

1 Hollin N. Kretzmann, State Bar No. 290054  
2 Kassia R. Siegel, State Bar No. 209497  
3 CENTER FOR BIOLOGICAL DIVERSITY  
4 1212 Broadway, Suite 800  
5 Oakland, CA 94612  
6 [hkretzmann@biologicaldiversity.org](mailto:hkretzmann@biologicaldiversity.org)  
[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)  
7 Tel: (510) 844-7133  
8 Fax: (510) 844-7150

9 Elizabeth A. Jones, State Bar No. 326118  
10 CENTER FOR BIOLOGICAL DIVERSITY  
11 660 S. Figueroa St., Suite 1000  
12 Los Angeles, CA 94612  
13 [ljones@biologicaldiversity.org](mailto:ljones@biologicaldiversity.org)  
14 Tel: (213) 785-5400  
15 Fax: (213) 785-5748

16 Deborah A. Sivas, State Bar No. 135446  
17 ENVIRONMENTAL LAW CLINIC  
18 Mills Legal Clinic at Stanford Law School  
19 559 Nathan Abbott Way  
20 Stanford, CA 94305-8610  
21 [dsivas@stanford.edu](mailto:dsivas@stanford.edu)  
22 Tel: (650) 723-0325  
23 Fax: (650) 723-4426

24 *Attorneys for Plaintiff Center for Biological Diversity*

25 **BEFORE THE CALIFORNIA SUPERIOR COURT**  
26 **COUNTY OF ALAMEDA**

27 Center for Biological Diversity, a non-profit  
28 organization,

Plaintiff,

v.

California Geologic Energy Management  
Division, a political subdivision of the State of  
California, and DOES I through X,

Defendants.

) Case No. \_\_\_\_\_

) COMPLAINT FOR DECLARATORY AND  
) INJUNCTIVE RELIEF

) [Cal. Code of Civ. Proc., § 1060]

## INTRODUCTION

1  
2           1. Plaintiff Center for Biological Diversity (the “Center” or “Plaintiff”) brings this action for  
3 declaratory and injunctive relief to halt the pattern and practice of the California Department of  
4 Conservation, Geologic Energy Management Division (“CalGEM” or “Defendant”) of issuing  
5 permits to conduct drilling and other oil and gas activities without environmental review, in violation  
6 of the California Environmental Quality Act (“CEQA”), Pub. Resources Code, §§ 21000 et seq.

7           2. Despite its reputation as a leader in environmental protection, California is home to more  
8 than 100,000 active or idled oil and gas wells across the state. Mountains of scientific research—  
9 including local, state, and federal governments’ own studies—conclude that oil and gas activities  
10 cause significant harms to public health and the environment. Oil and gas production causes air and  
11 water pollution, destroys large areas of habitat, sickens nearby communities, and adds substantial  
12 amounts of greenhouse gases to the atmosphere.

13           3. The environmental destruction has been facilitated by the state oil and gas regulator.  
14 Operators must obtain a permit or approval from CalGEM prior to conducting any oil and gas  
15 activities. As the state’s primary regulator of these activities, CalGEM is charged with determining  
16 whether new oil and gas projects may proceed and may approve a permit only after adequate  
17 environmental review. CalGEM’s discretionary permits and approvals apply to drilling, well  
18 stimulation, and injection activities.

19           4. But CalGEM has a consistent and ongoing pattern and practice of ignoring its legal  
20 obligation to conduct environmental review before issuing oil and gas permits throughout the state. In  
21 2020 alone, CalGEM approved close to 2,000 permits to drill new oil and gas wells without  
22 conducting a review of the environmental impacts of the projects. In addition, CalGEM approved  
23 scores of well stimulation and oil and gas injection projects that also lacked adequate environmental  
24 review.

25           5. CalGEM effectuates its unlawful pattern and practice in three ways: it either (1) issues  
26 permits and approvals without any apparent environmental review documentation whatsoever, (2)  
27 relies on inapplicable CEQA exemptions, or (3) issues Notices of Determination that depend on  
28 inadequate or invalid environmental analyses performed by local governments.



1 the public health risks facing communities exposed to industrial pollution. Specific objectives include  
2 addressing the adverse impacts of oil and gas operations to climate, water, air, wildlife, public health,  
3 and environmental justice. The Center has two offices in California, located in Oakland and Los  
4 Angeles.

5 14. The Center has 84,333 members, including 17,679 members who reside in California.  
6 The Center's members and staff include individuals who live, work, and recreate in areas threatened  
7 by the adverse impacts of oil and gas development.

8 15. The pollution caused by oil and gas development poses a risk to the health and safety of  
9 the Center's members and staff. Members and staff in California also suffer harm from the effects of  
10 climate change fueled by oil and gas production.

11 16. The Center, its members and staff have ongoing recreational, scientific, and educational  
12 interests harmed by the Defendant's unlawful actions. Members and staff include those who are  
13 particularly interested in protecting the many native, imperiled, and sensitive species and their  
14 habitats that may be affected by oil and gas development. Members and staff include those who  
15 regularly use and intend to continue to use the areas affected by the oil and gas well approvals at issue  
16 here.

17 17. The Center, its members and staff also depend on the rights that CEQA's public notice,  
18 hearing, and commenting requirements afford to the public to advocate for stronger environmental  
19 protection and inform the public and decision-makers about the harms of oil and gas development.

20 18. The Center, its staff, and its members therefore will be directly, adversely, and  
21 irreversibly affected by CalGEM's continued unlawful approvals of oil and gas permits without  
22 adequate environmental review.

23 19. Defendant CALIFORNIA DEPARTMENT OF CONSERVATION, GEOLOGIC  
24 ENERGY MANAGEMENT DIVISION ("CalGEM") is an agency of the state of California  
25 headquartered in Sacramento, California.<sup>1</sup> CalGEM is charged with supervising the drilling,  
26 operation, maintenance, well stimulation, injection, and plugging and abandonment of oil and gas

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27 <sup>1</sup> Prior to 2020, CalGEM was called the Division of Oil, Gas, and Geothermal Resources, or DOGGR.  
28 For purposes of this Complaint, references to CalGEM include DOGGR as well.

1 wells within the state of California so as to prevent, as far as possible, damage to life, health,  
2 property, and natural resources. (Pub. Res. Code, § 3106, subd. (a).) It must also “protect[ ] public  
3 health and safety and environmental quality, including reduction and mitigation of greenhouse gas  
4 emissions associated with the development of hydrocarbon and geothermal resources in a manner that  
5 meets the energy needs of the state.” (Pub. Res. Code, § 3011, subd. (a).)

