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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **COUNTY OF LOS ANGELES, CENTRAL CIVIL WEST**

16 THE COUNTY OF LOS ANGELES,

17 Petitioner,

18 v.

19 CALIFORNIA DEPARTMENT OF  
CONSERVATION, DIVISION OF OIL,  
20 GAS, AND GEOTHERMAL RESOURCES;  
DOES 1-50, inclusive,

21 Respondents,

22 SOUTHERN CALIFORNIA GAS  
23 COMPANY; and ROES 1-30, inclusive,

24 Real Parties in Interest.

**CASE NO. BS168381**  
*Related to Case No. JCCP 4861*

**COUNTY OF LOS ANGELES' EX PARTE  
APPLICATION FOR:**

**1. IMMEDIATE STAY;**

**2. TEMPORARY RESTRAINING  
ORDER; AND**

**3. OSC RE PRELIMINARY INJUNCTION  
TO STOP REOPENING OF ALISO  
CANYON**

Date: July 28, 2017  
Time: 1:30 p.m.  
Dept.: 311

Assigned for All Purposes to the  
Hon. John Shepard Wiley, Jr., Dept. 311

Action Filed: March 8, 2017  
Trial Date: None Set

1 **TO THE HONORABLE COURT, ALL PARTIES AND ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on July 28, 2017 at 1:30 p.m., or as soon thereafter as  
3 the matter may be heard in Department 311 of the above-entitled court located at 600  
4 Commonwealth Avenue, Los Angeles, California 90005, Petitioner County of Los Angeles (the  
5 “County”) will and hereby does apply *ex parte* for an immediate stay pursuant to Code of Civil  
6 Procedure (“CCP”) section 1094.5(g), which provides that the Court may stay the operation of the  
7 administrative order or decision pending the judgment of the Court, a temporary restraining order  
8 and order to show cause re preliminary injunction to stop the reopening of the Aliso Canyon gas  
9 storage facility (“Aliso Canyon” or the “Facility”).

10 Good cause and exigency exist to support this *ex parte* application. After a nearly two-  
11 year moratorium on gas injections at Aliso Canyon, on July 19, 2017, Respondent California  
12 Department of Conservation, Division of Oil, Gas, and Geothermal Resources (“DOGGR”)  
13 announced that Southern California Gas Company (“SoCalGas”) could begin injecting gas at the  
14 facility. DOGGR’s approval of injections violates its duties under California law. DOGGR has  
15 not satisfied the necessary conditions to demonstrate the safety of the Facility, as required by  
16 Senate Bill 380 (“SB 380”), the Governor’s Emergency Proclamation, DOGGR’s emergency  
17 regulations, DOGGR Order No. 1109 and additional measures identified by DOGGR as necessary  
18 to ensure the Facility’s safety.

19 Immediately after DOGGR approved injections, the County met and conferred with  
20 DOGGR and SoCalGas about the County’s intent to seek an injunction. On July 20, 2017, the  
21 County asked SoCalGas to refrain from beginning injections at Aliso Canyon until the Court rules  
22 on the County’s request for *ex parte* relief. SoCalGas refused; it also refused to disclose when it  
23 would begin injecting gas but indicated that injections were imminent. (Declaration of Amnon Z.  
24 Siegel (“Siegel Decl.”) ¶ 3.)

25 The County has no adequate remedy at law. The County, and its residents whose health  
26 and safety it is duty-bound to protect, will suffer irreparable harm if DOGGR’s order authorizing  
27 SoCalGas to resume injections at the Facility is not stayed until this Court can determine whether  
28 DOGGR’s actions comply with California law. Pursuant to California Code of Civil Procedure

1 sections 526, 527 and 1094.5(g), Public Resources Code section 21168.9, and the Court's inherent  
2 powers, *the County therefore requests that the Court maintain the status quo and order an*  
3 *immediate stay of DOGGR's authorization to allow SoCalGas to begin injections at Aliso*  
4 *Canyon until it has ruled on the County's ex parte application, set for hearing on Friday, July*  
5 *28, 2017.*

6 Since the catastrophic gas leak in October 2015, state law has prohibited SoCalGas from  
7 injecting gas into Aliso Canyon. Before the prohibition on injections can be lifted, SoCalGas must  
8 show—and DOGGR must determine—that all necessary steps to ensure the safety of the Facility  
9 have been completed. Specifically, SB 380, an urgency statute passed by a 2/3 vote of the  
10 Legislature, requires that “the risks of failures identified in the [comprehensive safety] review  
11 have been addressed.” And a Risk Management Plan (“RMP”), including a facility-wide  
12 emergency response plan, must be in place *before* the Facility is deemed safe for operation. These  
13 conditions have not been met.

14 DOGGR and SoCalGas have acknowledged the well-known and very serious risk of a  
15 catastrophic earthquake shearing multiple wells at Aliso Canyon. The Facility lies directly on the  
16 active Santa Susana fault line, and there are other active faults nearby. Seismic experts, including  
17 DOGGR's and SoCalGas's, agree that there is a high probability (60% to 80%) of a large  
18 earthquake (greater than 6.3 magnitude) on or near Aliso Canyon within the next 50 years. The  
19 Facility cannot withstand such an event. The experts expect that the rupture along the fault will be  
20 at least one or two feet, likely shearing the wells and causing catastrophic leaks from multiple  
21 wells. Nationally credited seismic experts from the National Labs, consulted by DOGGR in  
22 December 12, 2016, stated that a quantitative probabilistic seismic hazard analysis (“PSHA”) and  
23 a probabilistic fault displacement analysis (“PFDA”) should be conducted to understand the  
24 seismic hazards at the Facility; and that SoCalGas should use those seismic studies to develop its  
25 RMP.

26 Individuals with direct knowledge of Aliso Canyon's subsurface infrastructure have  
27 sounded the alarm. SoCalGas's former head of gas storage at Aliso Canyon, James Mansdorfer,  
28 cautioned DOGGR against issuing authorization to reopen: “there is a potential for catastrophic

1 loss of life, and in light of SoCalGas[’s] refusal to openly address this [seismic] risk, my ethics  
2 just will not allow me to stand by without making the public aware of what could happen.”  
3 (Declaration of Scott Kuhn (“Kuhn Decl.”) ¶ 31 & Ex. 27 at p. 1.) DOGGR has authorized  
4 injections before doing the seismic testing necessary to address and mitigate this significant safety  
5 risk.

6 During the moratorium on injections, DOGGR stated that SoCalGas must develop an RMP  
7 that identifies risks to the Facility and sets forth mitigation protocols for such risks. Despite its  
8 own clearly stated conditions for reopening Aliso Canyon, DOGGR has approved injections with  
9 an admittedly incomplete RMP. According to DOGGR, approval of the RMP is “conditioned  
10 upon further [uncompleted] study to evaluate seismic risk mitigation measures.” Moreover,  
11 DOGGR has failed to conduct a well-by-well analysis at Aliso Canyon of whether subsurface  
12 safety valves would increase safety. A subsurface safety valve at SS-25 would have prevented the  
13 unprecedented disaster in October 2015.

14 DOGGR has also refused to conduct any environmental review as required under the  
15 California Environmental Quality Act (“CEQA”) at all.

16 Should an earthquake occur, allowing SoCalGas to reinject gas into Aliso Canyon without  
17 first requiring the completion of all steps necessary to ensure the safety of Aliso Canyon will  
18 cause the County, and its residents, severe and irreparable harm. If a large earthquake occurs  
19 without sufficient risk mitigation protocols in place, the catastrophe that occurred in October 2015  
20 at Aliso Canyon would be repeated on a much larger and more devastating scale. Porter Ranch  
21 residents have suffered enough. The necessary testing and planning should be completed before  
22 lifting the prohibition on injections of gas.

