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8 *Department of Toxic Substances Control and the*
9 *Toxic Substances Control Account*

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12
13 CALIFORNIA DEPARTMENT OF TOXIC
14 SUBSTANCES CONTROL and the TOXIC
SUBSTANCES CONTROL ACCOUNT,
15 Plaintiffs,
16
17 v.
18 PACIFIC GAS & ELECTRIC COMPANY;
UNION OIL COMPANY OF CALIFORNIA;
19 and SWEPI LP,
20 Defendants.

Case No.
COMPLAINT FOR RECOVERY OF
RESPONSE COSTS and DECLARATORY
RELIEF (42 U.S.C. §§ 9601 et seq.)

21
22 Plaintiffs, the California Department of Toxic Substances Control (“DTSC”) and the Toxic
23 Substances Control Account (collectively referred to herein as “Plaintiffs”) allege as follows:

24 **STATEMENT OF THE CASE**

25 1. This is a civil action brought by Plaintiffs against Pacific Gas & Electric Company;
26 Union Oil Company of California; and SWEPI LP (each individually referred to herein as a
27 “Defendant” and collectively referred to herein as the “Defendants”) under sections 107(a) of the
28 Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42

1 U.S.C. § 9607(a), for the recovery of unreimbursed response costs that Plaintiffs have incurred,
2 and interest on such response costs, in connection with releases and threatened releases of
3 hazardous substances at, beneath, above, and/or from the Benson Ridge landfill (“Benson
4 Ridge”), a closed hazardous waste treatment and disposal landfill located in Lake County,
5 California.

6 2. Plaintiffs further make a claim for declaratory relief, under 28 U.S.C. § 2201 and
7 section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), for a declaratory judgment that each
8 Defendant is jointly and severally liable to Plaintiffs for the response costs Plaintiffs have
9 incurred, and for any further response costs Plaintiffs incur in the future as result of any release or
10 threatened release of a “hazardous substance,” as defined in CERCLA section 101(14), 42 U.S.C.
11 § 9601(14), at Benson Ridge.

12 3. Benson Ridge was operated as a hazardous and solid waste landfill until it ceased
13 accepting waste in or about 1984. Benson Ridge, and the horizontal and vertical extent of the
14 contamination caused by releases and threatened releases of hazardous substances at and from
15 Benson Ridge, is a “facility,” within the meaning of sections 101(9)(A) and 101(9)(B), of
16 CERCLA, 42 U.S.C. §§ 9601(9)(A), 9601(9)(B).

17 JURISDICTION AND VENUE

18 4. The court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and section
19 113(b) of CERCLA, 42 U.S.C. § 9613(b).

20 5. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) and section 113(b)
21 of CERCLA, 42 U.S.C. § 9613(b), because the releases and threatened releases of hazardous
22 substances that are at issue occurred in this judicial district.

23 PLAINTIFFS

24 6. DTSC is a public agency of the State of California, organized and existing under
25 California Health and Safety Code sections 58009 and 58010. DTSC has the authority to protect
26 California’s people and environment from the harmful effects of toxic substances by restoring
27 contaminated resources, enforcing hazardous waste laws, reducing hazardous waste generation,
28 and encouraging the manufacture of chemically safer products. *See, e.g.*, Cal. Health & Safety

1 Code §§ 25100-25259, §§ 25300-25359.45, and §§ 58009-58010. DTSC has authority under
2 state law to determine whether there has been a release and/or threatened release of a hazardous
3 substance and to respond to releases and/or threatened releases of hazardous substances.

4 7. The Toxic Substances Control Account is an account within the State of California
5 General Fund. California Health and Safety Code section 25173.6 establishes the account and the
6 Director of DTSC administers the account. Under California Health and Safety Code section
7 25361(a), the account shall be a party in any action for the recovery of response costs or
8 expenditures under Chapter 6.8 of Division 20 of the California Health and Safety Code that were
9 incurred by DTSC from the account.

10 **DEFENDANTS**

11 8. Defendant PACIFIC GAS & ELECTRIC COMPANY (“PGE”) is a corporation
12 organized and existing under the laws of the State of California. DTSC is informed and believes,
13 and based on such information and belief alleges, that PGE has its principal place of business in
14 San Francisco, California. DTSC is further informed and believes, and based on such information
15 and belief alleges, that PGE “arranged for disposal or treatment ... of hazardous substances,” as
16 set forth in section 107(a) of CERCLA, 42 U.S.C. § 9607(a), at Benson Ridge.

17 9. Defendant UNION OIL COMPANY OF CALIFORNIA (“UNOCAL”) is a
18 corporation organized and existing under the laws of the State of California, with its corporate
19 headquarters in El Segundo, California. DTSC is informed and believes, and based on such
20 information and belief alleges, that UNOCAL “arranged for disposal or treatment ... of hazardous
21 substances,” as set forth in section 107(a) of CERCLA, 42 U.S.C. § 9607(a), at Benson Ridge.

