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13 UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 CENTER FOR BIOLOGICAL DIVERSITY) Civ. No.

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vs.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

U.S. ENVIRONMENTAL PROTECTION
AGENCY; ANDREW WHEELER, in his
official capacity as Administrator of the U.S.
Environmental Protection Agency,

Defendants.

INTRODUCTION

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2 1. Plaintiff Center for Biological Diversity (“the Center”) challenges the U.S.
3 Environmental Protection Agency Administrator Andrew Wheeler and the U.S. Environmental
4 Protection Agency’s (collectively “EPA”) failure to comply with the National Environmental
5 Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*, and the implementing Council on
6 Environmental Quality (“CEQ”) regulations, 40 C.F.R. §§ 1500.1 *et seq* when it exempted the
7 Dollie Sands of the Pismo Formation in the Arroyo Grande Oil Field, San Luis Obispo County
8 (“Arroyo Grande Aquifer”) from the protections of the Safe Drinking Water Act, 42 U.S.C. §
9 300f *et seq.*, in order to allow injection of oil and gas wastewater and other fluids into the
10 aquifer, without first evaluating and disclosing the foreseeable environmental impacts of that
11 exemption.

12 2. In addition, the Center challenges EPA’s failure to comply with Section 7 of the
13 Endangered Species Act (“ESA”), 16 U.S.C. § 1536(a)(2), and its implementing regulations, 50
14 C.F.R. § 402. Specifically, EPA failed to ensure, through completed consultation with U.S. Fish
15 and Wildlife Service (“FWS”) under Section 7 of the ESA, that the exemption of the Arroyo
16 Grande Aquifer from the protections of the Safe Drinking Water Act will not jeopardize the
17 survival of the federally endangered Pismo clarkia and other federally listed species.

18 3. The decision to exempt the Arroyo Grande Aquifer will allow Sentinel Peak
19 Resources, LLC (“Sentinel” or “Operator”) to inject oil wastewater into the aquifer via
20 underground injection wells and to use enhanced oil recovery methods such as steam injection,
21 wherein large volumes of steam are injected underground to heat the heavy crude oil so that it
22 will flow to the surface. Activities accompanying an expansion of injection wells, such as
23 clearing, grading, drilling, injection and disposal of produced water will increase traffic, noise,
24 air pollution, water pollution and the risk of groundwater contamination and increased
25 seismicity.

26 4. The Center brings this case to overturn EPA’s unlawful and unwise decision to
27 exempt the Arroyo Grande Aquifer and to ensure that sensitive, protected species in the area are
28 properly protected and that any exemption of the aquifer occur, if at all, following a thorough

1 environmental review that properly informs the public and decisionmakers of the full impacts of
2 such action.

3 5. The Center seeks injunctive and declaratory relief, including an order setting aside
4 EPA's decision to exempt the Arroyo Grande Aquifer ("Aquifer Exemption") and directing EPA
5 to complete the required ESA consultation and NEPA analysis before it makes any decision to
6 exempt the Arroyo Grande Aquifer from the protections of the Safe Drinking Water Act.

7 **JURISDICTION**

8 6. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 16
9 U.S.C. § 1540(g)(1)(A) (ESA citizen suit provision) and 5 U.S.C. §§ 702, 704, 706
10 (Administrative Procedure Act). Declaratory and injunctive relief is available pursuant to 28
11 U.S.C. §§ 2201-02 and Rule 57 of the Federal Rules of Civil Procedure.

12 7. The Center provided EPA with at least 60 days notice of the ESA violations
13 alleged herein as required by 16 U.S.C. § 1540(g)(2)(A). Defendants have not remedied the
14 violations set out in that 60-day written notice.

15 8. EPA has not remedied its violations of NEPA and is in violation of that statute
16 under the standards of review provided by the APA. The Center has exhausted all available
17 administrative remedies to the degree such exhaustion is required.

18 **VENUE**

19 9. Venue is proper pursuant to 28 U.S.C. § 1391 and 16 U.S.C. § 1540(g)(3)(A)
20 because defendants reside there and because a substantial part of the events or omissions giving
21 rise to the claims occurred in this district and the violation occurred in this district, because the
22 decision to exempt the Arroyo Grande Aquifer was made by EPA's Region 9, which is
23 headquartered in San Francisco.

