William B. Rostov (State Bar No. 184528)
Tamara T. Zakim (State Bar No. 288912)
EARTHJUSTICE
50 California Street, Ste. 500
San Francisco, CA 94111
Tel: 415-217-2000
Fax: 415-217-2040
Email: wrostov@earthjustice.org
tzakim@earthjustice.org

Attorneys for Plaintiffs/Petitioners
Center for Biological Diversity and Sierra Club

Hollin N. Kretzmann (State Bar No. 290054)
CENTER FOR BIOLOGICAL DIVERSITY
351 California Street, Ste. 600
San Francisco, CA 94104
Tel: 415-436-9682
Fax: 415-436-9683
Email: hkretzmann@biologicaldiversity.org

Attorney for Plaintiff/Petitioner
Center for Biological Diversity

ENDORSED
FILED
ALAMEDA COUNTY

MAY 07 2015

CLERK OF THE SUPERIOR COURT
By

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

CENTER FOR BIOLOGICAL DIVERSITY and SIERRA CLUB, Plaintiffs/Petitioners, v. CALIFORNIA DEPARTMENT OF CONSERVATION, DIVISION OF OIL, GAS, AND GEOTHERMAL RESOURCES, and DOES 1 through 100, inclusive, Defendants/Respondents.	RG15769302 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND VERIFIED PETITION FOR WRIT OF MANDATE**

ED_001000_00019582-00001

Plaintiffs and Petitioners Center for Biological Diversity and Sierra Club bring this action on their own behalf, on behalf of their members, on behalf of the general public, and in the public interest, and hereby allege as follows:

INTRODUCTION

1. During times of drought, California residents, municipalities and farmers increasingly rely on groundwater for drinking, irrigation and other beneficial uses. California is now experiencing one of the most severe droughts in history. In response to the dire water scarcity situation facing Californians, the Governor declared a statewide emergency and promulgated the state's first-ever mandatory water use restrictions earlier this year.

2. California and federal laws safeguard the state's dwindling supply of water resources by protecting underground sources of drinking water. The relevant laws protect not only aquifers that are currently being used for drinking water, but also aquifers containing groundwater that could be used for drinking water in the future. These laws are designed to prevent damage before it occurs. Strict adherence to these laws is crucial during dire circumstances like the current drought.

3. Despite the drought and these protections, Respondent California Department of Conservation, Division of Oil, Gas, and Geothermal Resources ("DOGGR") admits that for years it has improperly allowed thousands of wells to inject oil industry wastewater and other fluids into protected aquifers in violation of law. As a result, California aquifers have been contaminated.

4. Rather than shutting down the illegal activity, DOGGR has promulgated a new set of "emergency" rules (the "Aquifer Exemption Compliance Schedule Regulations") that purport to allow illegal injections in most cases until 2017. These rules turn the definition and purpose of a public emergency upside down by employing regulatory emergency powers to allow admittedly illegal injection into underground sources of drinking water ("protected aquifers") to continue for nearly two more years.

5. The true emergency is the ongoing contamination of California's underground supply of water. DOGGR has a nondiscretionary duty and legal authority to prevent and halt harm to these groundwater resources but refuses to take the necessary, immediate steps to protect them. Through this action, Center for Biological Diversity and Sierra Club seek to protect the state's groundwater

ED_001000_00019582-00002

resources from further illegal contamination under the guise of DOGGR's sham "emergency" regulatory scheme.

6. Both the emergency regulations and the status quo fail to protect California's underground drinking water sources from harm. Since DOGGR continues to fail in implementing its regulatory duties, this Court must vacate the emergency regulations and ensure that DOGGR complies with the law by ordering DOGGR to take all immediate action necessary and available to it to meet its obligations to prohibit illegal injection of wastewater into protected aquifers.

