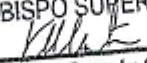


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16 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
17 FOR THE CITY AND COUNTY OF SAN LUIS OBISPO

18 CENTER FOR BIOLOGICAL DIVERSITY, a
19 non-profit corporation,

20 Petitioner,

21 v.

22 CALIFORNIA DEPARTMENT OF
23 CONSERVATION, DIVISION OF OIL, GAS,
24 AND GEOTHERMAL RESOURCES;
25 CALIFORNIA STATE WATER RESOURCES
26 CONTROL BOARD, and DOES 1 through 10,

27 Respondents;

28 FREEPORT-MCMORAN OIL & GAS LLC,
and DOES 11 through 25,

Real Parties in Interest.

Case No.: 16CV-0353

**VERIFIED PETITION FOR WRIT OF
MANDATE**

(Code Civ. Proc. §§ 1085, 1094.5;
California Environmental Quality Act,
Pub. Res. Code §§ 21168, 21168.5)

1 **INTRODUCTION**

2 1. California faces one of the most severe droughts in the state’s history. In times of
3 drought and when water is scarce, California residents, municipalities, and farmers rely on
4 groundwater resources for drinking, irrigation, and other beneficial uses. This has entailed drilling
5 greater numbers of water supply wells in areas where no wells existed before, and drilling wells
6 deeper into the earth in order to access previously unreachable water. Better water treatment
7 technology has also allowed Californians to treat and use groundwater resources that would have
8 been considered unusable in the past.

9 2. California and federal laws safeguard the state’s dwindling groundwater resources,
10 protecting both aquifers that are currently used for drinking water and aquifers that could be used for
11 drinking water or other beneficial uses in the future. These laws are intended to prevent pollution of
12 California’s aquifers to preserve their beneficial and drinking water use now and in the future.

13 3. In limited circumstances, states and the U.S. Environmental Protection Agency
14 (“EPA”) can exempt some groundwater aquifers from the protections of the federal Safe Drinking
15 Water Act, 42 U.S.C. § 300f *et seq.* (“SDWA”), allowing oil and gas companies to inject polluted
16 wastewater and other fluids into them. Such an exemption is called an “aquifer exemption.” An oil
17 or gas operator must obtain an aquifer exemption prior to injecting wastewater and other fluids into
18 an aquifer.

19 4. Respondent California Division of Oil, Gas, and Geothermal Resources (“DOGGR”),
20 which operates the federal oil and gas underground injection control (“UIC”) program in California
21 pursuant to a Memorandum of Agreement with EPA, has admitted that for years it has improperly
22 allowed thousands of enhanced oil recovery (“EOR”) and wastewater injection wells to inject
23 wastewater and other fluids into aquifers that are federally protected under the SDWA. Rather than
24 shut down this unlawful activity, DOGGR promulgated “emergency” regulations (14 CCR §1779.1)
25 that purport to require operators either to obtain an aquifer exemption or cease injection into the
26 illegal injection wells by February 2017.

27 5. Real Party in Interest Freeport-McMoRan Oil & Gas, LLC (“Freeport”) operates the
28 Arroyo Grande Oil Field in San Luis Obispo County. There are currently approximately 400 active

1 and idle oil wells at the Arroyo Grande Oil Field (“Arroyo Grande”), of which approximately 90 are
2 active or idle waste disposal or EOR wells (collectively, “Class II injection wells”) that inject (or
3 have injected in the past) into a protected (non-exempt) aquifer. Freeport plans to expand oil
4 production by adding up to 450 new and reworked wells, including oil production, steam injection,
5 and waste disposal wells. In order to legalize its unlawful injections and to accommodate planned
6 expansion, in August 2015, Freeport submitted an application to DOGGR for state approval of an
7 aquifer exemption (“Aquifer Exemption”) for an aquifer in the Arroyo Grande Oil Field (technically
8 known as the Edna Member, Dollie Sands, of the Pismo Formation, but hereinafter referred to as
9 “Arroyo Grande Aquifer”).