6 20. Defendants DOES I through X, inclusive, are unknown to Plaintiff. Because Plaintiff  
7 does not know the true names or capacities of these persons or entities, Plaintiff sues these defendants  
8 by their fictitious names. Plaintiff alleges that Does I through X have legal authority over one or more  
9 aspects of oil and gas operations in California. Plaintiff will amend the Complaint for Declaratory and  
10 Injunctive Relief to set forth the names and capacities of each Doe along with any additional  
11 appropriate allegations when such information is ascertained.

## 12 **FACTUAL BACKGROUND**

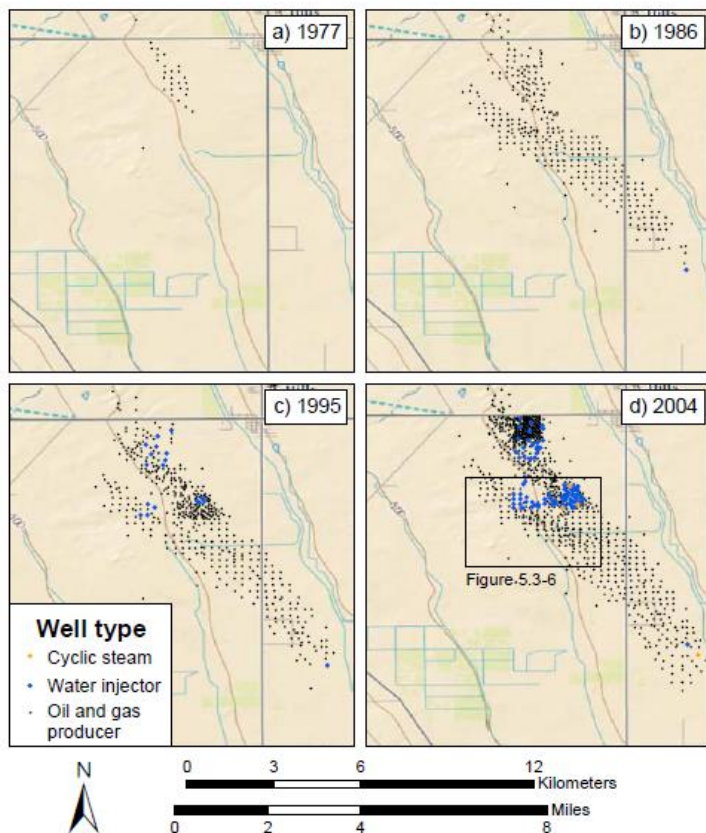
### 13 **Oil and Gas Extraction in California**

14 21. California has been a major oil and gas producing state for over a century. Today, it is the  
15 seventh largest oil-producing state by volume, and it also produces significant amounts of methane  
16 gas. California has over 107,000 active or idle oil and gas wells across the state. About another  
17 130,000 are plugged, and there are an unknown number of undocumented wells that were drilled  
18 before recordkeeping requirements went into effect.

19 22. Oil and gas companies continue to discover new oil fields and new pools of oil and gas  
20 within known oil fields. Since 1973, the industry has made new discoveries in Kern, Fresno, Los  
21 Angeles, Ventura, Santa Barbara, and other counties. New deposits have expanded the boundaries of  
22 multiple oil and gas fields, including major fields such as Elk Hills, South Belridge, Kern River, Lost  
23 Hills, and Midway-Sunset. The industry still engages in exploratory drilling, seeking to develop new  
24 reserves.

25 23. Over time, the footprint and impacts of the oil and gas industry have significantly  
26 increased in existing fields. Oil fields established around the turn of the 20<sup>th</sup> Century have grown into  
27 stretches of land densely packed with active, idle, and abandoned wells. Oil fields across the state  
28 have shared a similar trajectory, with the number of wells increasing exponentially since the 1970s,

1 aided by the advent of horizontal drilling, hydraulic fracturing, steam injection, and other extreme  
2 extraction techniques. For example, the maps below depict the development of a section of the Lost  
3 Hills Oil Field since 1977<sup>2</sup>:



17  
18 24. Lost Hills had about 1,151 active wells in 1973. Today, the same field has about 4,086.

19 25. Operators drill a substantial number of new wells each year. From 2013 to 2018,  
20 operators drilled 10,719 new oil and gas wells in California. In 2019 alone, CalGEM authorized  
21 permits to drill 2,533 new wells. CalGEM permitted more than 1,900 additional wells in 2020.

22 26. The new wells added in 2020 significantly increased well tallies within individual oil  
23 fields. In San Emidio oil field (Kern County), which had five wells in 2000, CalGEM issued permits  
24 for nine new wells in 2020, increasing the number of permitted wells by 180%.

27  
28 <sup>2</sup> California Council of Science and Technology, An Independent Scientific Assessment of Well  
Stimulation in California, Vol. III (July 2015), p. 15.

27. Since 1974, the number of wells in California’s major oil fields has increased significantly. Of the 15 largest oil fields in California, 7 have more than doubled the number of active wells within their boundaries. Elk Hills has more than 30 times as many active wells today as it did in 1974. California has roughly 65,000 active wells across the state compared to just over 38,000 in 1974.

Field	Active Wells in 1974	Active Wells in 2020	Percentage Increase
<b>Elk Hills</b>	122	3878	3,079%
<b>North Belridge</b>	96	1272	1,225%
<b>Lost Hills</b>	1,151	4,086	255%
<b>Cymric</b>	748	2,618	250%
<b>South Belridge</b>	2,618	9,160	250%
<b>Poso Creek</b>	535	1,367	156%
<b>Kern River</b>	4,531	10,989	143%

28. Midway-Sunset, the largest oil field in the state, has more than 19,000 active and idle wells today, compared to 8,084 in 1974.

29. Oil and gas development has not only expanded over time; it has also intensified. New technologies have helped the industry extract oil and gas in areas that were previously uneconomical or inaccessible using conventional drilling and pumping.

30. Some operators now utilize well stimulation treatments to access oil and gas deposits trapped in certain types of geologic formations. One type of well stimulation is hydraulic fracturing, or “fracking,” in which operators inject water, chemicals, and a proppant such as sand into the well under high pressure to fracture the surrounding geologic formations and allow oil and gas to flow to the surface.

31. Oil and gas operators also use “enhanced oil recovery” techniques, or “EOR,” in which they pump steam, water, and gas into injection wells to increase the flow of oil and gas to the surface. The pressure and heat involved in the injection process can cause additional adverse impacts, including risks to groundwater, air quality, soil, and climate. According to state records, in 1974,

1 about 56% of oil was produced by EOR. In 2019, about 75% of oil production was facilitated by  
2 EOR.

