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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ENVIRONMENTAL DEFENSE CENTER, a California non-profit corporation,

Plaintiff,

vs.

BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT; BRIAN SALERNO, Director, Bureau of Safety and Environmental Enforcement; JARON E. MING, Pacific Region Director, Bureau of Safety and Environmental Enforcement; BUREAU OF OCEAN ENERGY MANAGEMENT; WALTER CRUICKSHANK, Acting Director, Bureau of Ocean Energy Management; ELLEN G. ARONSON, Pacific Region Director, Bureau of Ocean Energy Management; UNITED STATES DEPARTMENT OF THE INTERIOR; SALLY JEWELL,

Civil Case No. 2:14-cv-09281

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

(National Environmental Policy Act, 42 U.S.C. § 4321 *et seq*., Administrative Procedure Act, 5 U.S.C. § 551 *et seq*.)

Secretary of the Interior,

Defendants.

JURISDICTION AND VENUE

1. This Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1361 (federal officer action), and the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 *et seq.* and may issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201–2202 (declaratory order). The claims comprising this action arise under the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq*., and the APA.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because Defendants reside in this District and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District. Defendant Bureau of Safety and Environmental Enforcement's ("BSEE") Pacific Region Office and Bureau of Ocean Energy Management's ("BOEM") Pacific Region Office are both located in Camarillo, California.

INTRODUCTION

3. Plaintiff Environmental Defense Center ("EDC" or "Plaintiff") brings this civil action for declaratory and injunctive relief against the United States Department of the Interior ("DOI" or "Interior"), its component agencies BSEE and BOEM, and individual agency officials sued in their official capacity (collectively, "Defendants"), for violations of NEPA in relation to Defendant BSEE's decisions to approve fifty-one Applications for Permits to Drill ("APDs") and Applications for Permits to Modify ("APMs") authorizing well stimulation methods, including acid well stimulation and hydraulic fracturing, in order to facilitate oil and gas development and production from offshore platforms located within federal, Outer Continental Shelf ("OCS") waters off California's coastline. BSEE has approved each of these APDs and APMs without allowing for any public participation or conducting adequate environmental review, in violation of NEPA.

4. Offshore well stimulation methods including acid well stimulation and hydraulic fracturing pose numerous environmental risks to coastal and marine natural resources. These risks include impacts to water quality associated with discharges of toxic chemicals found in well stimulation fluids, and impacts to air quality including greenhouse gas emissions. In addition, such discharges pose unstudied risks to many threatened and endangered species, including blue whale, fin whale, humpback whale, and southern sea otters, and risks to other fish, birds, and aquatic organisms including invertebrate species that comprise the base of the food chain. These methods also present the potential for spills related to accidental release of chemicals during transport to and from oil and gas platforms, from chemicals stored on platforms, or from the disposal of such chemicals through underground injection or direct discharge to the marine environment. Moreover, there are geologic hazards associated with purposely fracturing the geologic formation and additional fluid injection in seismically active areas. Finally, there are significant risks regarding whether well casings have been designed to safely accommodate the increased pressures associated with offshore well stimulation activities, and whether offshore platforms and wells have been designed for the extended life associated with well stimulation activities.

5. Despite these risks, BSEE routinely bases its decisions to approve APDs authorizing the use of well stimulation pursuant to "categorical exclusions." Unlike an environmental impact statement ("EIS") or environmental assessment ("EA"), categorical exclusions are cursory, checklist type documents that do not contain detailed analysis of potential environmental impacts. BSEE's approval of APMs authorizing the use of well stimulation is even more truncated—BSEE has prepared no NEPA analysis whatsoever prior to approval of the permit modifications challenged in this action.

6. BSEE's reliance on categorical exclusions, or no NEPA documentation at all, in the approval of APDs and APMs authorizing offshore well

stimulation is unlawful, as these well stimulation methods pose significant risks to the environment. Moreover, BSEE has failed to provide a reasoned explanation for its decisions, and the record for many approvals is so lacking as to preclude meaningful judicial review. In addition, the categorical exclusion relied upon by BSEE is not appropriate for the APDs challenged in this action. In sum, Defendants have failed to take the "hard look" at the potential environmental impacts of drilling permitted under the APDs and APMs as required by NEPA.