24 **INTRADISTRICT ASSIGNMENT**

25 10. Pursuant to Civil Local Rule 3-5, assignment to the San Francisco Division or
26 Oakland Division is proper pursuant to Civil L.R. 3-2(d) because the decision to exempt the
27 Arroyo Grande Aquifer was made by EPA Region 9, which is headquartered in San Francisco
28 County.

PARTIES

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2 11. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3)
3 organization with approximately 67,000 active members, with offices in California, including
4 Los Angeles, Oakland, Joshua Tree, and elsewhere across the country. The Center works
5 through science, law, and policy to secure a future for all species, great or small, hovering on the
6 brink of extinction. The Center is actively involved in species and habitat protection issues
7 worldwide, including throughout California, and continues to actively advocate for increased
8 protections for imperiled species in California, including among others, the Pismo clarkia, the
9 Indian Knob mountainbalm, the South-Central California Coast steelhead trout, the Tidewater
10 goby, and the California red-legged frog.

11 12. The Center's members include those who have visited areas where the Pismo
12 clarkia, Indian Knob mountainbalm, Tidewater goby, South-Central California Coast steelhead
13 trout, and California red-legged frog are known to occur and plan to do so on a regular basis.
14 They use these areas to try to observe these species and other wildlife for research, education,
15 photography, illustration, aesthetic enjoyment, and recreational and other activities. The
16 opportunity to view wildlife in these areas is of significant interest and value to the Center's
17 members and staff. The Center's members and staff derive professional, aesthetic, spiritual,
18 recreational, and economic benefits from the Pismo clarkia and other wildlife and their habitats.
19 These members have plans to continue to recreate, live, work, draw, teach, visit, and botanize in
20 the areas within San Luis Obispo County that would be impacted by the Aquifer Exemption. The
21 Center brings this action on its own behalf and on behalf of its adversely affected members.

22 13. The Center and its members have an interest in ensuring industrial activities in the
23 Arroyo Grande Oil Field do not harm the environment through participation in the Aquifer
24 Exemption approval process, and in the preparation of comprehensive environmental analyses
25 required under NEPA. The Center submitted comment letters to the California Department of
26 Oil, Gas, and Geothermal Resources ("state oil regulator") opposing the state oil regulator's
27 recommendation to exempt the aquifer. The Center also submitted letters to various staff at EPA
28 Region 9 to, *inter alia*, urge Federal Register publication and a formal notice and comment

1 period for the aquifer exemption application and to notify the agency that approving the aquifer
2 exemption application without environmental review or consultation would violate NEPA and
3 the ESA.

4 14. The Center and its members have been and are suffering, and will continue to
5 suffer, irreparable injury as a result of EPA's decision to exempt the Arroyo Grande Aquifer.
6 The exemption specifically allows Sentinel to inject oil wastewater into the aquifer via Class II
7 wells and to employ Enhanced Oil Recovery ("EOR") methods to recover oil, such as cyclic
8 steam injection and steam flooding. Activities accompanying the expansion of injection wells,
9 such as clearing, grading, drilling, injection and disposal of produced water will increase traffic,
10 noise, air pollution, water pollution and the risk of groundwater contamination and increased
11 seismicity. All of these harms will diminish the Center's members' ability to enjoy recreational,
12 spiritual, professional, aesthetic, educational, and other activities in San Luis Obispo County.

13 15. EPA's failure to comply with NEPA has deprived the Center and its members of
14 information to which they are entitled under NEPA, including information pertaining to the
15 effects of underground injection wells on environmental resources in San Luis Obispo County,
16 reasonable alternatives to the proposed action, and available measures to mitigate adverse
17 environmental impacts. This lack of required public information has injured the Center and its
18 members by depriving them of a meaningful opportunity to comment on the missing information
19 and denying them the procedural safeguards required by NEPA to ensure that EPA carefully
20 considers the direct, indirect, and cumulative effects of its proposed actions, environmentally
21 superior alternatives to that action, and appropriate mitigation measures prior to allowing new
22 injection.

23 16. EPA's failure to ensure against jeopardy through completion of consultation on
24 the Aquifer Exemption's impacts to the Pismo clarkia, Indian mountainbalm, Tidewater goby,
25 South-Central California Coast steelhead trout, California red-legged frog, and other federally
26 listed species injures and continues to injure the Center and its members. If EPA completed
27 consultation as required under Section 7 of the ESA (16 U.S.C. § 1536(a)(3)), EPA would detail
28 how the Aquifer Exemption affects endangered or threatened species and their habitats and, if

1 necessary, it would suggest reasonable and prudent alternatives to protect these species. 16
2 U.S.C. § 1536(b)(3-4).