10 6. On February 8, 2016, after reviewing Freeport’s application and hearing and
11 responding to public comments—including from Petitioner Center for Biological Diversity (the
12 “Center”) and numerous neighbors of the Arroyo Grande Oil Field—and after consulting with the
13 State Water Resources Control Board (“State Board”) and the Regional Water Quality Control
14 Board, DOGGR determined the aquifer merited exemption and submitted the Aquifer Exemption
15 application to EPA for final approval.

16 7. The California Environmental Quality Act, California Public Resources Code §§
17 21000 *et seq.* (“CEQA”), is a comprehensive statute designed to provide for long-term protection of
18 the environment. It requires agencies to analyze projects that may have significant impacts on the
19 environment, and to mitigate or avoid those impacts if feasible.

20 8. DOGGR did not conduct environmental review under CEQA prior to determining
21 that the aquifer could be polluted by oil and gas wastewater and other fluids, and submitting the
22 Aquifer Exemption to EPA for final approval. DOGGR disclaimed any responsibility for complying
23 with CEQA in connection with the Aquifer Exemption, despite having received specific comments
24 notifying DOGGR of its responsibilities under CEQA.

25 9. By determining that the Aquifer Exemption merited consideration and submitting it to
26 EPA for approval, DOGGR and the State Board committed themselves to a course of action that
27 would eliminate and foreclose protection of the aquifer under the SDWA. DOGGR and the State
28 Board had a clear responsibility under CEQA to disclose, analyze, and mitigate or avoid the effects

1 of this decision – and of the future development that will follow as a result of this decision – before
2 deciding to eliminate the possibility that the Arroyo Grande Aquifer could ever be used for drinking
3 water or other beneficial purposes in the future. Environmental review of the whole project
4 (including both the Aquifer Exemption and the foreseeable expansion of the oil field enabled by the
5 Aquifer Exemption) should have occurred at the earliest possible opportunity, before DOGGR and
6 the State Board effectively committed the state to sacrificing this water to oil-related pollution.

7 10. The Center therefore seeks relief from this Court to set aside Respondents’ decision
8 to approve the Aquifer Exemption, and direct Respondents to comply with CEQA and refrain from
9 allowing injection into the Arroyo Grande Aquifer until they have complied with CEQA.

10 11. The relief requested here will confer a significant benefit on the public and will result
11 in the enforcement of important public rights, including the public’s right to disclosure of the
12 potentially significant impacts of exempting the Arroyo Grande Aquifer from protection under the
13 SDWA; and the public’s right to ensure that DOGGR and the State Board act in accordance with the
14 state’s environmental laws.

15 **JURISDICTION AND VENUE**

16 12. This Court has jurisdiction over the matters alleged in this petition pursuant to Code
17 of Civil Procedure section 1085 (alternatively section 1094.5) and Public Resources Code section
18 21168.5 (alternatively section 21168).

19 13. Venue in this Court is proper under Code of Civil Procedure section 393(b) because
20 the cause of action or some part thereof arose in the County of San Luis Obispo.

21 **PARTIES**

22 14. Petitioner Center for Biological Diversity is a non-profit, public interest
23 environmental organization dedicated to the protection of native species and their habitats through
24 science, policy, and environmental law. Recognizing that global warming from society’s emission of
25 greenhouse gases is one of the foremost threats to the Center’s members and their recreational,
26 spiritual, vocational, educational, aesthetic and other interests in the earth’s environment,
27 biodiversity, and public health, the Center’s Climate Law Institute works to reduce greenhouse gas
28 emissions and promote sound conservation strategies in order to protect these interests. The Center’s

1 specific objectives also include ensuring that the impacts of oil and gas operations – including the
2 impact of oil and gas operations on our water, air, climate, environment, and public health – are
3 accurately accounted for, considered, and mitigated in accordance with science and applicable law.
4 The Center has 48,575 members, including approximately 9,500 members in California including in
5 San Luis Obispo County, where the impacts of the Aquifer Exemption will be felt. Center members
6 have concrete aesthetic, recreational, scientific, spiritual, educational, and other interests that will be
7 directly and adversely affected by any action by Respondents in violation of CEQA.