23 This is especially so because there has been no need for gas from Aliso Canyon since it  
24 closed almost two years ago, because the earthquake analysis and RMP can be completed in six to  
25 nine months, and because the massive potential harm from not doing this work far outweighs the  
26 harm, if any, from not reopening Aliso Canyon without doing this work. If there is an urgent need  
27 to withdraw gas Aliso Canyon, there is sufficient gas already in the Facility, and SB 380 (codified  
28 at PRC 3217(i)(1) authorizes DOGGR to permit emergency withdrawals. In fact, SoCalGas

1 withdrew gas from Aliso Canyon in January 2017. Such emergency withdrawals can continue  
2 while DOGGR maintains the prohibition on new injections. In other words, there is no immediate  
3 or urgent need for gas from this field, and if an earthquake occurs as predicted, the tens of  
4 thousands of people adjacent to the field, and the County, would suffer catastrophic injury.

5 By this application, the County requests the following relief from the Court:

6 (1) An immediate stay of DOGGR's approval of injections at the Facility until the Court  
7 rules on this application, set for hearing on July 28, 2017;

8 (2) A temporary restraining order that maintains the prohibition on injections until the  
9 Court rules on the request for a preliminary injunction, or in the alternative motion for stay;

10 (3) An order to show cause regarding preliminary injunction to prevent injection of natural  
11 gas into Aliso Canyon until: the necessary seismic testing (including PHSA and PFDA studies) is  
12 completed; DOGGR determines whether the reopened wells at Aliso Canyon should have  
13 subsurface safety valves installed; an RMP, with an emergency response plan, is finalized; and  
14 DOGGR completes the required CEQA review.

15 This *ex parte* application is based on this notice, the accompanying Memorandum of  
16 Points and Authorities, the accompanying declarations of Thomas Davis, Tony Payne, Matthew  
17 d'Alessio, Gary Saleba, Dr. Jeffrey D. Gunzenhauser, Scott Kuhn, and Amnon Siegel and exhibits  
18 thereto, the Verified Second Amended Petition ("VSAP"), other pleadings and other papers on file  
19 in this action, all matters of which this Court may take judicial notice, and such oral and  
20 documentary evidence as may be presented at the hearing on this *ex parte* application.

21 **Statement Pursuant to California Rule of Court 3.1202(a)**

22 Pursuant to Rules 3.1203 and 3.1204 of the California Rules of Court, the County's  
23 counsel provided notification of this *ex parte* application to counsel for DOGGR and SoCalGas  
24 via telephone on July 20, 2017. (Siegel Decl. ¶ 4.) DOGGR's and SoCalGas's counsel indicated  
25 that they will appear and oppose the application. (*Id.*)

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10 The County also provided notification of this *ex parte* application to counsel for the  
California Public Utilities Commission ("CPUC") via telephone on July 20, 2017. (*Id.* ¶ 4.)  
11 CPUC's counsel indicated that he would appear. (*Id.* ¶ 4.) Though the CPUC is named as a  
12 Respondent in the recently filed Verified Second Amended Petition for Writ of Mandate (in Case  
13 No. BS168381), the County is not seeking relief against the CPUC in this application.  
14

15 Attorneys for the CPUC:

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20

**Disclosures Pursuant to California Rule of Court 3.1202(b)**

21 The County has not filed an *ex parte* application to seek the relief sought here.

22 DATED: July 24, 2017

MILLER BARONDESS, LLP

23  
24 By: 

25 LOUIS R. MILLER  
26 Attorneys for Petitioner and Plaintiff  
27 THE COUNTY OF LOS ANGELES  
28

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In 1979, SoCalGas removed and did not replace the subsurface safety valve on well SS-25  
4 at Aliso Canyon. DOGGR (and SoCalGas) knew about it but did nothing. Thirty-six years later  
5 in October 2015, a leak in SS-25 spewed over 100,000 metric tons of methane gas into the  
6 atmosphere and forced thousands of Porter Ranch residents to flee. The largest natural gas leak in  
7 U.S. history could have been prevented. Before reopening Aliso Canyon, DOGGR is legally  
8 required to ensure that the risk of another disaster is addressed and mitigated. Though DOGGR  
9 has taken steps to improve the safety of the wells, it has not completed its job under California  
10 law, unnecessarily exposing County residents to potentially catastrophic health and safety risks.

11 A large earthquake is expected to occur within the next 50 years along the Santa Susanna  
12 Fault (“SSF”) that bisects all of the wells at the Facility. The earthquake could happen tomorrow,  
13 next week, next month or in ten years—in geological time, very soon. This earthquake would  
14 likely shear many, if not all, of the wells, creating a catastrophe exponentially greater than the  
15 massive single-well leak in 2015. The human and environmental effects would be devastating.  
16 Because natural gas is highly flammable, the release of gas from a large earthquake could trigger,  
17 according to SoCalGas’s former head of gas storage, “a firestorm of unimaginable proportions.”

18 DOGGR made the decision to allow new injections at Aliso Canyon without addressing  
19 the earthquake risk or any plan to mitigate the potential harm to health, safety and property  
20 resulting from an earthquake and a multi-well leak. In doing so, DOGGR is violating the law and  
21 is acting irresponsibly, in derogation of public health and safety. The moratorium on injections  
22 must continue until all necessary steps to demonstrate the safety of the Facility have been  
23 completed. DOGGR’s mandate to ensure safety before allowing injection originates from the  
24 Governor, the State Legislature and its own written orders and directives:

- 25 • The Governor’s Emergency Proclamation requires DOGGR to: conduct a  
26 “comprehensive review” of the safety of the wells at Aliso Canyon; implement a  
27 “comprehensive risk management plan” at each gas storage facility in the State; and  
28 • SB 380, codified in Public Resources Code (“PRC”) § 3217, states that before DOGGR  
lifts the moratorium, it must: (1) complete a comprehensive safety review; (2) ensure

1 that “the risks of failures identified in the [comprehensive safety] review have been  
2 addressed”; (3) ensure that the “supervisor’s duty to prevent damage to life, health,  
3 property, and natural resources . . . is satisfied”; and (4) conduct a public hearing *after*  
4 the comprehensive safety review is complete to allow for public comment.

- 5 • DOGGR Order No. 1109 mandate safety measures that must be completed “to  
6 demonstrate the integrity and safety of each of the wells,” including a comprehensive  
7 RMP and facility-wide emergency response plan.

8 DOGGR has failed to comply with these legal requirements.

9 Seismic Risks: Seismology experts, including DOGGR’s and SoCalGas’s, agree that there  
10 is a substantial likelihood (60% to 80%) of a significant earthquake (greater than 6.3 magnitude)  
11 on the SSF in the next 50 years. SoCalGas and DOGGR have known about this seismic risk for  
12 years. In 2009, James Mansdorfer, SoCalGas’s former Storage Engineering Manager, identified  
13 the very serious consequences from the anticipated large earthquake at Aliso Canyon and offered a  
14 solution, but SoCalGas refused to do it.<sup>1</sup> DOGGR and SoCalGas claim that the necessary seismic  
15 studies can be done at a later date. Wrong. Based on SB 380, DOGGR must ensure that “the risks  
16 of failures identified in the review *have been addressed*.” PRC § 3217(a)(1) (emphasis added).  
17 Earthquakes pose the largest risk. DOGGR has identified this risk but, admittedly, has not  
18 addressed it.

19 Risk Management Plan (“RMP”): DOGGR Order No. 1109 requires a “Risk Management  
20 Plan . . . [that] includes an effective facility-wide emergency response plan and effective geologic  
21 and geotechnical hazard mitigation protocols.” An RMP is an essential component of addressing  
22 the safety of the Facility. DOGGR admitted that the RMP is not done; instead, DOGGR stated  
23 that its approval of the RMP is “conditioned” on SoCalGas completing the evaluation of seismic  
24 risks, which SoCalGas admits has not been completed.

