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

CENTER FOR BIOLOGICAL DIVERSITY,
EARTHWORKS, ENVIRONMENTAL
WORKING GROUP, and SIERRA CLUB, non-
profit corporations,

Plaintiffs,

vs.

CALIFORNIA DEPARTMENT OF
CONSERVATION, DIVISION OF OIL, GAS,
AND GEOTHERMAL RESOURCES, and DOES I
through X, inclusive,

Defendants.

) Case No.:
)
)
) **VERIFIED COMPLAINT FOR**
) **DECLARATORY AND INJUNCTIVE**
) **RELIEF**

) (Cal. Code of Civil Procedure § 1060)

INTRODUCTION

1. Plaintiffs Center for Biological Diversity, Earthworks, Environmental Working Group, and Sierra Club (collectively, “Plaintiffs”) bring this action for declaratory and injunctive relief to challenge the pattern and practice of the California Department of Conservation, Division of Oil, Gas, and Geothermal Resources (“DOGGR”) in issuing permits for oil and gas wells within the state of California in violation of the California Environmental Quality Act (“CEQA”), Pub. Res. Code. § 21000 *et seq.* In particular, DOGGR’s practice of approving permits for oil and gas wells after exempting such projects from environmental review or otherwise issuing boilerplate negative declarations finding no significant impacts from these activities undermines the fundamental review requirements of CEQA.

1 individuals who regularly use and intend to continue to use the areas in California affected by the oil
2 and gas well approvals at issue here, including members who are particularly interested in protecting
3 the drinking water, air quality, and natural environment that may be affected by oil and gas
4 development.

5 11. Plaintiff ENVIRONMENTAL WORKING GROUP (“EWG”) is a non-profit
6 corporation formed pursuant to the laws of the District of Columbia. EWG has offices in Oakland,
7 California and elsewhere in the United States, and has more than 1.2 million online supporters,
8 including over 150,000 in California. EWG’s mission is to protect the most vulnerable segments of
9 the human population from health problems attributed to a wide array of toxic contaminants, and to
10 replace government policies, including subsidies that damage the environment and natural resources,
11 with policies that invest in conservation and sustainable development. In order to accomplish its
12 mission, EWG employs a team of scientists, engineers, policy experts, lawyers, and others to review
13 government data, legal documents, and scientific studies and conducts its own laboratory tests to
14 expose threats to public health and the environment and find solutions. EWG has been actively
15 working in California and elsewhere to expose the lack of effective oversight and regulation of, and
16 the environmental and health impacts related to, hydraulic fracturing. In particular, EWG conducts
17 original research and publishes reports on U.S. oil and natural gas drilling, with particular attention
18 to hydraulic fracturing and its many inherent risks, and routinely engages with state officials and
19 regulatory agencies to educate them about the risks of fracking and how to manage them in a way
20 that does not compromise natural resources and public health.

21 12. Plaintiff SIERRA CLUB is a national non-profit corporation with approximately
22 600,000 members, roughly 143,000 of whom live in California. The Sierra Club is dedicated to
23 exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the
24 responsible use of the earth’s ecosystems and resources; to educating and encouraging humanity to
25 protect and restore the quality of the natural and human environment; and to using all lawful means
26 to carry out these objectives. The Sierra Club has been actively working in California and elsewhere
27 to address the serious threats to public health and the environment related to the lack of oversight
28 and safeguards for hydraulic fracturing activities. The Sierra Club, including its Kern-Kaweah

1 Chapter, has many members living in and/or recreating in California counties affected by the oil and
2 gas approvals at issue here.

3 13. Plaintiffs bring this action on their own behalf and on behalf of their members,
4 employees, and supporters who are residents and taxpayers of the state of California, and who are
5 adversely affected by the actions of DOGGR as described in this Complaint. In particular,
6 DOGGR's pattern and practice of permitting oil and gas operations in the absence of appropriate
7 CEQA review causes permanent and/or long-lasting impacts to water quality, air quality, wildlife,
8 recreation, and visual resources, as well as an adverse impact on Plaintiffs and their members' ability
9 to enjoy the conservation, recreational, spiritual, wildlife, and aesthetic qualities of the areas affected
10 by oil and gas operations.

11 14. By this action, Plaintiffs seek to protect the above-described health, welfare,
12 environmental, conservation, recreation, spiritual, cultural, economic, scientific, and other interests
13 of its members, employees, and supporters and the general public and to enforce a public duty owed
14 to them by DOGGR. Plaintiffs and their staff and members have a right to, and a beneficial interest
15 in, DOGGR's performance of its duties under CEQA and the Public Resources Code. These
16 interests have been threatened by DOGGR's decision to approve oil and gas wells in violation of
17 CEQA, and unless the relief requested in this case is granted, will continue to be adversely affected
18 and irreparably injured by the failure of DOGGR to comply with the law.