8 15. Respondent Department of Conservation, Division of Oil, Gas and Geothermal
9 Resources, is a subdivision within the State of California’s Department of Conservation that
10 oversees California’s UIC program. Pursuant to California Public Resources Code section 3131 and
11 40 C.F.R. sections 146.4 and 147.250, Respondent DOGGR is the agency primarily responsible for
12 approving proposed aquifer exemptions and submitting those proposed exemptions to the EPA for
13 final approval. DOGGR is a “public agency” within the meaning of CEQA. (Pub. Resources Code
14 § 21063.)

15 16. Respondent California State Water Resources Control Board is a department within
16 the California Environmental Protection Agency. Pursuant to Public Resources Code section 3131,
17 the State Board is required to consult with DOGGR regarding proposed aquifer exemptions, and
18 must concur with DOGGR that a proposed aquifer exemption merits consideration by EPA, before
19 an aquifer exemption may be approved by the state and submitted to EPA. The State Board is a
20 “public agency” within the meaning of CEQA. (Pub. Resources Code § 21063.)

21 17. Petitioner does not know the true names and capacities, whether individual, corporate,
22 associate or otherwise, of DOE 1 through DOE 10, inclusive, and therefore sues said parties under
23 fictitious names. Petitioner will amend this Petition to show their true names and capacities when the
24 same have been ascertained. Each of these parties is the agent of Respondent DOGGR and/or
25 Respondent State Board, and performed acts on which this action is based within the course and
26 scope of such agency or agencies.

27 18. Real Party in Interest Freeport-McMoran Oil & Gas LLC (“Freeport”) is listed as the
28 “Applying Owner/Operator” in the application submitted to DOGGR seeking approval of the

1 Aquifer Exemption. As the party listed as an applicant in the application for the Aquifer Exemption,
2 Freeport is the “person” described in subdivision (b) or (c) of Public Resources Code section 21065
3 with respect to this project. Accordingly, Freeport is the “real party in interest” reflected in the
4 agency’s record of proceedings for purposes of Public Resources Code section 21167.6.5(a).

5 19. Petitioner does not know the true names and capacities, whether individual, corporate,
6 associate or otherwise, of DOE 11 through DOE 25, inclusive, and therefore sues said parties under
7 fictitious names. Petitioner will amend this Petition to show their true names and capacities when the
8 same have been ascertained. Each of these parties is the agent, owner, alter ego, and/or other entity
9 acting in a decision-making or controlling capacity of Real Party in Interest Freeport, and performed
10 acts within the course and scope of such agency or capacity.

11 **STANDING**

12 20. Petitioner has a beneficial interest in this proceeding due to particular harm caused by
13 the violations of law alleged in this Petition. Petitioner and its members have a special interest in this
14 proceeding above and beyond the interest of the public at large. Respondents’ actions have caused
15 and will cause concrete, particularized, actual and/or imminent harm to the interests of Petitioner’s
16 members by, *inter alia*, frustrating their ability to participate meaningfully in the CEQA process and
17 exposing them to environmental impacts from the Aquifer Exemption that may have been reduced or
18 avoided had Respondents complied with their legal obligations under CEQA. Petitioner has
19 members who would have standing to sue in their own right.

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

25 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

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

28 23. Petitioner has complied with the requirements of Public Resources Code section

1 21167.5 by serving a written notice of intent to commence this action on Respondents on August 2,
2 2016. A copy of the written notice and proof of service are attached hereto as Exhibit A.

3 24. Petitioner has complied with the requirements of Public Resources Code section
4 21167.7 by furnishing a copy of this petition to the Attorney General on August 3, 2016 in
5 accordance with Code of Civil Procedure section 388. A copy of the letter accompanying the petition
6 and proof of service are attached hereto as Exhibit B.

7 **ENTITLEMENT TO RELIEF**

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

13 26. Petitioner has no plain, speedy or adequate remedy in the course of ordinary law
14 unless this Court grants the requested peremptory writ of mandate. In the absence of such a remedy,
15 Respondents' approval of the Project will stand in violation of State law.