### 3 **Environmental and Health Impacts**

4 32. The continual addition of new oil and gas activity has resulted in significant  
5 environmental impacts, creating air and water pollution, harm to wildlife and habitat, and adverse  
6 health effects for communities near oil and gas projects. These impacts are well documented.

#### 7 *Air Pollution and Harm to Public Health and Safety*

8 33. More than seven million Californians live within a mile of at least one oil or gas well.  
9 Many wells are close to homes, schools, daycare facilities, playgrounds, and other places vulnerable  
10 populations frequent. In Los Angeles alone, there are 130 schools, 184 daycare facilities, 213  
11 residential elderly homes and nearly 628,000 residents within 800 m (½ mile or 2,625 feet) of an  
12 active oil well.

13 34. Mounting scientific evidence shows living in close proximity to oil and gas development  
14 results in higher rates of asthma and other respiratory ailments, cancer, and adverse birth outcomes. In  
15 2013, the California Legislature commissioned the California Council of Science and Technology to  
16 conduct a study of the impacts of well stimulation activities in California. The researchers concluded  
17 that air pollution from all types of oil and gas development, not just well stimulation, “could present  
18 health hazards to nearby communities in California.” The same study noted, “Studies from outside  
19 California indicate that, from a public health perspective, the most significant exposures to toxic air  
20 contaminants such as benzene aliphatic hydrocarbons and hydrogen sulfide occur within 800 m (one-  
21 half mile) from active oil and gas development.”

22 35. Oil and gas activity occurs in parts of the state that already suffer from poor air quality,  
23 including regions that exceed federal limits for ozone and particulate matter pollution.

24 36. In 2020, the California Attorney General, on behalf of the California Air Resources  
25 Board, urged the federal Bureau of Land Management to consider air emissions before approving  
26 new oil and gas leases in Kern County, stating, “Any additional emissions of volatile organic  
27 compounds, nitrogen oxides, and other air pollutants in these areas from expanded oil and gas  
28 production may be significant and should be mitigated. Furthermore, the public health risk exposure



1 to toxic air contaminants is greatest near active oil and gas sites. Because many residents in Kern  
2 County already live near oil and gas activity, any new oil and gas development in the County must  
3 take into account the health impacts to nearby sensitive receptors.”

4 37. All stages of oil and gas production result in air pollution, including well pad  
5 construction, drilling, well completion, well stimulation and maintenance, enhanced oil recovery,  
6 transportation, and waste disposal.

7 38. Many stages of production require the use of chemical additives that contain multiple  
8 toxic substances known to cause adverse health impacts, including known or possible human  
9 carcinogens and pollutants that are listed as hazardous under the Clean Air Act. Chemical mixtures  
10 used to facilitate drilling, for example, contain chemicals known to cause adverse health impacts; a  
11 survey of 46 recent drilling operations in the South Coast Air Quality Management District’s toxic air  
12 contaminant database shows operators used 17 different air toxics 364 times, totaling more than 3  
13 million pounds just in the drilling phase of production. Emissions from wastewater disposal ponds  
14 can contain high levels of benzene and other harmful air pollutants. In addition, oil and gas  
15 hydrocarbons themselves contain carcinogens and other chemicals harmful to human health.

16 39. Air pollution attributable to oil and gas production is significant. In Kern County, oil and  
17 gas emissions make up 96.4% of hydrogen sulfide, 25.7% of formaldehyde, 14.4% of xylenes, 11.1%  
18 of hexane, and 8.9% of benzene emissions in the County.

19 40. A study by the City of Los Angeles Petroleum Administrator found 72 chemicals used in  
20 oil and gas operations in Los Angeles that have potential to travel by air and be inhaled. The mixing,  
21 handling, and use of inorganic minerals and oxides used in drilling can release respirable particulates,  
22 some of which are known to cause cancer. A separate study commissioned by the City of Los  
23 Angeles surveyed peer-reviewed scientific literature and found a multitude of studies included  
24 findings of observable adverse health impacts for people living close to oil and gas activities.

#### 25 Greenhouse Gas Emissions

26 41. Oil and gas activities in California also emit significant amounts of greenhouse gases  
27 such as carbon dioxide and methane. Greenhouse gas emissions from the extraction stage alone  
28 account for 4.1% of the state’s total greenhouse gas emissions. Refining fossil fuel accounts for an

1 additional 7.0% of the state’s total greenhouse gas emissions. Finally, the combustion of fossil fuels  
2 in the transportation sector accounts for 41% of statewide greenhouse gas emissions.

3 42. California’s oil fields require relatively high amounts of energy to extract, transport, and  
4 refine oil and gas into usable products. Thus, more greenhouse gas emissions are required to produce  
5 oil and gas in California than in most other places in the world and the emissions rate continues to  
6 increase as oil fields age. Since 2000, the greenhouse gas emissions associated with California oil and  
7 gas production have increased 30% per barrel. Methane leakage from oil and gas wells also  
8 contributes to greenhouse gas emissions.

9 43. The state Attorney General recently called it “unacceptable” to approve new federal  
10 leases without fully acknowledging the significant greenhouse gas emissions in the midst of  
11 California’s climate-fueled record heatwaves and wildfires.

12 Water Degradation

13 44. Oil and gas activities harm the state’s water resources as well. Oil and gas wells typically  
14 produce far more wastewater than oil. Wastewater from oil and gas activities can contain the  
15 carcinogen benzene and other harmful chemicals. Most wastewater is injected into disposal wells, of  
16 which there are hundreds across the state, or discharged into unlined pits. Wastewater disposal has  
17 resulted in documented cases of groundwater contamination. The Central Valley Regional Water  
18 Quality Control Board concluded that contaminants from oil and gas wastewater from an unlined pit  
19 migrated into multiple groundwater sources and traveled more than 2.2 miles underground. The  
20 CCST found “ample evidence” of groundwater contamination caused by oil and gas activities. A  
21 State Water Resources Control Board official admitted to the State Legislature that state regulators  
22 had allowed oil companies to inject wastewater into groundwater resources, resulting in  
23 contamination of those sources.

24 45. A joint study by the State Water Resources Control Board and the U.S. Geologic Survey  
25 found oil and gas contaminants in multiple wells sampled near oil and gas activity in Santa Barbara  
26 and Kern County oil fields.

1           Spills and Land Degradation

2           46. Oil and gas activities have caused numerous large-scale spills. Operators have spilled  
3 tens of millions of gallons of oil and toxic wastewater, resulting in soil contamination, air pollution,  
4 and wildlife fatalities. One survey found that there were 575 spills of produced water from 2011 to  
5 2014, and 18 percent of those spills affected waterways. There were 31 chemical spills in oil fields,  
6 nine of them acid spills.

7           47. Oil and gas spills can be deadly. In 2011, one oil worker died when the ground near a  
8 steam injection project opened a sinkhole, and the worker fell into a pool of hot oil and hydrogen  
9 sulfide.

