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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

CENTER FOR BIOLOGICAL DIVERSITY, a non-profit corporation, Petitioner, v. CALIFORNIA DEPARTMENT OF CONSERVATION, DIVISION OF OIL, GAS, AND GEOTHERMAL RESOURCES; CALIFORNIA NATURAL RESOURCES AGENCY; and JOHN LAIRD, in his official capacity as Secretary of the California Natural Resources Agency, Respondents; and DOES 1 through 50.	Case No.: **VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** (Code Civ. Proc. §§ 526, 1060, 1085, 1094.5; California Environmental Quality Act, Sen. Bill No. 4 (2013-2014))

INTRODUCTION

1. Hydraulic fracturing ("fracking") and other new "well stimulation" techniques have increased oil and gas production while exacting a terrible toll on our health, environment, and climate. California is the nation's third largest oil producing state, and fracking and other well stimulation activities are frequent and widespread. Millions of Californians living near oil and gas wells face grave health and safety threats from fracking and from all phases of the oil and gas production process. Every day, the oil industry pollutes our air, contaminates our drinking water, uses dangerous chemicals near homes and schools, increases earthquake risk by injecting vast quantities of wastewater into disposal wells near active faults, and fuels climate change. During the worst drought in California's history, oil companies are illegally dumping vast volumes of toxic waste fluid from fracking and other production techniques into protected drinking water aquifers and unpermitted, unlined open pits.

2. Increasing awareness of the severe risks of fracking, coupled with recognition that Respondent California Department of Conservation, Division of Oil, Gas, and Geothermal Resources ("DOGGR") was failing to fulfill its duty to oversee and protect the public from oil and gas activities, led to an outpouring of public concern over these issues. In response, in September 2013 the California Legislature passed Sen. Bill. No. 4 (2013-2014 Reg. Sess.) (subsequently amended by Senate Bill No. 861 (2013-2014 Reg. Sess., collectively "SB 4").

3. SB 4 was designed to provide the public with complete information about, and increased protection from, well stimulation activities. Under SB 4, well stimulation is any treatment, subject to certain specified exceptions, of an oil or gas well that enhances recovery by increasing the permeability of the formation. Well stimulation includes fracking, as well as acid well stimulation treatments such as acid fracking and acid matrix stimulation.

4. SB 4 required DOGGR to complete an Environmental Impact Report ("EIR") pursuant to the California Environmental Quality Act ("California Public Resources Code § 21000 et seq., "CEQA") by July 1, 2015, to provide Californians with detailed information on all of the harms and risks of well stimulation throughout our state. DOGGR had never before completed CEQA review of these activities, on either a programmatic or site-specific basis, despite its duties as the

regulatory agency charged with oversight of drilling, operation, and abandonment of oil and gas wells. SB 4 further required DOGGR to institute new regulations and a new permitting regime for well stimulation by July 1, 2015.

5. SB 4 required Respondents California Natural Resources Agency and John Laird, California Natural Resources Secretary (collectively, "Resources Agency") to complete an independent, scientific statewide study of all of the potential impacts of well stimulation by January 1, 2015. The Legislature set the deadline for the statewide study six months before the deadline for the EIR to ensure that the EIR that was informed by the best available science.

6. The mandates of SB 4 and CEQA should have resulted in an EIR that informed the public and decision makers, for the first time, of all the potentially significant direct, indirect, and cumulative impacts of fracking and well stimulation. These mandates should have resulted in DOGGR's adoption of feasible alternatives and mitigation measures to avoid or reduce these harms and risks, and improved regulation of oil and gas activities in our state.

7. Instead, DOGGR prepared a fundamentally flawed draft EIR that ignored and downplayed the serious dangers of well stimulation. The draft EIR utilized an unstable, unclear, and overly narrow project description. It improperly piecemealed the project by analyzing the impacts of well stimulation without disclosing and analyzing the impacts of other phases of oil and gas production which necessarily occur along with well stimulation. It failed to adequately disclose the environmental impacts, ignoring the myriad serious harms and risks including those to our air, water, and climate. The draft EIR also failed to adopt legally adequate mitigation measures and alternatives, and wrongly rejected feasible alternatives. It also contained significant factual errors, including wrongly identifying 11 groundwater aquifers as exempt from pollution protections.

8. On July 1, 2015, DOGGR certified the final EIR. Rather than remedy the defects of the draft EIR, this final EIR instead compounds them. The EIR contains additional inconsistent statements about the project description, in some instances going so far as to claim that there is in fact no project to which the EIR is addressed. Relying on the this new assertion that DOGGR is neither approving nor carrying out a project or program, the EIR fails to adopt findings, fails to incorporate mitigation measures and/or alternatives into the project, fails to adopt a mitigation

monitoring or reporting plan, and fails to include a statement of overriding considerations justifying the remaining significant and unavoidable impacts of the project.

9. In addition to these problems, the EIR was not informed by, and did not incorporate, the scientific information synthesized in the independent statewide study. The Resources Secretary violated the law by delaying release of the statewide scientific study by over six months past the statutory deadline. The report that was due on January 1, 2015, was instead released on July 9, 2015, too late to meaningfully inform the EIR. The report identified a substantial number of new and more severe risks and harms from well stimulation, including threats to California's water supplies from the use of toxic chemicals in "shallow fracking" operations near protected drinking water and the health risks suffered by millions of Californians who live near oil and gas wells and are exposed to dangerous air pollutants. DOGGR violated the law by certifying an EIR which was not informed by this independent statewide study as the Legislature intended.

10. As a result of these violations, the EIR serves only as window dressing for DOGGR's continued attempts to dismiss as inconsequential the serious damages and risks of well stimulation and continue business as usual for the oil industry.

11. Petitioner Center for Biological Diversity therefore petitions this Court for a peremptory writ of mandate directing Respondent DOGGR to set aside its certification of the EIR and enjoining DOGGR from granting any permits to conduct well stimulation until DOGGR prepares, considers and certifies a legally adequate EIR. In addition, or in the alternative, Petitioner seeks a judicial declaration that, to the extent Respondent DOGGR certified the EIR without also approving any "project" or "program" with respect to well stimulation in the State of California, Petitioner requests a finding find the EIR cannot be used to support any subsequent program activities or project approvals under CEQA Guidelines section 15168, subdivision (c). Petitioner further seeks a judicial declaration that Respondents John Laird and California Natural Resources Agency failed to complete the study of well stimulation impacts mandated by SB 4 in time to fulfill the Legislature's clear intent that the study inform the EIR, and that as a result, neither DOGGR nor any other agency may approve any subsequent project or activity related to well stimulation in the State of California in reliance on the EIR without first preparing a revised, subsequent or

supplemental EIR addressing impacts, mitigation measures and alternatives, in light of the new information produced in the study. Finally, Petitioner seeks an injunction preventing Respondents from approving any application to conduct well stimulation activities in reliance on the EIR unless and until Respondents fully comply with CEQA and SB 4.

12. Grant of the requested relief will confer a significant benefit on the public and will result in the enforcement of important public rights, including the public's right to disclosure of potentially significant impacts of well stimulation in the state of California; and the public's right to ensure that DOGGR only acts in accordance with the state's environmental laws.

JURISDICTION AND VENUE

13. This Court has jurisdiction over the matters alleged in this petition pursuant to Code of Civil Procedure sections 1060 and 1085 (alternatively section 1094.5) and Public Resources Code section 21168.5 (alternatively section 21168).