16 **STATEMENT OF FACTS**

17 *Statutory and Regulatory Framework*

18 27. Among other things, the SDWA protects underground sources of drinking water from
19 contamination caused by underground injection of wastes or any other materials. (*See* 42 U.S.C. §
20 300h *et seq.*) To achieve this end, the SDWA authorizes EPA to promulgate regulations that protect
21 underground sources of drinking water. (42 U.S.C. § 300h; *see generally* 40 C.F.R., Parts 144-147.)

22 28. EPA regulations define an "underground source of drinking water" as an aquifer or
23 portion of an aquifer:

24 (a) (1) Which supplies any public water system; or

25 (2) Which contains a sufficient quantity of ground water to supply a public water system;

26 and

27 (i) Currently supplies drinking water for human consumption; or

28 (ii) Contains fewer than 10,000 mg/l total dissolved solids; and

1 (b) Which is not an exempted aquifer.

2 (40 C.F.R. § 144.3.)

3 29. EPA regulations classify as “Class II” injection wells those wells that inject fluids:

4 (1) Which are brought to the surface in connection with natural gas storage operations, or
5 conventional oil or natural gas production and may be commingled with waste waters
6 from gas plants which are an integral part of production operations, unless those waters
7 are classified as a hazardous waste at the time of injection.

8 (2) For enhanced recovery of oil or natural gas; and

9 (3) For storage of hydrocarbons which are liquid at standard temperature and pressure.

10 (40 C.F.R. § 144.6(b).)

11 30. Waste fluids, including those brought to the surface in the process of extraction of oil
12 and gas, known as “produced water,” and fluids used in enhanced recovery of oil or natural gas, can
13 contain harmful contaminants such as benzene, heavy metals, acids, and other chemicals that are
14 associated with adverse human health consequences, including cancer.

15 31. Under EPA regulations, “no injection shall be authorized by permit or rule if it results
16 in the movement of fluid containing any contaminant into underground sources of drinking water . . .
17 if the presence of that contaminant may cause a violation of any primary drinking water regulation . .
18 . or may adversely affect the health of persons.” (40 C.F.R. § 144.1(g); *see also* 42 U.S.C. §
19 300h(b)(1).)

20 32. An aquifer that meets the definition of an “underground source of drinking water” is
21 protected under SDWA requirements unless and until affirmatively exempted under EPA
22 regulations. (40 C.F.R. §§ 144.1(g), 146.4, 144.7(a).) Such exemptions are known as “aquifer
23 exemptions.” “[I]n the absence of a showing by the applicant that a proposed injection is safe, the
24 SDWA presumes that the injection will endanger an [underground source of drinking water]” and
25 the injection must be prohibited. (*U.S. v. King* (9th Cir. 2011) 660 F.3d 1071, 1079.) Accordingly,
26 injection of fluids containing contaminants from a Class II well into a non-exempt aquifer is
27 prohibited.

28 33. Under federal law, an aquifer may be exempted only if meets the criteria in 40 C.F.R.

1 section 146.4:

2 (a) It does not currently serve as a source of drinking water; and

3 (b) It cannot now and will not in the future serve as a source of drinking water because:

4 (1) It is mineral, hydrocarbon or geothermal energy producing, or can be
5 demonstrated by a permit applicant as part of a permit application for a Class II or III
6 operation to contain minerals or hydrocarbons that considering their quantity and
7 location are expected to be commercially producible.

8 (2) It is situated at a depth or location which makes recovery of water for drinking
9 water purposes economically or technologically impractical;

10 (3) It is so contaminated that it would be economically or technologically impractical
11 to render that water fit for human consumption; or

12 (4) It is located over a Class III well mining area subject to subsidence or catastrophic
13 collapse; or

14 (c) The total dissolved solids content of the ground water is more than 3,000 and less than
15 10,000 mg/l and it is not reasonably expected to supply a public water system.

16 (40 C.F.R. § 146.4.)