3 17. The relief sought herein—an order vacating and enjoining EPA’s decision to
4 exempt the aquifer and compelling consultation and NEPA analysis—will redress the Center’s
5 injuries. This court has jurisdiction to provide this relief. All such relief would improve
6 Plaintiff’s opportunities for using and enjoying the area surrounding the Arroyo Grande Oil
7 Field.

8 18. The Center has no adequate remedy at law to address the foregoing injuries to
9 their interests.

10 19. Defendant ANDREW WHEELER is sued in his official capacity Administrator of
11 the EPA. In that role Administrator Wheeler has been charged by Congress with the duty to
12 administer the Safe Drinking Water Act and protect all current and future potential sources of
13 drinking water. Administrator Wheeler is responsible for ensuring EPA complies with all federal
14 laws including NEPA and the ESA. Administrator Wheeler is also charged with overseeing all
15 EPA regional offices including EPA Region 9, which has authority over California and approved
16 the Aquifer Exemption.

17 20. Defendant UNITED STATES ENVIRONMENTAL PROTECTION AGENCY is
18 a federal agency responsible for administering the Safe Drinking Water Act, NEPA, and the
19 ESA.

20 STATUTORY BACKGROUND

21 Safe Drinking Water Act

22 21. The Safe Drinking Water Act protects underground sources of drinking water
23 from contamination caused by underground injection. *See* 42 U.S.C. § 300h(b)(1). To achieve
24 this end, the Safe Water Drinking Act requires EPA to promulgate regulations that prevent
25 injection into underground sources of drinking water. 42 U.S.C. § 300h; *see generally* 40 C.F.R.
26 §§ 144-147.

27 22. EPA regulations define “underground source of drinking water” as an aquifer or
28 portion of an aquifer which supplies any public water system, *or* an aquifer or portion of an

1 aquifer which contains a sufficient quantity of ground water to support to public water system,
2 and which either currently supplies drinking water or contains fewer than 10,000 mg/l total
3 dissolved solids. 40 C.F.R. § 144.3. An aquifer that meets the definition of an “underground
4 source of drinking water” is protected under the Safe Drinking Water Act unless and until
5 affirmatively exempted from protection. 40 C.F.R. §§ 144.1(g), 146.4, 144.7(a).

6 23. Under federal law, an aquifer may be exempted only if does not currently and
7 “cannot now and will not in the future serve as a source of drinking water,” or if the total
8 dissolved solids content of the ground water is between 3,000 mg/l and 10,000 mg/l and the
9 aquifer “is not reasonably expected to supply a public water system.” 40 C.F.R. § 146.4. These
10 are the only criteria EPA is required to consider when making a discretionary determination to
11 exempt an aquifer. Notably, the water quality in the Arroyo Grande Aquifer is well below 3,000
12 mg/l total dissolved solids, and is as low as 1,000 mg/l in some regions.

13 24. “[I]n the absence of a showing by the applicant that a proposed injection is safe,
14 the [Safe Drinking Water Act] presumes that the injection will endanger an [underground source
15 of drinking water]” and the injection must be prohibited. *U.S. v. King* (9th Cir. 2011) 660 F.3d
16 1071, 1079.

17 25. A decision by EPA to exempt an aquifer allows underground injection wells,
18 specifically Class II injection wells, to be drilled in and inject into the exempted portions of the
19 aquifer. 40 C.F.R. § 146.4. “Class II” injection wells are those wells that inject fluids that contain
20 wastewaters brought to the surface during oil and natural gas production operations, for the
21 purpose of enhanced recovery of oil or natural gas, or for oil and natural gas storage. 40 C.F.R. §
22 144.6(b).

23 26. Wastewater brought to surface in the process of oil and gas extraction, known as
24 “produced water,” and fluids used in enhanced recovery of oil or natural gas can contain harmful
25 contaminants such as benzene, heavy metals, acids, and other chemicals that are associated with
26 adverse human health consequences, including cancer.