14. Venue in this Court is proper under Code of Civil Procedure section 393 subd. (b) because the cause of action or some part thereof arose in the County of Sacramento. Venue in this Court also is proper because Respondents, or some of them, reside in the County of Sacramento. (Code Civ. Proc. § 395, subd. (a).)

PARTIES

15. Petitioner Center for Biological Diversity ("the Center") is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. Recognizing that global warming from society's emission of greenhouse gases is one of the foremost threats to the Center's members and their recreational, spiritual, vocational, educational, aesthetic and other interests in the earth's environment, biodiversity, and public health, the Center's Climate Law Institute works to reduce greenhouse gas emissions and promote sound conservation strategies in order to protect these interests. The Center's specific objectives also include ensuring that the impacts of oil and gas operations – including the climate, environmental, and public health impacts of operations themselves, as well as the combustion of the produced oil and gas – are accurately accounted for, considered, and mitigated in accordance with science and applicable law. The Center has more than

50,000 members, including more than 11,000 members in California, where the impacts of the Project will be felt. Center members have concrete aesthetic, recreational, scientific, spiritual, educational, and other interests that will be directly and adversely affected by any action by Respondents taken in reliance on the inadequate EIR.

16. Respondent Department of Conservation, Division of Oil, Gas and Geothermal Resources ("DOGGR"), is a subdivision within the State of California's Department of Conservation that oversees drilling, operation, and abandonment of oil, natural gas, and geothermal wells. Pursuant to California Public Resources Code section 3161 subd. (b)(3) and (4), DOGGR was the lead agency and thus prepared the EIR challenged in this petition.

17. Respondent California Natural Resources Agency is a California executive branch agency with the mission "[t]o restore, protect and manage the state's natural, historical and cultural resources for current and future generations using creative approaches and solutions based on science, collaboration and respect for all the communities and interests involved."

18. Respondent John Laird is sued in his official capacity as Secretary of the California Natural Resources Agency. Pursuant to California Public Resources Code section 3160(a), Secretary Laird was responsible for causing the independent scientific study of well stimulation and its impacts throughout the State of California to be conducted and completed by January 1, 2015.

19. Petitioner does not know the true names and capacities, whether individual, corporate, associate or otherwise, of Doe 1 through Doe 50, inclusive, and therefore sues said parties under fictitious names. Petitioner will amend this Petition to show their true names and capacities when the same have been ascertained. Each of these parties is (a) the agent of Respondent DOGGR and performed acts on which this action is based within the course and scope of such agency, and/or (b) utilized or relied on, or will utilize or rely on, or otherwise has taken or will undertake any action in reliance on, the EIR certified by DOGGR on July 1, 2015.

STANDING

20. Petitioner has a beneficial interest in this proceeding due to particular harm caused by the violations of law alleged in this Petition. Petitioner and its members have a special interest in this proceeding above and beyond the interest of the public at large. Respondents' actions have caused

and will cause concrete, particularized, actual and/or imminent harm to the interests of Petitioner's members by, *inter alia*, frustrating their ability to participate meaningfully in the CEQA process and exposing them to environmental impacts from well stimulation activities that may have been reduced or avoided had Respondents complied with their legal obligations under CEQA and SB 4. Petitioner has members who would have standing to sue in their own right.

21. Petitioner also has a beneficial interest in this proceeding because it seeks to enforce legislative enactments that establish public rights. (See, e.g., *Green v. Obledo* (1981) 29 Cal.3d 126, 144.) Petitioner has an interest in having these laws executed and Respondents' public duties enforced, so as to ensure that Respondents do not impair or defeat the purpose of the legislation establishing these public rights.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

22. Petitioner has performed all conditions precedent to filing this action and have exhausted any and all administrative remedies to the extent required by law.

23. Petitioner has complied with the requirements of Public Resources Code section 21167.5 by serving a written notice of intent to commence this action on Respondents on 28, 2015. A copy of the written notice and proof of service are attached hereto as Exhibit A.

24. Petitioner has complied with the requirements of Public Resources Code section 21167.7 by furnishing a copy of this petition to the Attorney General on July 28, 2015 in accordance with Code of Civil Procedure section 388. A copy of the letter accompanying the petition and proof of service are attached hereto as Exhibit B.

ENTITLEMENT TO RELIEF

25. As set forth in this Petition, Respondents have present legal duties, and the present ability to perform those duties, pursuant to CEQA and SB 4. Respondents have failed and/or refused to perform those duties. In addition, or in the alternative, Respondents have abused their discretion in performing those duties. Petitioner has a clear, present, and legal right to Respondents' performance of these duties.

26. Petitioner has no plain, speedy or adequate remedy in the course of ordinary law unless this Court grants the requested peremptory writ of mandate and declaratory and injunctive

relief. In the absence of such remedies, Respondents' oversight of well stimulation activities in California will proceed in violation of State law.

STATEMENT OF FACTS

A. Senate Bill 4

27. New oil and gas "well stimulation" techniques, including fracking and acidization, allow increased oil and gas production at the price of increased health and environmental risk. Illness due to chemical exposure from the resulting air pollution and water pollution, earthquakes induced by the disposal of well stimulation wastewater, and loss of habitat for threatened and endangered species due to the intense industrial activity are just a few of the many damages wrought by fracking and other oil and gas activities.

28. California is currently the nation's third largest oil producing state. Fracking and other well stimulation methods are already widely employed in California and could increase dramatically in the future.

29. In 2013, in response to an outpouring of public concern over fracking and other dangerous oil and gas activities in our state, the California Legislature passed Sen. Bill No. 4 (2013-2014 Reg. Sess.) Governor Brown signed Sen. Bill No. 4 (2013-2014) into law on September 20, 2013.

30. Sen. Bill No. 4 (2013-2014) amended sections 3213, 3215, 3236.5 and 3401 of, and added Article 3 (commencing with section 3150) to, Division 3, Chapter 1 of the Public Resources Code. The bill also appended section 10783 to the California Groundwater Monitoring Act of the Water Code.

31. In June 2014, the Legislature passed Sen. Bill No. 861 (2013-2014 Reg. Sess.) ("SB 861"). Section 131 of SB 861 contained several amendments to Sen. Bill No. 4 (2013-2014).

32. The Legislature's findings in Sen. Bill No. 4 (2013-2014) as amended by SB 861 ("SB 4") reflect the profound risks that well stimulation poses to our state. For example, the Legislature found and declared that "insufficient information is available to fully assess" the "environmental, occupational, and public health hazards and risks" of fracking and other well stimulation techniques. (SB 4, § 1, subd. (b).) The Legislature further found that "[p]roviding

transparency and accountability to the public regarding well stimulation treatments, including, but not limited to, hydraulic fracturing, associated emissions to the environment, and the handling, processing, and disposal of well stimulation and related wastes, including from hydraulic fracturing, is of paramount concern." (SB 4, § 1, subd. (c).)

33. "Well stimulation treatment" means any treatment of a well designed to enhance oil and gas production or recovery by increasing the permeability of the formation. Well stimulation treatments include, but are not limited to, hydraulic fracturing treatments and acid well stimulation treatments. (Pub. Resources Code, § 3157, subd. (a).)