17 34. The SDWA allows EPA to grant a state primary authority (commonly known as
18 “primacy”) in regulating underground injection by approving that state’s UIC program. (42 U.S.C. §
19 300h-1.) States that acquire primacy must comply with the SDWA and certain EPA regulations,
20 depending on the method by which primacy is acquired. EPA approved California’s UIC program
21 for Class II wells in May 1984. (See 40 C.F.R. § 147.250.)

22 35. State programs like California’s must “prevent underground injection which
23 endangers drinking water sources.” (42 U.S.C. § 300h-4(a).)

24 36. In California, under its EPA-approved state UIC program, aquifer exemptions must
25 be approved initially by the state “Director,” here Respondent DOGGR. (40 C.F.R. § 144.7(b)(1),
26 (3).)

27 37. Aquifer exemptions proposed and approved by a state Director are subject to final
28 review and approval by EPA. (See 40 C.F.R. § 144.7(b)(2), (3).) Specifically, aquifer exemptions

1 pursuant to the criteria in 40 C.F.R. section 146.4(b) (specifying criteria for exempting an aquifer
2 that “cannot now and will not in the future serve as a source of drinking water”) are reviewed and
3 processed by EPA as proposed revisions to the state’s UIC program. (40 C.F.R. §§ 144.7(b)(3),
4 145.32.)

5 38. California law imposes additional requirements on the proposal and approval of
6 aquifer exemptions. Before submitting a proposed aquifer exemption to EPA, DOGGR must consult
7 with the State Board and the appropriate regional water quality control board as to (1) whether the
8 proposal conforms to federal aquifer exemption criteria, (2) whether the injection of fluids will
9 “affect the quality of water that is, or may reasonably be, used for any beneficial use,” and (3)
10 whether “[t]he injected fluid will remain in the aquifer or portion of the aquifer that would be
11 exempted.” (Pub. Resources Code § 3131(a)(1)-(3).) If, based on that consultation, DOGGR and
12 the State Board concur that the proposed aquifer exemption “may merit consideration for
13 exemption” by EPA, “they shall provide a public comment period and, with a minimum of 30 days
14 public notice, jointly conduct a public hearing.” (Pub. Resources Code § 3131(b).) “Following
15 review of the public comments, and only if the division [DOGGR] and state [water] board concur
16 that the exemption proposal merits consideration for exemption, the division shall submit the aquifer
17 exemption proposal” to EPA. (Pub. Resources Code § 3131(c).)

18 39. Section 3106(a) of the California Public Resources Code requires DOGGR “to
19 prevent, as far as possible, damage to life, health, property, and natural resources” and “damage to
20 underground . . . waters suitable for irrigation or domestic purposes by the infiltration of, or the
21 addition of, detrimental substances.” (Pub. Resources Code § 3106(a).)

22 40. Section 1775 of Title 14 of the California Code of Regulations also prohibits the
23 disposal of “oilfield wastes” in a manner that may cause damage to “life, health, property, freshwater
24 aquifers or surface waters, or natural resources, or be a menace to public safety.” (14 C.C.R. §
25 1775(a).)

26 41. CEQA is designed to ensure that the long-term protection of the environment be the
27 guiding criterion in public decisions. CEQA’s purpose is to “[e]nsure that the long-term protection
28 of the environment, consistent with the provision of a decent home and suitable living environment

1 for every Californian, shall be the guiding criterion in public decisions.” (Pub. Resources Code §§
2 21001(d), 21000(g).) CEQA requires that the government “[d]evelop and maintain a high-quality
3 environment now and in the future,” “[t]ake all action necessary to protect, rehabilitate, and enhance
4 the environmental quality of the state,” and “provide the people of this state with clean air and
5 water.” (*Id.* §§ 21001 (a), (b).)

6 42. To meaningfully achieve that end, CEQA compels public agencies to consider and
7 disclose to the public the environmental impacts of their actions in approving projects. It requires
8 informed and public participation in environmental decision-making and planning processes. (Cal.
9 Code Regs, tit. 14, §§ 15000, *et seq.* (“CEQA Guidelines”), § 15151.)