25 Subsurface Safety Valves (SSSVs): Under SB 380 and DOGGR Order No. 1109, the risks  
26 of failure and how to mitigate those risks must be evaluated for each of the wells before DOGGR  
27 authorizes reinjection. DOGGR has failed to analyze whether SSSVs would be an appropriate risk  
28

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<sup>1</sup> Mansdorfer blew the whistle on SoCalGas’s inaction in the face of catastrophic earthquake risks. DOGGR produced this Mansdorfer email and other revealing documents only *after* the County amended this lawsuit to include claims under the California Public Records Act (“PRA”). The County would not have known this had it not filed the PRA claim against DOGGR.

1 mitigation. DOGGR must identify whether SSSVs would enhance safety of the wells at Aliso  
2 Canyon before reopening the Facility.

3 Public Hearing: SB 380 is clear that the public meeting can occur only “[u]pon completion  
4 of the gas storage well comprehensive safety review.” DOGGR conducted the public hearing on  
5 February 1 and 2, 2017, after stating in January 2017 that the safety review had been completed.  
6 But recently, DOGGR said that the safety review was not completed until July 19, 2017, when  
7 DOGGR issued “updated comprehensive safety review findings.” No public hearing was held or  
8 scheduled after July 19, 2017. In fact, between February and July, DOGGR approved an  
9 additional 14 wells for injection without explanation. This violates SB 380. The Legislature  
10 demanded public transparency in DOGGR’s safety review.

11 CEQA: CEQA review is required because DOGGR’s discretionary approval constitutes a  
12 project. DOGGR has refused to follow CEQA law, erroneously claiming that authorizing  
13 injections will not impact the environment. This is incorrect as a matter of law. DOGGR must  
14 comply with CEQA before authorizing gas injections into the Facility.

15 The County seeks an immediate stay of DOGGR’s approval and a TRO to maintain the  
16 status quo regarding the moratorium on injection at Aliso Canyon, until DOGGR performs its  
17 duties as required by California law. Any harm to SoCalGas is slight and monetary only. On the  
18 other hand, the harm to public health and safety and the environment from another catastrophic  
19 leak is incalculable.

20 Moreover, the County does not seek to stop—and nothing prevents DOGGR from  
21 authorizing—emergency withdrawals of gas from Aliso Canyon to prevent electricity  
22 curtailments. PRC 3217(i)(1); (Kuhn Decl., ¶¶ 20-22, 40, & Exs. 17-19, 36.) The prohibition on  
23 injections with an allowance for emergency withdrawals has been the status quo for nearly two  
24 years and should continue. Before authorizing gas injections at Aliso Canyon, DOGGR must  
25 address the risks and determine how to mitigate them.

## 26 **II. STATEMENT OF FACTS**

### 27 **A. The Aliso Canyon Gas Leak**

28 For four months between October 2015 and February 2016, SoCalGas’s Aliso Canyon

1 storage facility leaked over 100,000 metric tons of hazardous natural gas into the surrounding  
2 community. DOGGR and the Governor ordered a moratorium on injection of natural gas into the  
3 Facility. The Governor's Emergency Proclamation, dated January 6, 2016, requires that DOGGR  
4 continue the moratorium on injections until a "comprehensive review . . . of the safety of the  
5 storage wells . . . is completed." (Kuhn Decl. ¶ 39 & Ex. 35 at 2.)

6 The County, as first responders, spent millions addressing the public health and safety  
7 crisis in Porter Ranch. (Declaration of Dr. Jeffrey Gunzenhauser ("Gunzenhauser Decl.") ¶ 16.)  
8 The exact cause of the leak is still unknown.

9 **B. Legislation And Administrative Action After The Leak**

10 The Legislature also took steps to ensure the safety of Aliso Canyon before it reopens.

11 On March 4, 2016, DOGGR issued Order No. 1109, which set forth actions that SoCalGas  
12 must take "to demonstrate the integrity and safety of each of the wells in the [Aliso Canyon] gas  
13 storage injection project." It required SoCalGas to "ensure that the Risk Management Plan . . .  
14 includes an effective facility-wide emergency response plan and effective geologic and  
15 geotechnical hazard mitigation protocols." This requirement was reiterated in a checklist of items  
16 that SoCalGas must complete. (Kuhn Decl. ¶ 8 & Ex. 6.)

17 DOGGR stated that it "will not consider approval of a request from [SoCalGas] for  
18 authorization to resume injections at the facility prior to SoCalGas' [sic] completing all of the  
19 items so designated on the checklist." (*Id.* Ex. 6.) DOGGR told SoCalGas: "Before any  
20 reinjection can occur, the Division must confirm through inspection that SCG and the Aliso  
21 Canyon facility are in compliance with all the conditions set forth in Senate Bill 380; the state's  
22 emergency regulations for underground gas storage; and also the State Oil and Gas Supervisor's  
23 Formal Order 1109, all of which are intended to ensure the protection of public health and safety  
24 as well as the environment." (*Id.* ¶ 9 & Ex. 7.)

25 The Legislature enacted SB 380, codified in PRC § 3217, which requires DOGGR to  
26 continue the prohibition of injection at Aliso Canyon until:

- 27 (1) "a comprehensive review of the safety of the gas storage wells at the facility is  
28 completed" [PRC § 3217(a)(1)];

- 1 (2) “the risks of failures identified in the review have been addressed” [*id.*];  
2 (3) “the supervisor’s duty to prevent damage to life, health, property, and natural  
3 resources ... as specified in [PRC] Section 3106, is satisfied” [*id.*]; and  
4 (4) DOGGR holds a public meeting to provide the public an opportunity to comment  
on the safety review findings. PRC § 3217(d).

5 SB 380 was an “urgency statute necessary for the immediate preservation of the public  
6 peace, health, or safety within the meaning of Article IV of the Constitution and [went] into  
7 immediate effect.”<sup>2</sup> The Legislature found: “In order to mitigate, at the earliest possible time,  
8 ongoing harm from the gas leak at the Aliso Canyon natural gas storage facility, and to evaluate  
9 the integrity of and the risks associated with gas storage wells at that facility, *it is necessary that*  
10 *this act take effect immediately.*”

11 **C. The Risk Management Plan Is Not Complete**

12 On October 5, 2016, DOGGR notified SoCalGas that its RMP was deficient for failure to  
13 address seismic risks. (Kuhn Decl. ¶ 5 & Ex. 3.) Six days later, SoCalGas submitted its  
14 “Supplement to SoCalGas’ Storage Risk Management Plan #2.” (*Id.* ¶ 7 & Ex. 5.) SoCalGas  
15 stated that the U.S. Geological Survey “predicts a high probability that an earthquake larger than  
16 Magnitude 6.3 will occur within 50km of the Aliso Canyon Field . . . within the next 50 years.”  
17 (*Id.* at p. 4.) SoCalGas acknowledged the need to “undertake further study of the geologic and  
18 geotechnical hazards in the area to determine if other mitigative measures are warranted ... .” (*Id.*)

19 On January 3, 2017, the County Fire Department submitted detailed comments to DOGGR  
20 stating that SoCalGas’s Aliso Canyon RMP “lacks sufficient critical detail and information of the  
21 potential threats/risks and safeguards at the facility.” (Payne Decl. ¶ 6 & Ex. A, Att. 5.) DOGGR  
22 responded that it would “make appropriate edits to the next cycle” of regulations but “does not  
23 intend to require another revision of the RMP from SoCalGas.” (*Id.* Ex. Ex. A, Att. 6.)

