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12
13 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
14 FOR THE CITY AND COUNTY OF ALAMEDA
15

16 CENTER FOR BIOLOGICAL DIVERSITY, a non-
17 profit corporation,

18 Plaintiff,

19 vs.

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

22 Defendants.
23

Case No.: **RG13664534**

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

(Cal. Code of Civil Procedure § 1060)

BY FAX

24
25 **INTRODUCTION**

26 1. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY brings this action for
27 declaratory and injunctive relief to challenge the pattern and practice of the California Department of
28 Conservation, Division of Oil, Gas, and Geothermal Resources (“DOGGR”) of issuing permits for

ENDORSED
FILED
ALAMEDA COUNTY
JAN 24 2013
CLERK OF THE SUPERIOR COURT
Anita Dhir

1 oil and gas well operations within the State of California without tracking, monitoring, or otherwise
2 supervising the high-risk, unconventional underground injection practice of hydraulic fracturing
3 (“Hydraulic Fracturing” or “fracking”), in violation of California’s Underground Injection Control
4 program, California Code of Regulations §§ 1724.6-10 (the “UIC Program”), and of the Public
5 Resources Code, §§ 3000 *et seq.*

6 2. Hydraulic Fracturing is currently used to extract oil and gas from wells throughout
7 the state of California. Hydraulic Fracturing is the injection into newly drilled or existing wells of
8 water, toxic chemicals, and sand or other materials that hold fissures open (“proppants”) at pressures
9 high enough to break and fracture tight shale formations, allowing the oil or gas within them to flow
10 into the wells. Recent technical developments and improvements in Hydraulic Fracturing and
11 horizontal drilling have made these activities economical, and oil and gas production from fracking
12 has spiked dramatically in the United States in the last few years. In California, the Monterey and
13 Santos shale formations, which underlie 1,752 square miles of the San Joaquin and Los Angeles
14 basins, are estimated to hold upwards of 15 billion barrels of oil. This equates to some 64% of the
15 shale oil in the continental United States, according to the Energy Information Agency’s 2011 report,
16 “Review of Emerging Resources: Overview of U.S. Oil and Gas Shale Plays.” The predicted
17 dramatic growth of Hydraulic Fracturing of the Monterey shale formation has been called the new
18 California “gold rush.”

19 3. Across the country Hydraulic Fracturing is associated with severe public health and
20 environmental effects and risks, including the use and contamination of large amounts of water
21 pumped into the wells, the contamination of domestic and agricultural water supplies, the emission
22 of hazardous air pollutants and methane, a potent greenhouse gas, surface spills of toxic fracking
23 chemicals and fluids before, during and after fracking operations, the inhalation of silica dust created
24 by proppants, environmental degradation, and the potential to induce seismic activity, a unique
25 concern in California, one of the nation’s most seismically active states. Despite these dangers,
26 DOGGR follows a pattern and practice of failing to track, monitor or regulate Hydraulic Fracturing,
27 to apply the UIC Program to Hydraulic Fracturing, and to ensure that damage to life, health, property
28 and California’s natural resources is prevented.

1 filing suit.

2 7. Venue is proper in this Court pursuant to Code of Civil Procedure sections 395 and
3 401 because DOGGR is a state agency and the California Attorney General has an office in Alameda
4 County.

5 8. Plaintiff gave written notice of its intention to file its Complaint on DOGGR before
6 filing this action. A copy of the notice and proof of service is attached as Exhibit A to this
7 Complaint.

8 9. Plaintiff served the Attorney General with a copy of the Complaint along with a
9 notice of its filing. A copy of the notice and proof of service is attached as Exhibit B to this
10 Complaint.

11 10. Plaintiff does not have a plain, speedy, or adequate remedy at law because Plaintiff,
12 its members and the environment will be irreparably harmed unless DOGGR's continued permitting
13 of oil and gas wells that are fracked in violation of the UIC Program and Public Resources Code
14 Section 3106(a) is enjoined.

15 **PARTIES**

16 11. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY ("the Center") is a non-profit
17 California corporation with offices in San Francisco and elsewhere in California and throughout the
18 United States. The Center is actively involved in environmental protection issues throughout
19 California and North America and has approximately 39,000 members. The Center's mission
20 includes protecting and restoring habitat and populations of imperiled species, and protecting air
21 quality, water quality, and public health. DOGGR approves oil and gas well operations in
22 California in violation of California's UIC Program and its duties under Public Resources Code
23 section 3106(a), and these actions impair the Center's ability to carry out its mission. The Center's
24 members and staff include individuals who regularly use and intend to continue to use areas in
25 California affected by fracking of oil and gas wells, including members who are particularly
26 interested in protecting the many native, imperiled, and sensitive species and their habitats that may
27 be affected by fracking. The Center's members have a right to, and a beneficial interest in,
28 DOGGR's performance of its regulatory and statutory duties to protect natural resources. These

1 interests have been, and continue to be, threatened by DOGGR’s pattern and practice of approving
2 oil and gas well operations in violation of the UIC Program, and without ensuring damage is
3 prevented. By this action, the Center seeks to protect the health, welfare, environmental, economic,
4 and other interests of its members and the general public and to enforce a public duty owed to them
5 by DOGGR.

