
35 State Oil and Gas Supervisor, and)
36 DOES 1 through 100, inclusive,)

Defendants.)

**NOTICE OF ASSIGNMENT AND
CASE MANAGEMENT CONFERENCE**

SIDNEY P CHAPIN

Assigned to _____ for all purposes.

Hearing Date: 7/13/17

Time: 8:00 am

Department: 4

See CRC Rule 3.720 Et. Seq.

CASE NO. BCV-17-100128

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND EQUITABLE
ESTOPPEL**

SCANNED

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1 3. In April 2015, Defendant adopted regulations (the “Compliance Schedule
2 Regulations”) establishing a timeline for completion of these aquifer reviews and requiring
3 operators, including Plaintiffs’ members, to cease injection into permitted UIC wells if “aquifer
4 exemptions” are not obtained by the specified deadlines. Pursuant to these regulations, injection
5 operations may occur after the specified dates only if an exemption is obtained or the aquifer does
6 not meet the statutory definition of USDW because the concentration of total dissolved solids
7 (“TDS,” a measure of salinity) in the water exceeds 10,000 milligrams per liter (mg/L).

8 4. Under amendments to the Public Resources Code enacted in 2015, the State Water
9 Resources Control Board (“State Board”) is a necessary participant in the aquifer exemption
10 review process. Plaintiffs’ members have expended significant time and resources over the past
11 several years to cooperate with Defendant and the State Board in the review process, and to assist
12 the agencies in their efforts to meet EPA’s directive regarding the UIC Program. Plaintiffs’
13 members have coordinated among themselves, at Defendant’s request, to streamline the process
14 and avoid the need for duplication of effort by the agencies. They have worked diligently to
15 provide lengthy and enormously detailed data support packages and aquifer exemption
16 application templates—despite Defendant’s repeated changes to the template and application
17 process—that Defendant may use to demonstrate to EPA that permitted injection wells are not
18 injecting into USDWs. In most instances, these data support packages and related application
19 materials were submitted well in advance of informal deadlines established by Defendant to
20 ensure timely completion of the process. Plaintiffs’ members have responded to Defendant’s and
21 other agencies’ requests for additional information throughout the process, and have met
22 repeatedly with the agencies to explain their operations and the complex subsurface geologies
23 where they occur. In short, Plaintiffs and their members have done everything within their
24 collective power to facilitate the aquifer exemption review process and promote its successful
25 outcome, namely, the approval of required aquifer exemptions by the specified deadlines.

26 5. Notwithstanding their extraordinary level of effort, Plaintiffs’ members now find
27 themselves on the edge of a precipice. Defendant and the other agencies involved in the aquifer
28 exemption review process effectively represented to operators that the process could be

1 completed before the deadlines contained in the Compliance Schedule Regulations, and that
2 aquifer exemptions would be approved within this timeframe where the criteria for exemption
3 were satisfied. Defendant and the other involved agencies have not lived up to their own
4 expectations. While the Compliance Schedule Regulations and the deadlines contained therein
5 may have been intended as a mechanism to ensure that EPA's issues would be addressed in an
6 expeditious manner, the forthcoming well shut-in deadlines now serve only to threaten grave and
7 imminent harm to Plaintiffs' members, through no fault of the members. Defendant's gross
8 underestimation of the amount of time it would take to review the exemption status of
9 approximately 45 aquifers has left operators facing the prospect of imminently having to shut-in,
10 by February 15, 2017, potentially thousands of legally permitted wells that pose no risk to
11 drinking water, with no individualized evaluation or determination being made for any particular
12 well as required by existing statutory requirements and fundamental principles of due process.

13 6. If the upcoming deadlines in the Compliance Schedule Regulations are not
14 suspended, the operators will be required to significantly scale back many of their production
15 operations, at great impact to themselves and to the public. If they fail to shut in the affected
16 injection wells, they face draconian, minimum fines of \$20,000 per well per day, with no apparent
17 opportunity for hearing regarding the grounds for requiring the wells to be shut-in and no
18 opportunity to contest the penalties. Based on the uncertainties surrounding the precise location
19 of the original exempt aquifer boundaries, DOGGR and the State Board have sometimes taken
20 inconsistent positions with respect to the scope of the exemptions under review. Defendant has
21 offered no clear guidance as to which specific wells it believes are subject to the cease-injection
22 deadlines, subjecting operators to enormous uncertainty and driving some to make decisions
23 based on "worst case scenarios" as the only assured means of avoiding potentially huge fines.
24 Furthermore, Defendant's unwillingness to provide guidance to operators has prevented certain of
25 Plaintiffs' members from developing alternative compliance strategies. These alternatives must
26 be approved and permitted by Defendant, and are also dependent on the outcome of Defendant's
27 and EPA's review of the pending aquifer exemption applications. Plaintiffs' members cannot
28 implement these alternatives until the pending exemption applications are resolved, thus placing

1 them in a classic Catch-22. Underscoring the unfairness of the situation, Defendant has stated
2 that it ultimately expects EPA to approve the majority of the pending aquifer exemption
3 applications, signaling that Defendant itself does not believe the wells pose any risk.

4 7. Requiring operators summarily to shut-in their wells and disrupt production for an
5 unspecified amount of time pending completion of the aquifer exemption review process would
6 result in an unconstitutional violation of due process and would deprive the Plaintiffs' members
7 of their rights to operate these wells in compliance with lawfully obtained permits. Accordingly,
8 Plaintiffs and their members seek declaratory and injunctive relief to avert this unlawful and
9 harmful result and to allow all lawfully permitted injection wells to remain in operation pending
10 completion of the aquifer exemption review process. Plaintiffs' members have no control over
11 the process and ask that Defendant be equitably estopped from enforcing the upcoming
12 Compliance Schedule Regulation deadlines.

13 JURISDICTION AND VENUE

14 8. This Court has jurisdiction over the matters alleged in this complaint pursuant to
15 the California Constitution, Article VI, § 10, Code of Civil Procedure §§ 88, 525, 526, and 1060.

16 9. Venue in this Court is proper under Code of Civil Procedure § 393(b) because the
17 causes of action arose or some part thereof arose in Kern County as a result of the administrative
18 actions described herein.