19 15. Defendant DEPARTMENT OF CONSERVATION, DIVISION OF OIL, GAS, AND
20 GEOTHERMAL RESOURCES ("DOGGR") is an agency of the state of California located in
21 Sacramento, California. DOGGR is charged with the regulation of drilling, operation, maintenance,
22 and plugging and abandonment of onshore and offshore oil, gas, and geothermal wells within the
23 state of California. DOGGR also acts as the lead or responsible agency for purposes of CEQA in
24 permitting oil and gas wells.

25 16. The true names and capacities, whether individual, corporate, or otherwise, of DOES
26 I through X are unknown to Plaintiffs. Plaintiffs will amend this Complaint for Declaratory and
27 Injunctive Relief to set forth the true names and capacities of said Doe parties when they have been
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1 ascertained. Plaintiffs allege that each of said Doe parties I through X has jurisdiction by law over
2 one or more aspects of oil and gas operations in California and their approval.

3 **BACKGROUND**

4 **I. Oil and Gas Development in California.**

5 17. Oil and gas have been commercially produced in California for more than a century.
6 As of 2010, California had 51,394 oil wells and 1,567 gas wells in production, located in 31 of the
7 state's 58 counties, producing approximately 200 million barrels of oil and 255 billion cubic feet of
8 gas. Approximately 2,300 new oil and gas wells were drilled in 2011. California is the fourth
9 largest oil producing state after Texas, North Dakota, and Alaska.

10 18. Historically, most oil and gas production in California and elsewhere has come from
11 "conventional" sources, meaning from relatively porous geologic formations where oil or gas will
12 flow out due to the pressure of the reservoir when a well is drilled (primary production), or with the
13 help of added pressure or temperature applied to the reservoir (secondary or tertiary production). By
14 contrast, "unconventional" oil and gas reservoirs are tightly bound with the geologic formations,
15 such as coal beds, shale, and tight sands, requiring discrete fractures to spur production.

16 19. As a result of advances in technologies such as hydraulic fracturing and horizontal
17 drilling, production of oil and gas from unconventional sources has increased dramatically in recent
18 years and is expected to further expand in the near future. For example, unconventional sources of
19 natural gas production accounted for 2.6 trillion cubic feet, or about 15% of total U.S. production, in
20 1990. The U.S. Department of Energy's Energy Information Administration ("EIA") predicts that
21 by 2035, annual production from such sources will increase to 21 trillion cubic feet per year and
22 represent 77% of total U.S. gas production. The EIA has also reported that the Monterey and Santos
23 shale formations, which underlie 1,752 square miles in the San Joaquin and Los Angeles basins in
24 California, are estimated to hold between 13.7 and 15.4 billion barrels of oil, or as much as 64% of
25 the nation's shale oil reserves.

26 **II. Hydraulic Fracturing and Its Environmental Impacts.**

27 20. Hydraulic fracturing (or "fracking") was first developed in the early 20th century and
28 has been used in California as far back as the 1950s. Fracking is the standard practice for extracting

1 oil and gas reserves from unconventional sources such as permeable rock formations, and has also
2 been increasingly applied to wells in conventional source formations to improve productivity. The
3 U.S. Environmental Protection Agency (“EPA”) estimates that 11,400 new wells are fractured each
4 year, while 1,400 existing wells are fracked to stimulate production. Based on a request from
5 DOGGR in March 2012, the Western States Petroleum Association reported that 628 wells were
6 fracked in California in 2011. As of October 15, 2012, an industry-operated website, FracFocus,
7 listed 445 wells in California that had been fracked since January 1, 2011. Given the voluntary
8 nature of this reporting, however, these figures represent an underestimate of the full extent of
9 hydraulic fracturing in California.

10 21. The process of hydraulic fracturing is conducted by pumping large quantities of fluid
11 down a wellbore into the target rock formation. The fracking fluid typically consists of 95% water,
12 4.5% proppant (such as sand, ceramic pellets, or other particles), and 0.5% chemicals that serve
13 various purposes, including biocides, oxygen scavengers, enzyme breakers, acids, stabilizers, gels,
14 and rust inhibitors. The fracking process creates and expands fissures in the geologic formation and
15 allows oil and gas to flow into the well.

16 22. In the first few days to weeks after fracking, the well pressure is released and some of
17 the fracking fluid, known as “flowback,” returns to the surface through the wellbore. Over longer
18 time periods, water naturally present in the ground, known as “produced water,” continues to flow
19 through the well to the surface. The flowback and produced water, which may contain the injected
20 chemicals as well as naturally occurring substances such as brines, metals, radionuclides, and
21 hydrocarbons, are typically stored in tanks and pits on site before treatment or disposal. Disposal of
22 these fluids is often accomplished through underground injection.