6 12. Plaintiff brings this action on its own behalf and on behalf of its members, employees,
7 and supporters who are residents and taxpayers of the state of California, and who are adversely
8 affected by the actions of DOGGR as described in this Complaint. In particular, DOGGR’s pattern
9 and practice of permitting oil and gas operations in the absence of tracking, monitoring or
10 supervising Hydraulic Fracturing causes permanent and/or long-lasting impacts on or risks to water
11 quality and availability, air quality, wildlife, recreation, and visual resources, as well as an adverse
12 impact on Plaintiff and its members’ ability to enjoy the conservation, recreational, spiritual,
13 wildlife, and aesthetic qualities of the areas affected by Hydraulic Fracturing. Plaintiff and its staff
14 and members have the right to, and a beneficial interest in, DOGGRs performance of its duties under
15 the UIC Program and the Public Resources Code. These interests have been threatened by
16 DOGGR’s pattern and practice of approving oil and gas wells in violation of the UIC Program and
17 the Public Resources Code, and unless the relief requested in this case is granted, will continue to be
18 adversely affected and irreparably injured by the failure of DOGGR to comply with the law.

19 13. 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.

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

1 **BACKGROUND**

2 **I. Hydraulic Fracturing in California.**

3 15. California is the fourth largest oil producing state after Texas, North Dakota, and
4 Alaska. As of 2010, California had some 51,394 oil wells and 1,567 gas wells in production,
5 located in 31 of the state’s 58 counties, producing approximately 200 million barrels of oil and 255
6 billion cubic feet of gas. In 2011, some 2,300 new oil and gas wells were drilled.

7 16. “Conventional” oil and gas production in California and elsewhere generally consists
8 of producing oil and gas from reservoirs holding hydrocarbons that have flowed into them from
9 relatively porous geological formations. This oil and gas is pushed out of the reservoirs to the
10 surface through the well either due to the pressure already existing within the reservoirs (primary
11 production), or by applying some additional pressure or temperature to push the oil and gas upwards
12 (secondary or tertiary production). Hydraulic Fracturing, or “unconventional” oil and gas
13 production, on the other hand, targets oil and gas tightly embedded within geologic formations such
14 as coal beds, shale, and tight sands; to collect these hydrocarbons, the rock formations themselves
15 must be fractured to allow the oil and gas to escape into the well. Water is injected into the wells at
16 very high pressure to create these new fractures. Chemicals, many of them hazardous, are added to
17 the water, including acids, biocides, oxygen scavengers, enzyme breakers, stabilizers, gels, and rust
18 inhibitors. The injection fluid also contains “proppants,” particles like sand or similar materials that
19 hold the newly created fractures open to allow the hydrocarbons to continue to flow into the well.
20 Hydraulic Fracturing occurs in vertical as well as horizontally drilled wells.

21 17. Based on a request from DOGGR in March 2012, the Western States Petroleum
22 Association reported that 628 wells were fracked in California in 2011. As of January 8, 2013, the
23 voluntary disclosure website, FracFocus, listed 615 wells in California that had been fracked since
24 January 30, 2011. Because DOGGR does not require fracking to be reported, and because listing the
25 activity on FracFocus is voluntary, the actual number of fracked wells in California likely exceeds
26 this count.

27 18. As part of the fracking process, significant amounts of the fracking water, fracking
28 chemicals, and naturally occurring substances such as brines, metals, radionuclides, and

1 hydrocarbons return to the surface through the wellbore. This contaminated water may be stored in
2 tanks and pits close to the well, or may be transported elsewhere, and in some cases is then disposed
3 of through underground injection. Fracking creates numerous and significant environmental and
4 human health hazards. A study assessing the hazards of chemicals used in natural gas fracking in
5 multiple states has identified 632 chemicals used in fracking operations. Colborn, Theo et al.,
6 Natural Gas Operations for a Public Health Perspective, 17 Human and Ecological Risk Assessment
7 1039 (2011). According to this study, “[m]ore than 75% of the chemicals could affect the skin, eyes,
8 and other sensory organs, and the respiratory and gastrointestinal systems. Approximately 40-50%
9 could affect the brain/nervous system, immune and cardiovascular systems, and the kidneys; 37%
10 could affect the endocrine system; and 25% could cause cancer and mutations.” However, because
11 of exceptions in federal and other state’s chemical disclosure requirements, much information
12 relating to the chemical content and the volumes of fracking fluid used remains unknown, and thus
13 the health risks are likely even greater than indicated by this study. In California, notwithstanding
14 the provisions of state law and the regulations governing the UIC Program, DOGGR does not
15 require the disclosure of chemicals used in fracking.