19 PARTIES

20 10. Plaintiff WSPA is a non-profit mutual benefit corporation, formed and existing
21 under the laws of California. Founded in 1907, and headquartered in Sacramento, WSPA is the
22 oldest petroleum trade association in the United States. WSPA is an advocate for the oil and gas
23 industry in California and the western states, and its essential mission is to support its members in
24 responsibly providing adequate, reliable and affordable sources of energy. WSPA's members are
25 engaged in, and intend to continue to engage in, lawful and permitted oil and gas exploration and
26 production operations in Kern County and throughout California, including lawfully permitted
27 injection operations under the UIC Program. WSPA's members have a significant and direct
28 interest in continued regulatory agency oversight and approval of activities under the UIC

1 Program. WSPA and its members would be adversely and directly affected, and irreparably
2 injured, if the Compliance Schedule Regulation deadlines described below remain in effect and
3 the Court does not grant the relief sought by Plaintiffs.

4 11. Plaintiff CIPA is a non-profit, non-partisan trade association based in Sacramento,
5 California that represents approximately 450 independent crude oil and natural gas producers,
6 royalty owners, and service and supply companies operating in California, including in Kern
7 County. CIPA is tasked with, among other things, ensuring that its members' interests in
8 responsibly providing adequate, reliable and affordable sources of energy to the public are
9 thoroughly protected. As with WSPA, CIPA's members are engaged in, and intend to continue to
10 engage in, lawful and permitted oil and gas exploration and production operations in California,
11 including injection under the UIC Program. CIPA and its members would be adversely and
12 directly affected, and irreparably injured, if the Compliance Schedule Regulation deadlines
13 described below remain in effect and the Court does not grant the relief requested by Plaintiffs.

14 12. Plaintiff IOPA is a corporation that was formed in 1904 and exists under the laws
15 of California. IOPA, which has offices in Bakersfield, California, enters into contracts with
16 small, independent oil and gas producers in Kern and other California counties to gather,
17 purchase, and sell the oil that is produced. IOPA's members are stockholders of the corporation
18 and certain of them are also engaged in, and intend to continue to engage in, lawful and permitted
19 oil and gas exploration and production operations in Southern California and the Central Valley,
20 including injection under the UIC Program. IOPA's members that conduct underground injection
21 operations would be adversely and directly affected, and irreparably injured, if the Compliance
22 Schedule Regulation deadlines described below remain in effect and the Court does not grant the
23 relief sought by Plaintiffs.

24 13. Defendant DOGGR is a subdivision within the State of California's Department of
25 Conservation that oversees the UIC Program. The agency oversees the drilling, operation,
26 maintenance and plugging of oil, natural gas and geothermal wells. All California oil and natural
27 gas production wells, enhanced recovery wells, water disposal wells, and service wells located on
28 state and private lands are permitted, drilled, operated, maintained, plugged and abandoned under

1 requirements and procedures administered by DOGGR. DOGGR has been granted primacy by
2 EPA to administer the Class II UIC Program under the federal SDWA, including the permitting
3 and regulation of underground injection wells in the state of California. (40 C.F.R. §§ 145.25,
4 147.250.) Many of the activities of Defendant as described in this action are carried out by
5 employees located within several DOGGR districts, including the Inland District which has
6 offices in Kern County.

7 14. Defendant David Bunn is sued in his official capacity as the Director of the
8 California Department of Conservation. The Director serves as the chief executive of the
9 Department of Conservation, which ultimately directs the activities of Defendant DOGGR.
10 Governor Brown appointed Director Bunn on June 18, 2015.

11 15. Defendant Kenneth Harris is sued in his official capacity as State Oil and Gas
12 Supervisor. The State Oil and Gas Supervisor supervises the drilling, operation, maintenance and
13 abandonment of wells. Governor Brown appointed Supervisor Harris on December 7, 2015.

14 16. DOES 1 through 100, inclusive are the partners, agents, employees or principals of
15 the named Defendants and other State agencies, and of each other whose true names and
16 capacities are currently unknown to Plaintiffs; the named defendants and Does 1 through 100,
17 inclusive, performed the acts and conduct herein alleged, aided and abetted the performance
18 thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct;
19 and therefore, Does 1 through 100, inclusive, are liable to Plaintiffs to the extent of the liability of
20 the named Defendants. Plaintiffs will seek leave of the Court to amend its Complaint to reflect the
21 true names and capacities of the Defendants designated herein as DOES when such identities and
22 capacities become known.

23 17. Based on information and belief, Plaintiffs allege that at all times mentioned
24 herein, each and every Defendant was acting as an agent and/or employee of each of the other
25 Defendants, and at all relevant times mentioned was acting within the course and scope of said
26 agency and/or employment with the full knowledge, permission, and consent of each of the other
27 Defendants. In addition, each of the acts and/or omissions of each Defendant alleged herein were
28 made known to, and ratified by, each of the other Defendants.

1 are regulated under the SDWA. Relevant to this action is the regulation of underground injection
2 operations associated with the exploration and production of oil and natural gas, known as the
3 Class II UIC Program.

4 21. Under the SDWA, a state may apply to EPA for “primacy” to carry out some or all
5 classes of the UIC Program. If the state’s application for primacy is granted, the state assumes
6 primary responsibility for regulation of the covered underground injection wells, applying either
7 federal regulations or the state’s own regulations, depending on the type of primacy that is sought.
8 DOGGR applied for Class II primacy in 1981. EPA granted DOGGR’s application in 1983, and
9 since that time DOGGR has had primary responsibility for permitting and regulating Class II
10 injection wells in California.

11 22. The UIC Program is designed to protect USDWs by prohibiting injection into
12 underground aquifers meeting established criteria and ensuring the proper location and
13 construction of injection wells to prevent migration of fluids out of the intended injection zone.
14 To achieve this goal, EPA established regulatory criteria pursuant to which an aquifer may be
15 exempted from regulation under the SDWA as a potential source of drinking water. Although the
16 SDWA does not mandate that an aquifer be “exempted” before an underground injection permit
17 may be issued, EPA adopted aquifer exemption criteria to facilitate the UIC permitting process
18 and avoid the need to make specific non-endangerment findings as to certain aquifers or portions
19 thereof.