10 43. Environmental review should be conducted “as early as feasible. . . to enable
11 environmental considerations to influence project program and design and yet late enough to provide
12 meaningful information for environmental assessment.” (CEQA Guidelines § 15004(b).) Agencies
13 are prohibited from taking actions “concerning the proposed public project that would have
14 significant adverse effect or limit the choice of alternatives or mitigation measures, before
15 completion of CEQA compliance.” (*Id.* § 15004(b)(2).)

16 44. Public agencies are prohibited from approving projects that would result in one or
17 more significant effects on the environment unless changes or alterations to the project will
18 altogether avoid their significant effects, or reduce them to a level of insignificance. (Pub. Resources
19 Code §§ 21081, 21002.)

20 45. Thus, CEQA establishes both procedural obligations to analyze and make public
21 adverse physical environmental effects, and a substantive obligation to mitigate significant impacts
22 or deny a project.

23 46. CEQA defines a “project” as “an activity which may cause either a direct physical
24 change in the environment, or a reasonably foreseeable indirect physical change in the environment,
25 and which is,” *inter alia*, either “directly undertaken” by a public agency or which “involves the
26 issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or
27 more public agencies.” (Pub. Resources Code § 21065(a), (c); CEQA Guidelines § 15378(a).) In
28 order to ensure all effects—including indirect effects—are analyzed and mitigated, agencies must

1 evaluate the “whole of an action,” and are prohibited from improperly segmenting or subdividing
2 single projects into smaller projects (“piecemealing”), whereby the overall, significant
3 environmental effects are obscured. (CEQA Guidelines § 15378(a); *Orinda Ass’n v. Board of*
4 *Supervisors* (1986) 182 Cal.App.3d 1145, 1171.)

5 47. CEQA applies to any discretionary project proposed to be carried out or approved by
6 a public agency unless the project is exempt from CEQA. (Pub. Resources Code § 21080(a).) A
7 public agency may not carry out or approve projects subject to CEQA unless and until the agency
8 complies with CEQA’s substantive and procedural mandates.

9 48. A public agency approves a project when, as a practical matter, the agency commits
10 itself to a definite course of action in regard to the project. (*See* CEQA Guidelines § 15352(a).)

11 ***The Arroyo Grande Aquifer Exemption Project***

12 49. The Arroyo Grande Oil Field (“Arroyo Grande”) sits in Price Canyon among rolling
13 hills of vineyards and homes about halfway between Pismo Beach and San Luis Obispo. Many
14 residents live in the woodsy, semi-rural area because they value its natural beauty. As a result, many
15 of the residents have moved to the area or stayed in the area to raise families.

16 50. Most of the residents who live near the Arroyo Grande Oil Field rely on well water
17 for domestic uses, including drinking, cooking, and bathing. As the Arroyo Grande Oil Field has
18 increased its use of EOR methods, such as high-pressure steam injection, to recover oil, and
19 increased the number of waste water injection wells, residents have become increasingly concerned
20 about the impacts of such oil extraction actions on their water.

21 51. Residents also have complained of noxious odors, noise, traffic, construction of oil
22 pipelines on their streets, and other concerns, all related to the Arroyo Grande Oil Field.

23 52. In addition, the Arroyo Grande Oil Field and surrounding area is home to species that
24 are listed as endangered or threatened under the federal Endangered Species Act, 16 U.S.C. §§ 1531-
25 44, that meet the definitions of rare or endangered species under CEQA. These include: the federally
26 endangered Pismo Clarkia, a flower in the evening primrose family, and Tidewater goby, a fish
27 species; and the federally threatened South-Central Coast Steel Trout and California red-legged frog.

28 53. There are currently approximately 400 active and idle wells at Arroyo Grande, of

1 which approximately 90 wells are active or idle waste disposal or EOR (such as steam injection)
2 wells currently or previously injecting into a protected aquifer. A total of approximately 600
3 production, EOR, waste disposal, and other wells have been drilled at the site.