7. BSEE has never provided the public with any notice or opportunity to comment on or otherwise participate in its decisions to approve the APDs and APMs at issue in this action before such decisions are made. BSEE's failure to provide for any public participation in relation to its decisions violates NEPA's specific regulatory public participation mandates as well as one of the overarching purposes of the statute.

8. Indeed, BSEE has refused to even provide NEPA documentation for its decisions to authorize APDs and APMs upon direct request, instead requiring Plaintiff and other members of the public to submit formal requests for such documents under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.

9. Plaintiff brings this case seeking declaratory relief that BSEE's reliance upon categorical exclusions, or no written NEPA documentation at all, in approving individual APDs and APMs involving offshore well stimulation is unlawful. Plaintiff seeks to enjoin drilling under the challenged APDs and APMs, as well as pending and future APDs and APMs authorizing offshore well stimulation including acidizing and fracking, until Defendants prepare an EIS in compliance with NEPA law and regulation that discloses and analyzes the full impacts and risks of today's offshore drilling and the evolving well stimulation technologies relied upon as part of such drilling.

PARTIES

10. Plaintiff EDC is a California public benefit, non-profit corporation, with offices in Santa Barbara and Ventura. Founded in response to the 1969 Santa Barbara oil spill, EDC has approximately 3,000 members and protects and enhances the local environment through education, advocacy, and legal action on behalf of itself and other non-profit, environmental organizations.

11. Since its founding more than thirty years ago, EDC has worked to protect the Santa Barbara Channel, other local coastal waters, the Channel Islands, and the terrestrial coastal environment of Santa Barbara and Ventura Counties from the risks and impacts of offshore oil drilling. The large majority of offshore oil and gas platforms off California's coast continue to be located in the Santa Barbara Channel.

12. The issue of offshore oil drilling directly impacts all three of EDC's primary organizational missions: protection of coast and ocean resources, open spaces and wildlife, and human and environmental health.

13. The majority of EDC members live within coastal communities in Santa Barbara and Ventura Counties that are at risk from the impacts of an offshore oil drilling disaster, as illustrated by the 1969 oil spill and other smaller spills that have occurred since that time. EDC members not only utilize areas that are impacted by offshore drilling and threatened by potential offshore oil drilling disasters—including the waters of the Santa Barbara Channel, the beaches of Santa Barbara and Ventura Counties, and the Channel Islands National Park and Channel Islands National Marine Sanctuary—it is their home.

14. The offshore oil and gas platforms for which the APDs and APMs challenged in this suit have been issued are located in the Santa Barbara Channel, and include Platforms Gail, Gilda, Harmony, Heritage, Hondo, and Irene.

15. EDC's members regularly utilize the Santa Barbara Channel, including the waters surrounding Platforms Gail, Gilda, Harmony, Heritage,

Hondo, and Irene, for a variety of pursuits. For example, EDC members have a broad range of recreational interests in the Santa Barbara Channel and its beaches, including swimming, surfing, kayaking, sailing, fishing, SCUBA diving, and other activities.

16. EDC members utilize the Santa Barbara Channel, its islands, and its beaches for wildlife viewing opportunities including whale watching, bird observation, and simple enjoyment of the predominantly unspoiled and clean environment.

17. EDC members utilize the Santa Barbara Channel, its islands, and its beaches for scientific, educational, and professional purposes, and have been involved in, and personally invested in, environmental education, study, and conservation efforts in and around the Santa Barbara Channel.

18. EDC members have economic interests that depend upon a clean, natural environment and in particular, a Santa Barbara Channel free from oil spills and other offshore drilling mishaps.

19. All of these interests are harmed by Defendant BSEE's failure to comply with NEPA with respect to its issuance of APDs and APMs authorizing the use of offshore well stimulation methods.

20. The legal violations alleged in this complaint cause direct injury to the aesthetic, economic, conservation, recreational, scientific, educational, and wildlife preservation and conservation interests of EDC and its members.

21. The above-described aesthetic, economic, conservation, recreational, scientific, educational, wildlife preservation and conservation, and other interests of EDC and its members have been, are being, and will continue to be irreparably harmed by Defendants' violations of law. The harm to these interests would be remedied by an Order of this Court declaring Defendants' actions as unlawful under NEPA and enjoining future approval of APDs and APMs pending full

compliance with NEPA. Plaintiff has no adequate remedy at law, and thus the requested relief is appropriate under the APA.