20 23. Under the SDWA and EPA’s implementing regulations, USDW is defined to
21 include all “non-exempt” aquifers containing groundwater with less than 10,000 mg/L TDS at a
22 quantity sufficient to supply a public water system. 40 C.F.R. § 144.3. Aquifers that do not meet
23 the definition of USDW (because they contain concentrations of TDS in excess of 10,000 mg/L),
24 and aquifers that have been exempted, are not subject to regulation under the SDWA.² Federal
25 regulations allow USDWs to be exempted from the UIC Program if they are not, and are not
26 reasonably likely to become, sources of drinking water in the future because they are (i) located in

27 _____
28 ² Although injection wells into non-USDW aquifers do not require an aquifer exemption,
operators are still required to obtain a UIC permit for such wells from DOGGR.

1 a hydrocarbon-bearing zone, (ii) situated at a depth that makes recovery of drinking water
2 economically or technologically impractical, or (3) so contaminated that it would be impractical
3 to render the water fit for human consumption. 40 C.F.R. § 144.7(b).

4 24. Class II injection wells include (i) wells that are used to safely manage or dispose
5 of the produced water³ and other Class II fluids generated during oil and natural gas production
6 operations, and (ii) wells that are used for enhanced oil recovery (“EOR”). As DOGGR admits,
7 “[p]roduced water can naturally contain low levels of benzene or other hazardous chemicals, but
8 the reinjection of water containing such chemicals does not present a public health hazard if the
9 injection zone is not used, or is not likely to be used, for drinking water.” *Center for Biological*
10 *Diversity and Sierra Club v. California Department of Conservation, Division of Oil, Gas, and*
11 *Geothermal Resources (“CBD III”)*, Superior Court of the State of California, County of
12 Alameda, Case No. RG15769302, Respondent DOGGR’s Opposition Brief at 3:10-13 (June 14,
13 2016).

14 25. EOR wells work by (i) injecting steam into a hydrocarbon-bearing formation for
15 purposes of reducing the viscosity of the oil to facilitate flow into a production well, or
16 (ii) injecting water for purposes of maintaining reservoir pressure to facilitate flow into a
17 production well. Produced water is commonly used as a source of water for enhanced oil
18 recovery operations, either directly or to produce the steam. The produced water used for EOR is
19 typically treated to reduce the concentration of TDS before it is injected into the oil-bearing
20 reservoir, and thus usually has a lower TDS content than the water in the receiving formation.
21 Water and steam flood EOR injection wells are typically located in close proximity (less than 150
22 feet) to the production wells in order to optimize oil production, greatly reducing any potential
23 threat to any underground source of drinking water. Indeed, Defendant has not identified any
24 impact to drinking water supplies from UIC wells operating in California.

25 26. All of the wells at issue in this case are Class II injection wells, and the vast
26 majority of them are EOR wells injecting into hydrocarbon-bearing zones.

27 ³ Produced water is water that occurs naturally in hydrocarbon-bearing geologic formations and
28 is incidentally brought to the surface with oil or gas during production, then separated from the
extracted oil or gas.

1 **B. California UIC Program**

2 27. California has a long history of oil and natural gas development and production
3 commencing in the mid- to late-1800's. Recognizing the importance of the oil and natural gas
4 industry to California, DOGGR was formed in 1915 to address the needs of state and local
5 governments and the oil and gas industry by regulating statewide activities according to a uniform
6 set of laws and regulations. Under the Public Resources Code, DOGGR has a dual mandate to
7 promote the development of the state's oil and gas resources and to supervise such operations in a
8 manner to prevent, as far as possible, damage to life, health, property and natural resources,
9 including underground waters suitable for irrigation or domestic purposes. Pub. Res. Code §
10 3106 (a) and (b).

11 28. DOGGR assumed primacy for administration of California's UIC Program in 1983
12 under a grant from EPA, in accordance with Section 1425 of the SDWA. (42 U.S.C. § 300h; 40
13 C.F.R. § 147.250.) The terms and conditions governing DOGGR's administration of the UIC
14 Program are set forth in a 1982 Memorandum of Agreement ("MOA") with EPA.

15 29. Following EPA's grant of primacy, DOGGR assumed primary responsibility for
16 administration and enforcement of its own regulatory program in lieu of the federal regulations
17 promulgated by EPA under the SDWA. California's UIC Program consists of: (1) relevant
18 portions of the Public Resources Code and the California Code of Regulations; (2) the MOA
19 establishing specific requirements and procedures governing DOGGR's administration of the
20 UIC Program; (3) various letters between the California Attorney General and EPA; (4) the UIC
21 Program description; and (5) materials submitted as part of California's primacy application. 40
22 C.F.R. § 147.250. EPA retains authority to oversee the State's UIC Program and may revise the
23 program and order corrective actions if it determines that the State's UIC Program is not in
24 compliance with the SDWA. See 40 C.F.R. §§ 145.32; 145.33. EPA also retains authority to
25 directly enforce the SDWA to protect groundwater supplies. 42 U.S.C. § 300h-2.

26 30. DOGGR is obligated under the 1982 MOA to regulate all Class II injections into
27 aquifers that qualify as USDWs unless an aquifer, or portion thereof, has been exempted in
28 accordance with criteria set forth in the federal UIC regulations discussed above. Aquifer

1 exemptions are considered revisions to the State's approved UIC Program and must be approved
2 by EPA. Insofar as relevant to this case, aquifers that are shown to contain producible
3 hydrocarbons are eligible for exemption, even if the water that co-exists in the formation contains
4 less than 10,000 mg/L TDS. Similarly, non-hydrocarbon producing aquifers that contain between
5 3,000 and 10,000 mg/L TDS are eligible for exemption where it can be shown that they do not
6 currently supply a public water system and are not reasonably likely to do so in the future.