16 19. Water contamination through fracking is a serious risk. Water containing fracking
17 fluid returning above ground through the well can contaminate surface water if it flows uncontrolled
18 through improperly installed well casings or cement, if the cement is fractured or damaged during
19 the fracking process, or if the casings or cement fail over time. Underground water sources can be
20 contaminated if the fracking fluid migrates to such sources through the newly created fractures or
21 through natural fractures and faults now connected to the well. The fracking fluid can also migrate
22 to adjacent wells that are abandoned and/or damaged, and thus find its way into ground or surface
23 water. Spills of fracking chemicals, fracking fluids, flowback and produced waters can occur on the
24 surface during preparation, drilling, storage or transportation activities. Storage of chemicals in
25 tanks or open pits and the disposal of wastewater in underground injection wells create further
26 contamination risks.

27 20. Fracking imposes large burdens on California’s scarce water resources and decreases
28 the availability of water for other purposes. Fracking can require tens of thousands to millions of

1 gallons of water per well, and most of the water that is recovered cannot be used for domestic or
2 agricultural purposes; rather, it is injected for underground storage or treated.

3 21. Fracking and its associated industrial operations also have significant negative effects
4 on air quality. These processes release volatile organic compounds (“VOCs”) that can react in the
5 atmosphere to form ozone and particular matter, which can cause asthma and bronchitis, heart
6 attacks, and even premature death. Additional air pollutants produced include toxics such as
7 benzene, ethylbenzene, and n-hexane. The diesel trucks, generators, and other industrial equipment
8 used to conduct the fracking operations add additional air pollution.

9 22. Fracking also raises particular concerns in seismically-active California. Connections
10 between the high-pressure underground injection of fracking wastewater and seismic activity have
11 been established in a number of recent reports, including a June 2012 report by the National
12 Research Council of the National Academies of Science. Small temblors in Arkansas, Ohio,
13 Oklahoma, and Texas have been associated with oil and gas production wastewater disposal,
14 including the underground injection of fracking wastewater. In addition, a recent study from the
15 British Columbia Oil and Gas Commission found that fluid injection during Hydraulic Fracturing in
16 proximity to pre-existing faults resulted in dozens of seismic events in the Horn River Basin of
17 northeast British Columbia between 2009 and 2011.

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

19 23. DOGGR’s UIC Program, codified in sections 1724.6-10 of the California Code of
20 Regulations, applies to all underground injections. Specifically, under the UIC Program, prior
21 approval must be obtained “before any subsurface injection or disposal project can begin.” Cal. Reg.
22 Code § 1724.6. The UIC Program requires that DOGGR must, *inter alia*, obtain detailed data,
23 engineering and geological studies, and maps concerning all underground injection projects; obtain
24 complete information concerning the relevant geological characteristics of the planned injection
25 zones; assure that injection fluids will be confined to the intended injection zones; approve injection
26 pressures and changes to injection pressures to ensure no damage occurs; obtain source information
27 about and chemical analyses of all injection liquids; conduct inspections; and supervise testing,
28

1 operation, monitoring, modification and plugging and abandonment of such projects. Cal. Reg.
2 Code §§1724.6-10. DOGGR regulates other subsurface injections that stimulate well production of
3 oil and gas, such as steam flooding, water flooding and cyclic steaming, as subsurface injection
4 activities under the UIC Program.

5 24. Hydraulic Fracturing is a subsurface injection procedure used to stimulate well
6 production of oil and gas, yet DOGGR follows a practice and pattern of not requiring compliance
7 with the UIC Program for (or even notice of) Hydraulic Fracturing.

8 25. In 1983, DOGGR was granted and assumed “primacy,” or primary authority from the
9 U.S. Environmental Protection Agency (“EPA”) under the federal Safe Drinking Water Act to
10 regulate Class II underground injection wells. Under the Safe Drinking Water Act, Class II wells
11 include wells which inject fluids for the enhanced recovery of oil or gas. To be granted primacy a
12 state’s program has to be at least as protective of underground sources of drinking water as under the
13 default provisions of the federal Safe Drinking Water Act. Nothing in the Safe Drinking Water Act
14 prevents a state from enacting more protective provisions than those contained in the Safe Drinking
15 Water Act. In its application for primacy, California relied on the provisions of its existing UIC
16 Program to demonstrate that its state law was as or more protective of underground sources of
17 drinking water than federal law.

18 26. In 2005, following federal court rulings holding that Hydraulic Fracturing fell within
19 the definition of “underground injection” under the Safe Drinking Water Act, Congress exempted
20 most forms of fracturing from the federal statutory definition of “underground injection.” California
21 did not, and to date has not, changed via statute or regulation the definition of “injection” under the
22 UIC Program so as to exclude Hydraulic Fracturing.