PARTIES

7. Plaintiff and Petitioner CENTER FOR BIOLOGICAL DIVERSITY (the "Center") is a non-profit organization with offices in San Francisco, Los Angeles, and elsewhere throughout California and the United States. The Center is actively involved in environmental protection issues throughout California and North America and has over 50,000 members, including many throughout California. The Center's mission includes protecting and restoring habitat and populations of imperiled species, reducing greenhouse gas pollution to preserve a safe climate, and protecting air quality, water quality, and public health. The Center has a long history of environmental protection through science, policy, education, and legal advocacy in California, and through this action seeks to protect public health, safety, the environment, and the general welfare of Californians by requiring DOGGR to protect potential sources of drinking water from toxic oil-waste contamination.

8. Plaintiff and Petitioner SIERRA CLUB is a national non-profit corporation with approximately 620,000 members, roughly 146,000 of whom live in California. The Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and encouraging humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Sierra Club has been actively working in California and elsewhere to address the serious threats to public health and the environment related to the lack of oversight and safeguards for the oil industry.

9. By this action, the Center and Sierra Club seek to protect the public health and welfare and the environment. The Center's and Sierra Club's members and the general public have a

right to, and have a beneficial interest in, protection of underground sources of drinking water and DOGGR's compliance with the laws and regulations that protect these resources. These interests have been, and continue to be, threatened by DOGGR allowing the injections into protected aquifers to continue. Unless the relief requested in this case is granted, they will continue to be adversely affected and irreparably injured by DOGGR's failure to comply with the law.

10. Defendant and Respondent CALIFORNIA DEPARTMENT OF CONSERVATION, DIVISION OF OIL, GAS, and GEOTHERMAL RESOURCES ("DOGGR") is an agency of the state of California with offices in Sacramento, California. DOGGR is charged with the regulation of drilling, operation, maintenance, and plugging and abandonment of onshore and offshore oil, gas, and geothermal wells within the state of California. DOGGR has a duty "to[, among other things,] prevent, as far as possible, damage to life, health, property, and natural resources . . . and damage to underground . . . waters suitable for irrigation or domestic purposes by the infiltration of, or the addition of, detrimental substances." (Pub. Res. Code sec. 3106, subd. (a).)

11. The true names and capacities, whether individual, corporate, or otherwise, of DOES 1 through 100 are unknown to the Center and Sierra Club. The Center and Sierra Club will amend this Complaint and Petition to set forth the true names and capacities of said DOE parties when they have been ascertained. The Center and Sierra Club allege that each of said DOE parties 1 through 100 has jurisdiction by law over one or more aspects of oil and gas operations in California and their approval. The Center alleges that each of said DOE parties 1 through 100 are either Defendants/Respondents or Real Parties in Interest.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to Code of Civil Procedure sections 525, 526, and 1085, Government Code section 11350, and California Constitution Article VI, section 10.

13. Venue is proper in this Court pursuant to Code of Civil Procedure sections 395 and 401(1) because DOGGR is a state agency and the California Attorney General has an office in Alameda County.

14. Pursuant to Code of Civil Procedure section 388, the Center and Sierra Club served the Attorney General with a copy of the Petition and Complaint along with a notice of its filing, and are including the notice and proof of service as Exhibit 1.

15. The Center and Sierra Club do not have a plain, speedy, or adequate remedy at law because the Center and Sierra Club and their members will be irreparably harmed by DOGGR's failure to enforce and comply with the law and by the ensuing environmental damage caused by DOGGR's illegal injections into protected aquifers.

State and Federal Requirements to Protect Drinking Water

16. In 1974, Congress enacted the Safe Drinking Water Act ("SDWA"; 42 U.S.C. § 300f *et seq.*; 40 C.F.R. § 144.1 *et seq.*) to ensure the quality of the nation's drinking water and to protect it from contamination. The SDWA includes, *inter alia*, an underground injection control ("UIC") program that governs the permitting, operation, and closure of injection wells that place fluids underground for storage, disposal, or enhanced oil and gas recovery.