24 **D. The Safety Review Is Not Complete**

25 On January 17, 2017, DOGGR sent a letter to SoCalGas stating that “SoCalGas has  
26 *partially satisfied* the requirements that the checklist directed SoCalGas to complete before the  
27 \_\_\_\_\_

28 <sup>2</sup> Urgency statutes must be passed by a 2/3 vote of the Legislature. Cal. Const. art. IV, § 8(d).



1 Division and the CPUC authorize injection to resume.” (Kuhn Decl. ¶ 13 & Ex. 11 (emphasis  
2 added).) One of the requirements that was only “partially” completed was the RMP. DOGGR  
3 admitted that approval of the RMP is “conditioned upon further study as recommended by subject  
4 matter experts . . . to evaluate seismic risk mitigation measures.” (*Id.*, Enclosure 1 at p. 2  
5 (Requirement #4).) Despite this, DOGGR stated that the comprehensive safety review was  
6 “complete” as of January 17, 2017. (*Id.*, Ex. 11 at p. 2.) Only 35 out of the 114 wells were  
7 deemed safe to reopen by DOGGR as of January 17, 2017.

8 On February 1 and 2, DOGGR held a public meeting in Woodland Hills, California,  
9 pursuant to SB 380 and on the basis that the comprehensive safety review was complete.

10 **E. Nevertheless, DOGGR Authorizes Reopening**

11 On July 19, 2017, DOGGR announced that it was lifting the prohibition of injections at  
12 Aliso Canyon for 49 wells—up from 35 wells. DOGGR also issued “Updated Comprehensive  
13 Safety Review Findings,” updating the safety findings from the January 17 letter. (Kuhn Decl.  
14 ¶17 & Ex. 15.) DOGGR did not hold a public meeting at which the public could have an  
15 opportunity to comment on the July 19, 2017 updated safety review findings.

16 The “updated” safety review findings still did not include a completed seismic risk study.  
17 DOGGR admitted that “a supplemental analysis of the seismic risk to the facility is *in process*.”  
18 (*Id.* ¶ 16 Ex. 14 (emphasis added).) DOGGR further stated:

- 19 • “DOGGR also believes that earthquake risks should be studied, evaluated, and mitigated to  
20 the maximum extent possible.” (*Id.* ¶ 18 & Ex. 16 at p. 26, Response to 16.)
- 21 • “DOGGR agrees that additional research on seismic risk must be conducted and has  
22 requested assistance from the National Labs to oversee seismic risk studies to include a  
23 [PSHA] and a [PFDA] and an evaluation of mitigation measures.” (*Id.*)
- 24 • “Further study into risks and appropriate mitigations for seismic events are certainly  
25 warranted and should be conducted as soon as practicable.” (*Id.* at 27.)
- 26 • “DOGGR conditioned approval of the RMP on additional study in connection with the  
27 National Labs to evaluate seismic risk mitigation measures beginning in 2017.” (*Id.* at 28,  
28 Response to 17.)

26 A comprehensive safety review requires studying seismic risks and assessing how to  
27 mitigate those risks. It is undisputed that there is a high probability of a major earthquake  
28 (magnitude 6.3 or greater) on the SSF under Aliso Canyon in the next 50 years. (Declaration of

1 Thomas Davis (“Davis Decl.”) ¶ 9; Kuhn Decl. ¶ 8 & Ex. 6; *see also* DOGGR Order No. 1118.)  
2 The predicted seismic event would cause a disaster exponentially worse than the October 2015 gas  
3 leak. (Kuhn Decl. ¶ 31 & Ex. 27; Davis Decl. ¶ 16(d) & Ex. 2; Declaration of Matthew d’Alessio  
4 (“d’Alessio Decl.”) ¶ 14 & Ex. 2.)

5 Worse, SoCalGas and DOGGR have known about this seismic danger for years but have  
6 done nothing about it. After the County brought its PRA claim against DOGGR, DOGGR  
7 produced documents showing that SoCalGas’s own James Mansdorfer—the thirty year executive  
8 at SoCalGas in charge of gas storage—warned SoCalGas top management in 2009, and until he  
9 retired in 2015, about the dangers of an earthquake on the Facility and proposed a solution. (Kuhn  
10 Decl. ¶ 26 & Ex. 22.) In 2012, Bret Lane, SoCalGas’s current CEO, directed Mansdorfer to “keep  
11 the Santa Susana issue out of the [General Rate Application].” (*Id.* ¶ 27 & Ex. 23.) SoCalGas  
12 muzzled Mansdorfer and deliberately concealed the known seismic risks from the public.

13 DOGGR has acknowledged the seismic risks but failed to require studies it admits are  
14 necessary to be completed before approving reinjection. One of DOGGR’s own engineers notified  
15 others at DOGGR about the danger: “Almost every well in Aliso Canyon gas storage project  
16 crosses the active Santa Susana Fault. Well shear may be expected when an active fault breaks.”  
17 (*Id.* ¶ 33 & Ex. 29.) DOGGR also recognized that a study of the SSF at Aliso Canyon “would  
18 provide relevant info: Santa Susana fault crosses many of the wellbores at Aliso Canyon gas field.  
19 May need to require additional fail, safe valves to prevent gas release in event of an earthquake.”  
20 (*Id.* ¶ 34 & Ex. 30.)

21 Internally, DOGGR admits that further study may demonstrate the need for SSSVs or other  
22 additional safety measures. But publicly, DOGGR claims that the necessary seismic studies and  
23 risk mitigation can be done later. DOGGR stated that the seismic testing, recommended by the  
24 National Labs in December 2016, should take approximately 12 months. (Kuhn Decl. ¶ 18 & Ex.  
25 16 at p. 27, Response 16.) Other experts believe it can be completed in 6 to 9 months. (Davis  
26 Decl. ¶ 16(f).)

27 Finally, DOGGR and SoCalGas agree that SSSVs should be studied. (Kuhn Decl. ¶ 7 &  
28 Ex. 5 at p. 14; ¶ 18 & Ex. 16 at p. 34, Response 31.) And DOGGR admits that a finalized RMP

1 “may in the future include the use of SSSVs . . . .” (*id.* Ex. 16 at p. 34, Response 31); and that  
2 SSSVs may “prevent gas release in the event of an earthquake (*id.* ¶ 34 & Ex. 30.) But DOGGR  
3 defers this issue to an unidentified later date claiming that SSSVs may be “appropriate in the  
4 context of updates to the RMP.” (Kuhn Decl. ¶ 18 & Ex. 16 at p. 34, Response 31.) Neither  
5 SoCalGas nor DOGGR has evaluated the risk mitigation that SSSVs would provide for any of the  
6 wells at Aliso Canyon—let alone the 49 wells DOGGR has approved to reopen.

### 7 **III. LEGAL STANDARD**

8 The County requests a stay pursuant to CCP section 1094.5(g) which provides that the Court  
9 may stay the operation of the administrative order or decision pending the judgment of the Court.  
10 Under section 1094.5(g), petitioners need not show balancing of the hardships or likelihood of success,  
11 but rather, *a stay should issue unless it would be against the public interest.* *Sterling v. Santa Monica*  
12 *Rent Control Bd.*, 168 Cal. App. 3d 176, 187 (1985); *Bd. of Med. Quality Assurance v. Superior Court*,  
13 114 Cal. App. 3d 272, 276 (1980).