23 27. For states such as California that have been granted primacy, EPA maintains an
24 oversight role to ensure that such states operate their UIC programs so as to meet the minimum
25 requirements of the Safe Drinking Water Act. Accordingly, in June 2011, EPA Region 9
26 commissioned a report reviewing DOGGR’s UIC Program for compliance with its primacy
27 agreement. In a July 18, 2011 letter from EPA to DOGGR accompanying the completed report,
28 Exhibit C hereto, EPA noted several “program deficiencies that require more immediate attention

1 and resolution.” In particular, EPA found that DOGGR’s regulations and practices did not
2 adequately protect potential underground sources of drinking water (1) from exposure to “fluid
3 movement due to improperly plugged wells and/or lack of cement in the casing/wellbore annulus;”
4 (2) by failing to perform site specific “Zone of Endangering Influence” determinations for injection
5 wells (i.e., the area in which pressure from the injection process could cause injected fluids to
6 migrate into underground sources of drinking water) by simply assuming that the potential fluid
7 migration for all wells is a quarter-mile; and (3) by failing to require adequate testing to determine
8 whether pressure levels in injection wells are safe to ensure that well casings remain intact and that
9 no damage will be done to the surrounding geologic formations. EPA requested that DOGGR
10 “provide EPA with an action plan...that addresses the above noted deficiencies and other areas for
11 improvement identified in the [report] by September 1, 2011.”

12 28. More than a year later, on November 16, 2012, DOGGR responded to EPA’s request.
13 In its cover letter, Exhibit D hereto, DOGGR stated that it had made improvements to its program
14 but admitted that “more work is required” to bring its UIC Program “into conformance with state
15 laws and regulations.” In the accompanying UIC Action Plan, DOGGR stated that it would evaluate
16 and review the adequacy of its regulations and address noted deficiencies in a new rulemaking to
17 begin in 2013.

18 29. While EPA’s letter to DOGGR was not specific to Hydraulic Fracturing, the
19 problems identified by EPA and conceded by DOGGR apply to all types of injection wells,
20 including those used for Hydraulic Fracturing.

21 30. On December 18, 2012, DOGGR released a “discussion draft” of proposed
22 regulations of Hydraulic Fracturing. The discussion draft, Exhibit E hereto, defines Hydraulic
23 Fracturing as a well stimulation technique “that involves the pressurized injection of hydraulic
24 fracturing fluid and proppant into an underground geologic formation in order to fracture the
25 formation, thereby causing or enhancing . . . the production of oil or gas from a well.” Yet, the
26 discussion draft proposed a new regulation that would remove fracking from UIC coverage upon
27 finalization: “Well stimulation projects, including hydraulic fracturing, are not underground
28 injection or disposal projects and are not subject to Sections 1724.6 through 1724.10.” The

1 “discussion draft” proposed rules have not been formally proposed, let alone finalized.

2 31. Even though DOGGR has now issued a preliminary version of regulations that
3 specifically acknowledge and would partially address some of the many serious risks of Hydraulic
4 Fracturing, DOGGR continues its current and ongoing pattern and practice of permitting well
5 operations without requiring any tracking or monitoring, or even notification, of Hydraulic
6 Fracturing, without applying the requirements of the UIC Program, and without assuring the
7 prevention of damage to life, health, property and natural resources.

8 32. DOGGR’s current UIC Program regulations are promulgated pursuant to the
9 authorities and mandates of the California’s Public Resources Code. The Public Resources Code
10 requires DOGGR to “supervise the drilling, operation, maintenance, and abandonment of wells and
11 the operation, maintenance, and removal or abandonment of tanks and facilities attendant to oil and
12 gas production...so as to prevent, as far as possible, damage to life, health, property, and natural
13 resources; damage to underground oil and gas deposits from infiltrating water and other causes; loss
14 of oil, gas, or reservoir energy, and damage to underground and surface waters suitable for irrigation
15 or domestic purposes by the infiltration of, or the addition of, detrimental substances.” Under the
16 Public Resources Code, no oil well may be drilled, deepened, re-drilled, plugged or permanently
17 altered until DOGGR has first received all “pertinent data” and has granted a drilling permit. Pub.
18 Res. Code §§ 3203(a), (b). Well owners and operators must demonstrate that all waters that might
19 be suitable for irrigation or domestic purposes are properly protected from infiltration or addition of
20 detrimental substances from the well. Pub. Res. Code §§ 3222. Well owners and operators must
21 maintain logs, subject to inspection by DOGGR, showing all water-bearing strata encountered in the
22 drilling of a well. Pub. Res. Code §§ 3210, 3211. To ensure compliance, DOGGR must order such
23 tests as are necessary to prevent damage from the extraction process to life, health, property and
24 natural resources, the escape of water into underground formations, and the infiltration of
25 detrimental substances into such underground or surface water. Pub. Res. Code §3224. All of
26 DOGGR’s actions and operations must be consistent not just with the specific provisions of the UIC
27 Program but also with the statutory requirements contained in the Public Resources Code.