17. The UIC program contains a specific program for "Class II" wells.

18. Class II wells include injection wells that dispose of waste fluids brought to the surface in the process of extraction of oil and gas, known as "produced water," and fluids used in enhanced recovery of oil or natural gas, such as "flowback fluids" resulting from well stimulation activities like hydraulic fracturing ("fracking") and steam injections.

19. Waste fluids, including produced water and flowback fluids, can contain harmful contaminants such as benzene, heavy metals, and other chemicals that are associated with adverse human health consequences, including cancer.

20. Under the SDWA, Class II injection wells may not inject into an aquifer—an underground geological formation containing water—unless the aquifer has previously been officially exempted from the protections of the SDWA.

21. The SDWA defines "underground sources of drinking water" to include non-exempt aquifers containing groundwater with less than 10,000 mg/L total dissolved solids ("TDS") at a quantity sufficient to supply a public water system. (40 C.F.R. § 144.3.)

22. An aquifer may be exempted only if (a) it does not currently serve as a source of drinking water; and (b) it cannot now and will not in the future serve as a source of drinking water. (40 C.F.R. § 146.4.)

23. In 1983, DOGGR received a grant of delegation from the U.S. Environmental Protection Agency ("EPA") to administer, implement and enforce the SDWA's requirements for the Class II UIC program in California. A Memorandum of Agreement ("MOA") between EPA and DOGGR sets forth DOGGR's regulatory responsibilities.

24. The MOA incorporates the requirements of the SDWA. The MOA states in unequivocal language that "an aquifer exemption must be in effect prior to or concurrent with the issuance of a Class II permit for injection wells into that aquifer." (Memorandum of Agreement (Sept. 29, 1982) ("MOA") at 6-7.)

25. The MOA also requires that DOGGR "adhere to the compliance monitoring, tracking and evaluation" pursuant to SDWA Section 1425 and "maintain a timely and effective compliance monitoring system including timely and appropriate actions on non-compliance." (MOA at 3.) DOGGR must perform "adequate recordkeeping and reporting" to "prevent underground injection which endangers drinking water sources." (42 U.S.C.A. § 300h-4, subd. (b).) The MOA additionally requires that DOGGR provide EPA with annual reports on the "recent operations of the Class II program." (MOA at 4.)

26. DOGGR's other oversight responsibilities with respect to Class II well operations include ensuring that permit applicants "satisfy [the] State that underground injection will not endanger drinking water sources." (42 U.S.C. § 300h(b)(1)(B); 42 U.S.C. § 300h-4(a).) Section 144.12 of Title 40 of the Code of Federal Regulations provides that "[n]o owner or operator shall construct, operate, maintain, . . . or conduct any other injection activity in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR part 142 or may otherwise adversely affect the health of persons." (40 C.F.R. § 144.12, subd. (a).) Section 145.11(a) of Title 40 of the Code of Federal Regulations requires that all state

UIC programs must have legal authority to implement and be administered in conformance with section 144.12. (40 C.F.R. § 145.11, subd. (a)(5).)

27. Under SDWA's state program delegation requirements, any state agency administering a Class II UIC program "shall have available" the ability "to restrain immediately and effectively . . . any unauthorized activity which is endangering or causing damage to public health or environment." (40 C.F.R. § 145.13, subd. (a)(1).)

28. The California Public Resources Code and the California Code of Regulations further define DOGGR's regulatory responsibilities in protecting aquifers from oil wastewater and other injected fluids.

29. Section 3106(a) of the California Public Resources Code requires DOGGR "to prevent, as far as possible, damage to life, health, property, and natural resources" and "damage to underground . . . waters suitable for irrigation or domestic purposes by the infiltration of, or the addition of, detrimental substances." (Pub. Res. Code § 3106, subd. (a).) Sections 3236 and 3236.5 of the Public Resources Code provide that an operator "who violates, fails, neglects, or refuses to comply with any provisions" of the Code (and, by necessary implication, its regulations) is guilty of a misdemeanor and may be fined $25,000 for each violation. (Pub. Res. Code §§ 3236, 3236.5.)

