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# Citizen Suit Enforcement/Safe Drinking Water Act: Center for Biological Diversity Notice of Intent to Sue U.S. Environmental Protection Agency Addressing Approval of Aquifer Exemption

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The Center for Biological Diversity (“CBD”) sent a July 25th 60-day Notice of Intent to Sue (“Notice”) to the United States Environmental Protection Agency (“EPA”) alleging a violation of the Endangered Species Act (“ESA”).

The alleged violation relates to what is described as EPA’s failure to consult with the United States Fish and Wildlife Service (“FWS”) in regards to approval of a Safe Drinking Water Act aquifer exemption for the Arroyo Grande Oilfield in California.

CBD states that EPA approves aquifer exemptions in California as part of its oversight of the state’s Underground Injection Control Program. An aquifer exemption is stated to involve a determination as to whether it is zonally isolated (i.e., injection of fluids will remain isolated in the exempted portion of the aquifer and will not affect water that is or can reasonably be in the future used for any other than official uses.) The Notice states that the exemption involves allowing expanded injection of oil wastewater into certain aquifers via Class II wells.

EPA is said to state that it had no responsibility to engage in ESA consultation because the aquifer exemption decision is not the legal cause of any later species impacts that might occur.

CBD argues in response to the federal agency’s decision that:

The threshold for triggering an agency's duties under the ESA and NEPA is low-if an agency takes an action that may have environmental impacts or that "may affect" a listed species or critical habitat, then NEPA review must be conducted and ESA section 7 consultation is required. EPA's approval of the Aquifer Exemption removes federal protection of the aquifer under the Safe Drinking Water Act ("SDWA"), which will in turn allow injection of oil waste fluids into the aquifer, and facilitate the expansion of production and injection wells at the Arroyo Grande Oilfield ("AGOF"). On May 6, 2016, the Center submitted a letter to EPA detailing the numerous endangered and threatened species at risk from the Aquifer Exemption, including but not limited to, the federally endangered Pismo clarkia, which exists only within a small area and has been confirmed to occur on the site of the Arroyo Grande Oilfield. The letter further explained

that EPA's failure to consult with FWS under the ESA prior to approving the Aquifer Exemption would result in a violation of the ESA. On March 9, 2016, the Center also submitted a letter to EPA notifying the agency that approving the Aquifer Exemption without conducting environmental review would violate NEPA. Nevertheless, EPA approved the Aquifer Exemption on April 30, 2019, without consulting with FWS under the ESA or conducting environmental review under NEPA.

A copy of the Notice can be found [here](#).