34. In practice, hydraulic fracturing ("fracking") involves the high-pressure injection of vast amounts of water, a proppant (a material inserted into a fracked well to keep the fracture open) such as silica, and an array of toxic chemicals, into an underground geologic formation so as to fracture the formation, and thereby stimulating the flow of hydrocarbons.

35. Acid well stimulation treatments are well stimulation treatments that involve the application of one or more acids in a well or underground geological formation. It includes acid fracking, which involves the injection of water, acid and other chemicals at high pressure so as to fracture the underlying geologic formation. The acid in the injected fluid dissolves portions of the formation, to stimulate the flow of hydrocarbons. Acid matrix stimulation treatments involve the injection of acid at a lower pressure, with the intent of dissolving the rock formation, rather than fracturing and dissolving the formation.

36. In order to provide the public with information about and protection from these dangerous activities, SB 4 imposes certain mandatory duties on DOGGR and the Resources Secretary.

37. The Resources Secretary must "cause to be conducted, and completed, an independent scientific study on well stimulation treatments, including, but not limited to, hydraulic fracturing and acid well stimulation treatments." (Pub. Resources Code, § 3160, subd. (a).) The Legislature specified that "[t]he scientific study shall evaluate the hazards and risks and potential hazards and risks that well stimulation treatments pose to natural resources and public, occupational, and environmental health and safety." (*Ibid.*)

38. In order to ensure the integrity and usefulness of this critically important, first-of-its kind statewide study, the Legislature added multiple specific requirements, specifying that the study must:

a. Identify areas in the state where well stimulation treatments are likely to spur oil and gas exploration and production;

b. Evaluate all aspects and effects of well stimulation treatment, from transport of the chemicals and water to the well site, through to disposal of flowback fluid (well stimulation fluid and other water that is produced by an oil or gas well) generated by the well stimulation.

c. Consider the potential for the use of recycled water in all well stimulation treatments;

d. Review and evaluate acid matrix stimulation treatments;

e. Consider, "at a minimum, atmospheric emissions, including potential greenhouse gas emissions, the potential degradation of air quality, potential impacts on wildlife, native plants, and habitat, including habitat fragmentation, potential water and surface contamination, potential noise pollution, induced seismicity, and the ultimate disposition, transport, transformation, and toxicology of well stimulation treatments, including acid well stimulation fluids, hydraulic fracturing fluids, and waste hydraulic fracturing fluids and acid well stimulation in the environment." (Pub. Resources Code, § 3160, subd. (b)(4).);

f. Identify geologic features that should be taken into account when designing a well stimulation treatment; and

g. Include a hazard and risk analysis addressing occupational and environmental exposures to well stimulation treatments, and the corresponding impacts on public health and safety.

(Pub. Resources Code, § 3160, subd. (a)(2), (3).)

39. The Legislature commanded Respondent Laird to complete the scientific study by January 1, 2015. (Pub. Resources Code § 3160, subd. (a).) The Resources Agency, however, failed

to meet this deadline, and did not complete the scientific study until July 9, 2015.

40. In addition to the independent, statewide scientific study, the Legislature required DOGGR to prepare an EIR "pursuant to [CEQA], to provide the public with detailed information regarding any potential environmental impacts of well stimulation in the state." (Pub. Resources Code, § 3161, subd. (b)(3)(A).) DOGGR was required to certify the EIR by July 1, 2015. (Pub. Resources Code, § 3161, subd. (b)(3)(B)(1).)

41. DOGGR has never before completed an EIR addressing the statewide impacts of fracking and other forms of well stimulation in California.

42. The Legislature also ordered DOGGR to prepare and "adopt rules and regulations specific to well stimulation treatments" by January 1, 2015. (Pub. Resources Code, § 3160, subd. (b)(1)(A).) "The rules and regulations shall include, but are not limited to, revisions, as needed, to the rules and regulations governing construction of wells and well casings to ensure integrity of wells, well casings, and the geologic and hydrologic isolation of the oil and gas formation during and following well stimulation treatments, and full disclosure of the composition and disposition of well stimulation fluids, including, but not limited to, hydraulic fracturing fluids, acid well stimulation fluids, and flowback fluids." (*Ibid*.)

43. In addition, the Legislature instituted a permitting regime specific to well stimulation. The new regime requires operators to submit an application for a permit to conduct a well stimulation treatment that includes enumerated categories of information. (Pub. Resources Code, § 3160, subd. (d)(1).) Fracking or other well stimulation without a valid permit approval is prohibited. (Pub. Resources Code, § 3160, subd. (d)(3).) DOGGR is prohibited from approving an incomplete application. (*Ibid*.) In considering whether to issue the permit, the DOGGR Supervisor is required to "evaluate the quantifiable risk of the well stimulation treatment." (Pub. Resources Code, § 3160, subd. (d)(3)(C).)

44. The Legislature specified the effective date of the regulations and permitting regime as July 1, 2015. (Pub. Resources Code, § 3161, subd. (a).)

45. The Legislature also created an interim regime for well stimulation for the period from January 1, 2014 through June 30, 2015. During this time period, well stimulation continued in

California subject to some (but not all), of the requirements of the final regulations and permitting regime. (Pub. Resources Code, § 3161, subd. (b).)

B. The Environmental Impact Report Process

46. On November 13, 2013, DOGGR issued a Notice of Preparation, which stated that "[p]ursuant to [Public Resources Code] Section 3161(b)(3), DOGGR must prepare an EIR to provide the public with 'detailed information' regarding any potential environmental effects associated with oil and gas well stimulation treatments within the State." DOGGR stated that it would prepare a draft and final EIR consistent with CEQA and the CEQA Guidelines, and solicited public comments on the Notice of Preparation.

47. Petitioner Center for Biological Diversity submitted comments on the Notice of Preparation dated January 16, 2014.

48. On January 9, 2015, DOGGR published a draft EIR ("DEIR") and opened a public comment period.

49. On March 16, 2015, Petitioner submitted two comment letters, with attachments, addressing the DEIR. Petitioner requested an extension of the public comment period due to the length and complexity of the DEIR, but the request for an extension was denied. Petitioner submitted supplemental comments on the DEIR on June 19 and June 26, 2015. Each of these comment letters detailed the numerous deficiencies of the DEIR, which are described further below.

50. DOGGR certified the EIR on July 1, 2015. The final EIR was not circulated for comment nor released to the public before certification. DOGGR also issued an eight-page document entitled "State Oil and Gas Supervisor's Certification Statement Issued in Connection with Environmental Impact Report on Analysis of Well Stimulation Treatments in California" ("Certification Statement").

51. The EIR failed to remedy the deficiencies identified in the draft EIR.

C. Deficiencies of the Environmental Impact Report

I. Inconsistent, Unstable, and Shifting Project Description

52. In the Executive Summary, the DEIR defines the project as "all activities associated with a stimulation treatment that could occur either at an existing oil and gas well, or at an oil and

gas well that is drilled in the future expressly for the purposes of a stimulation treatment." Chapter 7 of the DEIR, titled "Project Description," contains 55 pages of discussion of the project. According to the DEIR, the 'Project' focuses on the physical acts that are associated with hydraulic fracturing, acid fracturing, and acid matrix stimulation as they apply to both existing and future oil and gas wells within the State. DEIR Section 7.5, "Project Standards for Resource Protection," states:

> [t]he following proposed standards [water recycling standards, habitat protection standards, surface water protection standards, groundwater protection standard] would be implemented as part of the project to avoid and minimize impacts to sensitive resources. For the purposes of the impact analysis in this EIR, *these standards are considered part of the project* . . . . DOGGR intends to impose and enforce these standards in the future both when acting as a Lead Agency in conducting site-specific environmental analyses for proposed well stimulation treatments and when acting as a Responsible Agency in communicating with other agencies that are acting as Lead Agency with respect to the site-specific environmental analyses of proposed projects involving well stimulation treatments.