10          48. Steam injection can create pathways between the oil and the surface, resulting in so-  
11 called “surface expressions” that spill oil and wastewater. In 2019, multiple million-gallon surface  
12 expressions occurred in oil fields in Kern County. Contaminated soil had to be removed, and the  
13 California Department of Fish and Wildlife documented numerous wildlife fatalities.



28          California Department of Conservation photo of a 2012 “surface expression” in Kern  
County (June 7, 2018 presentation)

1  
2 Harm to Wildlife and Habitat

3 49. New oil and gas activities frequently occur in or near critical habitat for endangered,  
4 threatened, and otherwise imperiled species. Oil and gas activity can harm species by destroying,  
5 disturbing, or fragmenting habitat; injuring or killing wildlife with vehicle strikes; exposing species to  
6 oil and chemicals via spills, pits, and sumps; causing harmful noise, light, and vibration pollution;  
7 introducing invasive species; and making the effects of climate change more severe.

8 50. Imperiled species that are foreseeably harmed by oil and gas development include: blunt-  
9 nosed leopard lizard, giant kangaroo rat, Tipton’s kangaroo rat, tricolored blackbird, California  
10 condor, California gnatcatcher, burrowing owls, San Joaquin kit fox, San Joaquin woolly threads,  
11 California jewel flower, Temblor legless lizard, Kern mallow, California tiger salamander, California  
12 red-legged frog, and Lompoc yerba santa.

13 51. Oil companies have applied for incidental take permits to cover oil and gas activity that  
14 will result in foreseeable harm to protected species such as the blunt nosed leopard lizard, giant  
15 kangaroo rat, San Joaquin kit fox, California tiger salamander, California red-legged frog, and  
16 Lompoc yerba santa.

17 52. CalGEM has issued permits and approvals in areas that may directly harm protected  
18 habitat for endangered species such as Bakersfield Cactus and the Coastal California gnatcatcher and  
19 other areas that are preserved for natural resources.

20 Dangers of Idle and Deserted Wells

21 53. Oil and gas wells must be properly plugged to minimize the risk of wells serving as  
22 conduits for contamination and fugitive gas leaks. California has tens of thousands of unplugged idle  
23 wells that pose a risk to groundwater, air, and climate if left unaddressed. They present a particularly  
24 high risk when high-pressure activities like fracking and steam injection occur nearby. Climate-  
25 damaging methane can also escape into the atmosphere.

26 54. The risk of damage from idle and deserted wells is particularly acute because although  
27 companies are legally required to pay for the costs of plugging their wells, the state does not require  
28 companies to set aside bonds that cover the full cost of remediating a well, nor does the state impose

1 a deadline for plugging idle wells. Thus, thousands of wells remain unplugged indefinitely, and some  
2 oil wells may become orphaned if the responsible company fails to meet its obligation.

### 3 Cumulative Impacts

4 55. Oil and gas projects result in significant cumulative environmental impacts as well. In  
5 2020 alone, CalGEM approved more than 1,900 new wells, 83 well stimulations, and multiple  
6 injection projects. The new wells represent a significant expansion of oil and gas activity in  
7 California. The more than 1,900 new wells approved in 2020 alone would result in greater than a 5%  
8 increase in wells for at least 17 different oil fields compared to their 2000 well counts, assuming they  
9 are drilled.

10 56. The additional oil and gas activity will result in significant amounts of air and water  
11 pollution. The air pollution is particularly significant in regions that are in nonattainment for federal  
12 criteria pollutants. For example, the San Joaquin air basin is out of attainment for PM<sub>2.5</sub>, PM<sub>10</sub> and  
13 ozone. Any additional air pollution from oil and gas activity will have a significant impact and  
14 undermine efforts to achieve safer levels of air quality.

15 57. Cumulatively, California will lose significant land that will be cleared for new well pads  
16 and ever-expanding extraction operations.

17 58. Removing fluids from the ground in the course of extraction can also cause subsidence,  
18 permanently sinking the level of the surface.

19 59. Studies have shown that oil and gas activity can also cause seismic activity in California.

### 20 **CalGEM's Oil and Gas Permitting Process**

21 60. CalGEM is the primary regulator of oil and gas activity in California. The Public  
22 Resources Code requires CalGEM to “supervise the drilling, operation, maintenance, and  
23 abandonment” of oil and gas wells in a manner that “prevents, as far as possible, damage to life,  
24 health, property, and natural resources.” (Pub. Resources Code, § 3106, subd. (a) & (b).) Effective  
25 January 1, 2020, it further declares that the purpose of this oversight is to “protect[ ] public health and  
26 safety and environmental quality, including reduction and mitigation of greenhouse gas emissions  
27 associated with the development of hydrocarbon and geothermal resources in a manner that meets the  
28

1 energy needs of the state.” (Id., § 3011, subd. (a).) Relatedly, CalGEM is tasked with advancing  
2 California’s goal to become carbon-neutral by 2045.

3 61. CalGEM determines whether to allow proposed oil and gas activities to proceed, and if  
4 approved, under what conditions those activities may occur. Operators are required to obtain a permit  
5 from CalGEM prior to conducting drilling, well stimulation, or injection activities anywhere in the  
6 state. (Pub. Resources Code, §§ 3000 et seq.)

7 62. CalGEM may impose an extensive array of conditions for each of these permits and  
8 exercises its discretion to craft what it deems to be appropriate safety standards for construction and  
9 operational activities.

10 63. CalGEM also retains authority to inspect, monitor, impose additional conditions upon, or  
11 cease operations.

12 64. Over time, as the dangers of oil and gas production have become better understood, the  
13 Legislature has expanded CalGEM’s regulatory authority to supplement additional duties over  
14 specific operations such as well stimulation treatment, injection, and wastewater disposal.

15 Permits to Drill New Oil and Gas Wells

16 65. To drill a new oil and gas well, an operator submits a Notice of Intent to Drill (“NOI”),  
17 which includes a “CEQA checklist” that the operator completes. The Checklist requires the operator  
18 to include supporting documents and lists “Documents typically needed for CEQA review of each  
19 NOI/Application submittal.” The operator must describe the proposed drilling project and disclose  
20 several details about the well.

21 66. Prior to issuing a well permit, CalGEM must determine whether it would be consistent  
22 with its legal obligations to protect public health and the environment. (Pub. Resources Code §§  
23 3106, subd. (a), 3011.) CalGEM may issue or deny a drilling permit based on any number of factors,  
24 including but not limited to environmental impacts, health and safety considerations, the financial  
25 stability of the applicant, and whether the applicant has a history of regulatory violations. Effective  
26 January 2020, CalGEM must assess whether the applicant has sufficient bonds to properly plug and  
27 abandon the well and remediate the well site. This assessment is “based on the division’s evaluation  
28

1 of the risk that the operator will desert its well or wells and the potential threats the operator’s well or  
2 wells pose to life, health, property, and natural resources.” (Id., § 3205.3, subd. (a).)