28 33. Despite these provisions of the Public Resources Code, DOGGR issues permits

1 allowing oil and gas well operations without requiring notice, tracking, monitoring, or other
2 supervision of Hydraulic Fracturing, and without assuring the prevention, as far as possible, of
3 damage to life, health, property and natural resources.

4 34. Through a Public Records Request dated October 25, 2012, Exhibit F hereto, Plaintiff
5 obtained DOGGR's records for 12 wells listed as of that date on FracFocus, the industry-operated
6 website, as having been fracked. DOGGR produced records for 10 of these wells. Plaintiff is
7 informed and believes, and thereon alleges, that it appears from the well records obtained that
8 DOGGR issued "permits to conduct well operations" for each well; that all of the wells underwent
9 Hydraulic Fracturing; that DOGGR categorized only one of these wells, a well that was part of a
10 larger water flood project, as a UIC well; and that DOGGR did not apply the UIC Program
11 requirements to fracking operations even when well operators disclosed their intent to conduct
12 Hydraulic Fracturing. The 10 wells for which DOGGR supplied well records are as follows:

<u>Project Name</u>	<u>Well #</u>	<u>County</u>
14 Shafter, North Field, McConnell Unit 28-2H	030-19861	Kern
15 Elk Hills Field Well 334-36S	030-28273	Kern
16 South Belridge Field "Hill" well 631D	030-41629	Kern
17 South Belridge Field "Hill" well 664	030-41648	Kern
18 South Belridge Field well 631HW	030-41652	Kern
19 South Belridge Field "Hill" well 631C	030-44523	Kern
20 Lost Hills Field Well 1-10C	030-44694	Kern
21 South Belridge Field Well 914CR-34	030-45975	Kern
22 Monument Junction, Well & Houser 51-23W	030-46719	Kern
23 Monument Junction, Twisselman 23-14W	030-46970	Kern

24
25 35. On June 18, 2012, a Public Records Act request to DOGGR, Exhibit G hereto,
26 requested, *inter alia*, all documents relating to:

- 27 • Potential human health and environmental impacts including, but not limited to,
- 28

1 groundwater contamination, water usage, wastewater disposal, and increased seismic
2 activity, resulting from the practice of hydraulic fracturing;

- 3 • The chemical compounds used in the practice of hydraulic fracturing at oil and gas
4 operations in California;
- 5 • The location of oil and gas operations in California where hydraulic fracturing has
6 occurred; and
- 7 • The location of oil and gas operations in California where hydraulic fracturing is
8 planned or projected to occur.

9 36. On June 28, 2012, DOGGR responded to the Public Records Act request. DOGGR
10 stated that it “does not specifically track or monitor the practice of hydraulic fracturing, on a well-
11 by-well basis or otherwise,” and that “oil and gas operators are not required to notify [DOGGR] of
12 planned or projected hydraulic fracturing operations.” Exhibit H hereto.

13 37. DOGGR follows a practice and pattern of approving permits to conduct well
14 operations without requiring operators to disclose whether they will engage in Hydraulic Fracturing,
15 let alone comply with applicable statutory and regulatory obligations. This practice and procedure
16 violates DOGGR’s regulatory and statutory duties to ensure that Hydraulic Fracturing does no harm
17 to life, health, property, natural resources, or underground or surface water contamination.

18 **FIRST CAUSE OF ACTION**

19 **(Declaratory Relief – Violation of the Underground Injection Control Program, Cal. Reg.** 20 **Code §§ 1724.6-10)**

21 38. Plaintiff re-alleges, as if fully set forth herein, each and every allegation contained in
22 the preceding paragraphs.

23 39. DOGGR’s UIC Program covers “*any* subsurface injection or disposal project,” Cal.
24 Reg. Code §1724.6 (emphasis added). DOGGR applies the UIC Program for injection methods that
25 stimulate wells to recover oil and gas, such as cyclic steaming, steam flooding and water flooding,
26 but it does not apply it to Hydraulic Fracturing.

27 40. Under the UIC Program, DOGGR must, *inter alia*, obtain detailed engineering and
28

1 geological studies, maps and other data concerning all underground injection projects; obtain
2 information concerning the relevant geological characteristics of the planned injection zones; assure
3 that injection fluids will be confined to the intended injection zones; approve injection pressures and
4 changes to injection pressures; obtain a chemical analysis of the liquid being injected; conduct
5 inspections; and supervise testing, operation, monitoring, modification and plugging and
6 abandonment of such projects. Cal. Reg. Code §§1724.6-10. No UIC project may commence until
7 it has first been approved by DOGGR. Cal. Reg. Code § 1724.6.

8 41. Plaintiff contends that Hydraulic Fracturing is a subsurface injection project and falls
9 within the UIC Program; Plaintiff further contends that, under current regulations, the UIC Program
10 requirements must be applied to Hydraulic Fracturing. Cal. Reg. Code §§ 1724.6-10. DOGGR,
11 however, is currently following a practice and procedure of issuing permits to conduct well
12 operations without requiring notification, tracking, or monitoring of Hydraulic Fracturing, and
13 without applying the requirements of the UIC Program.