30. Section 1775 of Title 14 of the California Code of Regulations, which implements section 3106 of the Public Resources Code, also prohibits the disposal of "oilfield wastes" in a manner that may cause damage to "life, health, property, freshwater aquifers or surface waters, or natural resources, or be a menace to public safety." (14 C.C.R. § 1775, subd. (a).)

31. The California Code of Regulations also mandates that injection "shall be stopped" if there is evidence that "damage to life, health, property, or natural resources is occurring by reason of the project." (14 C.C.R. § 1724.10, subd. (h).)

Injection Wells in California

32. California's oil industry uses Class II underground injection wells for disposal of wastewater both from conventional oil and gas production and from so-called enhanced oil recovery well operations. Enhanced oil recovery wells themselves are also regulated as Class II underground injection wells.

33. A substantial portion of California's oil industry wastewater is disposed of via about 1,500 active wastewater disposal wells across the state, where it is injected underground.

34. This oil industry wastewater contaminates the aquifers into which it is injected with the chemicals and substances contained in it.

35. For example, wastewater can contain high levels of benzene, a known carcinogen.

36. DOGGR's own 1993 study of oil industry wastewater found that many of the study samples contained high levels of benzene. Tests for some samples detected benzene at concentrations thousands of times higher than the EPA limit for drinking water.

37. Many other harmful chemicals, including heavy metals, such as arsenic, are also present in oil industry wastewater.

38. Wastewater can also contain flowback fluid that returns to the surface after a well is stimulated using fracking and acidizing. These processes involve dozens of dangerous chemicals. After the fluid is used, it is typically sent to a Class II disposal well.

39. The oil industry's own chemical tests detected benzene and other toxic chemicals present in flowback fluid that operators recovered from production wells before sending the fluid to disposal wells. In the vast majority of tests submitted to DOGGR, benzene was detected at levels exceeding EPA's limit for drinking water.

40. Some 48,000 injection wells in California utilize so-called enhanced oil recovery techniques, which operate by pumping vast amounts of water or steam into the subsurface formation to increase the flow of oil to the surface.

41. Some enhanced oil recovery injection wells also operate illegally in protected aquifers.

42. Enhanced oil recovery techniques may combine injected steam with harmful chemicals used as surfactants. Enhanced oil recovery methods such as cyclic steam injection are also increasingly used in combination with well stimulation treatments such as hydraulic fracturing and acidizing, which use dozens of chemicals associated with adverse health effects.

43. Under DOGGR's Class II UIC program, both wastewater disposal well and enhanced oil recovery well activities may proceed only if injections occur into aquifers that have received

"exemptions" pursuant to SDWA regulations. "Non-exempt" aquifers are protected under state and federal law because they contain potential sources of drinking water.

44. Since at least 2011, DOGGR has been aware of serious and systematic problems with its UIC program.

45. In November 2012, DOGGR admitted that injection wells were operating in violation of the pertinent statutes and regulations.

46. It was not until three years after DOGGR became aware of deficiencies in the state's UIC program that DOGGR finally exercised its lawful authority and non-discretionary duty to order cessation of unlawful Class II operations, albeit only in very limited circumstances.

47. In July 2014, DOGGR issued orders requiring seven oil companies to cease injection at 11 wastewater disposal wells in Kern County, because "the disposal permits suspended may have allowed injection into aquifers that do not appear to have received the necessary 'exempt' designation from the U.S. EPA." (DOGGR, Press Release, California Department of Conservation, California's Oil Regulator to Review Underground Injection Control Program (July 18, 2014).)