3 67. CalGEM does not provide notice, a public comment period, or a public hearing, nor does  
4 the agency make NOIs available on its website. It approves many new drilling permits within ten  
5 business days and in many cases sooner.

6 68. The limited information regarding drilling permits that is publicly available comes in the  
7 form of CalGEM’s weekly permit summaries, which must be requested on CalGEM’s website as  
8 separate files each week. In the weekly summary chart of “Permits Issued” and “Permits Submitted”  
9 CalGEM lists the well numbers, operators, oil fields, and whether the operator intends to use the well  
10 for specific operations—such as oil and gas, steamflooding, cyclic steam injection, waterflooding, or  
11 water disposal—for each “New Drill” NOI that has been permitted or submitted for review during the  
12 prior week. In some cases, CalGEM approves an NOI the same week an operator submits it, and the  
13 same well is listed under Permits Submitted and Permits Issued in the weekly summaries.

14 69. Because the weekly summaries can contain inaccurate information, it is impossible for  
15 the public to know the exact number of newly permitted wells from reviewing the weekly summaries.  
16 According to publicly available documents, in 2020, CalGEM approved over 1,900 permits to drill  
17 new wells. According to CalGEM’s California Oil and Production Statistics reports, the oil industry  
18 has submitted an average of 3,476 new drilling applications each year from 2009 to 2018.

19 70. CalGEM imposes various conditions on the permits and approvals depending on the  
20 location and type of well. These can include dozens of safety and environmental conditions related to  
21 the construction and operation of the well.

#### 22 Permits to Conduct Well Stimulation

23 71. Beginning in 2015, California began requiring operators to obtain a permit from CalGEM  
24 prior to conducting well stimulation treatments, including fracking. (Pub. Resources Code, § 3160,  
25 subd. (d).)

26 72. Permit applications must include, among other things, the documentation of CEQA  
27 review. Operators must also disclose the identities and volumes of each chemical constituent they  
28 plan to use in their well stimulation. (Pub. Resources Code, § 3160, subd. (d), par. (1); 14 Cal. Code

1 Regs., §§ 1783, 1783.1, 1788.) CalGEM reviews the application’s groundwater monitoring plan,  
2 waste fluid disposal information, a water management plan, and any other “pertinent data the  
3 supervisor requires.” (Pub. Resources Code, § 3160, subd. (d), par. (1).)

4 73. Upon receiving an application, CalGEM must “evaluate the quantifiable risk of the well  
5 stimulation treatment.” (Pub. Resources Code, § 3160, subd. (d), par. (3).) Well stimulation treatment  
6 “shall be done in accordance with the conditions of [CalGEM’s] approval.” (14 Cal. Code Regs., §  
7 1783, subd. (a).)

8 74. CalGEM exercises judgment in deciding whether and under what conditions to approve a  
9 well stimulation permit.

10 75. According to the state’s database, CalGEM issued 213 permits for fracking in 2019, and  
11 83 permits for fracking in 2020. Because each fracking permit authorizes multiple fracking instances  
12 or “stages,” the 2020 permits authorize more than 600 fracking instances. Since CalGEM began  
13 issuing discretionary permits in 2015, it has approved more than 700 fracking permits.

14 *Injection well approvals*

15 76. State and federal laws also require operators to obtain approval prior to injecting fluids  
16 into the subsurface as part of oil and gas operations. California became the primary regulator for oil  
17 and gas injection activity in the state by obtaining “primacy” from the U.S. Environmental Protection  
18 Agency in 1983. CalGEM issues injection project approvals pursuant to the agency’s Underground  
19 Injection Control (“UIC”) regulations, adopted as part of the memorandum of agreement between the  
20 U.S. Environmental Protection Agency and California. (14 Cal. Code Regs., §§ 1724.5-1724.10.)

21 77. Injection activity includes the disposal of wastewater via injection well. It also includes  
22 an array of enhanced oil recovery techniques in which water, steam, or gases are injected under  
23 pressure into a well to increase the flow of hydrocarbons to the surface.

24 78. Injection activity can pose a risk to nearby groundwater resources. CalGEM, together  
25 with state and regional water boards, must assess the risk of contaminants migrating to protected  
26 sources of groundwater.



1           79. Approvals for injection activities may not be issued unless they “ensure that [injection  
2 activities] are effectively preventing damage to life, health, property, and natural resources.” (14 Cal.  
3 Code Regs, § 1724.6, subd. (d).)

4           80. Applicants must submit supporting data “that demonstrates to the Division’s satisfaction  
5 that injected fluid will be confined to the approved injection zone and that the underground injection  
6 project will not cause damage to life, health, property, or natural resources.” (Id., § 1724.7, subd. (a).)

7           81. CalGEM exercises judgment in deciding whether and under what conditions to approve  
8 an injection project approval. CalGEM often issues a Project Approval Letter (“PAL”) to approve a  
9 proposed project involving multiple injection wells. Applications must include an engineering study,  
10 geologic study, and an injection plan containing maps and supporting data intended to demonstrate  
11 fluid will not migrate beyond the intended injection zone. PALs are “subject to suspension,  
12 modification, or rescission by the Division.” (Id., § 1724.6, subd. (d).) PALs must also obtain  
13 approval from the state and regional water boards. Once a PAL is approved, operators must obtain  
14 permits for individual injection wells that they intend to operate as part of the approved injection  
15 project.

16           82. CalGEM must review existing injection projects no less than once every three years “to  
17 ensure that they are effectively preventing damage to life, health, property, and natural resources.”  
18 (Id.)

19           83. CalGEM issued one new PAL in 2020, authorizing five new injection wells. In 2019,  
20 CalGEM approved at least nine PALs for new injection projects. CalGEM approved dozens of  
21 expansions and modifications for injection projects in 2020. There are more than 800 active injection  
22 projects in the state, according to CalGEM’s records.

23           84. In November 2020, the California Department of Finance, Office of State Audits and  
24 Evaluations published the results of an audit of CalGEM’s permitting activity that found CalGEM  
25 skipped application reviews for multiple PALs and hundreds of permits for new injection wells.

26           85. The audit found that CalGEM has been using 33 placeholder projects (“dummy projects”)  
27 through which CalGEM approved injection wells without a valid underlying PAL. From April 1 to  
28

1 October 31, 2019, CalGEM approved more than 200 injection wells under a “dummy” project  
2 number that had no records documenting that a review was ever conducted.