14 42. Hydraulic Fracturing creates significant risks to California's natural resources, its
15 ground and surface water, and the public. Hydraulic Fracturing breaks up previously sealed-off rock
16 formations, creating permanent changes to underground geologic structures and extending the zone
17 that may be influenced or endangered by drilling activities. Fractures can extend for significant
18 distances, are flooded with chemically-laced water, and held open by proppants. The practice
19 creates increased risks that harmful substances in the fracking fluid may escape through the newly
20 created fractures into groundwater formations, contaminating water sources. Fracking may weaken
21 the stability of existing rock formations and may potentially induce seismic activity. Fracking also
22 creates further risks to public health through surface spills of toxic fluids, which may infiltrate
23 ground or surface water. In addition, fracking operations release air pollutants that carry significant
24 health and environmental risks.

25 43. Plaintiff contends that DOGGR's pattern and practice of issuing permits to conduct
26 well operations without requiring notification of whether fracking will occur, without tracking or
27 monitoring the practice and without applying the UIC Program requirements, is a violation of the
28 California Code of Regulations, Cal. Reg. Code §§ 1724.6-10. DOGGR, on the other hand,

1 contends that the UIC Program does not apply to Hydraulic Fracturing.

2 44. There is a present and actual controversy between Plaintiff and DOGGR as to the
3 legality of these practices that are of an ongoing and continuing nature. DOGGR has disseminated
4 “discussion draft” proposed regulations specifically to address Hydraulic Fracturing, but has not
5 actually proposed, let alone finalized them, and has admitted that it must do more work to bring its
6 UIC Program into conformance with state laws and regulations. Yet, DOGGR has failed to apply,
7 and continues to fail to apply, the analysis, monitoring, testing and supervision requirements of the
8 current UIC Program to Hydraulic Fracturing, and continues to issue permits to conduct well
9 operations without tracking or monitoring the fracking activity. DOGGR has failed, and continues
10 to fail, to proceed in a manner required by law in that it repeatedly and as a practice and ongoing
11 conduct issues permits to conduct well operations in violation of the UIC Program, Cal. Reg. Code
12 §§ 1724.6-10.

13 45. Plaintiff desires a judicial determination of the rights and obligations of the respective
14 parties concerning the allegations in this Complaint. An action for declaratory relief under
15 California Code of Civil Procedure 1060 “is an appropriate means of challenging an alleged
16 overarching policy or practice of an agency where there is an actual and present controversy over the
17 policy.” (*K.G. v. Meredith* (2012) 204 Cal.App.4th 164, 177.)

18 46. Such a declaration is necessary and appropriate at this time in order that Plaintiff may
19 ascertain the right to require DOGGR to act in accordance with the requirements of the UIC Program
20 and to require application of the UIC Program to Hydraulic Fracturing.

21 47. DOGGR’s failure to apply the UIC Program to Hydraulic Fracturing irreparably
22 harms and will continue to irreparably harm Plaintiff in that DOGGR’s actions expose Plaintiff and
23 the public in general to increased risk of, and actual, environmental harm and degradation of the
24 public resources of this State.

25 48. Plaintiff has no adequate remedy in the ordinary course of law to obtain relief from
26 the consequences of DOGGR’s actions. Plaintiff lacks an adequate remedy because monetary
27 damages cannot be ascertained and Plaintiff cannot be compensated for the environmental
28 degradation and risk caused by DOGGR’s continued issuance of oil and gas permits that allow

1 Hydraulic Fracturing to occur without tracking, monitoring or supervision. In addition, it is
2 impracticable and a waste of judicial resources for Plaintiff to challenge oil and gas permits one at a
3 time rather than with a single lawsuit. DOGGR issues hundreds of permits for oil and gas wells each
4 year, and since DOGGR does not require even notification of plans to frack, Plaintiff cannot
5 reasonably determine where and when Hydraulic Fracturing will occur.

6 **SECOND CAUSE OF ACTION**

7 **(Declaratory Relief – Violation of Public Resources Code §§ 3000 *et seq.*)**

8 49. Plaintiff re-alleges, as if fully set forth herein, each and every allegation contained in
9 the preceding paragraphs.

10 50. Public Resources Code Section 3106(a) mandates that DOGGR “supervise the
11 drilling, operation, maintenance, and abandonment of wells and the operation, maintenance, and
12 removal or abandonment of tanks and facilities attendant to oil and gas production . . . so as to
13 prevent, as far as possible, damage to life, health, property, and natural resources; damage to
14 underground oil and gas deposits from infiltrating water and other causes; loss of oil, gas, or
15 reservoir energy, and damage to underground and surface waters suitable for irrigation or domestic
16 purposes by the infiltration of, or the addition of, detrimental substances.”