7 31. The State's UIC Program also requires the issuance of permits to all underground
8 injection wells. DOGGR has adopted a two-tiered permit system consisting of a Project Approval
9 Letter ("PAL") and individual injection well permits. A PAL is issued where multiple wells
10 comprise a single UIC project, and it contains the terms and conditions applicable to that project.
11 Once the project has been approved, individual well permits must be obtained prior to drilling and
12 completing a well. PALs and individual well permits (collectively, "UIC permits") are issued by
13 DOGGR pursuant to the requirements of the Public Resources Code and applicable regulations in
14 Title 14 of the California Code of Regulations. An applicant seeking a UIC permit from DOGGR
15 must provide detailed technical data, including engineering studies, reservoir and flood
16 characteristics of each injection zone, plugging and abandonment plans, maps, and casing
17 diagrams. *See* 14 Cal. Code Regs., §§ 1724.6; 1724.7. The operator must ensure that the
18 injection is confined to an approved zone (referred to as zonal isolation), and DOGGR must
19 verify confinement of injected fluids, both vertically and laterally, in order to protect adjacent
20 aquifers, if any, and other hydrocarbon reservoirs.

21 32. Operation without a UIC permit violates both state law and the SDWA. Unless a
22 specific permit expressly provides otherwise, UIC permits do not expire and remain valid unless
23 and until revoked or suspended by DOGGR pursuant to an administrative adjudicatory process
24 prescribed by statute. *See* Cal. Pub. Res. Code §§ 3226, 3270.3, 3350-53. The statutory process
25 provides operators with the right to appeal and to a hearing. Cal. Pub. Res. Code §§ 3350, 3351.
26 Except in emergencies, the operator's filing of an appeal notice stays a cease and desist order
27 pending the hearing. Cal. Pub. Res. Code § 3350(b)(1).

28

1 **C. EPA Audit and Aquifer Characterization**

2 33. DOGGR's 1981 application for primacy identified the aquifers in California that it
3 determined should be exempt from regulation as USDWs under the UIC Program. These aquifers
4 were identified by reference to the oil fields or geologic formations or zones in which they are
5 located. DOGGR originally identified as exempt all hydrocarbon-producing formations
6 referenced in Volumes I, II and III of *California Oil and Gas Fields*, as well as a number of non-
7 hydrocarbon-producing zones that were used for wastewater disposal or related purposes. In
8 granting DOGGR primacy under the UIC Program, EPA approved all of the aquifer exemptions
9 identified in the State's application, including 11 specific aquifers that were being used for
10 wastewater disposal, some of which had been injected into for decades. Since the grant of
11 primacy, a few other aquifers have been officially identified as exempt by EPA.

12 34. The 2011 EPA audit identified several issues relating to DOGGR's
13 implementation of the UIC Program. Under the MOA, injection into USDWs is not allowed
14 unless the aquifer or relevant portion thereof has been administratively exempted.⁴ Chief among
15 the issues raised in the audit was a finding that injections were occurring into certain aquifers for
16 which exemption status under the MOA was unclear to EPA.

17 35. In the vast majority of cases, the injection zones in question are proven
18 hydrocarbon-producing formations. These injection zones are contiguous and geologically
19 similar to (but arguably outside the boundaries of) aquifers that were expressly exempted at the
20 time EPA granted the State primacy. These original boundaries were very generally defined by
21 reference to shaded areas on oil field maps developed in the early 1970s and the names of certain
22 pools of oil, without any reference to depth or area. In a number of cases, these original
23 boundaries are poorly defined and have been subject to differing interpretations over time.
24 Further, since the original aquifer exemptions were recognized in the MOA, significant new
25 geological and other technical information has been obtained regarding the location and depth of

26 ⁴ While the federal definition of USDW includes aquifers of up to 10,000 mg/L TDS, no aquifer
27 with such high salinity is used as an actual source of drinking water in California. The state
28 considers aquifers to be "sources of drinking water" if they contain less than 3,000 mg/L TDS.
(State Water Resources Control Board Resolution 88-63, "Sources of Drinking Water" (May
19, 1988), as amended by Resolution 2006-08 (February 1, 2006).)

1 hydrocarbon reserves and the quality of groundwater in and near these aquifers. Accordingly,
2 over the years, based on its increased understanding of the geologic and hydrological conditions
3 in California's oil fields, DOGGR has issued UIC permits for injection wells that are located
4 outside the boundaries of the exempt aquifers as depicted (or interpreted) in the State's 1981
5 application for primacy.

6 36. These expansions of originally exempted aquifer boundaries are referred to as
7 "step outs" and were determined by DOGGR to possess the same geologic and other
8 characteristics found within the original aquifer exemption boundaries described in the MOA.
9 DOGGR subsequently extended the administrative boundaries of the oil fields, and issued permits
10 for injection wells in these areas, without first obtaining formal approval of the corresponding
11 expanded aquifer exemption boundaries from EPA. The presence of producible hydrocarbons is
12 one of the major grounds for exemption of a USDW under the SDWA, and thus these "step-out"
13 aquifers qualify for formal aquifer exemptions pursuant to the MOA. Plaintiffs allege on
14 information and belief that EPA was aware of DOGGR's practice of extending the administrative
15 boundaries of exempt fields/formations to include step-out zones and that EPA did not raise any
16 objection to this practice until the findings of the 2011 audit were published.

17 37. DOGGR's post-audit review of underground injection wells also led to the
18 identification of 11 specific aquifers whose exemption status was unclear. A number of these
19 were non-hydrocarbon-bearing aquifers that had historically been used for Class II injection,
20 some for decades. Subsequent inquiry into the status of these 11 aquifers revealed that they were
21 originally classified as non-exempt in an initial version of the MOA, but later exempted in a
22 subsequent, slightly revised version of the MOA. Both versions of the MOA are dated September
23 29, 1982. However, the later version is believed to have been prepared in December 1982, and it
24 is considered by DOGGR to be the controlling version of the MOA. DOGGR now describes
25 these 11 aquifers as "historically treated as exempt." While the December 31, 2016 deadline for
26 shut-in of wells injecting into aquifers that were historically treated as exempt has passed (see ¶
27 40 below), some of Plaintiffs' members have injection operations in these aquifers and have
28 already shut-in some wells. Plaintiffs assert that certain of these aquifers are eligible for

1 exemption and that injection into these aquifers should be allowed to continue pending
2 completion of the aquifer exemption review process.