23 23. There are a number of significant environmental and human health impacts associated
24 with the process of hydraulic fracturing. According to an April 2011 report from the U.S. House of
25 Representatives, oil and gas companies between 2005 and 2009 used fracking products containing
26 29 chemicals that are (1) known or possible human carcinogens, (2) regulated under the federal Safe
27 Drinking Water Act, 42 U.S.C. § 300f *et seq.*, for their risks to human health, or (3) listed as
28 hazardous air pollutants under the federal Clean Air Act, 42 U.S.C. § 7401 *et seq.* This included the

1 injection of 11.4 million gallons of products containing benzene, toluene, xylene, and/or
2 ethylbenzene over the five-year period. In addition, several chemicals commonly used in fracking
3 operations, such as 1,4 dioxane, formaldehyde, benzene, toluene, ethylbenzene, acrylamide,
4 naphthalene, dibromoacetonitrile, ethylene oxide, and thiourea, are also listed under California's
5 Proposition 65 program based on their potential to cause cancer and/or reproductive harm.
6 However, the precise chemical makeup of most fracking fluids has not been disclosed because the
7 oil and gas industry has argued that it is proprietary information and/or a trade secret.

8 24. Given the use of such chemicals, as well as the release of other naturally-occurring
9 substances from rock formations, the contamination of domestic and agricultural water supplies from
10 the process of hydraulic fracturing is a major concern. Such contamination can occur through
11 several different mechanisms. For example, if a well bore is not properly sealed and cased,
12 chemicals and other materials can escape as they move through the well. The fracking fluid can also
13 migrate underground, through natural fractures as well as those created by the fracking process, and
14 can lead to contamination of groundwater. Abandoned wells can serve as pathways for the
15 migration of contaminants into water sources. Spills of fracking fluids including the flowback can
16 occur on the surface during storage and transportation activities. Wastewater is often disposed of
17 through underground injection wells, posing a further risk of contamination.

18 25. Fracking also requires the use of large volumes of water, which can vary from tens of
19 thousands to millions of gallons of water per well. Most of the water injected underground is either
20 not recovered or is unfit for domestic or agricultural use when it returns to the surface, and must be
21 treated and disposed of. Water usage is already a major issue in California, which has experienced
22 drought conditions and water shortages in recent years. Not only can water withdrawals for fracking
23 directly affect the availability of water for other uses, but it can also indirectly impact water supplies
24 by mobilizing naturally-occurring contaminants, causing land subsidence, or promoting bacterial
25 growth.

26 26. Fracking also releases volatile organic compounds ("VOCs") and other hazardous air
27 pollutants. VOCs can react in the atmosphere to form ozone and particular matter, which can cause
28 respiratory ailments such as asthma and bronchitis, heart attacks, and even premature death. Such

1 impacts are particularly acute in the San Joaquin Valley and Los Angeles air basins, which already
2 experience some of the worse air pollution in the nation. EPA has found that some of the largest air
3 pollution emissions in the natural gas industry occur as wells that have been fracked are prepared for
4 production. During the flowback stage of well completion, fracking fluids, water, and reservoir gas
5 come to the surface at a high velocity and volume. This mixture includes a large amount of VOCs
6 and methane along with air toxics such as benzene, ethylbenzene, and n-hexane. Ancillary
7 equipment used in fracking operations, such as diesel trucks and generators, can also be a significant
8 source of air pollution.

9 27. Recent evidence has also found that the underground injection of wastewater
10 resulting from hydraulic fracturing operations can induce seismic activity, a serious concern in
11 California. In June 2012, the National Research Council of the National Academies of Science
12 released a report finding that the injection of wastewater for disposal poses a risk of causing seismic
13 events. In recent years, a number of small earthquakes in Arkansas, Ohio, Oklahoma, and Texas
14 have been related to wastewater disposal associated with oil and gas production, including the
15 underground injection of wastewater resulting from fracking. In addition, a recent study from the
16 British Columbia Oil and Gas Commission found that fluid injection during hydraulic fracturing in
17 proximity to pre-existing faults resulted in dozens of seismic events in the Horn River Basin of
18 northeast British Columbia between 2009 and 2011.

19 **III. DOGGR’s Regulation of Oil and Gas Activities.**

20 28. DOGGR, an agency within the California Department of Conservation, has extensive
21 authority to regulate activities associated with oil and gas production in California, including the
22 subsurface injection of fluids, and issues permits for the drilling of new wells and reworking old
23 ones. Under Public Resources Code Section 3106(a), DOGGR is required to “supervise the drilling,
24 operation, maintenance, and abandonment of wells and the operation, maintenance, and removal or
25 abandonment of tanks and facilities attendant to oil and gas production...so as to prevent, as far as
26 possible, damage to life, health, property, and natural resources; damage to underground oil and gas
27 deposits from infiltrating water and other causes; loss of oil, gas, or reservoir energy, and damage to
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1 underground and surface waters suitable for irrigation or domestic purposes by the infiltration of, or
2 the addition of, detrimental substances.”