17 51. The Code imposes numerous duties on DOGGR to fulfill this mandate, including
18 obtaining the “pertinent data” before it approves drilling, reworking or deepening of a well. Pub.
19 Res. Code § 3203(a). Well owners and operators must demonstrate that all waters that might be
20 suitable for irrigation or domestic purposes are properly protected from infiltration or addition of
21 detrimental substances from the well. Pub. Res. Code §§ 3222. Well owners and operators must
22 maintain logs, subject to inspection by DOGGR, showing all water-bearing strata encountered in the
23 drilling of a well. Pub. Res. Code §§ 3210, 3211. To ensure compliance, DOGGR must order such
24 tests as are necessary to prevent damage, as far as possible, to life, health, property and natural
25 resources, the escape of water into underground formations, and the infiltration of detrimental
26 substances into such underground or surface water. Pub. Res. Code §3224.

27 52. The Public Resources Code provides DOGGR with both the authority and the
28 mandate to regulate all forms drilling, including Hydraulic Fracturing.

1 53. DOGGR’s pattern and practice of issuing permits to conduct well operations without
2 notification of, tracking or monitoring the practice of Hydraulic Fracturing is a violation of Public
3 Resources Code sections 3000 *et seq.* and specifically of section 3106(a)’s mandate to prevent
4 damage to life, health, property, and natural resources or damage to underground and surface waters
5 suitable for irrigation or domestic purposes by the infiltration of, or the addition of, detrimental
6 substances.

7 54. There is a present and actual controversy between Plaintiff and DOGGR as to the
8 legality of these practices that are of an ongoing and continuing nature. DOGGR does not apply the
9 UIC Program to Hydraulic Fracturing and contends that the UIC Program does not cover the
10 practice. While DOGGR has disseminated “discussion draft” proposed regulations that specifically
11 address Hydraulic Fracturing, it has not actually proposed, let alone finalized, these regulations, or
12 otherwise taken action that complies with the mandates of Public Resources Code sections 3000 *et*
13 *seq.* to prevent, as far as possible, damage to life, health, property and California’s natural resources.

14 55. DOGGR has failed to require, and continues to fail to require, even notification of
15 when a well will be fracked, and continues to issue permits to conduct well operations without
16 tracking or monitoring the activity. DOGGR has failed, and continues to fail, to proceed in a manner
17 required by law in that it repeatedly and as a practice and ongoing conduct issues permits to conduct
18 well operations in violation of the Public Resources Code sections 3000 *et seq.*

19 56. Plaintiff desires a judicial determination of the rights and obligations of the respective
20 parties concerning the allegations in this Complaint. Such a declaration is necessary and appropriate
21 at this time in order that Plaintiff may ascertain the right to require DOGGR to act in accordance
22 with the requirements of the California Public Resources Code and regulate Hydraulic Fracturing so
23 as to prevent, as far as possible, damage to life, health, property, natural resources, and underground
24 and surface water suitable for irrigation or domestic purposes.

25 57. DOGGR’s pattern and practice irreparably harms and will continue to irreparably
26 harm Plaintiff in that DOGGR’s actions expose Plaintiff and the public in general to increased risk
27 of, and actual, environmental harm and degradation of the public resources of this State.

28 58. Plaintiff has no adequate remedy in the ordinary course of law to obtain relief from

1 the consequences of DOGGR's actions, as described herein.

2 **THIRD CAUSE OF ACTION**

3 **(Injunctive Relief)**

4 59. Plaintiff re-alleges, as if fully set forth herein, each and every allegation contained in
5 the preceding paragraphs.

6 60. An overriding purpose of California's Public Resources Code as it pertains to oil and
7 gas operations is that DOGGR shall so supervise the drilling and operation of wells as to prevent, as
8 far as possible, damage to life, health, property, natural resources, underground and surface waters.
9 Cal. Res. Code §3106(a). The Code imposes numerous duties on DOGGR to fulfill this mandate,
10 including obtaining all pertinent data before it approves drilling or reworking a well; a demonstration
11 that waters suitable for irrigation or domestic purposes are not contaminated; and ongoing testing
12 and monitoring. Pub. Res. Code §§ 3203(a), (b), 3210, 3211, 3222, 3224. DOGGR's failure even to
13 require notification of Hydraulic Fracturing activities violates these provisions and exposes Plaintiff
14 and the public to unacceptable risks and environmental harm.

15 61. DOGGR's UIC program requires DOGGR to obtain engineering and geological
16 studies, maps and data about the characteristics of planned injection zones; assure that injection
17 fluids will be confined to the intended injection zones; approve injection pressures and changes to
18 injection pressures; obtain a chemical analysis of the liquid being injected; conduct inspections; and
19 supervise testing, operation, monitoring, modification and plugging and abandonment of such
20 projects. Cal. Reg. Code §§1724.6-10. DOGGR's pattern and practice of approving permits to
21 conduct well operations while failing to require any notification, tracking or monitoring of Hydraulic
22 Fracturing, let alone applying the regulatory requirements contained in the UIC Program, violates
23 DOGGR's mandate to ensure that these activities will not cause damage. These violations are
24 ongoing and continuing.