(emphasis added).

53. The final EIR and Certification Statement describe the project very differently from the DEIR. Both documents contain new and entirely different statements about the project definition. Indeed, these documents go so far as to deny that the EIR is directed to any project at all. The Certification Statement claims that the EIR is "rare, and possibly unique" in that it was "mandated by statute without any accompanying 'proposed project' requiring action by DOGGR or any other public agency. The subject of the EIR, 'well stimulation in the state,' is not a pending 'project' in any ordinary sense." The final EIR includes a textual revision which states that the EIR was not prepared "in response to either a proposed site specific discretionary project or proposed governmental action." This revision directly contradicts and creates an internal inconsistency with the EIR's Project Description.

54. The Certification Statement asserts that "the absence of any proposed project to approve, modify, or reject leaves DOGGR, after certifying the EIR, without any need to take any

further action under CEQA." Based on this new theory, the agency did not adopt formal findings addressing the disposition of all of the significant environmental effects identified in the EIR, did not adopt any feasible mitigation measures or alternatives to reduce or avoid these effects, did not adopt a mitigation and reporting program, and did not adopt a statement of overriding considerations for significant unavoidable effects that will occur. The agency disavowed its duty to adopt specific and enforceable mitigation measures, asserting that "[o]ver time, the measures imposed by DOGGR may start to look different from those found in the EIR." The agency further asserted that "[b]ecause this programmatic information, as well as the mitigation measures themselves, are not embodied in any 'project,' DOGGR has no obligation under SB 4 to enshrine such measures in an enforceable policy document of any kind."

55. The Certification Statement, however, is itself internally inconsistent. It denies the existence of any project whatsoever, but also defines the project as well stimulation in California: "DOGGR evaluated the impacts of existing and potential future oil and gas well stimulation treatments occurring within California." In that respect it identified the subject of the EIR as "well stimulation in the state," observing that "[s]uch activities were legally occurring at the time SB 4 was passed, and in fact had been occurring for decades."

56. The EIR is also internally inconsistent. Frequently, it describes the project as well stimulation in California pursuant to the final regulations prepared pursuant to SB 4. For instance, it describes the document as addressing "the direct, indirect and cumulative effects of oil and gas well stimulation treatments in California with implementation of DOGGR's proposed permanent regulations . . . ." The Certification Statement also adopts this project definition in places, stating that "the EIR's analysis assumed that well stimulation treatments would be performed in a manner consistent with those regulations [required to be prepared pursuant to SB 4]."

57. The final EIR changed the project description in other ways, as well. For example, "[t]he original Resource Protection Standard for habitat (Draft EIR Section 7.5.2) [defined as part of the project in the DEIR] has been eliminated, and has not been replaced." DOGGR also eliminated the Resource Protection Standard for groundwater, on the basis the environmental concerns at issue

would be adequately addressed by a combination of existing laws and regulations and the other mitigation measures in the EIR.

58. The Certification Statement and EIR also describe the EIR as a programmatic analysis. The EIR describes itself as a "Program EIR," and states that it will be put to the "traditional uses" of a program EIR. According to DOGGR, it was therefore prepared at a "programmatic level of analysis," with the intention that it "will simply function as a first tier data base on which DOGGR and other agencies can build…" For some projects, however, the agency does not intend to conduct any additional CEQA review, but instead plans to conclude that the proposed permit is "within the scope of the project covered by the program EIR." The agency asserts that it will use a "mitigation manual," to be developed from the EIR, to determine whether proposed well stimulation treatment activities have been "adequately examined" in the EIR.

59. Thus, DOGGR asserts that it plans to rely upon the EIR as a "program" EIR in the future, while simultaneously denying the existence of any "program" or project and disavowing its obligations for properly approving and certifying a program EIR.

II. Improper Piecemealing of Project Review and Unlawfully and Impermissibly Narrow Scope

60. The EIR unlawfully piecemeals and segments the project under review by analyzing, in many instances, the impacts of well stimulation without considering the other oil and gas activities which accompany well stimulation. It makes no sense from an environmental and health perspective, and violates CEQA, to attempt to analyze the physical activities that occur during well stimulation separate and apart from the drilling, production, waste disposal, and other activities that occur along with well stimulation.

61. In addition, the geographic scope of the EIR is impermissibly narrow. Although many of the impacts of well stimulation are not limited by political boundaries, but experienced throughout the state, the EIR excludes from analysis large portions of the state, on the basis that these counties do not contain economically viable hydrocarbon reserves. The impacts of well stimulation, including but not limited to air pollution, water pollution from waste water disposal, seismic risk, and traffic, extend beyond the areas that are underlain by economically viable hydrocarbon reserves. Further, in

analyzing impacts, the EIR concludes that future production could occur essentially anywhere within the Monterey formation, and that future oil and gas development in the state is most likely to occur in regions overlying the Monterey Formation. Yet portions of the state excluded from analysis include four counties that, according to the EIR, overlay the edge of the Monterey shale formation;

III. Failure to Adequately Disclose and Analyze Environmental Impacts

62. The EIR fails to adequately disclose or analyze the harms and risks that well stimulation poses to California's scarce groundwater and surface water resources. For example:

a. Well stimulation and oil and gas production produce large quantities of toxic wastewater which requires handling and disposal. This water may be disposed of in ways that are both unsafe and illegal, including by injection into protected drinking water aquifers, dumping into open pits, and application to agricultural fields as irrigation water. The EIR does not adequately disclose or analyze the environmental harms and risks of these disposal practices or the challenges and resulting environmental impacts of the handling and disposition of this volume of wastewater in the future;

b. The EIR adopts a definition of protected groundwater that excludes certain groundwater required by state and federal law to be protected. Additionally, the EIR lists 11 aquifers as exempt from protection that are not in fact exempt;

c. The EIR fails to support its conclusion that there is not expected to be a need for a significant number of new Class II (underground injection waste water disposal);

d. The EIR fails to disclose or analyze the harms and risks of underground migration of well stimulation fluids and other pollutants through underground fractures and other conduits;

e. The EIR fails to consider the permanent or long-term unusability of groundwater resources due to contamination with well stimulation fluids and other pollutants; and

f. The EIR fails to adequately disclose and analyze the full range of direct and indirect environmental impacts of well stimulation on surface water resources,

including by failing to disclose impacts that may occur as a result of well stimulation treatments after treatment is complete.

63. The EIR fails to adequately disclose or analyze the environmental effects of the large amount water use needed for well stimulation.