14 The standards governing issuance of preliminary injunctive relief are well-established.  
15 The Court must weigh “‘two interrelated factors,’ specifically, the likelihood that plaintiffs will  
16 prevail on the merits at trial, and the comparative harm to be suffered by plaintiffs if the injunction  
17 does not issue against the harm to be suffered by defendants . . . if it does.” *King v. Meese*, 43 Cal.  
18 3d 1217, 1226 (1987). In addition, “[i]t is well established that when injunctive relief is sought,  
19 consideration of public policy is not only permissible but mandatory.” *Teamsters Agric. Workers*  
20 *Union v. Int’l Brotherhood of Teamsters*, 140 Cal. App. 3d 547, 555 (1983).<sup>3</sup>

21 An even more lenient standard is applicable here. The California Supreme Court has held  
22 that “where a legislative body has specifically provided injunctive relief for a violation of a statute  
23 or ordinance, a showing by a governmental entity that it is likely to prevail on the merits should  
24 give rise to a presumption of public harm.” *IT Corp. v. County of Imperial*, 35 Cal. 3d 63, 71-72

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25 <sup>3</sup> California courts recognize that a preliminary injunction can be granted when there is a  
26 weaker showing of likelihood of success on the merits, where strong equitable considerations  
27 favor the injunction. *See, e.g., Auto v. City and County of San Francisco*, 201 Cal. App. 4th 1347,  
28 1361 (2011). Federal courts are in accord. *See, e.g. Alliance for Wild Rockies v. Cottrell*, 632  
F.3d 1127, 1132, 1134-35 (9th Cir. 2011).

1 (1983). This presumption can be rebutted only if the defendant can show that “it would suffer  
2 grave or irreparable harm from the issuance of the preliminary injunction ....” *Id.*; *see also Water*  
3 *Replenishment District of Southern Cal. v. City of Cerritos*, 220 Cal. App. 4th 1450, 1463-64  
4 (2013) (reversing trial court’s denial of preliminary injunction requiring payment). This standard  
5 applies here, where the legislature has authorized relief for violation of 1094.5(g) and CEQA  
6 (PRC § 21168.9).

7 **IV. AN IMMEDIATE STAY AND TRO SHOULD BE ISSUED**

8 **A. The County Is Likely To Succeed On The Merits**

9 **1. DOGGR Did Not Satisfy Its Duties Under California Law**

10 The Governor’s Emergency Proclamation, SB 380, DOGGR Order 1109 and DOGGR’s  
11 own orders to SoCalGas require DOGGR to *complete* actions necessary to ensure that Aliso  
12 Canyon is safe to reopen. Those steps have not been completed: no seismic studies or risk  
13 mitigation protocols have been done; the RMP is incomplete; no analysis of whether SSSVs  
14 should be installed on the reopened wells has been undertaken; and DOGGR held the SB 380-  
15 required public hearing *before* completing the safety review.

16 Under California law, a writ of mandate will lie to set aside agency action based on an  
17 incorrect interpretation of the law. *California School Boards Ass’n v. State Board of Education*,  
18 186 Cal. App. 4th 1298, 1327 (2010) (“Mandamus may issue ... to compel an official both to  
19 exercise his discretion (if he is required by law to do so) and to exercise it under a  
20 proper interpretation of the applicable law.” (quoting *Common Cause v. Board of Supervisors*, 49  
21 Cal. 3d 432, 442 (1989)). “[T]he proper interpretation of a statute [here, SB 380] is ultimately the  
22 court’s responsibility.” *American Coatings Ass’n, Inc. v. South Coast Air Quality Dist.*, 54 Cal.  
23 4th 446, 462 (2012); *see also Yamaha Corp. of America v. State Board of Equalization*, 19 Cal.  
24 4th 1, 6-7 (1998) (holding that an agency’s interpretation of law is not binding on courts).

25 Further, “[a] public entity has a ministerial duty to comply with its own rules and  
26 regulations where they are valid and unambiguous.” *Galzinski v. Somers*, 2 Cal. App. 5th 1164,  
27 1170 (2016) (citation omitted) (finding that respondent agency abused its discretion by failing to  
28 follow its own requirements); *Pozar v. Dep’t of Transp.*, 145 Cal. App. 3d 269, 271 (1983)

1 (same); *see also Gregory v. State Bd. of Control*, 73 Cal. App. 4th 584, 595-96 (1999) (a writ of  
2 mandate may be issued to compel a public agency to follow its own internal procedures); *Civil*  
3 *Serv. Ass'n v. S.F. Redevelopment Agency*, 166 Cal. App. 3d 1222, 1226-27 (1985) (ordering the  
4 trial court to issue a writ of mandate to the agency that failed to follow its own personnel policies).

5 Importantly, reversal of an administrative decision is warranted when that “decision  
6 manifests an indifference to public safety and welfare.” *Kolender v. San Diego Cty. Civil Serv.*  
7 *Comm’n*, 132 Cal. App. 4th 716, 721 (2005) (citation omitted) (holding that agency’s decision  
8 reducing penalty from termination to a 90-day suspension for sheriff’s deputy who lied to cover up  
9 physical abuse of an inmate was an abuse of discretion). Because DOGGR failed to carry out its  
10 duties under State law and its own internal orders (e.g., DOGGR Order 1109), the Court should  
11 compel DOGGR to do so.

12 (a) **Seismic Risks Are Still Unaddressed**

13 SB 380 obligated DOGGR to continue the prohibition of injections until “the risks of  
14 failures identified in the review have been addressed.” PRC § 3217(a)(1). DOGGR identified  
15 risks that could affect a well’s viability like faulty installation, manufacturing defects, excessive  
16 wear, and corrosion. (Kuhn Decl. ¶ 18 & Ex 16 at pp. 18-19, Response 10.) Through testing,  
17 DOGGR addressed these issues. (*Id.*) Wells that passed the two batteries of tests were deemed by  
18 DOGGR to be safe for reinjection, while wells that failed these tests were taken off line. (*Id.*)

19 There is one huge risk that remains unaddressed—a major earthquake. DOGGR’s decision  
20 to not address this risk before authorizing reinjections violates its obligations. The type of  
21 expected earthquake at the SSF would shear many, if not all, the wells at Aliso Canyon.<sup>4</sup> Dr.  
22 Davis’s depiction of a sheared well—following a rupture or ground slippage of just 1-2 feet—  
23 demonstrates the damage to a well from the probable earthquake expected in the next 50 years.

24 \_\_\_\_\_  
25 <sup>4</sup> In its Supplement to the Aliso Canyon RMP, SoCalGas states that, if there is an earthquake that  
26 shears storage wells, the faulting will pinch off the casing and tubing “significantly reducing and  
27 often stopping flow potential.” (Kuhn Decl. ¶ 7 & Ex. 5, Section 2.2.2.) As explained by Dr.  
28 Thomas L. Davis, natural gas, “especially when stored at high pressure, can migrate through  
subsurface rocks and release above ground relatively quickly.” (Davis Decl. ¶ 8.) SoCalGas’s  
claim is “very speculative.” (*Id.* ¶ 22 & Ex. 5.)

1 (Davis Decl. ¶ 9.) The disaster would be much worse than the leak from SS-25. (*Id.*; Kuhn Decl.  
2 ¶ 31 Ex. 27; d'Alessio Decl. ¶ 14 & Ex. 2.)

3 DOGGR admits the seismic studies “are certainly warranted and should be conducted as  
4 soon as practicable.” (Kuhn Decl. ¶ 18 Ex. 16 at 30, Response 16.) Yet DOGGR refuses to  
5 complete those studies before SoCalGas begins injection.

6 To justify its failure to address the seismic risk, DOGGR relies exclusively on one  
7 sentence in the National Labs’ letter of December 12, 2016: “we do not believe that the  
8 recommended detailed seismic studies require immediate action, but they should be planned and  
9 executed in a deliberate manner.” (*Id.* ¶ 12 & Ex. 10 at p. 2.) DOGGR’s reliance on this singular  
10 statement (in actuality, only the first clause of the sentence) is wrong. *W. States Petroleum Ass’n*  
11 *v. Superior Court*, 9 Cal. 4th 559, 577 (1995) (court “must ensure that an agency has adequately  
12 considered all relevant factors, and has demonstrated a rational connection between those factors,  
13 the choice made, and the purposes of the enabling statute” (citation omitted)).