4 54. In October 2012, the previous operator, Plains Exploration & Production Company
5 (“Plains Exploration”), applied to the County of San Luis Obsipo (“County”) for a conditional use
6 permit (“CUP”) to expand production at Arroyo Grande, proposing to add up to 450 new and
7 reworked wells, including oil production, steam injection (EOR), and waste disposal wells (“Phase V
8 expansion”).

9 55. In November 2012, the County issued a Notice of Preparation for an Environmental
10 Impact Report (“EIR”) under CEQA for the Phase V expansion.

11 56. In August 2015, Freeport (which acquired Plains Exploration in 2013), requested the
12 Aquifer Exemption from DOGGR for the Arroyo Grande Aquifer (“Exemption Request”).

13 57. Freeport subsequently asked the County to put the EIR for the Phase V expansion on
14 hold pending approval of the Aquifer Exemption. On the basis of this information, Petitioner
15 believes, and so alleges, that the Aquifer Exemption is a necessary precondition to, and an integral
16 part of, the Phase V expansion project.

17 58. On August 20, 2015, DOGGR published a notice of the Exemption Request and
18 opened a public comment period.

19 59. On September 21, 2015, DOGGR and the State Board held a public hearing on the
20 Aquifer Exemption. The Center and other organizations and residents submitted oral and written
21 comments. Approximately 100 members of the public testified in opposition to the Aquifer
22 Exemption.

23 60. On December 2, 2015, DOGGR opened a second public comment period, and on
24 December 16, 2015, the Center submitted supplemental written comments in opposition to the
25 Aquifer Exemption.

26 61. The Center and other commenters opposed the Aquifer Exemption because, among
27 other reasons:

- 28 • The aquifer does not meet the federal and state criteria for aquifer exemptions in that the

1 application failed to demonstrate that the Arroyo Grande Aquifer was not currently being
2 used as drinking water, could in the future be used as drinking water, or that the aquifer
3 was isolated from, and would not affect, other beneficial use water;

- 4 • The historic drought and increasingly sophisticated groundwater treatment technology
5 means that previously “unusable” aquifers may in the future be usable and needed as
6 drinking water or for other beneficial uses; and
- 7 • The state is required to conduct environmental review before approving Freeport’s
8 Exemption Request to allow the aquifer to be polluted by oil waste, because doing so is
9 likely to result in a myriad of direct and foreseeable indirect significant environmental
10 impacts on water quality, air quality, and biological resources, among other impacts,
11 and/or because failing to analyze this exemption prior to, and in connection with, the
12 Phase V expansion is improper subdividing or piecemealing of the overall project to
13 increase production and related injection at the Arroyo Grande Oil Field.

14 62. On February 8, 2016, DOGGR approved the Arroyo Grande Exemption Request by
15 finding that it merited consideration by EPA, and submitting it to EPA. The State Board concurred in
16 DOGGR’s determination that the request merited consideration. Specifically, the State Board agreed
17 with DOGGR that injection of fluids into the Arroyo Grande Aquifer would not affect the quality of
18 the water for any present or future beneficial use, but only “as long as” specified conditions on future
19 injection wells were met. Specifically, the Water Board stated that it and DOGGR would consider
20 incorporating the use of sentry groundwater monitoring wells, buffer zones between injection wells
21 and the exemption boundary, and monitoring and maintenance of the formation pressure and
22 groundwater elevations in the exempted area into future Class II injection well permits and
23 approvals.

24 63. When DOGGR submitted the Exemption Request to EPA, Respondents also released
25 a response to comments received during the two comment periods. In their response to a specific
26 comment notifying Respondents of their responsibilities under CEQA, the agencies stated only that
27 “any CEQA related questions should be addressed to the county” of San Luis Obispo, which the
28 agencies understood to be preparing “a CEQA document . . . to address a potential expansion of

1 operations.”

2 64. Petitioners have been informed, and so believe and on that basis allege, that
3 Respondents did not file a Notice of Exemption or any other specific notice of their decision
4 pursuant to CEQA. This petition is timely filed within 180 days of DOGGR’s approval of the
5 Exemption Request. (Pub. Resources Code § 21167(a), (d).)