64. Despite the severe health risks from the air pollution from well stimulation, the EIR's analysis of air quality impacts is deficient in numerous respects. Examples include but are not limited to:

a. The EIR fails to conduct a health risk assessment, and instead asserts that a health risk assessment would be a potential mitigation measure to be imposed in circumstances that are both arbitrary and uncertain; and

b. The EIR fails to adequately disclose or analyze the serious health harms and risks from the air pollution and chemical exposure associated with well stimulation;

c. Although air pollution is not restricted by political boundaries, and the effects of emission of greenhouse gas pollutants like carbon dioxide and methane are felt across the state, the EIR restricts air quality impacts analysis to the eight air basins in which an existing oil and gas field is located; and

d. The analysis fails to correlate the amount of air pollutants emitted as a result of well stimulation to adverse human health impacts that could be expected to result from those emissions.

65. The EIR fails to adequately consider the greenhouse gas and climate change impacts of well stimulation. Examples include but are not limited to:

a. The EIR fails to consider all of the direct, indirect, and cumulative greenhouse gas emissions of well stimulation, including the emissions that result from combusting and using the fossil fuels that will be produced and the emissions from all phases of the oil and gas production process; and

b. Even in the limited regard that the EIR does address greenhouse gases, the analysis is faulty. For example, while the EIR acknowledges that the Air Resource Board's emission inventory may underestimate methane emissions from

petroleum production and abandoned oil and gas wells, it makes no attempt to address that underestimation in its analysis of greenhouse gas emissions.

66. The EIR fails to adequately disclose and analyze the full range of direct and indirect environmental impacts of well stimulation on geology, soils and mineral resources, including by failing to address the seismic risks associated with subsurface injection of well stimulation waste water. The EIR limits its seismicity analysis only to events triggered directly and in the immediate aftermath of a well stimulation event.

67. The analysis of terrestrial biological resources is inadequate in numerous respects. For example, it fails to consider the indirect impacts of pre-site drilling site preparation, drilling operations, well completion operations, testing and production, well plugging and abandonment, and transport of oil and gas to refineries, even though the EIR acknowledges that well stimulation may result in the development of new wells and fields that are not economically viable without stimulation activities. The EIR also fails to adequately disclose and analyze the impacts of spills of oil, hydraulic fracturing fluids, waste fluid disposal, or acid on wildlife and habitats.

68. The analysis of marine and coastal biological resources is deficient in numerous respects. For example, the EIR purports to divide the state into six study regions and claims that study regions other than Study Regions 1, 2 and 3 do not contain oil and gas facilities that are near or within coastal and marine environments. Study Region 6, however, includes two coastal counties – San Mateo and Humboldt - each of which has active oil and gas fields, as well as several counties bordering on the San Francisco Bay Delta that contain active oil and gas fields. One of the oil and gas fields in San Mateo County is, in figure 5-8 of the EIR, on the coastline along Half Moon Bay.

69. The analysis of marine and coastal biological resources is also inadequate in that it fails to identify and analyze the presence of various threatened fish and marine birds in the areas analyzed; incorrectly states that there are no federal- or state-listed invertebrate species in Study Regions 1, 2 or 3; incorrectly claims there are no federal- or state-listed fish species in Study Region 1; and fails to acknowledge the presence of habitat for the federally endangered leatherback sea turtle in Study Region 3. As a result, the EIR fails to analyze impacts upon those species.

70. The EIR fails to adequately disclose and analyze the full range of noise and vibration impacts, including by failing to consider the noise impact of more than one well in proximity to a receptor, and by failing to address the noise impacts of venting or flaring from wells that would not be economically viable, and thus would not have been drilled, without well stimulation.

71. The EIR fails to adequately disclose and analyze the full range of direct and indirect impacts on public and worker safety. For example:

a. The EIR fails to disclose and analyze the risks of failure of stimulated wells, despite the availability of such data;

b. The EIR discloses that wastewater from well stimulation will foreseeably be used in agriculture, but fails to analyze the risks to the public from this practice;

c. The EIR fails to disclose and analyze harm to oil and gas workers from exposure to diesel particulates; and

d. The EIR fails to disclose and analyze harm to oil and gas workers as a result of exposure to volatile organic compounds.

72. The EIR fails to adequately disclose and analyze the full range of cumulative impacts. Examples of the deficiencies of the cumulative impacts section include but are not limited to:

a. The EIR generally fails to consider cumulative impacts of well stimulation activities and "conventional" oil and gas field activities across the state. Rather than considering conventional oil and gas production activities in their entirety, the EIR considers only a limited number of specified projects;

b. The EIR fails to properly disclose or analyze the cumulative effect on air quality and health impacts due to chemical exposure. Further, the EIR concludes that there would be no cumulative air quality impacts in Study Regions 3, 5 and 6 because no well stimulation is projected to occur in those regions. Air pollutants cannot be assumed to remain in the political subdivision in which they were emitted;

c. The EIR fails to consider the cumulative impact on the risk of seismic events caused by underground disposal of produced water from well stimulation projects and conventional oil and gas production; and

d. The EIR fails to consider the cumulative impact on water resources from disposal of produced water from well stimulation projects and conventional oil and gas production;

e. The EIR fails to adequately consider the cumulative effect on biological resources from habitat destruction, fragmentation, and other impacts.

IV. *Failure to Consider and Adopt Legally Adequate Mitigation Measures*

73. There is no clear commitment to mitigate in the EIR. Throughout, the EIR states that DOGGR "intends" to impose mitigation measures, and that where local agencies fail to impose sufficient mitigation measures DOGGR "may" use its regulatory powers to impose conditions of approval on well stimulation treatment permits to ensure that environmental impacts are mitigated. The EIR asserts that even where there are significant impacts of the kind at which the mitigation measures are aimed, DOGGR may not impose those measures as written in the EIR. Further, the Certification Statement provides that in the future, DOGGR may choose to modify and update the Mitigation Policy Manual. The mitigation measures are described as "a floor" that is "somewhat flexible." Where DOGGR is not the lead agency on a site-specific project that tiers off this EIR, the EIR states that DOGGR will accept mitigation measures formulated by other agencies that are "substantially consistent" with the mitigation measures in the EIR. No definition of substantial consistency is provided by the EIR. As a result, the actual content of the mitigation measures that will be applied, and the circumstances in which they will be applied, is entirely unknown.

74. The EIR makes no attempt to mitigate indirect impacts of the development of new wells or fields. Although the final EIR purports to consider the potential impacts from the establishment of new wells or new fields developed because well stimulation made production in those areas viable, the document does not actually do so. The draft EIR did identify mitigation measures for what it defined as indirect impacts facilitated by well stimulation treatments, but these

mitigation measures were expressly deleted from the final EIR, or modified so that they applied only to well stimulation activities.