3 86. The audit found that in other instances, CalGEM approved expansions of an existing  
4 project without conducting requisite review. In one case, CalGEM approved a project expansion of  
5 400 new wells and 640 additional acres that were not authorized by the original PAL.

### 6 **CalGEM’s Mandatory Duties under CEQA**

7 87. CEQA’s purpose is to “[e]nsure that the long-term protection of the environment,  
8 consistent with the provision of a decent home and suitable living environment for every Californian,  
9 shall be the guiding criterion in public decisions.” (Pub. Resources Code, § 21001, subd. (d).)

10 88. CEQA requires public agencies to “[t]ake all action necessary to protect, rehabilitate, and  
11 enhance the environmental quality of the state,” and “provide the people of this state with clean air  
12 and water.” (Id., § 21001, subs. (a) & (b).)

13 89. Subject to certain limited statutory and categorical exemptions for specific types of  
14 projects, CEQA requires lead agencies to, at minimum, conduct an initial study on any project which  
15 that “may have a significant effect on the environment.” (14 Cal. Code Regs., § 15063, subd. (a).)  
16 This study must examine all significant direct, indirect and cumulative impacts of the proposed  
17 project.

18 90. Where an agency determines that, after an initial study, the project may have a significant  
19 impact on the environment, or if the project contributes to cumulative impacts, the lead agency must  
20 prepare an Environmental Impact Report (or “EIR”). (14 Cal. Code Regs., § 15064, subs. (f) & (h).)  
21 Alternatively, if an agency determines that a proposed project would not have a significant impact on  
22 the environment, it may adopt a Negative Declaration (Pub. Resources Code, §§ 21064, 21080, subd.  
23 (c).)

24 91. An EIR must also identify, and the permitting agency must adopt, feasible mitigation  
25 measures in order to substantially lessen or avoid otherwise significant environmental effects. (Pub.  
26 Resources Code, §§ 21002, 21081, subd. (a); 14 Cal. Code Regs., § 15126.4, subd. (a).)

27 92. Discretionary permits or approvals constitute “projects” that are subject to CEQA (14  
28 Cal. Code Regs., § 15378, subd. (a)(3).) The oil and gas permits and approvals issued by CalGEM for

1 new well drilling, well stimulation, and injection involve agency discretion as to whether to approve  
2 the permit, and if so, under what conditions. Because the projects are discretionary, the agency’s  
3 action is subject to CEQA.

4 93. CalGEM categorizes issuance of “permits” and of “project approval letters” for injection  
5 projects as “typical projects” under CEQA that require “discretionary action” from CalGEM.

6 94. There are no applicable exemptions that apply to CalGEM’s drilling, well stimulation, or  
7 injection permits.

8 95. For oil and gas projects for which no other public agency has conducted an  
9 environmental review, CalGEM acts as the lead agency.

10 96. Where a separate agency elects to serve as the lead agency for a project and CalGEM acts  
11 as a responsible agency, CEQA still requires CalGEM to independently review the adequacy of any  
12 existing environmental reviews and to adopt feasible alternatives and mitigation measures. (Pub.  
13 Resources Code, § 21002.1, subd. (d); 14 Cal. Code Regs., § 15096.) The responsible agency must  
14 mitigate or avoid the “direct and indirect environmental effects of those parts of the project it decides  
15 to . . . approve.” (14 Cal. Code Regs., § 15096, subd. (g)(1).)

## 16 **CALGEM’s Pattern and Practice of Violating Its Mandatory CEQA Duties**

17 97. Upon information and belief, CalGEM routinely violates its duty to conduct an initial  
18 study and further environmental review for any new oil and gas well drilling, well stimulation, or  
19 injection permits and approvals.

20 98. Instead, CalGEM repeatedly and consistently issues permits and approvals for oil and gas  
21 drilling, well stimulation, and injection projects without properly disclosing, analyzing, or mitigating  
22 the significant environmental impacts of these projects.

23 99. CalGEM unlawfully evades CEQA review duties pursuant to one of the following  
24 actions.

### 25 *(1) Lack of CEQA Review*

26 100. CalGEM approves projects with no publicly available documentation that it has  
27 conducted environmental review or issued a determination as to whether the proposed oil and gas  
28 projects may cause significant environmental impacts.

1           101. In 2020, CalGEM issued about 400 drilling permits for new wells for which no publicly  
2 available documentation exists that would indicate an environmental review occurred.

3           102. In 2020, 4 of the 83 well stimulation permits had no CEQA documentation.

4           103. In 2019 and 2020, CalGEM issued several Project Approval Letters authorizing oil and  
5 gas injection projects that involve hundreds of wells. A state audit found that several project  
6 approvals and modifications did not undergo basic regulatory review, and CalGEM has not published  
7 any documentation of CEQA environmental review.

8           104. Despite a search of the State Clearinghouse and CalGEM’s website for evidence of  
9 CEQA review, no such documents were discovered, and no information is available that explains  
10 whether or how these permits were reviewed.

11           *(2) Improper Notices of Exemption*

12           105. In other instances, when CalGEM acknowledges its role as a lead agency, it repeatedly  
13 issues a Notice of Exemption, claiming that new oil and gas projects are exempt under three  
14 exemptions.

15           106. In 2020 alone, CalGEM approved about 123 Notices of Exemption, authorizing at least  
16 396 new oil and gas wells without CEQA review in Monterey, Los Angeles, Fresno, and Kern  
17 counties, as well as on federal land.

18           107. In its Notices of Exemption, CalGEM almost invariably cites the same three  
19 exemptions: (1) the statutory exemption for an “ongoing project” “because CalGEM identified  
20 administrative boundaries of the . . . oil & gas field that were approved prior to April 5, 1973;” (2) the  
21 categorical Class 1 exemption for “existing facilities” because “the well will be installed within an  
22 existing oil field and involves no expansion of use of the oil field;” and (3) the categorical Class 4  
23 exemption for “minor alterations to land” because the well “involves the minor alteration of the  
24 condition of land and/or vegetation within a densely developed oil field and does not require the  
25 removal of healthy, mature scenic trees.”

26           108. CalGEM almost invariably applies these same exemptions to various oil and gas  
27 projects, regardless of the location or size of the proposed project, the depth of the wells, nearby  
28 habitat or communities, the intended use of the wells, or the environmental harm that is likely to

1 result from approving these projects. The Notices of Exemption do not indicate that CalGEM has  
2 adequately evaluated the direct, indirect, or cumulative effects of any of the approved projects.

3 109. The statutory exemption for “ongoing projects” (Pub. Resources Code, § 21169; 14 Cal.  
4 Code Regs., § 15261, subd. (b)) does not apply because these permits authorize new, expanded, and  
5 more intense activities.