22 10. Defendant SWEPI LP (“SWEPI”) is a corporation organized and existing under the
23 laws of the State of Delaware. DTSC is informed and believes, and based on such information
24 and belief alleges, that SWEPI is the successor to Shell California Production Company through a
25 series of merges as follows: Shell California Production Company merged with Shell Western
26 E&P; Shell Western E&P subsequently merged with SWEPI LP, with SWEPI LP as the surviving
27 corporation. DTSC is informed and believes, and based on such information and belief alleges,
28 that SWEPI (by and through a predecessor entity, Shell California Production Company)

1 “arranged for disposal or treatment ... of hazardous substances,” as set forth in section 107(a) of
2 CERCLA, 42 U.S.C. § 9607(a), at Benson Ridge.

3 11. DTSC is informed and believes, and based on such information and belief alleges,
4 that each Defendant knowingly arranged for the disposal of its hazardous substances in
5 California.

6 **BENSON RIDGE**

7 12. Benson Ridge is a landfill approximately 150 acres in size located at 7620 Highway
8 29, Kelseyville, Lake County, California 95451. Benson Ridge occupies a narrow valley and the
9 area surrounding Benson Ridge largely consists of brush-covered rangeland. The following uses
10 exist within one half to one mile southwest of Benson Ridge: a residential care facility for the
11 elderly, other residential use, agricultural use, and business use.

12 13. Benson Ridge is identified by Assessor's Parcel numbers 7-018-13 (5.09 acres), 7-
13 029-6 (80.00 acres), 7-030-21 (19.25 acres), and 9-022-01 (46.04 acres). The waste management
14 area of Benson Ridge encompassed approximately 25 acres of the 150-acre property, of which
15 approximately 9 acres were utilized for actual disposal operations.

16 14. From at least 1979 to 1984, an entity known as the IT Corporation owned and
17 operated Benson Ridge for purposes that included, without limitation, treating, storing, and
18 disposing of Class I and Class II hazardous wastes. Hazardous substances disposed of at Benson
19 Ridge primarily included liquids and sludges, including, but not limited to: drilling muds;
20 geothermal condensates and brines; petroleum fractions; geothermal power plant wastes from
21 hydrogen sulfide abatement/removal equipment; and geothermal power plant solid wastes from
22 maintenance operations. During its operation, Benson Ridge utilized three surface impoundments
23 for the evaporation of liquid and sludge wastes. Impacts to environmental media (*e.g.*, soil vapor,
24 soil, surface water and groundwater) occurred during the management of the hazardous materials
25 and/or wastes received by Benson Ridge.

26 15. After Benson Ridge ceased accepting hazardous substances for treatment, storage,
27 and disposal, the IT Corporation undertook formal closure activities and, on March 24, 1993,
28 Benson Ridge received closure certification. Benson Ridge transitioned to postclosure status

1 pursuant to a “postclosure permit” approved by DTSC on December 31, 1997. *See* Cal. Health &
2 Saf. Code §§ 25245-25248. The postclosure permit was renewed on June 10, 2008. A subsequent
3 postclosure permit renewal application did not qualify for renewal because of inadequate
4 financial assurances.

5 16. The on-going, postclosure activities required at Benson Ridge include, but are not
6 limited to, onsite recovery and management of groundwater contaminated by past waste
7 management activities, evaporation of the recovered groundwater in an onsite evaporation basin,
8 long-term groundwater monitoring, routine inspections, maintenance and compliance activities,
9 and water quality sampling and reporting.

10 17. In 2002, IT Corporation (the former owner and operator of Benson Ridge) filed for
11 bankruptcy protection and, on May 1, 2004, the “IT Environmental Liquidating Trust” (“ITELT”)
12 was established to oversee the long-term post closure operation, maintenance, and upkeep of
13 Benson Ridge as part of the conclusion of the bankruptcy proceedings. On May 1, 2004, ITEL
14 became the owner and operator of Benson Ridge.

15 18. A requirement applicable to Benson Ridge is that the owner/operator—*i.e.*, ITEL—
16 must obtain and maintain sufficient financial assurances that it can complete the required
17 postclosure activities. *See* Cal. Health & Saf. Code § 25245(a)(2); Cal. Code Regs., tit. 22, §
18 66264.145(e)(3).

19 19. On February 29, 2016, DTSC determined that ITEL was in violation of the
20 postclosure requirements, due to the underfunding of financial assurances for completion of the
21 postclosure activities by an amount no less than \$1,385,960.31.

22 20. On April 5, 2016, ITEL informed DTSC in writing that it had “no additional
23 financial assets, or mechanisms in place, to meet the financial assurance obligations” required by
24 California law.

25 21. In written correspondence dated July 28, 2016, DTSC notified ITEL that the
26 financial assurances for postclosure activities at Benson Ridge was underfunded in the amount of
27 \$4,428,324, based upon the 30-year financial assurance period, which amount is periodically
28 reassessed and financial assurances renewed for another 30-year period to ensure long-term

1 financial assurance for postclosure activities at Benson Ridge. In this July 28, 2016 letter, DTSC
2 determined – based on ITEL T’s April 5, 2016 letter – that ITEL T would not be able to meet the
3 financial assurance obligations for continued maintenance of the closed units, including the
4 amount necessary for renewal of its permit to conduct the required postclosure activities.