75. The mitigation measures are vague, uncertain, improperly deferred, and unenforceable in numerous respects. Examples of inadequate mitigation measures include, but are not limited to:

a. The circumstances in which Mitigation Measure AQ-3, which requires a well stimulation permit applicant to prepare a health risk assessment, will be applied are uncertain because the measure requires the assessment only where a well is within 1,500 feet of any existing residences, worksites, schools, daycare centers, playgrounds or medical facilities and where "any applicable air district protocols" demonstrate "the need for such a document;" and

b. Mitigation Measure AQ-3b requires DOGGR to confirm that well stimulation treatment activities shall be limited to geographic areas in which such activities shall not create unacceptable health risk to sensitive receptors. As what constitutes an "unacceptable health risk" is not defined or analyzed in the EIR, it is unclear whether or when this mitigation measure will be imposed. The EIR proposes that the unacceptable health risk be mitigated by DOGGR recommending to counties and cities that they address the compatibility of well stimulation treatment activities and other land uses with sensitive receptors by using their police power and statutory authority under the Planning and Zoning Law. The outcomes of application of this measure are entirely uncertain and improperly deferred.

c. Mitigation Measure BIOT-1b (minimize impacts to native vegetation and habitat) is unlawfully deferred, uncertain and unenforceable because it fails to set out concrete measures to mitigate the impact to which it is addressed (substantial reduction of the habitat of a fish or wildlife species). It merely directs DOGGR to review the project footprint design to ensure that it minimizes these effects on native vegetation, special-status species habitat, or agricultural that support special-status species. Mitigation Measure BIOT-2a (prevent hazards to fish and

wildlife) requires that a well stimulation treatment permit be conditioned on a requirement that the applicant specify and enforce vehicle speed limits on access roads within the project vicinity. How the applicant determines vehicle speed limits, and what vehicle speed limits would ensure mitigation of impacts on wildlife, is entirely uncertain.

d. Mitigation Measures TR-1a and TR-2a require the preparation of a traffic plan and the inclusion in a well stimulation treatment permit application of information about baseline road conditions. These mitigation measures would be applied only where 10 or more wells within one square mile are drilled by a single applicant. The same traffic impacts would occur with such well density irrespective of the identity of the applicants of the well stimulation permits. There is no explanation as to why the mitigation measures will be imposed only where a single operator is conducting drilling.

e. Mitigation Measure SWR-1a provides that stormwater pollution prevention plans developed for a well field or other aggregate of similar projects may serve as compliance with the mitigation measure, which requires that a stormwater pollution prevention plan be prepared for a permit for well stimulation treatment, "provided practical assurance is given that an individual project less than one acre is applicable to the stormwater pollution prevention plan and will comply with it." What constitutes "practical assurance" is unclear and undefined, and it is uncertain how DOGGR will assess whether the requisite level of assurance has been met.

f. Mitigation Measure SWR-1b is uncertain and improperly deferred. This mitigation measure prohibits the approval of an application for well stimulation where the well pad will be less than 100 feet from a perennial water body. However, exceptions to the mitigation measure may be granted "at DOGGR's discretion" if the setback "is infeasible or unnecessary."

g. Mitigation Measure GEO-1c is uncertain, unenforceable, and impermissibly deferred. It requires that well stimulation permits contain a condition requiring the applicant to "implement industry accepted practices during well stimulation technique to monitor and apply the minimum pressure required to achieve desired reservoir rock fracture." The EIR does not define what constitutes "industry accepted practice," or how DOGGR will assess whether such practices are being implemented.

h. Mitigation Measure CPMWQ-1a is uncertain, unenforceable, and improperly deferred in that it requires DOGGR, in certain circumstances, to "consult with staff of the California Coastal Commission . . . to establish a strategy for the protection of marine water quality that may be warranted in addition to implementation of the permanent regulations for wells stimulation that are adopted by DOGGR."

i. Mitigation Measure GHG-2a is vague, improperly deferred, and unenforceable insofar as it requires DOGGR to "consider potentially feasible means of reducing … GHG emissions," and suggests "potential strategies" that a well stimulation permit applicant may be required to implement to offset greenhouse gas emissions.

j. Mitigation Measure 7a is vague and unenforceable in that it requires DOGGR to impose a condition "suggesting" the use of an alternative to silica sand as a "proppant" (a material inserted into a fracked well to keep the fracture open). The condition shall "encourage" the selection of "appropriate materials that lack any harmful properties." What constitutes an "appropriate material," or how its "harmful properties" or lack thereof will be assessed, are undefined and uncertain.

76. The EIR also fails to adopt feasible mitigation measures that were available to reduce impacts.

V. Rejection of Feasible Alternatives

77. The EIR also improperly rejected alternatives that would have reduced impacts, including but not limited to Alternative 1 (no future well stimulation). The EIR relied on statements for the rejection of alternatives that it directly contradicted in other instances. For example, in its analysis of Alternative 2, the EIR assumes that prohibiting well stimulation in the Monterey Formation would result in importation of oil to substitute demand that would otherwise be satisfied by production from the Monterey Formation. It reaches this conclusion despite its prior assertion that development of the Monterey Shale is so uncertain that no future production from the Monterey Formation is included in the EIR's projections of future well stimulation. Thus, Alternative 2 concludes that although the decrease in California production under this alternative "is not quantifiable," its air quality impacts will be more severe than those of the project.

D. Failure to Incorporate the Independent Scientific Study or Conduct Subsequent or Supplemental Review

78. SB 4 directed the Natural Resources Secretary to complete an independent scientific study ("CCST Study") on the hazards of fracking on or before January 1, 2015. In response, the Secretary commissioned the California Council on Science and Technology ("CCST") to conduct this assessment. CCST proceeded to conduct the assessment in three volumes.

79. On January 14, 2015, the Resources Agency released Volume I of the study, entitled "Geology and Well Stimulation Treatments," which provided a description of well stimulation treatments, how they are conducted and practiced in California, and where they have been are being used for oil and gas production in the state.

80. On July 9, 2015, 189 days after the study's required completion date, and eight days after the certification of the EIR, the Resources Agency released Volumes II and III of the CCST Study. According to CCST, Volume II "discusses how well stimulation could affect water, atmosphere, seismic activity, wildlife and vegetation, and human health. Volume II reviews available data, and identifies knowledge gaps and alternative practices that could avoid or mitigate these possible impacts." According to CCST, Volume III "presents four case studies that assess environmental issues and qualitative risks for specific geographic regions: Offshore, Monterey Formation, Los Angeles Basin, and the San Joaquin Basin."

81. The CCST report contained new information of substantial importance showing that well stimulation will have significant effects not discussed in the EIR, and that effects which were discussed will be substantially more severe than shown in the EIR. This information includes, but is not limited to:

a. About three quarters of fracking in California takes place in wells less than 600 m (2,000 ft) deep, termed "shallow fracking" by the CCST. This shallow fracking poses a greater risk to groundwater because induced fractures may create direct conduits to protected drinking water;

b. The CCST recommended that permits for shallow fracking be denied, unless adequate assurance can be provided that groundwater will not be contaminated;

c. Groundwater monitoring alone does not ensure protection of water, nor will it necessarily detect contamination that occurs;

d. Other factors that make fracking in California potentially more dangerous than in other states include the following:

i. California reservoirs contain more mobile water, reducing the ability to contain migration;

ii. California's more active faults could create new subsurface pathways for chemicals; and

iii. Fracking takes place largely in established fields where there are many additional conduits for contamination;

e. The presence of stimulation fluids in produced water is likely to increase the risk of groundwater contamination;

f. There is ample evidence of groundwater contamination from percolation pits in California;

g. Produced water is used for irrigation in five fields; two of them (Kern River and Mount Poso) have used fracking. The wastewater is not tested for fracking chemicals. Treating wastewater is insufficient to detect and remove chemicals;

h. In addition to the water used directly in well stimulation, well stimulation enables

15-30 percent of enhanced oil recovery such as cyclic steam injection, amounting to as much as another 3.7 billion gallons of water used;

i. Overall potential for seismicity to be induced by wastewater injection may be at least as great or greater in California as in the central US;

j. There is evidence of a likely link between injection well activity and a cluster of earthquakes in the Santa Maria basin;

k. There is evidence of serious health risks from the air quality impacts of well stimulation and other oil and gas activities in, particularly in the Los Angeles area and San Joaquin Valley. For example:

i. In Los Angeles, communities are densely populated and located very close to fracked wells: 20 schools, 39 daycare centers, 27 elderly homes, and 128,000 people within a half mile of a stimulated well;

ii. Studies show there is a public health risk to communities within a half mile of active oil and gas development, including adverse birth outcomes and increased cancer risk;

iii. Oil and gas activities account for a significant portion of benzene released into the air, and benzene levels in 10 cities in the Los Angeles area exceeded state limits;

l. The CCST called for a science-based minimum setback distance requirement for fracked wells and for *all* oil and gas wells, due to health impacts.