3 38. Each of Plaintiffs' members are holders of valid Class II UIC injection permits and
4 are currently injecting into one or more of the subject aquifers in conformity with those permits.
5 With limited exception not relevant here, EPA, DOGGR and the State Board have allowed
6 Plaintiffs' members to continue to rely upon such permits and have expressed no objection to
7 their continuing injection operations during the pendency of the UIC Program investigation.
8 Indeed, in limited circumstances, EPA even authorized Defendant to issue permits for new
9 injection wells in allegedly non-exempt aquifers where the wells were part of a previously
10 approved UIC project.

11 **D. Compliance Schedule Regulations**

12 39. As a result of EPA's 2011 audit findings, DOGGR and EPA agreed that DOGGR
13 should perform a comprehensive review of all wells injecting into aquifers whose exemption
14 status EPA considered unclear. EPA approved DOGGR's plan to perform this review, which was
15 ultimately adopted by DOGGR in the form of the Compliance Schedule Regulations. The
16 regulations were first adopted on an emergency basis in April 2015 and later replaced by
17 permanent regulations in April 2016.

18 40. Among other things, DOGGR's Compliance Schedule Regulations codified the
19 specific deadlines to which Plaintiffs object and from which they seek relief in this litigation. *See*
20 14 Cal. Code Regs., §§ 1760.1, 1779.1. While the regulations prioritized the categories of wells
21 so that the highest risk wells were addressed first, the deadlines themselves are arbitrary and
22 established a highly accelerated timeframe for well shut-ins if aquifer exemptions were not issued
23 by certain dates. The three shut-in deadlines that are relevant to this Complaint are:

- 24 (i) December 31, 2016 – for wells in the 11 aquifers that were historically treated as
25 exempt;
- 26 (ii) February 15, 2017 – for wells in hydrocarbon-producing aquifers containing less
27 than 10,000 mg/L TDS; and
- 28 (iii) February 15, 2017 – for wells in non-hydrocarbon-producing aquifers containing

1 between 3,000 and 10,000 mg/L TDS.

2 The other high priority deadlines included in the Compliance Schedule Regulations have already
3 passed and are not the subject of this Complaint.

4 41. In promulgating these regulations, Defendant cited its general legislative mandate
5 to regulate oil and gas resources in California as the basis for its administrative authority. But
6 DOGGR's citation of authority ignores and leaves unaddressed the fact that the shut-in deadlines
7 unlawfully circumvent existing due process procedures mandated under the Public Resources
8 Code.

9 42. As written and adopted by Defendant, the Compliance Schedule Regulations are
10 intended to be self-implementing. In other words, Defendant excused itself from the obligations
11 and burdens, imposed by existing state law, of having to issue administrative cease and desist
12 orders to each and every affected well operator holding valid UIC permits. Under existing state
13 law, DOGGR is required to initiate permit revocation proceedings, conduct a hearing, and present
14 evidentiary findings specific to each individual well. Further, DOGGR's orders are subject to
15 appeal. Instead, the Compliance Schedule Regulations ignore those due process protections and
16 procedural safeguards by mandating the blanket shut-in of potentially thousands of injection wells
17 unless aquifer exemptions are approved by EPA prior to the specified dates. Operators of
18 permitted wells injecting into aquifers that have not been approved for exemption by EPA by the
19 specified deadlines must shut-in their wells or be subject to penalties between \$20,000 and
20 \$25,000 per day per well. These deadlines unlawfully deprive operators of their due process
21 rights.

22 43. None of the deadlines set forth in the Compliance Schedule Regulations are
23 mandated by law. Plaintiffs allege on information and belief that these dates were arbitrarily
24 selected as a means to expedite the aquifer exemption review process and to force Plaintiffs'
25 members to timely submit information supporting the aquifer exemption applications that
26 Defendant is required to submit to EPA. Plaintiffs' members understood that if this supporting
27 information was submitted in a timely manner, DOGGR, the State Board and EPA could
28

1 complete their respective reviews in a timely manner, such that aquifer exemptions could be
2 obtained by the deadlines specified in the Compliance Schedule Regulations.

3 44. DOGGR's Compliance Schedule Regulations focus only on the deadlines for final
4 approval of the aquifer exemptions by EPA. They do not specify timeframes for completion of
5 any of the necessary interim steps in the process, including: (i) operator preparation and submittal
6 of data support packages to assist DOGGR in drafting the exemption applications; (ii) DOGGR
7 review of those data support packages and request for State Board concurrence; (iii) State Board
8 review and concurrence with DOGGR's applications; (iv) 30-day public notice and hearing for
9 each application; (v) preparation and submission of final applications to EPA; and (vi) EPA
10 review and approval (or disapproval) of the applications.

11 45. By letter dated March 9, 2015, EPA notified DOGGR that all applications should
12 be submitted to EPA no later than four months in advance of the relevant deadline specified in the
13 forthcoming Compliance Schedule Regulations in order to give EPA adequate time to complete
14 its review and act upon the applications prior to the deadline. In turn, DOGGR informally
15 notified operators that data support packages should be submitted to DOGGR by August 15, 2016
16 in order for the state agencies to have adequate time to complete their reviews and forward the
17 applications to EPA.

18 46. Neither EPA nor DOGGR sought any input from Plaintiffs' members as to the
19 feasibility of completing the review process for approximately 45 aquifers within a period of just
20 two years.

21 47. At the time the Compliance Schedule Regulations were adopted, DOGGR did not
22 have any application forms, templates, or other guidance documents defining the specific
23 technical information that would be needed to support an aquifer exemption. Plaintiffs' members
24 worked with DOGGR and the State Board to develop an application template that could be used
25 by operators to ensure that all information needed to evaluate an application could be provided at
26 the outset. In addition, in order to streamline the review process and to avoid duplication of
27 effort, DOGGR asked the operators with operations in the same oil fields to coordinate their
28 efforts and produce a single data support package for each of the aquifers or portions thereof that

1 were subject to review. DOGGR would then use these data support packages to prepare the
2 aquifer exemption applications. Because multiple oil-bearing formations may exist within a
3 given oil field, and multiple companies may be working within the same field, any given
4 application may relate to the operations of several companies. Preparation of the application
5 templates and coordination among the operators took approximately six months of concerted
6 effort by Plaintiffs and their members.