14 DOGGR did not ask the National Labs to comment on—nor did they address—whether  
15 Aliso Canyon should be reopened before seismic testing is complete. To the contrary, the  
16 National Labs stated that these seismic studies should be done to “address” seismic risks:

- 17 • “Given the Santa Susana fault system transects the Aliso Canyon wells and the existence  
18 of other nearby faults, a risk exists from ground shaking and direct shearing/deformation of  
19 well casings.”
- 20 • Hazards can be determined through accepted methodologies such as PSHA and PFDA  
21 studies.
- 22 • An analysis of the ground shaking hazard on the SSF “will provide better insight into the  
23 seismic hazard at Aliso Canyon.”
- 24 • “[A] PFDA conducted for the faults transecting the Aliso Canyon wells will better inform  
25 the level of hazard to consider.”
- 26 • Performing a PSHA and PFDA “will provide a more detailed understanding of the seismic  
27 hazards at Aliso Canyon.”
- 28 • “A risk assessment should incorporate the design of the wells being used at Aliso Canyon.”
- The necessary seismic tests “will better inform the risk management process for operation  
of Aliso Canyon.”

(Kuhn Decl. ¶ 12 & Ex. 10 at p. 2.)

1 The National Labs recommend the necessary seismic testing be done in a deliberate, not  
2 hasty, manner; and of course these studies must “be planned and executed in a deliberate manner.”  
3 In fact, they could have—and should have—been started in December 2016, when the National  
4 Labs letter came out; if so, they likely would have been completed by now. DOGGR simply is not  
5 authorized to approve injection without addressing the obvious risk of a catastrophic earthquake, a  
6 risk SoCalGas and DOGGR have known about for years. (*Id.* ¶ 26 & Ex. 22 at p. 1.) The seismic  
7 studies are exactly the types of safety tests that the Governor (Emergency Proclamation), the  
8 Legislature (SB 380) and DOGGR (Order 1109) expected to be completed—and incorporated into  
9 an RMP and emergency response plan—*before* Aliso Canyon is reopened.

10 Planning to do the testing in the future does not satisfy SB 380’s requirement that DOGGR  
11 ensure that “the risks of failures identified in the [safety] review have been addressed.” PRC  
12 § 3217(a)(1). It also fails to comply with DOGGR Order 1109 and DOGGR’s own checklist of  
13 safety prerequisites. (Kuhn Decl. ¶ 4 & Ex. 2; ¶ 8 & Ex. 6.) Indeed, DOGGR admits that the  
14 required RMP with an emergency response plan, including “geologic and geotechnical hazard  
15 mitigation protocols” (i.e., seismic risks) is necessary but has not been completed; rather,  
16 DOGGR’s approval of the RMP was “conditioned” on completion of the necessary seismic  
17 studies. (Kuhn Decl. ¶ 13 & Ex. 11; ¶ 17 & Ex. 15 at p. 2.) In short, the RMP is not done and has  
18 not accounted for the seismic risks.

19 Moreover, there is no dispute as to what seismic studies need to be done or approximately  
20 how long they will take. The National Labs and independent experts agree that a PSHA and  
21 PFDA<sup>5</sup> should be completed. (*Id.* ¶ 12 & Ex. 10; Davis Decl. ¶ 16(e)(h); d’Alessio Decl. ¶ 14 &  
22 Ex. 2 at p.3) DOGGR claims that these studies will be completed in one year, while Dr. Davis  
23 states they can be done in six to nine months. (Kuhn Decl. ¶ 18 & Ex. 16 at p.30, Response 16;  
24 Davis Decl. ¶ 16(f).) Either way, since the National Labs’ letter was issued in December 2016, the  
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26 <sup>5</sup> A PFDA or PFDHA would provide critical information, including characterization of the  
27 magnitude and rate of occurrence of earthquakes on the SSF, location and extent of rupture, the  
28 expected amount and distribution of fault displacement, and the impact of such fault displacement  
on the wells at Aliso Canyon. (Davis Decl. ¶ 16(e); Kuhn Decl. ¶ 12 & Ex. 2 at p. 2.)



1 tests can be completed by late this year or early next year.

2 DOGGR's current decision unnecessarily puts the public in danger. *See, e.g., Dep't of*  
3 *Soc. Servs. v. Superior Court*, 58 Cal. App. 4th 721, 743 (1997) (finding abuse of discretion when  
4 Social Services fails to point out and evaluate areas of concern and potential danger before placing  
5 a minor in adoptive placement); *Andrus v. U.S. Dep't of Energy*, 200 F. Supp. 3d 1093, 1109 (D.  
6 Idaho 2016) (department's failure to disclose documents that contained information about the  
7 dangers from treatment and disposal of nuclear waste was an abuse of discretion).

8 As Mansdorfer wrote to DOGGR, the massive amounts of leaking gas from an earthquake  
9 could cause "a firestorm of unimaginable proportions." (Kuhn Decl. ¶ 31 & Ex. 11 at p. 2.)

10 **(b) The Risk Management Plan Is Not Complete**

11 The County also seeks a writ of mandate directing DOGGR to continue the moratorium on  
12 gas injections until SoCalGas submits a RMP that complies with DOGGR's own requirements.  
13 (VSAP ¶¶ 65-72, 154.) DOGGR promulgated Order No. 1009, which required DOGGR to act in  
14 the wake of the leak. (*See* DOGGR Order No. 1109 at pp. 4-5.)

15 By DOGGR's own admission, the RMP requirement is not complete. Instead, DOGGR  
16 "conditioned approval of the RMP on additional study in conjunction with the National Labs to  
17 evaluate seismic risk mitigation measures beginning in 2017." (Kuhn Decl. Ex 15 at p. 2.) The  
18 National Labs have stated that the as-yet uncompleted seismic evaluation is necessary for the  
19 RMP. (*Id.* Ex. 15 at p. 2.)

20 Moreover, the Legislature has declared that RMPs are essential to both inform the public  
21 about the health and safety issues specific to each facility and to "ensure a disaster like the Aliso  
22 Canyon leak does not happen again." SB 887, Sec. 1(i). Likewise, County Fire explains that an  
23 RMP is essential to facility safety and "is critical to ensure that damage to life and property as a  
24 result of a catastrophic incident is addressed." (Payne Decl. ¶ 4.) DOGGR's authorization of  
25 injections without a completed RMP is contrary to law.

26 **(i) The Emergency Response Plan is defective**

27 As part of the RMP, DOGGR required SoCalGas to submit a "facility-wide emergency  
28 response plan" ("ERP") before lifting the moratorium on gas injections. (Kuhn Decl. Ex. 6 at p.

1 1.) An ERP is a detailed and *usable* plan to respond to emergency situations so that the effects of  
2 another disaster are reduced or eliminated. *See* PRC § 3181(a)(2)(A). (Payne Decl. ¶ 4.)  
3 SoCalGas’s ERP falls far short. According to DOGGR engineers, the Aliso Canyon ERP is “too  
4 complex for emergency use.” (Kuhn Decl. Ex. 29.) This is troubling because emergency use is  
5 the *sole purpose* of an ERP.

6 The Aliso Canyon ERP does not comply with SB 887, in which the Legislature required  
7 natural gas storage facility operators to “consult with local emergency response entities on the  
8 [emergency] response plans.” PRC § 3181(a)(2)(A). County Fire, along with the Los Angeles  
9 City Fire Department, are the local emergency response entities. (Payne Decl. Ex. A at p. 4.) But  
10 SoCalGas *has not consulted* with either department, in violation of the law. (*Id.*) DOGGR admits  
11 that local response entities’ comments have not been incorporated into the ERP. (Kuhn Decl. Ex.  
12 16 at 29.) The ERP for the Facility contains documents that have not been updated since before  
13 the October 23, 2015 leak. (*See* VSAP ¶ 154; Payne Decl. Ex. A.)