5 22. On November 29, 2016, DTSC issued an Imminent and Substantial Endangerment
6 Determination and Order and Remedial Action Order (ISE Order, Docket Number: HSA-
7 FY16/17-052) under the authority of Health and Safety Code sections 25358.3(a),
8 25355.5(a)(1)(B), 58009 and 58010 (“ISE Order”). DTSC issued the ISE Order to address
9 threatened releases of hazardous substances that would occur if Benson Ridge is not adequately
10 managed when existing funds are exhausted and a permanent remedy has not been implemented.
11 The ISE Order named ITEL T and a few generators [*i.e.*, “arrangers”], including the Defendants,
12 or affiliates of Defendants, as respondents.

13 23. There have been “releases” of hazardous substances from Benson Ridge, as defined
14 in CERCLA section 101(22), 42 U.S.C. § 9601(22), which resulted in serious impacts to the
15 environment (*e.g.*, air, soil, soil vapor, surface water, groundwater, or other media) and allowed
16 exposure (*e.g.*, inhalation, dermal absorption, and ingestion) to human and ecological receptors on
17 and off Benson Ridge. Further releases threaten to result in similar serious impacts to the
18 environment and exposure to human and ecological receptors.

19 20 **FIRST CLAIM FOR RELIEF**

21 **(Cost Recovery Claim Against All Defendants Pursuant to Section 107(a) of CERCLA)**

22 24. Plaintiffs re-allege and incorporate by reference the allegations in Paragraphs 1
23 through 23 above, as though fully set forth herein.

24 25. Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), provides in relevant part that
25 any person who arranged for disposal or treatment, or arranged with a transporter for transport for
26 disposal or treatment, of hazardous substances at a facility from which there has been a release or
27 a threatened release of a hazardous substance which results in the incurrence of response costs,
28 shall be liable for all costs of removal or remedial action incurred by a State not inconsistent with

1 the National Oil and Hazardous Substances Pollution Contingency Plan (“National Contingency
2 Plan”), 40 C.F.R. Part 300.

3 26. Benson Ridge, and the horizontal and vertical extent of the hazardous substance
4 contamination caused by releases of hazardous substances from Benson Ridge, including, without
5 limitation, any area where any hazardous substance from Benson Ridge has come to be located, is
6 a “facility” within the meaning of section 101(9)(A) and (9)(B), 42 U.S.C. §§ 9601(9)(A),
7 9601(9)(B).

8 27. Each Defendant is a “person” within the meaning of section 101(21) of CERCLA, 42
9 U.S.C. § 9601(21).

10 28. Each Defendant arranged for disposal or treatment, or arranged with a transporter for
11 transport for disposal or treatment, of hazardous substances at Benson Ridge. Hazardous
12 substances from Benson Ridge have been released into the environment and there is a continuing
13 threat of additional hazardous substance releases from Benson Ridge. These releases and
14 threatened releases have resulted, and will continue to result, in Plaintiffs’ incurrence of response
15 costs. Each Defendant is liable to Plaintiffs for response costs Plaintiffs incurred at Benson Ridge
16 as a result of releases and threatened releases at Benson Ridge, pursuant to section 107(a)(3) of
17 CERCLA, 42, U.S.C. § 9607(a)(3).

18 29. The hazardous and solid wastes treated and/or disposed of at Benson Ridge
19 contained, without limitation, compounds that can migrate through groundwater, including, but
20 not limited to the following: arsenic, chromium, hexavalent chromium, mercury, nickel, sodium,
21 and vanadium. These wastes, which are present at Benson Ridge, contained “hazardous
22 substances,” which are defined in section 101(14) of CERCLA, 42 U.S.C. § 9601(14). There has
23 been a “release” or threatened release of hazardous substances, including but not limited to those
24 included in this paragraph, from Benson Ridge into the “environment,” within the meaning of
25 sections 101(8) and 101(22) of CERCLA, 42 U.S.C. §§ 9601(8) and 9601(22).

26 30. DTSC, in its capacity as an agency of the State of California, is considered a “State”
27 for purposes of recovery of response costs under section 107(a) of CERCLA, 42 U.S.C. §
28 9607(a).

1 to, oversight costs, incurred by Plaintiffs and resulting from release(s) and/or threatened release(s)
2 of hazardous substances at, beneath, above and/or from Benson Ridge;

3 2. For a declaration that each defendant is jointly and severally liable to Plaintiffs,
4 without regard to fault, for all future costs, including oversight costs, incurred by Plaintiffs as the
5 result of any release(s) and/or threatened release(s) of hazardous substances at, beneath, above
6 and/or from Benson Ridge;

7 3. For Plaintiffs' costs of suit;

8 4. For Plaintiffs' attorneys' fees;

9 5. For prejudgment interest; and

10 6. For such other and further relief as the court deems just and proper.

11 Dated: September 24, 2021

Respectfully submitted,

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14 TIMOTHY E. SULLIVAN
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15 /s/ Somerset Perry
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