7 48. Plaintiffs' members worked as quickly as possible to provide the necessary data
8 support packages to DOGGR and the State Board. Many of these packages were submitted well
9 in advance of DOGGR's informal August 15, 2016 "deadline," and all were submitted by that
10 date.

11 49. As a practical matter, DOGGR and the State Board's aquifer exemption review has
12 been an evolving and highly iterative process, and it has taken much longer than anticipated by
13 DOGGR, the State Board, or EPA. DOGGR and the State Board have made numerous requests
14 for additional information that go well beyond the information called for by the application
15 template. Plaintiffs' members have responded to all information requests in a thorough and
16 timely manner. Review, submission, and approval of the aquifer exemption applications now lie
17 in the hands of the agencies. If the agencies are to meet the deadlines set forth in the Compliance
18 Schedule Regulations, they must complete their respective reviews, conduct the required public
19 comment processes, and approve the exemptions all within the next several weeks.

20 **E. Plaintiffs' Need to Take Legal Action**

21 50. Plaintiffs allege on information and belief that it is extremely unlikely that all, or
22 even most, of the pending aquifer exemption applications will be considered and approved (or
23 denied) by EPA before the February 15, 2017 Compliance Schedule Regulations deadline.
24 Indeed, given the mandatory minimum 30-day public notice and hearing requirements that have
25 been established by law, this would appear to be a legal impossibility. The shut-in deadlines will
26 become effective despite that fact that Defendant has indicated – and Plaintiffs agree – that many
27 of the aquifers at issue qualify for exemption and that Plaintiffs' members' currently lawful
28 injections into these aquifers, based on DOGGR-issued UIC well permits, will ultimately be

1 allowed to continue once the review is completed. The vast majority of the injection wells at
2 issue in this case inject into oil-producing zones where the water is not suitable for human
3 consumption. Cessation of injection into these aquifers, or portions thereof, would unnecessarily
4 disrupt oil and natural gas production operations where there is no evidence of risk or harm. If the
5 upcoming February 15, 2017 deadlines are not suspended, Defendant will presumably consider
6 the aquifers to be non-exempt during the pendency of the aquifer exemption review process,
7 regardless of the ultimate outcome of that process. Shut-in of the affected wells would severely
8 impact Plaintiffs and their members whose underground injection operations are critical to oil and
9 natural gas production operations in the state. Because aquifer exemption applications were
10 submitted jointly on behalf of all members operating within a given oil field, loss of the right to
11 inject into a given aquifer will detrimentally impact all of Plaintiffs' members that operate in the
12 affected areas.

13 51. Plaintiffs are informed and believe, and on that basis allege, that as of the date of
14 the filing of this Complaint, DOGGR has submitted only four aquifer exemption applications to
15 EPA during this review process, despite the fact that operators have submitted data support
16 packages to DOGGR for 45 different aquifers that qualify for exemption. One of the four
17 applications that have been submitted to EPA was sent in February 2016 (almost one year ago),
18 and Plaintiffs understand that it was recently returned to the state agencies for further review.
19 The other three applications were forwarded to EPA during November and December 2016.

20 52. Defendant, along with the other agencies involved in this process, grossly
21 underestimated the amount of time they would take to review and act upon aquifer exemption
22 applications, to the grave detriment of Plaintiffs and their members. Plaintiffs' members timely
23 submitted complete aquifer exemption data support packages based upon the template that was
24 developed for this purpose in consultation with DOGGR and the State Board. At Defendant's
25 request, Plaintiffs' members coordinated among themselves, to the extent allowed under federal
26 and state antitrust laws, to produce joint data support packages and application templates,
27 relieving the agencies of the burden of processing multiple applications for the same aquifer.
28 Plaintiffs' members timely and thoroughly responded to all follow-up requests for information

1 and spent extensive amounts of time assisting agency staff in understanding the technical data and
2 other information contained in the applications and supplements thereto. Plaintiffs' members
3 have no control over the pace of the agencies' review processes and cannot be held responsible
4 for failure of the agencies to meet the deadlines set forth in the Compliance Schedule
5 Regulations.

6 53. Plaintiffs' members have met their obligations under the regulations and provided
7 all requested information in a timely fashion. However, DOGGR, the State Board, and EPA have
8 not adhered to their agreed obligations to complete the timely review and approval (or rejection)
9 of aquifer exemption applications. The net effect is that, in the absence of this Court's action,
10 lawfully obtained UIC permits will be *de facto* revoked with no due process offered to Plaintiffs'
11 members. This *de facto* revocation will force the curtailment or cessation of oil and natural gas
12 production operations in many locations where Class II injections are a necessary component of
13 oil and natural gas field operations.

14 54. The high level of regulatory uncertainty created by the laborious review process,
15 especially as it has unfolded over time, is untenable from a business perspective and has left
16 Plaintiffs and their members with no choice but to take legal action to protect their interests.

17 55. On January 17, 2017, DOGGR sent correspondence to EPA providing an update
18 on the status of its and the State Board's aquifer exemption review. In that correspondence,
19 DOGGR informed EPA that it intends to allow permitted UIC injection operations in 29
20 identified oil fields and formations to continue pending a final aquifer exemption approval from
21 EPA. Injection operations in 23 other oil fields and formations (only 13 of which are identified
22 by name) must be shut in no later than the February 15, 2017 deadlines specified in the
23 Compliance Schedule Regulations. Specific wells are not identified in the correspondence, and
24 no Notice to Operators or other form of assurance or administrative process was tendered to the
25 well permit holders who are directly threatened by application of the regulations. Apart from the
26 continuing uncertainty surrounding the scope of relief, if any, provided by Defendant's letter to
27 EPA, such informal communications do not serve to alleviate the threat of irreparable harm
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1 underlying Plaintiffs' claims or the unconstitutionality of the Compliance Schedule Regulation
2 deadlines. EPA's response to, or agreement with, the letter is unknown at this time.