82. The CCST report contained a number of recommendations to substantially reduce the risks of well stimulation that should have been considered by the EIR. Such recommendations included that DOGGR institute set-back requirements to protect public health, and deny permits, or require increased monitoring, operational control, reporting and preparedness where an operator cannot demonstrate with reasonable assurance that fractures will not extend into aquifers. DOGGR did not consider these recommendations or adopt additional mitigation measures.

83. DOGGR did not revise the EIR nor prepare a subsequent or supplemental EIR in light of the content of the CCST report.

FIRST CAUSE OF ACTION

(Violations of CEQA: Pub. Resources Code § 21000, et seq.)

84. Petitioner hereby realleges and incorporates the allegations contained in paragraphs 1 through 83, inclusive.

85. CEQA is designed to ensure that the long-term protection of the environment be the guiding criterion in public decisions. CEQA requires the lead agency for a project with the potential to cause significant environmental impacts to prepare an EIR that complies with the requirements of the statute. Those requirements include, but are not limited to, requirements to fully disclose and meaningfully analyze the project's potentially significant environmental impacts. The EIR must provide environmental analysis sufficient both to enable members of the public to comment meaningfully on the project's impacts and to permit decision-makers to intelligently consider environmental consequences when acting on the proposed project. Additionally, the EIR must analyze mitigation measures and a reasonable range of alternatives to the project that could feasibly reduce or avoid the project's significant environmental effects.

86. CEQA also mandates that the lead agency adopt feasible and enforceable mitigation measures that would reduce or avoid any of a project's significant environmental impacts. If any of the project's significant impacts cannot be mitigated to a less than significant level, then CEQA requires the adoption of any feasible alternative that would meet most of the project's objectives while avoiding or reducing its environmental impacts.

87. DOGGR violated CEQA by approving or carrying out a program of well stimulation in the State of California in reliance on an EIR that is inadequate and fails to comply with the requirements of CEQA and the CEQA Guidelines.[1] As a result, DOGGR prejudicially abused its

[1] The "CEQA Guidelines" referenced herein are codified at title 14 of the California Code of Regulations, section 15000 *et seq*.

discretion, failed to proceed in the manner required by law, and failed to support its determinations with substantial evidence.

88. Specific deficiencies in the EIR include the following:

A. Failure to Provide a Complete and Stable Description of the Project

89. A stable and accurate project description is essential to environmental review under CEQA. (CEQA Guidelines § 15124.) Absent an accurate project description, decision-makers and the public cannot weigh a project's environmental costs and benefits, meaningfully consider mitigation measures, or evaluate alternatives.

90. The project description was inconsistent and unstable within the EIR. The inconsistency extended to the denial that a project even exists. The project description also shifted between the draft EIR and the final EIR, denying the public the opportunity to meaningfully consider the project's environmental costs and benefits, mitigation measures, and alternatives.

91. Additionally, the EIR impermissibly narrowed the geographic scope of the project, refusing to consider impacts upon some counties, denying the public and decision-makers the opportunity to meaningfully consider the project's environmental impacts across the state.

B. Improper Segmentation of Environmental Review

92. The EIR improperly piecemealed the project by analyzing the impacts of well stimulation without disclosing and analyzing the impacts of other oil and gas activities which result from and necessarily occur along with well stimulation.

C. Failure to Adequately Disclose and Analyze Environmental Impacts

93. CEQA requires a lead agency to disclose and analyze a project's significant adverse effects upon the environment. An agency must use its best efforts to find out and disclose all that it reasonably can about a project's environmental effects. (CEQA Guidelines § 15144.) An EIR is judged for adequacy, completeness, and a good-faith effort at full disclosure. (CEQA Guidelines § 15151.)

94. DOGGR prejudicially abused its discretion, failed to proceed in a manner required by law, and failed to support its decisions with substantial evidence in that DOGGR has not adequately disclosed, analyzed, or mitigated the significant adverse effects of its well stimulation program upon

the environment, including, but not limited to, the effects discussed in Paragraphs 62 through 72, *supra*.

D. Failure to Propose and Adopt Legally Adequate Mitigation Measures

95. CEQA requires a lead agency to propose and analyze in an EIR, and upon project approval to adopt, feasible mitigation measures to eliminate or substantially reduce all significant impacts upon the environment. (Pub. Resources Code § 21081; CEQA Guidelines §§ 15064, subds. (c) and (h) and 15092.) Public Resources Code section 21002 creates a substantive policy by which agencies are forbidden to approve projects which have significant environmental impacts when feasible mitigation measures can substantially lessen or avoid such impacts. Mitigation measures must be fully enforceable through permit conditions, agreements, or other measures. (Pub. Resources Code, § 21081.6, subd. (b); CEQA Guidelines, § 15126.4, subd. (a)(2).) "Formulation of mitigation measures should not be deferred until some future time." (CEQA Guidelines, § 15126.4, subd. (a)(1)(B).)

96. As set forth in paragraphs 73 through 76, *supra*, numerous mitigation measures included in the EIR are vague, unenforceable, uncertain, and/or improperly deferred.

97. Additionally, DOGGR improperly deleted from the EIR mitigation measures addressing the indirect impacts of well stimulation activities as defined by DOGGR.

E. Failure to Analyze and Adopt Feasible Alternatives

98. Under CEQA, a public agency is required to consider and adopt feasible alternatives to substantially lessen significant adverse effects on the environment. (Pub. Reources Code §§ 21001, 21002, 21102.1 subd. (a), 21100 subd. (b)(4); CEQA Guidelines, § 15126 subd. (a).) Moreover, "CEQA establishes a duty for public agencies to avoid or minimize environmental damage where feasible." (Cal. Code Regs., tit. 14, §15021, subd. (a); Pub. Resources Code §§ 21001, 21002.1.)

99. As set forth in paragraph 77, *supra*, the EIR failed to adequately propose and analyze alternatives.

F. Failure to Conduct Subsequent or Supplemental Environmental Review

100. After an EIR is prepared and certified for a project, a subsequent or supplemental EIR is required where any of the following occurs: (1) substantial changes are proposed in the project which will require major revisions of the EIR; (2) substantial changes occur with respect to the circumstances under which the project will be undertaken, which will require major revisions of the EIR; or (3) "[n]ew information, which was not known and could not have been known at the time the [EIR] was certified as complete, becomes available." (Pub. Resources Code, § 21166.)