48. DOGGR's shut-down orders stated that immediate cessation was necessary because "an emergency exists and . . . immediate action(s) are necessary to protect life, healthy, property, and natural resources, specifically, the further degradation of the affected aquifers . . . ." (Emergency Order to Immediately Cease Injection Operations, issued to CMO, Inc. Well(s): 03039980 and 03044445 by State of California Natural Resources Agency, Department of Conservation, Division of Oil, Gas, and Geothermal Resources (July 2, 2013).)

49. From July to September of 2014, DOGGR shut down an additional three injection wells, but rescinded its orders to cease injection for three of the originally halted injected wells.

50. On September 15, 2014, the State Water Resources Control Board ("State Water Board") determined that there were 108 water supply wells within a mile of the 11 wastewater disposal wells that were shut down. The State Water Board identified many more water supply wells located within a mile of injection wells that had not yet been shut down.

51. On February 6, 2015, DOGGR admitted that nearly 2,500 wells were injecting into non-exempt aquifers containing groundwater with less than 10,000 mg/L TDS, which meets the

water quality standard for underground source of drinking water under the SDWA, or for which the TDS level is unknown. Four-hundred ninety of these wells are wastewater disposal wells. Another 1,987 wells are enhanced oil recovery wells.

52. DOGGR admitted "that in the past it has approved UIC projects in zones with aquifers lacking exemptions. The Division has not kept up with the task of applying for the necessary aquifer exemptions … required by statute …. The Division has thus been slow to reconcile the reality that industry has expanded the productive limits of oil fields established in the 1982 primacy agreement with SDWA requirements to obtain aquifer exemptions." (DOGGR Letter to EPA (Feb. 6, 2015) at 3.)

53. In March 2015, DOGGR requested the closure of 12 additional wastewater disposal wells. Eleven permits were voluntarily relinquished, and the twelfth was given a shut-down order.

54. Combined with the wells shut down in 2014, DOGGR has shut down 23 wells.

55. DOGGR continues to allow injection activity into the remaining 2,500 wells identified as operating in protected aquifers.

56. The agency is now performing a "review" of 30,000 Class II UIC wells. Such review is expected to be complete in 2016. "When completed, this review will serve to clarify records and improve data quality so that the full review of the UIC program can be completed." (DOGGR Letter to EPA (Feb. 6, 2015) at 4.)

57. Until review of all wells is complete, the full extent of noncompliance and of harm resulting from Class II well injections into protected aquifers cannot be fully known.

58. On February 6, 2015, DOGGR also stated that "[n]ew injections will be allowed" without obtaining aquifer exemptions first, and that DOGGR would only require these new injections to cease pursuant to DOGGR's phased compliance schedule "if no new exemption has been timely obtained." (*Id.* at 6.)

59. Appropriately, the California Legislature has become extremely concerned about the risks to California's groundwater sources posed by DOGGR's derelictions. On March 10, 2015, the California Senate Environmental Quality and Natural Resources and Water Committees held a joint

oversight hearing into the protection of groundwater and the effectiveness of California's Underground Injection Control Program.

60. The State Water Board, California's expert agency on issues relating to public water quality, testified at the oversight hearing.

61. On behalf of the State Water Board, the Chief Deputy of the State Water Board testified that the ongoing Class II well injections were contaminating the receiving aquifers: "Any injection into the aquifers that are not exempt has contaminated those aquifers . . . . What we found is that the aquifer, no surprise, has the material that was injected into it." (Joint Hearing Before California Senate Com. on Natural Resources and Water, and Senate Environmental Quality Committee, on Underground Injection Control Program (March 2015) at 74, testimony of Deputy of the State Water Board Jonathan Bishop.)

62. The State Water Resources Board Chief Deputy also testified that this contamination cannot be remediated: "We have a lot of history in addressing remediation of aquifers; and what I'll tell you is that you don't clean up aquifers, you contain the spread of contamination." (*Id.* at 73.)