3 **F. Harm to Plaintiffs**

4 56. DOGGR currently regulates over 50,000 wells under the Class II UIC Program,
5 the vast majority of which are owned or operated by Plaintiffs' members. These wells represent a
6 key component of Plaintiffs' members' lawful and permitted oil and natural gas exploration and
7 production operations, and are essential to the production of approximately 80% to 85% of all oil
8 produced in California. A significant portion of this production, possibly as much as 15% to
9 20%, could be impaired or lost as a result of the unconstitutional enforcement of the deadlines in
10 the Compliance Schedule Regulations.

11 57. Plaintiffs' members represent almost the entirety of the oil and natural gas
12 production industry in California. Their production and injection operations vary widely by size,
13 type, location, and relative sophistication. Many members operate side-by-side in the same oil
14 field, yet the scale of their facilities and production levels vary dramatically. As such, the
15 ramifications of the Compliance Schedule Regulations' deadlines will operate to the significant
16 detriment of all, but will essentially cripple the activities of members who, due to cost or physical
17 or temporal constraints, are unable to modify their operations to continue without access to the
18 affected injection wells. A significant number of members simply have no other way to manage
19 and dispose of Class II fluids other than by injection. The net effect is that potentially thousands
20 of these wells will be forced to cease injection operations by February 15, 2017 if the relief
21 sought by this Complaint is not granted. Under the circumstances presented, Plaintiffs' members
22 cannot reasonably be expected to forego protection of their legal rights solely on the basis of
23 DOGGR's January 17, 2017 correspondence with EPA, particularly since that correspondence
24 confirms Defendant's intention to enforce the Compliance Schedule Regulation deadlines in 23
25 oil fields and formations, 10 of which have not even been identified. And for some of Plaintiffs'
26 members, their businesses, and the livelihoods of their employees and contractors, as well as
27 those of royalty and mineral rights owners, depend on the continued operation of legally
28 permitted injection wells. As admitted by Defendant in previous litigation, the immediate shut-in

1 of the UIC wells subject to the February 15, 2017 deadline “would unnecessarily disrupt
2 California’s oil industry and harm the state’s economy.” *CBD III*, Respondent DOGGR’s
3 Opposition Brief at 17:10 (June 14, 2016). This disruption of operations and the resulting
4 economic harm would occur despite Defendant’s admission that “no contamination has been
5 detected in any water supply wells” as a result of underground injection operations. *CBD III*,
6 Respondent DOGGR’s Opposition Brief at 5:17-18 (June 14, 2016). Defendant has also admitted
7 that the State must recognize and afford due process to the impacted permit holders before wells
8 can be shut-in. *CBD III*, Reporter’s Transcript of Proceedings, Hearing on Petitioners’ Motion
9 for Preliminary Injunction at 37:6-7 (July 2, 2015).

10 58. Defendant acknowledges that industry has invested an estimated \$1.3 billion in the
11 regulated injection wells and attendant facilities, and according to Defendant’s own estimates,
12 approximately four percent (24,000 barrels per day) of the State’s oil production relies on the
13 wells that are subject to the deadlines in the Compliance Schedule Regulations. *CBD III*,
14 Respondent DOGGR’s Opposition to Plaintiff’s Motion for Preliminary Injunction at 10:17-19
15 (May 29, 2015); *CBD III*, Respondent DOGGR’s Opposition Brief at 23:10-14 (June 14, 2016).
16 Plaintiffs’ estimate of the impact to production is much higher than Defendant’s. Plaintiffs’
17 assessment indicates that shut-in of wells operated by only a subset of their members would
18 reduce production by more than 100,000 barrels per day, or approximately 15% to 20% of in-state
19 oil production. Plaintiffs’ members’ operations and underlying significant capital investments
20 would be seriously compromised, and crude oil supplies to certain refineries could be negatively
21 impacted, if the deadlines in the Compliance Schedule Regulations are not suspended to allow for
22 the orderly completion of the aquifer exemption review process by DOGGR, the State Board, and
23 EPA. Injection operations in these aquifers should be required to cease if and only if EPA
24 disapproves an application for exemption.

25 59. The majority of the State’s production occurs in Kern County. Consistent with
26 Plaintiffs’ estimates, Kern County estimates that it will lose 60,000 barrels per day of production
27 if UIC wells in that county are subject to shut-in because the aquifer exemption process is not
28 completed by the Compliance Schedule Regulations’ deadlines. A consortium of Kern County

1 business organizations submitted a letter to Governor Brown indicating that this loss of
2 production will have disastrous impacts on the County, estimated by the Kern Economic
3 Development Corporation at a total economic loss of \$1.4 to \$2.8 billion. According to Plaintiffs,
4 lost production will significantly exceed this estimate, which does not consider the value of the
5 investments by Plaintiffs' members in reliance on state permits.

6 60. A requirement to shut-in all Class II UIC wells subject to the February 15, 2017
7 deadlines would severely impair oil and natural gas production operations throughout the state, at
8 a collective cost of thousands of jobs and many billions of dollars to operators, royalty owners,
9 and the State's economy and tax receipts. Plaintiffs' members cannot be deprived of their rights
10 to operate legally permitted wells critical to their operations where Defendant has not initiated the
11 requisite administrative process to revoke their permits. Nor should the public be subjected to the
12 severe economic impacts that would be caused by shutting in potentially thousands of wells, none
13 of which has been shown to present any threat of harm to drinking water supplies.

14 **FIRST CAUSE OF ACTION**

15 Declaratory Relief (Cal. Code Civ. Proc. § 1060)

16 61. Plaintiffs re-allege and incorporate herein by reference the allegations of all
17 foregoing paragraphs.

18 62. This case presents a justiciable issue in that the Plaintiffs' members have
19 previously operated and continue to operate Class II injection wells that have been duly permitted
20 by DOGGR. Each of these permits remains in full force and effect; DOGGR has taken no action
21 to revoke or rescind any of these permits as required by the Public Resources Code. Nor has EPA
22 exercised its enforcement authority under the SDWA. Plaintiffs' members have fully complied
23 with all applicable requirements of California and federal law in the operation of their Class II
24 injection wells.

25 63. DOGGR notified operators that data support packages for aquifer exemption
26 applications should be submitted to DOGGR by August 15, 2016 in order for the state agencies to
27 have adequate time to complete their reviews and submit the applications to EPA. The operators
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1 submitted their data support packages for aquifer exemption applications to DOGGR by this date,
2 and many of them were submitted well before August 2016.