6 **FIRST CAUSE OF ACTION**

7 **(Violations of CEQA: Pub. Res. Code §§ 21000, et seq.)**

8 65. Petitioner hereby realleges and incorporates the allegations contained in paragraphs 1
9 through 65, inclusive.

10 66. Respondents’ decision to approve the Aquifer Exemption and submit the Aquifer
11 Exemption to EPA constituted a discretionary approval of a “project” within the meaning of CEQA.

12 67. Respondents took no steps to comply with the procedural or substantive mandates of
13 CEQA before approving the Aquifer Exemption and submitting it to EPA.

14 68. Specifically, Respondents violated CEQA by:

15 a. Failing to determine that the Aquifer Exemption was a “project” subject to
16 CEQA (Pub. Resources Code § 21065; CEQA Guidelines §§ 15060; 15378);

17 b. Failing to determine whether the Aquifer Exemption may have any significant
18 effects on the environment (Pub. Resources Code § 21080; CEQA Guidelines § 15063(a));

19 c. Failing to prepare an initial study, negative declaration, or environmental
20 impact report pursuant to CEQA (Pub. Resources Code §§ 21080(c), (d), 21082.2);

21 d. Failure to analyze the whole of the action, including potential direct, indirect,
22 and cumulative impacts of the Aquifer Exemption, including foreseeable oil wastewater and
23 EOR injection (Pub. Resources Code §§ 21065, 21083(b); CEQA Guidelines §§ 15064,
24 15125, 15126.2(a); *Orinda Ass’n v. Bd. of Supervisors* (1986) 182 Cal.App.3d 1145, 1171);

25 e. Failing to identify, consider or adopt mitigation measures and/or alternatives
26 that could lessen or avoid any significant environmental effects of the Aquifer Exemption
27 (Pub. Resources Code §§ 21002, 21002.1, 21081(a); CEQA Guidelines §§ 15021, 15091,
28 15126.4, 15126.6);

1 f. Failing to adopt findings and a mitigation monitoring and reporting program
2 (Pub. Resources Code §§ 21081, 21081.6); and

3 g. Otherwise failing to comply with CEQA's substantive and procedural
4 mandates prior to approving the Aquifer Exemption.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Petitioner prays for entry of judgment as follows:

7 1. For alternative and peremptory writs of mandate setting aside and voiding
8 Respondents' approval of the Aquifer Exemption;

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

12 3. For an order mandating that Respondents and Real Party in Interest suspend any or all
13 activities, pursuant to or in reliance upon Respondents' approval of the Aquifer Exemption, that
14 could result in an adverse change or alteration to the physical environment, until Respondents have
15 taken any actions necessary to bring their approval of the Aquifer Exemption into compliance with
16 CEQA (Pub. Resources Code § 21168.9(b)(2));

17 4. For a temporary stay, temporary restraining order, and preliminary and permanent
18 injunctions restraining Respondents and their agents, servants, and employees, and all others acting
19 in concert with them or on their behalf, from taking any action to approve any permits, licenses or
20 authorizations to perform underground injection activities in the Arroyo Grande Aquifer pending full
21 compliance with the requirements of CEQA and the CEQA Guidelines;

22 5. For costs of the suit;

23 6. For attorneys' fees as authorized by Code of Civil Procedure section 1021.5 and any
24 other applicable provisions of law; and

25 7. For such other and further relief as the Court finds just and proper.
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Respectfully submitted,



DATED: August 3, 2016

Maya Golden-Krasner
Kevin Bundy
Anchun Jean Su

Attorneys for Petitioner
CENTER FOR BIOLOGICAL DIVERSITY

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VERIFICATION

I am the Conservation Director at the Center for Biological Diversity, which is a party to this action. I am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing Verified Petition for Writ of Mandate and know its contents. The matters stated in it are true of my own knowledge except as to those matters that are stated on information and belief, and as to those matters I believe them to be true.

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

Executed on August 2, 2016, at Oakland, California.



Roman Czebiński
CENTER FOR BIOLOGICAL DIVERSITY