22. Defendant BSEE's failure to provide for any public participation as required by NEPA has also resulted in informational, procedural, and organizational harm to EDC and its members. Defendants are the cause of these injuries, and the requested relief would redress these injuries, at least in part.

23. Defendant BSEE is one of two agencies charged with managing offshore resources in federal waters, including regulation of oil and gas exploration, development, and production on the OCS. 30 C.F.R. § 250.101 (2012). BSEE is an agency of the U.S. Department of the Interior. BSEE is responsible for permitting offshore drilling operations and ensuring they comply with safety regulations.

24. Defendant BRIAN SALERNO is the Director of BSEE and is sued in his official capacity as the head of the federal agency responsible for the violations of NEPA alleged herein.

25. Defendant JARON E. MING is the Pacific Region Director of BSEE and is sued in his official capacity as the head of the federal agency responsible for the violations of NEPA alleged herein.

26. Defendant BOEM is one of two agencies charged with managing offshore resources in federal waters, including regulation of oil and gas exploration, development, and production on the OCS. 30 C.F.R. § 550.101 (2011). BOEM is an agency of the U.S. Department of the Interior, and is responsible for environmental analysis under NEPA.

27. Defendant WALTER CRUICKSHANK is the Acting Director of BOEM and is sued in his official capacity as the head of the federal agency responsible for the violations of NEPA alleged herein.

28. Defendant ELLEN G. ARONSON is the Pacific Region Director of BOEM and is sued in her official capacity as a responsible officer in the federal agency responsible for the violations of NEPA alleged herein.

29. Defendant DOI is a United States agency in the executive branch, and is responsible for managing the resources under its jurisdiction in accordance with all applicable laws and regulations, including NEPA.

30. Defendant SALLY JEWELL is the DOI Secretary and is sued in her official capacity as the head of the federal agency responsible for the violations of NEPA alleged herein.

31. BSEE and BOEM were created in October 2011, as part of a DOI reorganization of the former Minerals Management Service ("MMS"). The reorganization was prompted by the 2010 *Deepwater Horizon* explosion and resulting oil spill in the Gulf of Mexico, and was part of a larger reform effort described by the Obama Administration as the most aggressive and comprehensive reform to offshore oil and gas regulation in United States history.

LEGAL BACKGROUND

A. Administrative Procedure Act

32. Under the APA, reviewing courts shall "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

33. The APA provides for judicial review of "final agency action." 5 U.S.C. § 704.

34. Agency actions subject to judicial review include the "whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13).

35. A license subject to judicial review includes "the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission." 5 U.S.C. § 551(8).

36. Congress intended the definition of agency action under the APA to be expansive. S. Doc. No. 248, 79th Cong., 2d Sess., at 255 (1946) ("The term 'agency action' brings together previously defined terms in order to simplify the language of the judicial-review provisions of section 10 and to assure the complete coverage of every form of agency power, proceeding, action, or inaction."); *see also Whitman v. Am. Trucking Ass'n, Inc.*, 531 U.S. 457, 478 (2001) (interpreting APA definition of agency action as "meant to cover comprehensively every manner in which an agency may exercise its power").

B. The Outer Continental Shelf Lands Act

37. Originally enacted in 1953, the Outer Continental Shelf Lands Act ("OCSLA"), 43 U.S.C. §§ 1331-1356b, reaffirmed federal control over resources on the OCS, located beyond three nautical miles from a state's coast. OCSLA requires that oil exploration and production be "balanced with 'protection of the human, marine, and coastal environments.'" *Nat. Res. Def. Council v. Hodel*, 865 F.2d 288, 292 (D.C. Cir. 1988) (*quoting* 43 U.S.C. § 1802(1)–(2)).

38. Under OCSLA, oil and gas exploration and production in the OCS involves four stages: 1) Interior's development of a five-year leasing program, 43 U.S.C. § 1344; 2) lease sales, *id.* § 1337; 3) exploration, *id.* § 1340; and 4) development and production, *id.* §1351.

39. The fourth and final OCSLA stage, development and production, consists of two separate and distinct discretionary agency actions that must occur prior to the commencement of drilling operations: 1) approval of a development and production plan (or, as previously called, a plan of development) (collectively referred to hereafter as "DPP"); and 2) issuance of drilling permits or modification

to drilling permits (APDs or APMs) that are consistent with the DPP. *See* 43 U.S.C. §1351; 30 C.F.R. §§ 250.410–.418 (2012).