27 27. Under EPA regulations, California’s state oil regulators first identify an aquifer
28 for exemption and then submit the aquifer to EPA for approval. 40 C.F.R. § 144.7(b)(1-2). After

1 review and approval by EPA, the aquifer exemption becomes final. 40 C.F.R. § 144.7(b)(2).

2 28. State oil regulators may not allow—and an operator may not conduct—Class II
3 injection (wastewater disposal and enhanced oil recovery, such as steam injection) into an
4 aquifer that is an “underground source of drinking water” unless and until EPA approves an
5 application to exempt the aquifer from Safe Drinking Water Act protections. 40 C.F.R. §§
6 144.1(g), 146.4, 144.7(a).

7 **National Environmental Policy Act**

8 29. The National Environmental Policy Act is “our basic national charter for
9 protection of the environment.” 40 C.F.R. § 1500.1(a). Its twin aims are to facilitate informed
10 agency decisionmaking and public access to information. NEPA requires agencies to “insure that
11 environmental information is available to public officials and citizens before decisions are made
12 and before actions are taken,” 40 C.F.R. § 1500.1(b), in order that agencies like EPA “make
13 decisions that are based on understanding of environmental consequences, and take actions that
14 protect, restore, and enhance the environment.” *Id.* § 1500.1(c). Before finalizing a major federal
15 action, EPA must disclose and consider its direct, indirect, and cumulative environmental effects,
16 including “ecological (such as the effects on natural resources and on the components, structures,
17 and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health
18 [effects]. . . .” *Id.* § 1508.8(b); *see also id.* §§ 1502.16, 1508.7, 1508.27(b)(7).

19 30. A cumulative effect is defined as “the impact on the environment which results
20 from the incremental impact of the action when added to other past, present, and reasonably
21 foreseeable future actions regardless of what agency . . . or person undertakes such other actions.
22 Cumulative impacts can result from individually minor but collectively significant actions taking
23 place over a period of time.” *Id.* § 1508.7. Indirect effects are reasonably foreseeable impacts
24 caused by the project that may occur later in time or farther removed in distance, including,
25 among other impacts: growth-inducing effects, induced changes in the pattern of land use, and
26 related effects on air and water and other natural systems, including ecosystems. *Id.* § 1508.8(b)

27 31. To accomplish these objectives, NEPA directs all federal agencies to prepare an
28 environmental impact statement (“EIS”) to consider the effects of each “major Federal action []

1 significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C)(i). Federal
2 actions include “projects and programs entirely or partly... assisted, conducted, regulated, or
3 approved by federal agencies.” 40 C.F.R. § 1508.18(a). “Approvals of specific projects, such as
4 construction or management activities located in a defined geographic area” or actions “approved
5 by permit or other regulatory decision as well as federal and federally assisted activities” also
6 constitute federal actions. *Id.* § 1508.18(b)(4)

7 32. Before preparing an EIS, an agency may first prepare an environmental
8 assessment (“EA”) to determine whether the effects of an action may be significant. 40 C.F.R §
9 1508.9. If, after preparing an EA, the agency determines an EIS is not required, the agency must
10 provide a “convincing statement of reasons” why the project’s impacts are insignificant and issue
11 a Finding of No Significant Impact. 40 C.F.R. §§ 1501.4, 1508.9, 1508.13. If an action may have
12 a significant effect on the environment, or even if there are substantial questions as to whether it
13 may, the agency must prepare an EIS. *See id.* § 1508.3; *see also Native Ecosystems Council v.*
14 *U.S. Forest Serv.*, 428 F.3d 1233, 1239 (9th Cir. 2005).

15 **Endangered Species Act**

16 33. Congress enacted the Endangered Species Act, 16 U.S.C. §§ 1531-44 (“ESA”), in
17 response to growing concern over the extinction of plants, fish, and wildlife, and recognized that
18 certain species “have been so depleted in numbers that they are in danger of or threatened with
19 extinction.” 16 U.S.C. § 1531(a)(2). Accordingly, one primary purpose of the ESA is “to provide
20 a means whereby the ecosystems upon which endangered species and threatened species depend
21 may be conserved ... [and] a program for the conservation of such endangered species and
22 threatened species....” *Id.* § 1531(b). The ESA defines “conservation” to mean “the use of all
23 methods and procedures which are necessary to bring any endangered species or threatened
24 species to the point at which the measures provided pursuant to this Act are no longer
25 necessary.” *Id.* § 1532(3).