6 110. The Class 1 categorical exemption applies only to “minor alterations of existing  
7 facilities.” It does not apply here because there is no existing facility; the permits authorize new and  
8 expanded activity. Similarly, the Class 4 categorical exemption applies only to projects that constitute  
9 only a “minor [ ] alternation of the condition of land, water, and /or vegetation...” (14 Cal. Code  
10 Regs., § 15304.) The land disturbance, threat to water quality, and damage to native vegetation  
11 caused by new oil and gas development precludes CalGEM from applying this exemption.

12 111. Moreover, categorical exemptions do not apply where a project “may impact on an  
13 environmental resource of . . . critical concern,” where there are unusual circumstances, or where  
14 successive projects have a cumulative impact. (Cal. Code. Regs. tit. 14, § 15300.2.) Such exceptions  
15 preclude CalGEM from evading CEQA review.

16 112. CalGEM approves projects pursuant to a Notice of Exemption even where the project  
17 proposes new wells and new appurtenant equipment in areas close to homes or sensitive habitats.

18 *(3) Improper Notices of Determination*

19 113. CalGEM also avoids CEQA environmental review by issuing Notices of Determination.  
20 In these cases, CalGEM claims it is acting as the responsible agency and asserts that a prior  
21 environmental review conducted by a separate public agency acting as the lead agency is sufficient to  
22 satisfy its obligations under CEQA and evaluate all significant environmental impacts. CalGEM  
23 relies on these underlying documents regardless of when they were prepared, whether the approval at  
24 issue is within the scope of the initial review, or the document’s legal status.

25 114. A responsible agency must perform an independent review, make its own findings, and  
26 reach its own conclusions as to whether and how to approve a project. (CEQA Guidelines, § 15096,  
27 subd. (g).) It must also adopt all feasible mitigation measures within its powers. (Id.)

28

1           115. While local governments often act as the lead agencies for new oil and gas projects,  
2 cities and counties typically lack petroleum geologists, environmental experts, or other relevant  
3 technical expertise available on staff. CalGEM plays a crucial role in reviewing applications for state  
4 permits to ensure oil and gas activities’ adverse effects are adequately analyzed and mitigated.

5           116. In addition, the Legislature affirmed CalGEM’s role as ensuring oil and gas activities  
6 are conducted in a manner consistent with the state’s purpose to “protect[ ] public health and safety  
7 and environmental quality, including reduction and mitigation of greenhouse gas emissions  
8 associated with the development of hydrocarbon [ ] resources....” (Pub. Resources Code, § 3011,  
9 subd. (a).)

10           117. CalGEM has the authority to deny any permit application, or to impose requirements on  
11 oil and gas activity as a condition to issuing a permit or approval.

12           118. As the state regulator, CalGEM plays a critical role in analyzing the statewide and  
13 cumulative impacts of approving new oil and gas projects.

14           119. Despite this crucial responsibility, CalGEM issues Notices of Determination as a matter  
15 of course when an applicant for an oil and gas permit identifies a lead agency and underlying  
16 environmental document.

17           120. In 2020, CalGEM approved about 1,265 wells pursuant to 282 Notices of  
18 Determination. In addition, in 2020, CalGEM approved about 79 well stimulation permits pursuant to  
19 a Notice of Determination.

20           121. A substantial portion of Notices of Determination rely on an EIR purporting to apply to  
21 all oil and gas activity in Kern County. The Fifth District Court of Appeal ruled that the EIR was  
22 legally deficient and deemed it invalid in 2020. (*See King & Gardiner Farms v. County of Kern*  
23 (2020) 45 Cal.App.5th 814.) The Court ruled that the EIR did not sufficiently disclose, analyze, or  
24 mitigate oil and gas activities’ adverse impacts to air, water, land, noise, and health. (*Id.*)

25           122. For all projects relying on the invalid Kern County EIR, CalGEM’s Notices of  
26 Determination state that the agency has not identified any additional environmental impacts beyond  
27 those already named by the lead agency, Kern County, despite the court’s finding that that Kern  
28 County failed to identify all of the significant environmental impacts of oil and gas in the County’s

1 EIR. CalGEM did not conduct independent environmental analysis even for impacts for which the  
2 Kern EIR was deemed legally deficient.

3 123. Even after Kern County set aside the EIR in its entirety on March 26, 2020 in  
4 compliance with a court order, CalGEM continues to issue Notices of Determination that rely on the  
5 Kern County EIR. From March 26, 2020 to the end of the calendar year, CalGEM approved over 124  
6 Notices of Determination relying upon the invalid Kern County EIR for projects authorizing 705 new  
7 oil and gas wells in Kern County. During that same period, CalGEM issued 83 permits for well  
8 stimulation pursuant to Notices of Determination relying on the same EIR. Because each well  
9 stimulation permit authorizes multiple well stimulation events, the total number of hydraulic  
10 fracturing events authorized is actually 607.

11 124. CalGEM also continues to approve drilling permits in jurisdictions outside of Kern  
12 County based on outdated environmental reviews. Three Notices of Determination were issued in  
13 2020 for 26 wells in San Luis Obispo, Monterey, and Los Angeles counties without consideration of  
14 new information about environmental impacts or any evidence that the activities approved were  
15 covered by the underlying environmental document. For example, in 2020 CalGEM approved 11 new  
16 oil and gas wells in the San Ardo oil field in Monterey County without conducting any environmental  
17 review. The Notice of Determination states that CalGEM “considered” a 1980 mitigated negative  
18 declaration, but provides no support for the determination that the 1980 document encompasses the  
19 11 new oil and gas wells or the cyclic steam injection that will be utilized at those wells.

20 125. CalGEM’s pattern and practice of issuing oil and gas permits has been demonstrated by  
21 its continued activity in 2020, summarized below:  
22  
23  
24  
25  
26  
27  
28

Violation	Projects Approved	Notes
Permits to Drill New Wells, no CEQA documentation	At least 400 wells	
Injection Project Approval Letters (PALs), no CEQA documentation	At least 1 project and an unknown number of modifications and expansions.	A state audit found at least 9 PALs and authorizations for hundreds of new injection wells had inadequate review in 2019.
Permits to Drill New Wells, Improper Notice of Exemption	396 wells	
Permits to Drill New Wells, Improper Notice of Determination	At least 1,265 wells.	534 wells approved before Kern County Oil and Gas EIR was set aside. 705 wells in Kern County approved after EIR was invalidated. 26 wells approved outside of Kern County.
Permits for Well Stimulation, Improper Notice of Determination	83 well stimulation permits	Permits authorize 607 hydraulic fracking events

## CLAIM FOR RELIEF

### Unlawful Pattern and Practice

#### Improper Issuance of Oil and Gas Permits and Approvals

126. Plaintiff incorporates paragraphs [1-125] as if fully set forth herein.

127. CEQA requires public agencies to conduct an environmental review for discretionary projects that may result in significant direct, indirect, and cumulative environmental impacts.