40. OCSLA establishes detailed statutory requirements for the contents of DPPs. *See* 43 U.S.C. § 1351. Among other mandates, the DPP must set forth the specific work to be performed, the location and size of facilities and operation, and the land, labor, material, and energy requirements associated with such facilities and operations, the environmental safeguards to be implemented, and all safety standards. *Id*. § 1351(c)(1)–(6).

41. These statutory requirements are supplemented by additional detailed regulatory requirements, which have been recently revised and updated in the wake of the 2010 *Deepwater Horizon* disaster in the Gulf of Mexico. *See* 30 C.F.R. §§ 550.241–.262 (2011).

42. OCSLA affirmatively requires that DOI "shall, from time to time," review approved DPPs in order to determine if plan revisions are necessary, and shall include "changes in available information and other onshore or offshore conditions affecting or impacted by the development and production pursuant to such plan." 43 U.S.C. § 1351(h)(3).

43. OSCLA further directs that if such periodic review "indicates that the plan should be revised to meet" statutory requirements, "the Secretary shall require such revision." 43 U.S.C. § 1351(h)(3). OCSLA regulations provide additional specific detail regarding post-approval requirements for DPPs, including specific triggers establishing when DPPs must be revised or supplemented. *See* 30 C.F.R. §§ 550.280–.285 (2011).

44. Before drilling any well, or before sidetracking, bypassing or deepening a well, a lessee must obtain an APD. 30 C.F.R. §§ 250.410–.418 (2012).

45. An operator must apply for an APM if it intends to revise its drilling plan, change major drilling equipment, or plugback. 30 C.F.R. § 250.465(a)

(2012). APMs must include a "detailed statement of the proposed work that would materially change from the approved APD." 30 C.F.R. § 250.465(b)(1) (2012).

46. APDs and APMs authorizing development and production may only be issued when consistent with an approved DPP. *See* 30 C.F.R. § 250.410(b) (2012).

C. National Environmental Policy Act

47. NEPA is the "basic national charter for protection of the environment." 40 C.F.R. § 1500.1 (1978). NEPA establishes two overarching purposes: 1) to create an open, informed and public decision making process by insuring that environmental information is available to public officials and citizens before decisions are made and before actions are taken; and 2) to require that the federal government integrate environmental considerations into all of its actions by helping public officials make decisions that are based on an understanding of environmental consequences, and that protect, restore, and enhance the environment. 40 C.F.R. §§ 1500.1(b), (c) (1978).

48. CEQ was created to administer NEPA and it has promulgated NEPA regulations, which are binding on all federal agencies. *See* 42 U.S.C. §§ 4342, 4344; *see also* 40 C.F.R. §§ 1500–1518 (1978).

49. The CEQ regulations affirm that public scrutiny is an "essential" part of the NEPA process, and that "NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken." 40 C.F.R. § 1500.1(b) (1978).

50. To this end, federal agencies shall "[m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures," 40 C.F.R. § 1506.6(a) (1978), and "solicit appropriate information from the public." *Id*. § 1506.6(d); *id*. § 1500.2(d) (stating that agencies "shall to the fullest extent possible . . . [e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment"). Agencies shall "[p]rovide public notice of

NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested and affected" and "[i]n all cases the agency shall mail notice to those who have requested it on the individual action." 40 C.F.R. § 1506.6(b)(1) (1978).

51. NEPA requires each federal agency to prepare, and circulate for public review and comment, a detailed EIS prior to undertaking any major federal action significantly affecting the quality of the human environment. 42 U.S.C. § 4332(C). When a federal agency is not certain whether an EIS is required, it must prepare an EA. 40 C.F.R. § 1508.9 (1978). If the agency concludes in an EA that a project may have significant impacts on the environment, then an EIS must be prepared. 40 C.F.R. § 1501.4 (1978). If an EA concludes that there are no significant impacts to the environment, the federal agency must provide a detailed statement of reasons why the project's impacts are insignificant and issue a "finding of no significant impact" ("FONSI"). 40 C.F.R § 1508.13 (1978).