3 29. In 1983, DOGGR was granted “primacy,” or primary authority by EPA under the
4 federal Safe Drinking Water Act, to regulate Class II underground injection wells, which includes
5 wells used for enhanced oil recovery or to dispose of wastewater associated with oil and gas
6 production. In June 2011, EPA Region 9 commissioned a report reviewing DOGGR’s regulation of
7 Class II wells for compliance with its primacy agreement. In a July 18, 2011 letter from EPA to
8 DOGGR accompanying the report, EPA noted several “program deficiencies that require more
9 immediate attention and resolution.” In particular, EPA found that DOGGR’s regulations and
10 practices did not adequately protect potential underground sources of drinking water (1) from
11 exposure to “fluid movement due to improperly plugged wells and/or lack of cement in the
12 casing/wellbore annulus;” (2) by failing to perform site specific “Zone of Endangering Influence”
13 determinations for injection wells (i.e., the area in which pressure from the injection process could
14 cause injected fluids to migrate into underground sources of drinking water) by simply assuming that
15 the potential fluid migration for all wells is a quarter-mile; and (3) by failing to require adequate
16 testing to determine whether pressure levels in injection wells are safe to ensure that well casings
17 remain intact and that no damage will be done to the surrounding geologic formations.

18 30. In the July 18, 2011 letter, EPA requested that DOGGR “provide EPA with an action
19 plan...that addresses the above noted deficiencies and other areas for improvement identified in the
20 [report] by September 1, 2011.” To date DOGGR has not responded to this request.

21 31. In order to drill or rework an oil or gas well in California, permits are typically
22 needed from both DOGGR and a local agency, depending on where the well is located. Additional
23 permits may also be needed from the U.S. Bureau of Land Management (for wells on federal lands),
24 the State Lands Commission (for wells on state lands). In many counties, wells that are drilled in
25 existing oil and gas fields do not require a local agency permit. In addition, DOGGR serves as the
26 lead agency for CEQA purposes for all wells located in Kern County, where the vast majority of oil
27 wells (more than 80%) in the state of California are located.

32. In permitting oil and gas wells in California, DOGGR must comply with the statutory and regulatory requirements of the California Environmental Quality Act. CEQA requires each state agency to prepare an Environmental Impact Report (“EIR”) when it proposes to approve or carry out a discretionary project that may have a significant impact on the environment, and to mitigate or avoid those significant impacts whenever feasible to do so. (Pub. Res. Code §§ 21002.1, 21061, 21080(a).) Where an agency determines that a proposed project would not have a significant effect on the environment, it must adopt a “negative declaration” to that effect. (Pub. Res. Code §§ 21064, 21080(c).) In limited circumstances, an agency project approval may be exempt from CEQA review if it falls within one of the “categorical exemptions” enumerated in CEQA’s implementing regulations. (Cal. Code Regs. tit. 14, §§ 15061(b)(2), 15300-33.) However, these exemptions are intended to apply to projects that fall within a predefined type of activity that have been analyzed and determined not to have a significant effect on the environment. (Pub. Res. Code § 21084(a); Cal. Code. Reg. tit. 14, § 15300.)

33. DOGGR has never prepared an EIR when issuing permits for oil and gas wells in the state of California. Rather, DOGGR’s approval of permits for oil and gas wells since 2011 has followed the issuance of either (1) a Notice of Exemption from the requirements of CEQA based on a categorical exemption for “Minor Alterations to Land” in Cal. Code Regs. tit. 14, § 15304 or, in one instance, for “Existing Facilities” in Cal. Code Regs. tit. 14, § 15301; or (2) a Negative Declaration or Mitigated Negative Declaration finding that such projects will not have a significant effect on the environment.