63. Following the oversight hearing, eight members of the California Legislature wrote to Governor Brown expressing their acute concern about the situation. Their letter describes the current state of affairs: "Testimony at the hearing in conjunction with a recent report by CalEPA revealed that California's UIC program is broken and the state's groundwater resources are not being adequately protected. There have been decades of poor data management, lax and effectively incompetent oversight and implementation of UIC permitting and egregious administrative confusion by DOGGR and US EPA." (Cal. Legislature Letter to Gov. E. Brown (March 20, 2015) at 1.)

64. The legislators requested that "immediate" steps be taken to stop illegal injection into protected aquifers.

65. Instead of ordering the immediate cessation of all current illegal injections, on April 2, 2015, DOGGR proposed emergency "Aquifer Exemption Compliance Schedule Regulations" to allow these illegal injections to continue. Under these proposed rules:

a. Injections into aquifers in non-hydrocarbon bearing zones with less than 3,000 mg/L TDS may continue until October 15, 2015, and thereafter if an exemption is granted by that time;

b. Injections into one of eleven non-hydrocarbon bearing aquifers that were treated as exempt (when in fact they were not) may continue until December 31, 2016, and thereafter if an exemption is granted by that time;

c. Injections into non-hydrocarbon bearing zones with between 3,000 and 10,000 mg/L TDS may continue until February 15, 2017, and thereafter if an exemption is granted by that time; and

d. Injections into hydrocarbon bearing zones with under 10,000 mg/L TDS may continue until February 15, 2017.

(Notice of Proposed Emergency Rulemaking Action for "Aquifer Exemption Compliance Schedule Regulations" (April 2, 2015) at 3.)

66. DOGGR issued the emergency regulations under Government Code section 11346.1, subdivision (b), which allows an agency to adopt emergency regulations if it finds that an emergency situation "clearly poses such an immediate, serious harm that delaying action to allow public comment would be inconsistent with the public interest." (Cal. Gov. Code § 11346.1, subd. (a)(3).)

67. An "emergency" is a situation that calls for immediate action to "avoid serious harm to the public peace, health, safety, or general welfare." (Cal. Gov. Code § 11342.545.)

68. A finding of emergency under this section may not be based upon "expediency, convenience, best interest, general public need, or speculation." (*Ibid.*)

69. In its Notice of Proposed Emergency Rulemaking Action, DOGGR proffered two reasons for emergency rulemaking: (1) DOGGR's failure to phase out illegal injections by the stated compliance deadlines would "seriously jeopardize the federal government's ongoing approval of the State's UIC Program"; and (2) "codification of the compliance schedule as an emergency regulation will provide the level of certainty operators need in order to revise their business plans."

70. Neither so-called emergency identified by DOGGR addresses or concerns public welfare, health or safety.

71. The Office of Administrative Law ("OAL") posted the proposed regulations on its website on April 9, 2015, triggering a five-day public comment period.

72. The Center and Sierra Club each submitted timely comments, pointing out numerous deficiencies with the proposed emergency rules, including:

a. DOGGR did not provide substantial evidence of the existence of an actual "emergency" as defined by state law or show that the rules would address such an emergency;

b. The proposed regulations were contrary to existing state and federal law; and

c. The proposed regulations are unnecessary.

73. In response to public comments, DOGGR submitted to OAL a Revised Finding of Emergency, which proffered additional alleged justifications for the emergency rulemaking.

74. In its Revised Finding, DOGGR asserted that the decision to allow illegal and harmful injections to continue was actually beneficial to public health and safety. It asserted, without evidence, that "abrupt disruption" to the oil industry would be detrimental to general welfare.

75. On April 20, 2015, OAL approved the Aquifer Exemption Compliance Schedule Regulations adopting the proposed rules' deadlines for continuation of the illegal injections.