14 (ii) **The RMP Fails To Consider Subsurface Safety Valves**

15 The Aliso Canyon RMP does not address all appropriate mitigation protocols. DOGGR  
16 acknowledges that SSSVs may mitigate the risks of well failure, but DOGGR and SoCalGas have  
17 not made any determination as to whether SSSVs would mitigate risks for the 49 wells set to  
18 reopen at Aliso Canyon. (Kuhn Decl. Ex. 16 at 31.) This mitigation analysis must be—but is  
19 not—addressed in the RMP. *See* PRC Code § 3181(a)(2). DOGGR has yet again decided to delay  
20 a decision on this critical issue.

21 SSSVs would mitigate the earthquake risk. (d’Alessio Decl. Ex. 2 at p. 5; Kuhn Decl. Ex.  
22 27 at p. 1,3.) DOGGR and SoCalGas have not considered this safety option.

23 (c) **SB 380 Requires Public Hearing After Safety Review Complete**

24 On July 19, 2017 DOGGR issued “Updated Comprehensive Safety Review Findings” and  
25 approved 14 additional wells. The July 19 findings state: “the more current findings below  
26 replace the previous [January 17] findings” and later declares that “the comprehensive safety  
27 review is complete.” (Kuhn Decl. Ex. 15 at pp. 1,4.) The safety review findings from January 17,  
28 2017, were not complete. Therefore, the prior public meeting in February was premature. PRC

1 § 3217(d). DOGGR must comply with SB 380 and hold another public meeting.

2 **2. DOGGR Erred By Not Conducting CEQA Review**

3 DOGGR violated CEQA by approving the project without conducting CEQA review. (*See*  
4 VSAP ¶¶ 166, 176.) A temporary restraining order and preliminary injunction are necessary to  
5 ensure that DOGGR complies with CEQA before any injection is allowed.<sup>6</sup> *Miller v. City of*  
6 *Hermosa Beach*, 13 Cal. App. 4th 1118, 1141-42 (1993) (preliminary injunction should have been  
7 issued to stop construction of a hotel because the city had not prepared an EIR). CEQA's purpose  
8 is to inform the public of the environmental consequences of decisions before they are  
9 made. *Citizens of Goleta Valley v. Bd of Supervisors*, 52 Cal. 3d 553, 564 (1990). The  
10 "Legislature intended [CEAQ] to be read so as to afford the fullest possible protection to the  
11 environment within the reasonable scope of the statutory language." *Cmtys. for a Better Env't v. Cal.*  
12 *Res. Agency*, 103 Cal. App. 4th 98, 110 (2002).

13 **(a) Resumption Of Injections Is A "Project"**

14 DOGGR has claimed that the resumption of injections at Aliso Canyon is not a "project"  
15 and thus CEQA does not apply. (Kuhn Decl. Ex. 16 at p. 43.) Not so. Courts broadly define  
16 "project" to maximize protection of the environment. *POET, LLC v. State Air Res. Bd.*, 12 Cal.  
17 App. 5th 52, 73 (2017); *Creed-21 v. City of San Diego*, 234 Cal. App. 4th 488, 503 (2015). A  
18 "project" is any activity that may cause "either a direct physical change in the environment, or a  
19 reasonably foreseeable indirect physical change in the environment." PRC § 21065(c); Cal. Code  
20 Regs. tit. 14, § 15378(a). Whether an activity is a "project" is a question of law. *Creed-21*, 234  
21 Cal. App. 4th at 503.

22 DOGGR's decision to authorize injections is a "project" under CEQA. Indeed, DOGGR  
23 issued a statement that approval of injection would take the form of a "Project Approval Letter."  
24 (*See* VSAP, Ex. F.) But after the County raised its CEQA concerns, DOGGR reversed course,  
25 approving injections without issuing a Project Approval Letter, and now claims its approval is not  
26

27 <sup>6</sup> Under SB 380, DOGGR was the first agency to act to determine whether gas injections could  
28 resume. Thus, DOGGR is the "lead agency." Cal. Code Regs. tit. 14, § 15051(c).

1 a “project.” SoCalGas will inject large quantities of methane and other hazardous substances at  
2 high pressure back into Aliso Canyon following the largest natural gas leak in U.S. history.  
3 (VSAP ¶ 2.) These injections will change the physical conditions of the area. Natural gas is  
4 highly flammable and easily ignited by heat or sparks, and it contains a potent greenhouse gas  
5 (methane) and known carcinogens and toxins (benzene, toluene and ethylbenzene). (*Id.* ¶¶ 33-36.)  
6 The potential for adverse environmental effects is obvious: the Legislature, the Governor and  
7 DOGGR have all found it necessary to prohibit gas injections at Aliso Canyon for over a year and  
8 a half in order to protect the public and the environment. (*Id.* ¶¶ 43-52.)

9 DOGGR claims CEQA does not apply because SB 380 does not require compliance.  
10 Wrong. “CEQA is intended to be used *in conjunction with* discretionary powers granted to public  
11 agencies by other laws.” 14 Cal. Code Regs. § 15040(a) (emphasis added); *see also id.* § 15040(c)  
12 (CEQA *supplements* other laws). SB 380 does not exempt Aliso Canyon from CEQA.

13 DOGGR also argues that the premature public meeting in February 2017 somehow  
14 satisfies CEQA’s specific statutory disclosure requirements. Wrong. There are strict requirements  
15 that must be followed for an agency to avoid CEQA review. PRC § 21080.5; *Miller*, 13 Cal. App.  
16 4th at 1142 (rejecting the Coastal Commission’s argument that its review was a “functional  
17 equivalent” of an EIR because the commission did not comply with section 21080.5). For  
18 example, to avoid CEQA review, DOGGR is required to have conditioned approval on the  
19 availability of feasible alternatives or feasible mitigation measures. PRC § 21080.5(d)(2)(A).  
20 Yet, DOGGR has authorized re-injections without making a determination on critical mitigation  
21 protocols, such as SSSVs. (Kuhn Decl., Ex 16 at p. 34.)

22 Lastly, DOGGR may now claim that it is somehow excused from CEQA review because  
23 of the prior EIR certified by the CPUC in November 2013.<sup>7</sup> DOGGR cannot rely on this prior  
24 EIR because there is “new information of substantial importance, which was not known and could  
25 not have been known with the exercise of reasonable diligence at the time the previous EIR was  
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27 <sup>7</sup> This prior EIR is publicly available through the PUC’s website, at URL:  
28 ([www.cpuc.ca.gov/Environment/info/ene/aliso\\_canyon/aliso\\_canyon\\_home.html](http://www.cpuc.ca.gov/Environment/info/ene/aliso_canyon/aliso_canyon_home.html)).

1 certified as complete.” Cal. Code Regs. § 15162(a)(3) (requiring a subsequent EIR or negative  
2 declaration). After the prior EIR was certified, the largest natural gas leak in U.S. history occurred  
3 at the Facility. This disaster is new information that contradicts critical, erroneous findings in the  
4 prior EIR. (See EIR Volume I at p. 3-4 (finding that the “storage field facility’s existing record of  
5 safe natural gas operations is excellent”).) Further, there are substantial seismic risks to the  
6 Facility that were not addressed in the prior EIR. DOGGR has made no findings to the contrary.

7 **(b) The Project Does Not Fit Any CEQA Exemptions**

8 DOGGR has failed to meet its burden to show that its approval falls within a CEQA  
9 exemption. *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo*  
10 *Valley Unified School District*, 139 Cal. App. 4th 1356, 1389 (2006) (the agency has the burden to  
11 support its application of an exemption with substantial evidence).