34. Since 2011, DOGGR has approved at least 18 oil and gas projects without CEQA review based on the regulatory exemptions for “Minor Alternations to Land” or “Existing Facilities”:

<u>Project Name</u>	<u># of wells</u>	<u>County</u>	<u>Dave Approved</u>
B&J CM-11 and B&J CM-12	2	Kern	8/10/2011
835G-1 (Cassini)	1	Kern	10/14/2011
Central Point 94X	1	Kern	11/10/2011

1	Jackson and Perkins 27-3H	1	Kern	1/12/2012
2	Brooks 1	1	Kern	3/7/2012
3	Thorndyke #1	1	Kern	3/7/2012
4	Mel 1	1	Kern	4/9/2012
5	Wasatch 1	1	Kings	4/25/2012
6	Golden Trout	1	Kings	5/15/2012
7	Century CUSA 35-1	1	Kern	6/8/2012
8	Patricia McKellar et al No. 1	1	Kern	8/9/2012
9	Little Bear 314-5H	1	Kern	8/9/2012
10	William Elliot 75-5	1	Kern	8/9/2012
11	Fulwyler 82-15AH	1	Kern	8/9/2012
12	Paladin 1-25	1	Kern	8/9/2012
13	Vintage 7-14H and 8-14H	2	Kern	8/13/2012
14	Charles Wiggins et al No. 1	1	Kern	8/13/2012
15	Gooselake 1-4	1	Kern	8/13/2012

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17 35. Since 2011, DOGGR has approved at least 20 oil and gas projects based on a

18 Negative Declaration or Mitigated Negative Declaration finding that such activities do not have a

19 significant effect on the environment. Except in one instance discussed below, the Negative

20 Declarations for these projects do not mention, let alone evaluate or mitigate, impacts from hydraulic

21 fracturing, and largely consist of boilerplate language regarding other potential environmental

22 impacts:

24	CEQA #	Project Name	# of wells	County	Dave Approved
25	2010121038	Kuhn Trust #1-14	3	Kern	2/14/2011
26	2010101083	Gunslinger Project	10	Kern	3/23/2011
27	2011031084	Daniel #1	1	Kern	5/4/2011
28	2011031064	SE 1/4, Section 11, T30S, R29E MDB&M	1	Kern	5/5/2011

1	2011041050	Galatea 845Z-8	1	Kern	5/23/2011
2	2011041097	Diatomite & Midway Sunset Development	1267	Kern	6/15/2011
3	2011031030	Barrel Valley	15	Kern	6/15/2011
4	2011031038	North Antelope Hills	2	Kern	6/21/2011
5	2011062040	Richter 1-8 and 2-8	2	Sutter	7/21/2011
6	2011081015	Jaguar Project	2	Kings	9/22/2011
7	2011091011	Boswell Project	4	Kern	10/14/2011
8	2011061068	Bear #6 and #7	2	Kern	11/10/2011
9	2011081014	Section 31 and 32, T25S, R19E, MDB&M	2	Kern	11/16/2011
10	2011111003	Kingmaker North	4	Kings	12/12/2011
11	2011111004	Kingmaker South	2	Kings	12/12/2011
12	2011111055	BLC	1	Kern	12/28/2011
13	2011121008	Aera Citrus 1	1	Kern	1/9/2012
14	2011111079	19Z Diatomite Development Project	55	Kern	1/12/2012
15	2011111066	Three Amigos	16	Kern	4/19/2012
16	2012042049	Daniel #2	1	Kern	9/7/2012

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18 36. Even though DOGGR has no specific regulations governing fracking, these negative
19 declarations typically state that “[i]f all applicable statutes and regulations are followed, the project
20 will not degrade groundwater quality or interfere with groundwater recharge, or deplete groundwater
21 resources in a manner that will cause water-related hazards such as subsidence.” The negative
22 declarations also assert that there will be no impact from the transport, use, or disposal of hazardous
23 materials without any discussion of the fracking chemicals to be used or the potential for well casing
24 failures.

25 37. In one instance, the negative declaration for the Gunslinger Project admits that the
26 project “could involve casing perforation jobs into various intervals, and hydraulic fracture jobs to
27 improve permeability. If any hydraulic fracture using diesel fuel will be employed, DOGGR will be
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1 notified in advance.” However, this negative declaration provides no additional information,
2 analysis, or mitigation regarding the impacts of such fracking activities.

3 38. Although DOGGR has the statutory authority to regulate hydraulic fracturing
4 pursuant to Public Resources Code Sections 3013 and 3106, the agency asserts that it does not
5 currently track, monitor, control, or have any specific standards applicable to the hydraulic fracturing
6 of oil and gas wells. In fact, DOGGR asserts that it does not know where or how often fracking
7 occurs in California, how much water is required, or what chemicals are injected underground in
8 fracking fluids, and it does not have any information regarding the safety, efficacy, or necessity of
9 the practice.

10 39. In May 2012, after publicly stating for many months that it was not planning any
11 specific regulations to address the practice of fracking, DOGGR announced that it would hold a
12 series of workshops around the state “to be conducted as part of a comprehensive information
13 gathering process aimed at the development of regulations governing hydraulic fracturing.”
14 Although the final workshop was held in Sacramento on July 25, 2012, the scope, content, or timing
15 of any such regulations remains unknown.