26 34. The ESA vests primary responsibility for administering and enforcing the statute
27 with the Secretaries of Commerce and Interior. The Secretaries of Commerce and Interior have
28 delegated this responsibility to the National Marine Fisheries Service and the U.S. Fish and

1 Wildlife Service (“FWS”), respectively.

2 35. To this end, Section 7(a)(2) of the ESA requires that “each federal agency shall, in
3 consultation with and with the assistance of [FWS], insure that any action authorized, funded, or
4 carried out by such agency (hereinafter... ‘agency action’) is not likely to jeopardize the
5 continued existence of any endangered species or threatened species or result in the destruction
6 or adverse modification of habitat of such species which is determined by [FWS] ... to be
7 critical.” 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14. “Action” is broadly defined to include “all
8 activities or programs of any kind authorized, funded, or carried out, in whole or in part” by
9 federal agencies and includes granting permits and licenses, as well as actions that may directly
10 or indirectly cause modifications to the land, water, or air. 50 C.F.R. § 402.02.

11 36. An agency must initiate consultation under Section 7 whenever its action “may
12 affect” a listed species or critical habitat. 50 C.F.R. § 402.14(a). Conversely, an agency is
13 relieved of the obligation to consult on its actions only where the action will have “no effect” on
14 listed species or designated critical habitat. “Effects determinations” are based on the direct,
15 indirect, and cumulative effects of the action when added to the environmental baseline and other
16 interrelated and interdependent activities. 50 C.F.R. §§ 402.14(g)(2-3); 402.02. The “may affect”
17 standard broadly includes “[a]ny possible effect, whether beneficial, benign, adverse or of an
18 undetermined character.” 51 Fed. Reg. 19,926 (Jun. 3, 1986).

19 37. To initiate consultation, the action agency must assess the impacts of the action on
20 listed species and their habitat and provide all relevant information about such impacts to the
21 expert wildlife agency (here, FWS). 50 C.F.R. § 402.14(c)-(d). If the action agency determines
22 that an action “may affect” but is “not likely to adversely affect” a listed species or its critical
23 habitat, and if FWS concurs in writing with that determination, the agency does not have to
24 undergo formal consultation. 50 C.F.R. §§ 402.13(c), 402.14(b).

25 38. If FWS does not concur, or if the action agency has determined that the action is
26 “likely to adversely affect” a listed species, the agencies must conduct a formal consultation. *Id.*
27 § 402.14(a).

1 **Administrative Procedure Act**

2 39. Neither NEPA nor ESA contains an internal standard of review; judicial review of
3 federal agency action is therefore governed by the Administrative Procedure Act (“APA”), 5
4 U.S.C. § 551 *et seq.* Under the APA, courts “shall hold unlawful and set aside” agency action,
5 findings, or conclusions found to be “arbitrary, capricious, an abuse of discretion, or otherwise
6 not in accordance with the law.” 5 U.S.C. § 706(2)(A).

7 **FACTUAL AND PROCEDURAL BACKGROUND**

8 40. The Arroyo Grande Oil Field sits in Price Canyon among rolling hills of
9 vineyards and homes about halfway between Pismo Beach and the town of San Luis Obispo.
10 Many residents live in or visit the woodsy, semi-rural area because they value its natural beauty
11 and plant- and wildlife.

12 41. As described, *supra*, the Arroyo Grande Oil Field and surrounding area is home to
13 many rare and unique plant and wildlife species. Some of these species are listed under the ESA
14 as endangered or threatened, including the Pismo clarkia, a flower in the evening primrose
15 family; Indian Knob mountainbalm, a flower in the borage family; the Tidewater goby, a fish
16 species; and the South-Central California Coast steelhead trout and California red-legged frog.



27 Pismo Clarkia (*Clarkia speciose ssp. immaculata*)



California Red-Legged Frog (*Rana draytonii*)

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13 42. These species, some of which do not exist or grow anywhere else, hold special
14 significance for many residents who live near the Arroyo Grande Oil Field. Residents have
15 grown increasingly concerned about the impacts of underground injection wells and other
16 oilfield operations on these species.