25 62. EPA has already determined that DOGGR's administration of the UIC Program does
26 not adequately protect potential underground sources of drinking water (1) from exposure to fluid
27 movement(s) by failing to perform site-specific zones of endangering influence determinations for
28 injections wells; and (2) by failing to require adequate testing to determine safe pressure levels in

1 injection wells to prevent damage to surrounding geologic formations. In its November 16, 2012
2 response to EPA, DOGGR cited improvements to its program but admitted that “more work is
3 required” to bring its UIC Program “into conformance with state laws and regulations.” To date,
4 DOGGR has not indicated that it has completed this work. Nor has DOGGR implemented or
5 enforced any provision of its existing UIC Program to Hydraulic Fracturing. Permitting Hydraulic
6 Fracturing to occur without adequate regulatory supervision creates unacceptable risks of harm.

7 63. Plaintiff has no adequate remedy in the ordinary course of law to obtain relief from
8 the consequences of DOGGR’s actions. Plaintiff lacks an adequate remedy because monetary
9 damages cannot be ascertained and Plaintiff cannot be compensated for the environmental
10 degradation caused by DOGGR’s ongoing conduct. In addition, it is impracticable and a waste of
11 judicial resources for Plaintiff to challenge oil and gas permits one at a time rather than with a single
12 lawsuit. DOGGR issues hundreds of permits for oil and gas wells each year without requiring the
13 disclosure of fracking activities, and Plaintiff has no way of reasonably determining where and when
14 Hydraulic Fracturing will occur.

15 64. Therefore, the Court should enjoin DOGGR from issuing permits to conduct well
16 operations that allow Hydraulic Fracturing to take place without adequate regulatory supervision in
17 compliance with Public Resources Code Section 3106(a) and the related statutes, and with the UIC
18 Program, and in a manner that prevents damage, as far as possible, to life, health, property and
19 natural resources, including the protection of surface and groundwater.

20 **REQUEST FOR RELIEF**

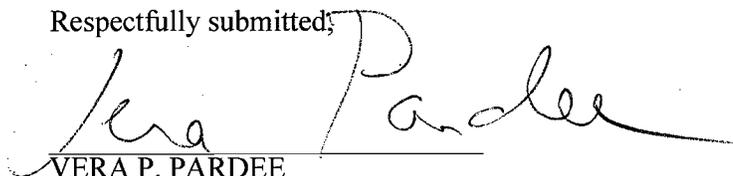
21 Wherefore, Plaintiff respectfully requests relief as follows:

- 22 1. A declaratory judgment that Hydraulic Fracturing constitutes subsurface injection
23 under California’s UIC Program;
- 24 2. A declaratory judgment that DOGGR’s failure to apply the UIC Program to
25 Hydraulic Fracturing violates California Code of Regulations sections 1724.6-10;
- 26 3. A declaratory judgment that DOGGR must regulate Hydraulic Fracturing so as to
27 comply with the mandate of Public Resources Code section 3106(a) to prevent, as far
28

1 as possible, damage to life, health, property and natural resources, including ground
2 water and surface water, and that no Hydraulic Fracturing may take place absent
3 compliance with this mandate.

- 4 4. An order enjoining DOGGR from issuing permits for drilling activities involving
5 Hydraulic Fracturing that do not apply the UIC Program requirements to those
6 activities;
- 7 5. An order enjoining DOGGR from allowing Hydraulic Fracturing to occur without
8 preventing, as far as possible, damage to life, health, property and natural resources,
9 including ground water and surface water, as required by Public Resources Code
10 section 3106(a);
- 11 4. Costs incurred herein, including reasonable attorney's fees and expert witness costs,
12 pursuant to Code of Civil Procedure Section 1021.5 and other provisions of law; and
- 13 5. All such other equitable or legal relief that the Court considers just and proper.

14 Respectfully submitted,

15 
16 VERA P. PARDEE

17 DATED: January 24, 2013

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Attorneys for Plaintiff

1 **VERIFICATION**

2 I, Peter Galvin, hereby declare:

3 I am the Conservation Director of the Center for Biological Diversity, a non-profit
4 corporation incorporated in the State of California and with offices in San Francisco and elsewhere
5 in the United States. The facts alleged in the above Complaint for Declaratory and Injunctive Relief
6 are true of my personal knowledge, except as to matters which are therein stated on information and
7 belief, and as to those matters I believe them to be true.
8

9 I declare under penalty of perjury under the laws of the State of California that the above is
10 true and correct and that this verification is executed on this 23rd day of January, 2013 at
11 Whitethorn, California.
12

13 *Peter Galvin*
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