16 40. On June 18, 2012, Plaintiffs’ attorneys submitted a Public Records Act request to
17 DOGGR, attached as Exhibit C hereto, for all documents relating to:

- 18 (1) Policies, procedures, legal memoranda, or other documents regarding DOGGR’s review
19 of oil and gas activities under CEQA;
- 20 (2) Environmental Impact Reports (“EIRs”) regarding oil and gas activities that DOGGR has
21 produced and/or approved as a “lead agency” for CEQA purposes within the past 20 years;
- 22 (3) The decision by DOGGR to serve as the “lead agency” for CEQA purposes regarding oil
23 and gas activities within Kern County;
- 24 (4) Potential human health and environmental impacts including, but not limited to,
25 groundwater contamination, water usage, wastewater disposal, and increased seismic
26 activity, resulting from the practice of hydraulic fracturing;
- 27 (5) The chemical compounds used in the practice of hydraulic fracturing at oil and gas
28 operations in California;

1 (6) The location of oil and gas operations in California where hydraulic fracturing has
2 occurred; and

3 (7) The location of oil and gas operations in California where hydraulic fracturing is planned
4 or projected to occur.

5 41. On June 28, 2012, DOGGR sent Plaintiffs' attorneys a letter responding to the Public
6 Records Act request. In the letter, attached as Exhibit D hereto, DOGGR stated that they have no
7 EIRs regarding oil and gas activities, that it "does not specifically track or monitor the practice of
8 hydraulic fracturing, on a well-by-well basis or otherwise," and that "oil and gas operators are not
9 required to notify [DOGGR] of planned or projected hydraulic fracturing operations."

10 **FIRST CAUSE OF ACTION**

11 **(Declaratory Relief – Violation of CEQA)**

12 42. Plaintiffs re-allege, as if fully set forth herein, each and every allegation contained in
13 the preceding paragraphs.

14 43. The California Environmental Quality Act, Public Resources Code §§ 21000-21177,
15 is a comprehensive statute designed to provide for long-term protection of the environment. In
16 enacting CEQA, the state Legislature declared its intention that all public agencies responsible for
17 regulating activities affecting the environment give prime consideration "to preventing
18 environmental damage, while providing a decent home and satisfying living environment for every
19 Californian." (Pub. Res. Code § 21000(g).)

20 44. CEQA requires each state agency to prepare an EIR when it proposes to approve or
21 carry out a discretionary project that may have a significant impact on the environment, and to
22 mitigate or avoid those significant impacts whenever feasible to do so. (Pub. Res. Code §§ 21002.1,
23 21061, 21080(a).) "Significant effect on the environment" is defined as "a substantial, or potentially
24 substantial, adverse change in any of the physical conditions within the area affected by the project
25 including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic
26 significance." (Cal. Code Regs. tit. 14, § 15382.) The term "project" includes the issuance of a
27 permit, and DOGGR's issuance of permits for oil and gas wells is a "discretionary" action. (Pub.
28 Res. Code §§ 20165, 21080.)

1 45. As the implementing regulations for CEQA provide, the discussion of significant
2 environmental impacts “should include relevant specifics of the area, the resources involved,
3 physical changes, alterations to ecological systems, and changes induced in population distribution,
4 population concentration, the human use of the land (including commercial and residential
5 development), health and safety problems caused by the physical changes, and other aspects of the
6 resource base such as water, historical resources, scenic quality, and public services.” (Cal. Code
7 Regs. tit. 14, § 15126.2(a).)

8 46. A fundamental purpose of CEQA is to “[p]revent significant, avoidable damage to the
9 environment by requiring changes in projects through the use of alternatives or mitigation
10 measures.” (Cal. Code Regs. tit. 14, § 15002(a)(3).) Consequently, an EIR must identify feasible
11 mitigation measures in order to substantially lessen or avoid otherwise significant environmental
12 effects. (Pub. Res. Code §§ 21002, 21081(a); Cal. Code Regs. tit. 14, § 15126.4(a).)

13 47. Where an agency determines that a proposed project would not have a significant
14 effect on the environment, it must adopt a “negative declaration” to that effect. (Pub. Res. Code §§
15 21064, 21080(c).)

16 48. In limited circumstances, an agency may determine that a project is exempt from
17 CEQA review if it falls within one of the “categorical exemptions” enumerated in CEQA’s
18 implementing regulations. (Cal. Code Regs. tit. 14, §§ 15061(b)(2), 15300-33.) However, these
19 exemptions are intended to apply to projects that fall within a predefined type of activity that have
20 been analyzed and determined not to have a significant effect on the environment. (Pub. Res. Code
21 § 21084(a); Cal. Code. Reg. tit. 14, § 15300.)