17 43. Most of the residents who live near the Arroyo Grande Oil Field rely on well
18 water for domestic uses, including drinking, cooking, and bathing. As the Arroyo Grande Oil
19 Field has increased its use of enhanced oil recovery methods, such as cyclic steam injection and
20 steam flooding, to recover oil, and increased the number of wastewater injection wells, residents
21 have become increasingly concerned about the impacts of such oil extraction actions on their
22 water. Underground injection of wastewater and other fluids—even in exempted aquifers—can
23 result in the contamination of aquifers. It is nearly impossible to remediate a contaminated
24 aquifer.

25 44. Residents are concerned that spills might negatively impact wildlife and the
26 environment. A recent spill of nearly *one million* gallons of crude oil and water at a nearby
27 California oil field that also relies on steam injection to produce crude oil has highlighted the
28 danger that similar spills might occur at the Arroyo Grande Oil Field.

1 45. Residents are concerned that oil extraction activities in the Arroyo Grande Oil
2 Field will lead to air pollution that will harm their health, the environment, and the climate.

3 46. Residents also have complained of other impacts, including noxious odors, noise,
4 traffic, and construction of oil pipelines on their streets, stemming from the Arroyo Grande Oil
5 Field.

6 47. There are currently approximately 400 active and idle wells in Arroyo Grande, of
7 which approximately 90 wells are active or idle waste disposal or enhanced oil recovery wells
8 currently or previously injecting into groundwater. A total of approximately 560 production,
9 EOR, waste disposal, and other wells have been drilled at the site.

10 48. In August 2015, then-operator Freeport-McMoRan Oil & Gas, LLC (“Freeport”)
11 requested that the state oil regulators identify the Arroyo Grande Aquifer to EPA for exemption.

12 49. The Aquifer Exemption is a necessary precondition to, and an integral part of, a
13 plan by Freeport to significantly expand production at the Arroyo Grande Oil Field, by drilling
14 up to 450 new and reworked wells, including oil production, steam injection, and waste disposal
15 wells (“Phase V Expansion”). Without a method by which to dispose of wastewater, oil
16 extraction cannot significantly expand. Steam injection and steam flooding are necessary to
17 extract the heavy crude oil in the Arroyo Grande Oil Field. Freeport’s planned expansion is in an
18 area in which a number of sensitive species may occur, including the Pismo clarkia and Indian
19 Knob mountainbalm, as well as the California state fully protected golden eagle.

20 50. On February 8, 2016, DOGGR submitted the proposed Aquifer Exemption to
21 EPA for approval.

22 51. On August 3, 2016, the Center petitioned for a writ of mandate against the state
23 oil regulators and the California State Water Resources Control Board in San Luis Obispo
24 Superior Court for violating the California Environmental Quality Act (the state’s analog to
25 NEPA), California Public Resources Code §§ 21000 *et seq.*, because these agencies failed to
26 conduct environmental review before identifying the aquifer and submitting the application to
27 EPA for review. *Center for Biological Diversity v. California Division of Oil, Gas, and*
28 *Geothermal Resources et al.*, No. 16-CV-0353 (Cal. Super. Ct., filed Aug. 3, 2016). On June 30,

1 2017, the Superior Court denied the Center’s petition in part because the state oil regulators’
2 identification and submission of the Arroyo Grande Aquifer to EPA for exemption was not an
3 “approval,” because only EPA has final authority to approve or deny the aquifer exemption
4 application. Because of this decision, no environmental review has been undertaken to analyze
5 and inform the public about the direct, indirect, and cumulative impacts of the Aquifer
6 Exemption on the environmental resources of the Arroyo Grande Oil Field and surrounding area,
7 or to consider any alternatives to exemption of the Arroyo Grande Aquifer as requested by the
8 state oil regulators.

9 52. On April 30, 2019, EPA Region 9 issued a Record of Decision approving the
10 Aquifer Exemption. It did not conduct any environmental review under NEPA nor did it consult
11 with FWS under Section 7 of the ESA prior to approval.

12 **FIRST CAUSE OF ACTION**
13 **VIOLATION OF APA AND NEPA**
14 **(FAILURE TO OBSERVE THE PROCEDURES OF THE NATIONAL**
15 **ENVIRONMENTAL POLICY ACT)**

16 53. The Center hereby realleges and incorporates by reference the allegations set forth
17 in the preceding paragraphs.