76. The new Aquifer Exemption Compliance Schedule Regulations are now in effect.

FIRST CAUSE OF ACTION

(Declaratory Relief – California Administrative Procedure Act Violations)

77. The Center and Sierra Club hereby incorporate all previous paragraphs by reference.

78. Under the California Administrative Procedure Act ("APA"), emergency regulations must be declared invalid if the facts recited in the finding of emergency "do not constitute an emergency." (Cal. Gov. Code § 11350(a).)

79. A regulation must also be "declared invalid" under the APA if "the agency's determination that the regulation is reasonably necessary to effectuate the purpose of the statute … or other provision of law that is being implemented, interpreted, or made specific by the regulation is not supported by substantial evidence." (Cal. Gov. Code § 11350, subd. (b)(1).)

80. The APA also requires that regulations meet standards of "consistency," "necessity," and "non-duplication" to be valid. (Cal. Gov. Code §§ 11350, subd. (a); 11349.1.)

81. The Aquifer Exemption Compliance Schedule Regulations fail to comply with APA requirements for emergency regulations.

82. The recited facts in DOGGR's Revised Finding of Emergency do not constitute or justify an emergency.

83. The Aquifer Exemption Compliance Schedule Regulations fail to meet the APA's consistency, necessity, and nonduplication standards.

84. The Aquifer Exemption Compliance Schedule Regulations are in conflict with, and violate, existing state and federal law because they allow continued illegal injection of oil wastewater into protected aquifers.

85. The Aquifer Exemption Compliance Schedule Regulations are also not reasonably necessary to effectuate the purpose of the laws protecting underground sources of drinking water.

86. Promulgation of the Aquifer Exemption Compliance Schedule Regulations was an abuse of discretion, unsupported by substantial evidence, and contrary to law. As a result, the Aquifer Exemption Compliance Schedule Regulations are invalid.

87. There is a present and actual controversy between Plaintiff and DOGGR as to the validity of the Aquifer Exemption Compliance Schedule Regulations.

88. The Center and Sierra Club desire a judicial determination of the rights and obligations of the respective parties concerning the allegations in this Complaint. "Any interested party may obtain a judicial declaration as to the validity of any regulation … by bringing an action for declaratory relief in the superior court in accordance with the Code of Civil Procedure." (Cal. Gov. Code § 11350, subd. (a).)

89. Such a declaration is necessary and appropriate at this time in order that the Center and Sierra Club may ascertain the validity of the Aquifer Exemption Compliance Schedule Regulations, which are now in effect.

90. DOGGR's promulgation of the Aquifer Exemption Compliance Schedule Regulations irreparably harms and will continue to irreparably harm the Center and Sierra Club, their members,

and the public by DOGGR's failure to enforce and comply with the law and because of the ensuing environmental damage caused by DOGGR's illegal authorization of oil wastewater injection into protected aquifers.

SECOND CAUSE OF ACTION

(Writ of Mandate)

91. The Center and Sierra Club hereby incorporate all previous paragraphs by reference.

92. DOGGR has a non-discretionary duty under state and federal law, including the MOA, to prevent Class II well injections into protected aquifers. By allowing such injections to continue, and by enacting, implementing, and maintaining the Aquifer Exemption Compliance Schedule Regulations, DOGGR has failed to perform, and has violated, its non-discretionary duties.

93. DOGGR has acted unlawfully and beyond the scope of its statutory and regulatory authority as set forth in California and federal law.

94. DOGGR has also acted arbitrarily and capriciously and has abused its discretion.

95. DOGGR's actions described above are contrary to the public interest and, if permitted to remain in effect, will expose California's protected water resources to ongoing, irreparable contamination, degradation and harm.

96. The Center and Sierra Club have a beneficial interest in ensuring that DOGGR refrains from enacting, implementing and maintaining the Aquifer Exemption Compliance Schedule Regulations, and a beneficial interest in ensuring that DOGGR strictly follow state and federal law requirements, including its obligation to protect California's non-exempt aquifers from contamination and prevent harm to and degradation of non-exempt aquifer groundwater.