22 49. DOGGR’s pattern and practice of approving oil and gas wells without any mention,
23 let alone evaluation or mitigation, of the environmental and public health impacts of oil and gas
24 development, including the effects of hydraulic fracturing, is a violation of CEQA.

25 50. In particular, DOGGR has violated CEQA by issuing permits for oil and gas wells
26 without any CEQA review by improperly relying on the regulatory exemption for “Minor
27 Alterations to Land” in Cal. Code Regs. tit. 14, § 15304 or for “Existing Facilities” in Cal. Code
28 Regs. tit. 14, § 15301. Section 15304 provides an exemption from CEQA for “minor public or

1 private alterations in the condition of land, water, and/or vegetation which do not involve removal of
2 healthy, mature, scenic trees except for forestry or agricultural purposes,” and includes such
3 examples as “new gardening or landscaping,” “[m]inor temporary use of land having negligible or
4 no permanent effects on the environment, including carnivals, sales of Christmas trees, etc.,” “[t]he
5 creation of bicycle lanes on existing rights-of-way,” and “[f]uel management activities within 30 feet
6 of structures to reduce the volume of flammable vegetation,” with no mention of environmental
7 harmful activities such as oil and gas drilling. (Cal. Code Regs. tit. 14, § 15304.)

8 51. Section 15301 provides an exemption from CEQA for “the operation, repair,
9 maintenance, permitting, leasing, licensing, or minor alteration of existing public or private
10 structures, facilities, mechanical equipment, or topographical features, involving negligible or no
11 expansion of use beyond that existing at the time of the lead agency's determination,” and includes
12 such examples as “[i]nterior or exterior alterations involving such things as interior partitions,
13 plumbing, and electrical conveyances,” “[m]aintenance of existing landscaping, native growth, and
14 water supply reservoirs,” and “[u]se of a single-family residence as a small family day care home.”
15 (Cal. Code Regs. tit. 14, § 15301.)

16 52. DOGGR has also violated CEQA by issuing permits for oil and gas wells based on
17 boilerplate negative declarations that do not provide the required environmental review, or let alone
18 even mention, the impacts of hydraulic fracturing. For example, the project descriptions for these oil
19 and gas wells do not identify or describe fracking activities. Even though DOGGR has no specific
20 regulations governing fracking, the negative declarations typically state that “[i]f all applicable
21 statutes and regulations are followed, the project will not degrade groundwater quality or interfere
22 with groundwater recharge, or deplete groundwater resources in a manner that will cause water-
23 related hazards such as subsidence.” The negative declarations also assert that there will be no
24 impact from the transport, use, or disposal of hazardous materials without any discussion of the
25 fracking chemicals to be used or the potential for well casing failures.

26 53. One of the fundamental purposes of the CEQA process is to provide public agencies
27 and the public in general with detailed information about the effect which a proposed project is
28 likely to have on the environment, and to mitigate or avoid any significant impacts whenever

1 feasible. Moreover, “[o]nly through an accurate view of the project may the public and interested
2 parties and public agencies balance the proposed project’s benefits against its environmental cost,
3 consider appropriate mitigation measures, assess the advantages of terminating the proposal and
4 properly weigh other alternatives.” (*City of Santee v. County of San Diego* (1989) 214 Cal. App. 3d
5 1438, 1454.) DOGGR’s issuance of permits for oil and gas wells based on negative declarations that
6 do not mention, discuss, evaluate, or mitigate the impacts of hydraulic fracturing fails to fulfill these
7 fundamental requirements of CEQA.

8 54. In addition, CEQA requires DOGGR to consider and evaluate the cumulative impacts
9 of a project when the project’s incremental effects are “cumulatively considerable.” (Pub. Res. Code
10 § 21083(b)(2); Cal. Code Regs. tit. 14, § 15130(a).) “Cumulatively considerable” means that “the
11 incremental effects of an individual project are significant when viewed in connection with the
12 effects of past projects, the effects of other current projects, and the effects of probable future
13 projects.” (Pub. Res. Code § 21083(b)(2); Cal. Code Regs. tit. 14, § 15065(a)(3).) In its issuance of
14 permits for oil and gas wells based on regulatory exemptions that provide for no environmental
15 review or boilerplate negative declarations that do not evaluate the impacts of hydraulic fracturing
16 activities, DOGGR has failed to properly consider the cumulative impacts of past, present, and
17 future oil and gas projects.

18 55. There is a present and actual controversy between Plaintiffs and DOGGR as to the
19 legality of these practices that are of an ongoing nature. DOGGR has prejudicially abused its
20 discretion and not proceeded in a manner required by law in that it repeatedly and as a policy,
21 practice, and/or ongoing conduct issues permits for oil and gas wells without conducting proper
22 CEQA review.