128. CalGEM has an ongoing pattern and practice of approving oil and gas permits, including permits and approvals to conduct drilling, well stimulation, and injection without conducting environmental review of potentially significant impacts as required by CEQA. CalGEM improperly evades its duty to conduct environmental review by issuing, for example:

- a. discretionary oil and gas permits and approvals with no publicly available documentation that CEQA review has occurred.
- b. discretionary oil and gas permits and approvals pursuant to a Notice of Exemption, citing exemptions that are inapplicable to the permitted oil and gas



1 activities. CalGEM also issues categorical exemptions without adequately  
2 evaluating whether relevant exceptions to those exemptions apply.

- 3 c. discretionary oil and gas permits and approvals pursuant to Notices of  
4 Determination that improperly rely on inadequate or invalid environmental  
5 review, and/or do not include adequate independent review required of a  
6 responsible agency.

7 129. This pattern and practice is unlawful. At a minimum, CalGEM must prepare an initial  
8 study to identify and evaluate whether a permit or approval of a proposed oil and gas project may  
9 have significant effects.

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

15 131. There is a present and actual controversy between Plaintiff and Defendant as to the  
16 legality of this policy or practice. CalGEM has failed, and continues to fail, to proceed in a manner  
17 required by law by repeatedly and consistently issuing discretionary permits and approvals to conduct  
18 drilling, well stimulation, and injection activities without complying with CEQA.

19 132. Plaintiff has no adequate remedy in the ordinary course of law to obtain relief from the  
20 consequences of CalGEM’s actions. Plaintiff has repeatedly requested that CalGEM discontinue its  
21 unlawful pattern and practice, but CalGEM has failed comply with its legal obligations under CEQA.

22 133. CalGEM’s unlawful pattern and practice denies Plaintiff and the public the opportunity  
23 to submit comments and pursue administrative remedies. Properly subjecting oil and gas permitting  
24 to CEQA review would also mitigate some of the environmental harm caused by these projects.  
25 Monetary damages are inadequate to compensate Plaintiff for the harm caused by CalGEM’s  
26 unlawful activity.

27 134. CalGEM’s ongoing pattern and practice irreparably harms and will continue to harm  
28 Plaintiff and its members in that CalGEM’s violations harm and endanger the health and environment

1 in which Plaintiff and its members have an interest. Monetary damages are an inadequate remedy  
2 because the loss of an opportunity to review a project's environmental damage and the environmental  
3 impacts resulting from the approved projects is irreparable.

4 135. Therefore, to prevent further irreparable harm, the Court should enjoin CalGEM from  
5 issuing any further permits or approvals authorizing new oil and gas drilling, well stimulation, or  
6 injection activity unless and until CalGEM has conducted, at minimum, a CEQA-compliant initial  
7 study for any proposed project.

8 136. In addition, judicial economy is served by adjudicating the legality of CalGEM's pattern  
9 and practice, which would spare parties and courts from litigating the propriety of thousands of  
10 individual permits and approvals in multiple jurisdictions.

11 137. The issue is of great public interest. The oil and gas projects authorized by CalGEM  
12 endanger the health and safety millions of Californians. The cumulative impact of oil and gas activity  
13 in the state has a significant impact on California's air, water, climate, wildlife, and health. The public  
14 has been denied the information, analysis, and mitigation measures that could reduce the harms from  
15 oil and gas. The public has also been deprived of opportunities to comment on these dangerous  
16 projects because of the lack of notice, a commenting period, and hearings on these projects.

## 17 18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff respectfully requests that the Court:

- 20 (1) Issue a declaration of CalGEM's duties and responsibilities under CEQA;  
21 (2) Issue a declaration that CalGEM's pattern and practice of issuing oil and gas permits and  
22 approvals without applying the environmental review procedures under CEQA, and without  
23 determining whether its approval of such permits may have significant adverse environmental  
24 effects before making its determination, is unlawful. This includes CalGEM's pattern and  
25 practice of:

26 (a) Issuing permits and approvals for drilling new oil and gas wells, well stimulation, or  
27 injection project approval letters with no CEQA documentation;

28 (b) Issuing permits and approvals for drilling new oil and gas wells, well stimulation, or

1 injection project approval letters as a lead agency pursuant to a Notice of Exemption citing  
2 inapplicable exemptions for ongoing projects, minor alterations to land, and existing facilities;

3 (c) Issuing permits and approvals for drilling new oil and gas wells, well stimulation, or  
4 injection permits or project approval letters as a responsible agency pursuant to a Notice of  
5 Determination in reliance upon an invalid or otherwise inadequate environmental review or  
6 invalid local permit; and

7 (d) Failing to provide public notice and comment opportunities and responses to  
8 comment before issuing oil and gas permits.

9 (3) Issue a permanent injunction enjoining CalGEM from continuing any of the above unlawful  
10 practices and policies unless and until CalGEM complies with CEQA's environmental review  
11 procedures and adequately discloses, evaluates, and mitigates the direct, indirect, and cumulative  
12 impacts of each project.

13 (4) Issue any other declaratory or injunctive relief, as appropriate under California Code of Civil  
14 Procedure section 525, et seq.;


15 (5) Award Plaintiff costs and fees associated with this litigation, including reasonable attorneys'  
16 fees and expert witness costs, as authorized by California Code of Civil Procedure section  
17 1021.5, and any other applicable provisions of law; and

18 (6) Grant other such relief as the Court deems just and proper.

19  
20 Respectfully submitted,

21 Dated: February 24, 2021

CENTER FOR BIOLOGICAL DIVERSITY

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23  
24 by:  \_\_\_\_\_  
Hollin Kretzmann

25 Kassia R. Siegel  
26 Center for Biological Diversity  
27 1212 Broadway, Suite 800  
28 Oakland, CA 94612  
[hkretzmann@biologicaldiversity.org](mailto:hkretzmann@biologicaldiversity.org)  
[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)

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Elizabeth Jones  
Center for Biological Diversity  
660 S. Figueroa St., Suite 1000  
Los Angeles, CA 90017  
[ljones@biologicaldiversity.org](mailto:ljones@biologicaldiversity.org)

Deborah A. Sivas  
Environmental Law Clinic  
Mills Legal Clinic at Stanford Law School  
559 Nathan Abbott Way  
[dsivas@stanford.edu](mailto:dsivas@stanford.edu)

*Attorneys for Plaintiff*