101. Respondents violated CEQA by failing to prepare a subsequent or supplemental EIR taking into account new information of substantial importance about well stimulation contained in the CCST report that shows (1) the project will have significant effects not discussed in the EIR; (2) that the significant effects will be substantially more severe than shown in the EIR; and/or (3) that mitigation measures or alternatives measure which are considerably different from those analyzed in the EIR would substantially reduce one or more significant effects on the environment.

G. Failure to Adopt Findings and a Mitigation Monitoring Program

102. Under CEQA, no public agency may carry out or approve a project for which an EIR has been prepared, and for which one or more significant environmental effects have been identified, unless the agency makes specific findings with respect to each significant effect that: (1) changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effect; (2) such changes or alterations are within the jurisdiction and responsibility of another public agency and have been, or can and should be, adopted by that other agency; or (3) specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures or alternatives identified in the environmental impact report, and specific overriding benefits of the project outweigh the significant effects on the environment. (Pub. Resources Code, § 21081; CEQA Guidelines, §§ 15091-15093.)

103. When making findings regarding mitigation measures required in or changes incorporated into a project to mitigate or avoid significant effects, a public agency must adopt a monitoring or reporting program designed to ensure compliance with these measures or changes during project implementation. (Pub. Resources Code, § 21081.6, subd. (a).)

104. To the extent DOGGR approved any "program" or "project" of well stimulation in accordance with its certification of the EIR, DOGGR failed to adopt findings, failed to incorporate mitigation measures and/or alternatives into the project, failed to adopt a mitigation monitoring or reporting plan, and failed to include a statement of overriding considerations justifying the remaining significant and unavoidable impacts.

SECOND CAUSE OF ACTION

(Violation of SB 4: Pub. Resources Code § 3161)

105. Petitioner hereby realleges and incorporates the allegations contained in paragraphs 1 through 83, inclusive.

106. Public Resources Code section 3161, subdivision (b), imposes a mandatory and ministerial duty on DOGGR to commence and certify an EIR "pursuant to" the requirements of CEQA.

107. DOGGR failed to perform its mandatory, ministerial duty pursuant to Public Resources Code section 3161, subdivision (b), by failing to prepare an EIR that meets the requirements of CEQA, as detailed in paragraphs 52 through 83, *supra*.

108. In addition, and in the alternative, DOGGR abused any discretion vested in the agency by Public Resources Code section 3161, subdivision (b), by failing to prepare an EIR that meets the requirements of CEQA, as detailed in paragraphs 52 through 83, *supra*.

THIRD CAUSE OF ACTION

(Declaratory Relief for CEQA Violations: Code Civ. Proc. § 1060)

109. Petitioner hereby realleges and incorporates the allegations contained in paragraphs 1 through 83, inclusive.

110. Petitioner seeks a judicial declaration pursuant to section 1060 of the Code of Civil Procedure that, to the extent Respondent DOGGR certified a final EIR without also approving any "project" or "program" with respect to well stimulation in the State of California, the EIR cannot be used to support any subsequent program activities or project approvals under CEQA Guidelines section 15168, subdivision (c). In the alternative, to the extent DOGGR did approve or commence a "program" or "project" with respect to well stimulation in the State of California in connection with

its certification of the EIR, Petitioner seeks a judicial declaration that DOGGR violated CEQA and SB 4 for the reasons stated in paragraphs 52 through 83, *supra*.

111. An actual controversy exists between Petitioner and Respondent DOGGR as to (1) whether DOGGR approved or is carrying out a "project" or "program" regarding well stimulation in the State of California in connection with its certification of the EIR; and (2) whether a "program" EIR certified in the absence of any accompanying "program" or "project" can be relied upon by DOGGR or any other public agency in evaluating or approving subsequent activities.

FOURTH CAUSE OF ACTION

(Declaratory Relief for SB 4 Violations: Code Civ. Proc. § 1060)

112. Petitioner hereby realleges and incorporates the allegations contained in paragraphs 1 through 83, inclusive.

113. The plain text and structure of SB 4 evince a clear legislative purpose, namely that both the CCST study and the EIR were intended to inform the public about the environmental impacts of well stimulation in the State of California.

114. SB 4 established a mandatory duty on Respondent Resources Agency to conduct and complete the CCST study by January 1, 2015 (Pub. Resources Code § 3160, subd. (a)), and a mandatory duty on Respondent DOGGR to complete and certify the EIR by July 1, 2015 (Pub. Resources Code § 3161, subd. (b)(3)(B)(i)).

115. The Legislature intended that the CCST study be completed in time to inform the disclosure and analysis of environmental impacts in the EIR.

116. Respondent Resources Agency unlawfully delayed completion of the CCST study until after certification of the final EIR, and thereby thwarted the Legislature's clear purpose in requiring the CCST study to be completed in time to inform the final EIR.

117. Petitioner seeks a judicial declaration pursuant to section 1060 of the Code of Civil Procedure establishing that, in order to effectuate the Legislature's clear purpose in enacting SB 4, neither DOGGR nor any other agency may approve any subsequent project or activity related to well stimulation in the State of California in reliance on the EIR without preparing a revised, subsequent,

or supplemental EIR, including developing mitigation measures and alternatives therein, in light of the new information produced in the CCST report.

118. An actual controversy exists between Petitioner and Respondents concerning the role that the Legislature intended the CCST study required by Public Resources Code section 3160, subdivision (a), to play in the preparation and future use of the EIR required by Public Resources Code section 3161, subdivision (b), and in informing the public about any and all environmental effects of well stimulation in the State.

FIFTH CAUSE OF ACTION

Injunctive Relief (Code Civ. Proc. § 526)

119. Petitioner hereby realleges and incorporates the allegations contained in paragraphs 1 through 83, inclusive.

120. Respondents' violations of CEQA and SB 4 as alleged in this Petition will cause irreparable harm to Petitioner, its members, and to the public at large. These errors and prejudicial abuses of discretion constitute the basis for injunctive relief to prevent this irreparable harm pursuant to Code of Civil Procedure section 526.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for entry of judgment as follows:

1. For alternative and peremptory writs of mandate setting aside and voiding Respondents' certification of the EIR;

2. For alternative and peremptory writs of mandate directing Respondents to comply with CEQA, the CEQA Guidelines, and SB 4, and to take any other action required pursuant to Public Resources Code section 21168.9;

3. For a temporary stay, temporary restraining order, and preliminary and permanent injunctions restraining Respondents and their agents, servants, and employees, and all others acting in concert with them or on their behalf, from taking any action to approve any permits, licenses or authorizations to perform well stimulation pending full compliance with the requirements of CEQA, the CEQA Guidelines and SB 4;

4. That the Court determine and declare that, to the extent Respondent DOGGR certified a final EIR without also approving any "project" or "program" with respect to well stimulation in the State of California, the EIR cannot be used to support any subsequent program activities or project approvals under CEQA Guidelines section 15168, subdivision (c).

5. That the Court determine and declare that neither DOGGR nor any other agency may approve any subsequent project or activity related to well stimulation in the State of California in reliance on the EIR without first supplementing the analysis in the EIR, and any discussion of mitigation measures and alternatives therein, in light of the new information produced in the CCST report.

6. For Petitioner's costs and attorney fees pursuant to the California Code of Civil Procedure section 1021.5 and any other applicable provisions of law; and

7. For such other and further relief as the Court finds just and proper.

Respectfully submitted,

DATED: July 28, 2015

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