23 56. Such conduct by DOGGR irreparably harms and will continue to irreparably harm
24 Plaintiffs in that DOGGR’s actions expose Plaintiffs and the public in general to environmental
25 degradation of the public resources of this state due to its failure to evaluate, understand, and
26 mitigate the impacts of oil and gas development, including the effects of hydraulic fracturing.

27 57. Plaintiffs desire a judicial determination of the rights and obligations of the respective
28 parties concerning the allegations in this Complaint. An action for declaratory relief under

1 California Code of Civil Procedure 1060 “is an appropriate means of challenging an alleged
2 overarching policy or practice of an agency where there is an actual and present controversy over the
3 policy” (*K.G. v. Meredith* (2012) 204.Cal.App.4th 164, 177), including an agency’s failure to
4 comply with its CEQA obligations.

5 58. Such a declaration is necessary and appropriate at this time in order that Plaintiffs
6 may ascertain the right to require DOGGR to act in accordance with the obligations of CEQA to
7 ensure that permitted oil and gas activities will not be harmful to public health or the environment.

8 59. Plaintiffs have no adequate remedy in the ordinary course of law to obtain relief from
9 the consequences of DOGGR’s actions. Plaintiffs lack an adequate remedy because monetary
10 damages cannot be ascertained and Plaintiffs cannot be compensated for the environmental
11 degradation caused by DOGGR’s continued issuance of oil and gas permits in violation of CEQA.
12 In addition, it is impracticable and a waste of judicial resources for Plaintiffs to challenge oil and gas
13 permits one at a time rather than with a single lawsuit. DOGGR issues dozens of permits for oil and
14 gas wells each year. Because neither the Notices of Exemption nor the Negative Declarations issued
15 by DOGGR contain legally adequate information about the effects of fracking—or even any relevant
16 information at all—Plaintiffs have no way of determining from these individual documents where
17 and when hydraulic fracturing will occur.

18 **SECOND CAUSE OF ACTION**

19 **(Injunctive Relief)**

20 60. Plaintiffs re-allege, as if fully set forth herein, each and every allegation contained in
21 the preceding paragraphs.

22 61. Unless Plaintiffs are granted injunctive relief, they will suffer irreparable harm in that
23 DOGGR’s pattern and practice of issuing permits for oil and gas wells without any consideration or
24 mitigation of the environmental and human health impacts from oil and gas development, including
25 the effects of hydraulic fracturing, as required by CEQA is creating and will continue to create
26 adverse harm to the health of Plaintiffs and to the environment, as described herein, to the detriment
27 of Plaintiffs and the public. Therefore, the Court should enjoin DOGGR from issuing oil and gas
28 permits to the extent that they allow for hydraulic fracturing unless and until DOGGR has complied

1 with CEQA by the preparation of environmental documentation that considers, evaluates, and
2 mitigates the impacts from such activities.

3 62. Plaintiffs lack an adequate remedy at law because monetary damages cannot be
4 ascertained and Plaintiffs cannot be compensated for the environmental degradation caused by the
5 actions of DOGGR complained of herein.

6
7 **REQUEST FOR RELIEF**

8 Wherefore, Plaintiffs respectfully request relief as follows:

- 9 1. A declaratory judgment as to the illegality of the pattern and practice of DOGGR in
10 failing to comply with CEQA in the permitting of oil and gas wells in the state of
11 California;
- 12 2. An injunction enjoining DOGGR from the approval of any further permits for oil and
13 gas wells where hydraulic fracturing may occur within the state of California unless
14 and until it complies with the requirements of CEQA by considering, evaluating, and
15 mitigating the environmental and public health impacts associated with hydraulic
16 fracturing.
- 17 3. Costs incurred herein, including reasonable attorney's fees and expert witness costs,
18 pursuant to Code of Civil Procedure Section 1021.5 and other provisions of law; and
- 19 4. All such other equitable or legal relief that the Court considers just and proper.

20 Respectfully submitted,

21
22 DATED: October 16, 2012

23 _____
24 GEORGE M. TORGUN
25 WILLIAM ROSTOV
26 EARTHJUSTICE
27 50 California Street, Suite 500
28 San Francisco, CA 94111
T: (415) 217-2000
F: (415) 217-2040

Attorneys for Plaintiffs

1 **VERIFICATION**

2 I, Jennifer Krill, hereby declare:

3 I am the Executive Director of Earthworks, a non-profit corporation with offices in Berkeley,
4 California and elsewhere in the United States. The facts alleged in the above Complaint for
5 Declaratory and Injunctive Relief are true to my personal knowledge and belief.

6 I declare under penalty of perjury under the laws of the State of California that the above is
7 true and correct and that this verification is executed on this 15th day of October 2012 at Berkeley,
8 California.

9 

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11 _____
12 Jennifer Krill
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