3 64. Based on the scope of the review mandated by EPA, the amount of time it is taking
4 to complete this effort, and the fact that no action has been taken to revoke Plaintiffs' members'
5 legal permits to operate their injection wells, enforcement of the deadlines in the Compliance
6 Schedule Regulations will unconstitutionally deprive Plaintiffs' members of their property rights
7 without due process of the law. Moreover, the automatic shut-in provisions of the Compliance
8 Schedule Regulations are contrary to and unsupported by Public Resources Code provisions
9 granting Plaintiffs' members due process in the permit revocation process, and are therefore
10 unlawful.

11 65. A declaratory judgment in this matter would terminate the unconstitutional
12 application of the Compliance Schedule Regulations to Plaintiffs' members, would afford relief
13 from the uncertainty, cost, disruption, conflict and controversy giving rise to this proceeding, and
14 would prevent a similar situation from arising in the future.

15 66. This matter is most properly resolved through a declaratory judgment issued by
16 this Court. The matter involves important questions of the constitutionality of the Compliance
17 Schedule Regulations as applied to Plaintiffs' members. It is therefore of critical importance to
18 Plaintiffs' members and the public at large.

19 **SECOND CAUSE OF ACTION**

20 Injunctive Relief

21 67. Plaintiffs re-allege and incorporate herein by reference the allegations of all
22 foregoing paragraphs.

23 68. Plaintiffs and Plaintiffs' members will suffer irreparable harm if the Compliance
24 Schedule Regulations, as applied to Plaintiffs' members, remain in force and effect and are not
25 enjoined.

26 69. Defendant currently regulates over 50,000 wells as part of its UIC Program, the
27 vast majority of which are held by Plaintiffs' members. Underground injection is an integral and
28 necessary component of oil production in California and the practice is widespread throughout the

1 industry. Potentially thousands of these wells will be forced to cease injection operations by
2 February 15, 2017 if the relief sought by this Complaint is not granted. Absent the ability to
3 conduct underground injection operations, actual production of oil and natural gas will be
4 curtailed in many locations, thus depriving the members of their right to extract oil and natural
5 gas from California's fields and significantly impacting the economy in Kern County and
6 throughout the State. As Defendant admits, the immediate shut-in of these wells "would
7 unnecessarily disrupt California's oil industry and harm the state's economy." *CBD III*,
8 Respondent DOGGR's Opposition Brief at 17:10 (June 14, 2016).

9 70. Plaintiffs and their members have no adequate remedy at law for the injuries
10 alleged herein. The limited administrative relief (if any) provided by Defendant's January 17,
11 2017 letter to EPA does not adequately mitigate this risk of harm. Only this Court's exercise of
12 its equitable powers can protect Plaintiffs' members from sustaining irreparable harm.

13 71. Although injunctive relief would prevent irreparable injury to Plaintiffs and their
14 members, on balance, the injury to the Defendant, if any, would not be significant. The aquifer
15 exemption application process would proceed at the same pace of review acceptable to
16 Defendant, the State Board and EPA, with only the deadlines applicable to Plaintiffs' members
17 being enjoined. Similarly, Defendant's responsibility to ensure compliance with the SDWA
18 would not be compromised because Defendant would still have the right to initiate legally-
19 mandated cease and desist order proceedings in the event that it can demonstrate an entity is
20 operating an injection well that presents a risk to drinking water supplies. *See* Cal. Pub. Res.
21 Code § 3270.3. However, in light of the fact that Defendant has admitted that "no contamination
22 has been detected in any water supply wells" as a result of underground injection operations, and
23 Defendant has failed to demonstrate any water supply impact from injection, there is little, if any
24 likelihood, that such a risk exists. *CBD III*, Respondent DOGGR's Opposition Brief at 5:17-18
25 (June 14, 2016).

26 72. The public interest would also be served by injunctive relief because enforcement
27 of the deadlines in the Compliance Schedule Regulations would likely result in job losses and
28 other significant economic impacts to Kern County and the State. Plaintiffs' members employ

1 thousands of workers and retain a significant number of contractors to provide a wide range of
2 oilfield services such as well drilling, well maintenance and workovers, monitoring and testing,
3 chemical analysis and other testing of crude oil, environmental monitoring, construction and
4 maintenance of facilities including tanks, vessels, pipelines and processing equipment, and others.
5 Those contractors in turn employ thousands of employees who work in the oilfields or otherwise
6 provide support services to Plaintiffs' members. An unknown, but significant number of these
7 individuals would be at risk. In addition, enforcement of the deadlines would negatively impact
8 owners of mineral rights, who receive royalties and other payments from oil and natural gas
9 production. If the Compliance Schedule Regulations were enforced, the resulting loss of jobs
10 would cause extreme financial hardship to these individuals, and would propagate serious effects
11 throughout the local and state economy, resulting in significant reductions in sales taxes and other
12 sources of revenue. In Kern County alone, total economic losses are estimated at \$1.4 to \$2.8
13 billion.

14 **THIRD CAUSE OF ACTION**

15 Equitable Estoppel

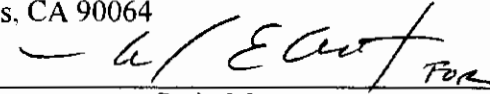
16 73. Plaintiffs re-allege and incorporate herein by reference the allegations of all
17 foregoing paragraphs.

18 74. Under the circumstances alleged in this Complaint, Defendant knew or should
19 have known, at the time the Compliance Schedule Regulations were adopted, that it was
20 providing insufficient time for DOGGR, the State Board, and EPA to complete review and
21 approval of the aquifer exemption applications.

22 75. Despite this knowledge, in the adoption of the Compliance Schedule Regulations,
23 Defendant expected and intended that Plaintiffs' members would act in reliance upon the
24 regulation and timely submit all requested data support packages for DOGGR's aquifer
25 exemption applications and respond to all supplemental information requests made by the state
26 and federal agencies. Defendant further intended that Plaintiffs and their members would act in
27 reliance upon Defendant's representations that the aquifer exemption application approval
28 process would be complete by February 15, 2017.

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