97. The Center, Sierra Club, and the public are irreparably harmed by DOGGR's failure to prevent Class II wells from injecting into protected aquifers, which causes irreparable contamination to California's protected aquifers, and by the Aquifer Exemption Compliance Schedule Regulations, which set aside environmental protections for invaluable drinking water sources in California and purport to legalize Class II well injections known to contaminate drinking water sources in California's aquifers.

98. The Center and Sierra Club have no plain, speedy and adequate remedy at law other than the relief sought herein.

99. Because the promulgation of the Aquifer Exemption Compliance Schedule Regulations is quasi-legislative in nature and not adjudicatory, the Center and Sierra Club bring this action under Code of Civil Procedure section 1085.

100. In the alternative, however, the Center and Sierra Club also seek a writ of mandate under CPP section 1094.5 to the extent, if any, that the Court concludes section 1094.5 is applicable here.

PRAYER FOR RELIEF

WHEREFORE, the Center and Sierra Club respectfully request that the Court:

1. Issue an order pursuant to California Government Code section 11350 declaring that the Aquifer Exemption Compliance Schedule Regulations are contrary to, in conflict with, and/or not reasonably necessary to effectuate the purpose of state and federal law;

2. Issue an order pursuant to California Government Code section 11350 declaring that the circumstances described in DOGGR's Revised Finding of Emergency do not constitute an "emergency" as defined under the California Administrative Procedure Act;

3. Issue an order pursuant to California Government Code section 11350 declaring that the Aquifer Exemption Compliance Schedule Regulations are void;

4. Issue preliminary and permanent injunctive relief requiring DOGGR to vacate and rescind the Aquifer Exemption Compliance Schedule Regulations;

5. Issue any other preliminary and permanent injunctive relief, as appropriate under California Code of Civil Procedure section 525, *et seq.*;

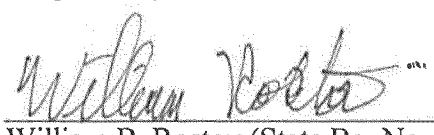
6. Issue a peremptory writ of mandate pursuant to California Code of Civil Procedure section 1085 declaring that DOGGR abused its discretion by allowing injections into protected aquifers;

7. Issue a peremptory writ of mandate pursuant to California Code of Civil Procedure section 1085 ordering DOGGR to take all actions necessary and available to it to immediately meet its non-discretionary duties to prohibit illegal injection of wastewater into protected aquifers;

8. Award Petitioners' fees and costs, including reasonable attorneys' fees and expert witness costs, as authorized by California Code of Civil Procedure section 1021.5, and any other applicable provisions of law; and

9. Grant such other relief as the Court deems just and proper.

Respectfully submitted,



DATED: May 7, 2015

William B. Rostov (State Bar No. 184528)
Tamara T. Zakim (State Bar No. 288912)
EARTHJUSTICE
50 California Street, Ste. 500
San Francisco, CA 94111
Tel: 415-217-2000
Fax: 415-217-2040
Email: wrostov@earthjustice.org,
tzakim@earthjustice.org,

Attorneys for Plaintiffs/Petitioners
Center for Biological Diversity and Sierra Club

Hollin N. Kretzmann (State Bar No. 290054)
CENTER FOR BIOLOGICAL DIVERSITY
351 California Street, Ste. 600
San Francisco, CA 94104
Tel: 415-436-9682
Fax: 415-436-9683
Email: hkretzmann@biologicaldiversity.org

Attorneys for Plaintiff/Petitioner
Center for Biological Diversity

ED_001000_00019582-00017

VERIFICATION

I, Kathryn Phillips, declare:

I am the Director of Sierra Club California. I have read the foregoing complaint for declaratory and injunctive relief and verified petition for writ of mandate against the California Department of Conservation, Division of Oil, Gas and Geothermal Resources, and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe it to be true.

Executed May 6, 2015 in Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct.

Kathryn Phillips

Kathryn Phillips