18 54. This Court must “hold unlawful and set aside agency action ... found to be ...
19 without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

20 55. An agency must disclose the environmental impacts for any major Federal action
21 that may significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(C)(i).
22 These include its direct, indirect, and cumulative environmental effects. 40 C.F.R. § 1508.8.

23 56. EPA’s aquifer exemption approval is a major Federal action that may
24 significantly affect the quality of the human environment. EPA’s disregard of NEPA’s
25 procedural requirements resulted in an ill-informed and substantively flawed decision. The
26 reworking and construction of these wells will lead to air and water pollution, noise, odors, and
27 habitat loss. Expansions of injection and oil production that may rely on the Aquifer Exemption,
28 such as the Phase V Expansion, would lead to hundreds more wells, compounding these effects
and exacerbating the climate crisis.

1 57. EPA failed to undertake any environmental review that would disclose the
2 potential environmental impacts of its approval or otherwise satisfy its obligations under NEPA.
3 EPA is therefore violating, and will continue to violate, NEPA and its implementing regulations.
4 42 U.S.C. §§ 4321 *et seq.*; 40 C.F.R. §§ 1500.1 *et seq.*

5 58. EPA’s failure or refusal to conduct environmental review, as required by NEPA,
6 is arbitrary, capricious, an abuse of discretion, not in accordance with law and/or constitutes
7 agency action unlawfully withheld or unreasonably delayed under Section 706 of the APA,
8 which has caused or threatens serious prejudice and injury to the Center’s rights and interests. 5
9 U.S.C. §§ 701-706, 706(2).

10 **SECOND CLAIM**
11 **VIOLATION OF APA AND ESA**
12 **(FAILURE TO UNDERTAKE SECTION 7 CONSULTATION)**

13 59. The Center hereby realleges and incorporates by reference the allegations set forth
14 in the preceding paragraphs.

15 60. Pursuant to Section 7(a)(2) of the ESA, EPA must initiate consultation with FWS
16 whenever an agency action “may affect” a federally threatened or endangered species. 50 C.F.R.
17 § 402.14(a).

18 61. The Arroyo Grande Oil Field and surrounding area is home to a number of federal
19 endangered and threatened species, including the federally endangered Pismo clarkia and
20 Tidewater goby and federally threatened South-Central California Coast steelhead trout and
21 California red-legged frog, which may be affected by existing underground injection into the
22 Arroyo Grande Aquifer as well as future expansion of injection and production. Activities
23 accompanying the reworking of existing wells and expansion of injection wells, such as clearing,
24 grading, drilling, injection and disposal of produced water will increase traffic and noise, as well
25 as air and water pollution, resulting in negative impacts to these species.

26 62. EPA has failed to initiate consultation on the impacts of the Aquifer Exemption to
27 the federally endangered Pismo clarkia and Tidewater goby, federally threatened South-Central
28 California Coast steelhead trout and California red-legged frog, and other federally listed species.

1 63. EPA is therefore violating, and will continue to violate, Section 7(a)(2) of the
 2 ESA and its implementing regulations by failing to ensure through consultation that the Aquifer
 3 Exemption does not jeopardize the continued existence of the Pismo clarkia and other federally
 4 listed species. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402. EPA's failure to fulfill its mandatory
 5 consultation duty is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance
 6 with law. 5 U.S.C. §§ 701-706, 706(2).

7 **REQUEST FOR RELIEF**

8 WHEREFORE, the Center prays for relief against EPA as follows:

9 A. For declarations that:

10 (1) EPA's approval of the Aquifer Exemption and failure to prepare
 11 environmental analysis in a lawful NEPA document violated NEPA, its implementing
 12 regulations, and the APA;

13 (2) EPA's failure to prepare an EIS for the Aquifer Exemption violated
 14 NEPA, its implementing regulations, and the APA;

15 (3) EPA's approval of the Aquifer Exemption and failure to consult with FWS
 16 violated the ESA, its implementing regulations, and the APA;

17 B. For an order setting aside as unlawful EPA's approval of the Aquifer Exemption;

18 D. For the Center's costs of suit and attorneys' fees pursuant to all applicable legal
 19 authority including, but not limited to, 16 U.S.C. § 1540(g), 28 U.S.C. § 2412, and any and all
 20 other provisions of law or equity; and

21 E. For such other and further relief as this Court may deem just and proper.
 22

23 DATED: November 21, 2019

/s/ Lauren S. Packard

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