12 First, DOGGR argues that lifting the moratorium on injections does not require an EIR  
13 because the “emergency” exemption (PRC § 21080(b)(4)) applies. (Kuhn Decl., Ex 16 at p. 43.)  
14 Wrong. This exemption applies only to agency action necessary to prevent or mitigate a “sudden,  
15 unexpected occurrence, involving a clear and imminent danger.” PRC § 21060.3. For example,  
16 authorizing the drilling of the relief well to stop the leak from SS-25 might fit the exemption. See  
17 *CalBeach Advocates v. City of Solana Beach*, 103 Cal. App. 4th 529, 536-37 (2002) (“emergency”  
18 exemption was properly invoked by the city in approving construction of a sea wall to prevent an  
19 imminent collapse of coastal bluffs).

20 Second, DOGGR claims that a categorical exemption for regulatory enforcement applies.  
21 Cal. Code Regs. tit. 14, § 15321; (Kuhn Decl., Ex 16 at p. 43.) “Categorical exemptions are  
22 strictly construed, ‘in order to afford the fullest possible environmental protection.’” *Save Our*  
23 *Schools v. Barstow Unified Sch. Dist. Bd. of Educ.*, 240 Cal. App. 4th 128, 140 (2015) (citation  
24 omitted); *County of Amador v. El Dorado Cty. Water Agency*, 76 Cal. App. 4th 931, 966 (1999).  
25 This exemption does not apply because DOGGR is not lifting the prohibition based on any  
26 regulatory enforcement action; rather, DOGGR is lifting the prohibition imposed by the  
27 Legislature (SB 380). DOGGR has failed to cite any authority that supports its argument. Under  
28 DOGGR’s interpretation, no underground gas storage project would ever be subject to CEQA.

1 (c) **The “Unusual Circumstances” Exception Applies**

2 Even if a categorical exemption applied (none do), DOGGR is prohibited from relying on  
3 them because a categorical exemption shall not be used “where there is a reasonable possibility  
4 that the activity will have a significant effect on the environment due to unusual circumstances.”  
5 Cal. Code Regs. tit. 14, § 15300.2(c). The “unusual circumstances” exception is met where the  
6 project will have a significant environmental effect or may have a significant environmental  
7 impact due to the project’s unusual circumstances, such as size or location. *Berkeley Hillside*  
8 *Pres. v. City of Berkeley*, 60 Cal. 4th 1086, 1105 (2015). A “significant effect on the  
9 environment” means a “substantial, or potentially substantial, adverse change in the environment.”  
10 PRC § 21068; Cal. Code Regs. tit. 14, § 15382.

11 DOGGR failed to consider the “unusual circumstances” exception. The failure to do so  
12 constitutes an abuse of discretion. *Hollywoodland v. City of Los Angeles*, 161 Cal. App. 4th 1168,  
13 1187-88 (2008) (writ of mandate granted where city failed to consider “unusual circumstances”).

14 The “unusual circumstances” exception applies. First, the Facility is located in a unique  
15 geologic setting—atop an active fault line in an area expected to have a large earthquake in the  
16 next 50 years. *See Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster*, 52 Cal.  
17 App. 4th 1165, 1179, 1207-08 (1997) (finding “unusual circumstances” were presented by a large  
18 landfill project proposed on a unique geologic site with potential adverse environmental effects  
19 due to groundwater contamination). Second, the Facility is composed of an aging infrastructure  
20 and has a poor safety record. *See Hollywoodland*, 161 Cal. App. 4th at 1187 (finding “unusual  
21 circumstances” because the city was approving a fence built atop old and unique granite walls that  
22 could be damaged by the project). Third, the Facility is located next to a residential community  
23 with over 30,000 residents. *See Myers v. Bd. of Supervisors*, 58 Cal. App. 3d 413, 426 (1976)  
24 (“unusual circumstances” where project had fire risks associated with a nearby forest).

25 **B. The Severe And Irreparable Harm To The County And Its Residents**  
26 **Outweighs Any Potential Harm To DOGGR And SoCalGas**

27 Where a public entity seeks an injunction, the trial court presumes the harm to the public  
28 outweighs the harm to the defendant if the public entity shows a likelihood of success. *People ex*

1 *rel. Harris v. Black Hawk Tobacco, Inc.*, 197 Cal. App. 4th 1561 (2011). The balance of  
2 hardships favors immediate injunctive relief. Two-thirds of the Legislature passed SB 380 as an  
3 urgency statute necessary for the immediate preservation of the public peace, health and safety.  
4 Failing to fully evaluate the risks at Aliso Canyon unnecessarily jeopardizes public safety.

5 Experts agree that it is not a question of if but when a massive earthquake will strike Aliso  
6 Canyon. (Kuhn Decl. Ex. 10; Ex. 27; Davis Decl. ¶¶ 9, 16(d) & Ex. 2.) The quake is expected to  
7 be greater than a 6.3 magnitude. When this occurs, the wells at Aliso Canyon will rupture,  
8 causing gas to escape to the surface. (*Id.*) The health and environmental catastrophe from a multi-  
9 well leak would dwarf the 2015 leak. In addition, the cost to the County as first responders will be  
10 substantial. The County spent millions of dollars and significant manpower responding to the  
11 2015 leak. (Gunzenhauser Decl. ¶ 16.)

12 Further, CEQA review cannot wait until *after* injections resume. The very purpose of  
13 CEQA is to “inform the public and its responsible officials of the environmental consequences of  
14 their decisions *before* they are made.” *County of Amador v. El Dorado Cty. Water Agency*, 76  
15 Cal. App. 4th 931, 944 (1999) (citation omitted).

16 SoCalGas cannot remotely show that “it would suffer grave or irreparable harm from the  
17 issuance of the preliminary injunction.” *IT Corp.*, 35 Cal. 3d at 72. The only harm to SoCalGas is  
18 (1) its claimed need for gas from the Facility to address energy reliability concerns, and (2) the  
19 loss of use of Aliso Canyon until the necessary testing and review of the Facility is complete.

20 First, gas from the Aliso Canyon facility has not been needed since the facility was closed  
21 almost two years ago. There have been no blackouts. In fact, if there is an urgent need to  
22 withdraw gas Aliso Canyon, there is sufficient gas already in the Facility, and DOGGR can  
23 authorize withdrawals when necessary. (Declaration of Gary Saleba (“Saleba Decl.”) ¶ 6; Kuhn  
24 Decl., Exs. 17-19, 36.) DOGGR has admitted that its decision to allow gas injections at the  
25 Facility is based on “considerations related to safety,” *not* “energy reliability” or “the necessity of  
26 the facility.” (Kuhn Decl. Ex. 16 at p. 12.)

27 Second, it would take approximately 6 to 12 months to complete the necessary seismic  
28 testing and CEQA disclosures. (Davis Decl. ¶ 16(f); Kuhn Decl. Ex. 16 at p. 27.) SoCalGas



1 should have conducted this testing in 2009 when Mansdorfer raised it. But instead, SoCalGas  
2 concealed it from public view, just as it concealed the degradation of SS-25 before the 2015 leak.  
3 SoCalGas's decision to hide and delay cannot be used to show irreparable harm. Moreover,  
4 monetary harm does not constitute irreparable harm. *See, e.g., L.A. Mem'l Coliseum Comm'n v.*  
5 *NFL*, 634 F.2d 1197, 1202 (9th Cir. 1980).

6 **V. CONCLUSION**

7 The County respectfully requests that the Court grant its *ex parte* application.

8 DATED: July 24, 2017

MILLER BARONDESS, LLP

9  
10 By:



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