52. In determining whether a proposed action may significantly affect the environment, NEPA requires that both the context and intensity of that action be considered. 40 C.F.R. § 1508.27 (1978). In considering context, "[s]ignificance varies with the setting of the proposed action." *Id.* § 1508.27 (a). Consideration of intensity, on the other hand, "refers to the severity of the impact," including impacts on "[u]nique characteristics of the geographic area such as proximity to park lands . . . wetlands . . . or ecologically critical areas," "[t]he degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration," and "[w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts." *Id.* § 1508.27 (b).

53. CEQ regulations provide for a limited exception to the requirement to prepare an EIS or EA under "categorical exclusions," where an agency has made a prior determination, through rulemaking, that certain categories of activities do not

have a significant impact on the human environment, either individually or cumulatively. *See* 40 C.F.R. §§ 1501.4(a)(2), 1508.4 (1978).

54. By definition, a categorical exclusion is limited to activities that the agency has previously considered and determined to have no significant individual or cumulative effect on the environment. 40 C.F.R. § 1508.4 (1978) (limiting categorical exclusions to actions that "have been found to have no such effect").

55. However, even if a proposed action falls within a previously defined category, an agency cannot rely on a categorical exclusion if "extraordinary circumstances" may be present. 40 C.F.R. § 1508.4 (1978) ("Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect."). Under DOI regulations, these circumstances include:

> (a) Significant impacts on public health or safety,
>
> (b) Significant impacts on . . . natural resources and unique geographic characteristics . . .
>
> (c) Highly controversial environmental effects . . .
>
> (d) Highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks . . .
>
> (e) Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.
>
> (f) Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects . . .
>
> (h) Significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species or have

significant impacts on designated Critical Habitat for these species.

43 C.F.R. § 46.215 (2008).

56. DOI regulations specify that extraordinary circumstances "exist for individual actions within categorical exclusions that *may* meet *any* of the criteria listed in paragraphs (a) through (l)." 43 C.F.R. § 46.215 (2008) (emphasis added). In such cases, the agency action is thus subject to environmental review pursuant to an EIS or EA. *California v. Norton*, 311 F.3d 1162, 1170 (9th Cir. 2002) ("When extraordinary circumstances are present, the agency must prepare environmental documentation despite the fact that the activity in question falls within a categorical exclusion.").

D. DOI NEPA Regulations and Policy

57. As required by NEPA, DOI has developed its own implementing regulations to supplement CEQ's overarching regulations. *See* 73 Fed. Reg. 61,292 (Oct. 15, 2008); *see also* 43 C.F.R. § 46.10 (2008) ("This part establishes procedures for the Department, and its constituent bureaus, to use for compliance [with NEPA and the CEQ regulations].").

58. These DOI regulations specifically define categories of actions excluded from NEPA review, 43 C.F.R. § 46.205 (2008), provide a list of Departmental categorical exclusions, *id*. § 46.210, and identify the "extraordinary circumstances" that prohibit the agency from relying on a CE even where the action does fit the pre-defined category, *id*. § 46.215.

59. DOI regulations do not contain any categorical exclusions specific to OCS activities.

60. However, BSEE and BOEM are also directed by agency policy documents not published in the *Code of Federal Regulations*. The former MMS promulgated a Departmental Manual ("DM") inherited by BSEE and BOEM that

identifies additional categories of actions designated as categorical exclusions, including those related specifically to OCS activities. *See* 51 Fed. Reg. 1,855 (Jan. 15, 1986); U.S. DEPT. OF THE INTERIOR, 516 DM 15, DEPARTMENTAL MANUAL–MANAGING THE NEPA PROCESS–MINERALS MANAGEMENT SERVICE (2004).

61. The DM lists fifteen categories of exclusions additional to those contained in the DOI regulations, broken into three primary areas: 1) general; 2) internal program initiatives; and 3) permit and regulatory functions. 516 DM 15.4.

62. The DM includes a categorical exclusion for the "Approval of an Application for Permit to Drill (APD) an offshore oil and gas exploration or development well." 516 DM 15.4(12). This exclusion only applies, however, "when said well and appropriate mitigation measures are described in an approved exploration plan, development plan, production plan, or Development Operations Coordination Document." *Id.*

63. Neither the DOI regulations nor the Departmental Manual contain any categorical exclusions specific to applications for permits to modify.

E. Unfulfilled DOI NEPA Regulatory Reform in the Wake of the *Deepwater Horizon* Disaster

64. In April 2010, the Nation's largest offshore oil disaster in its history occurred in the Gulf of Mexico when the "Macondo well" blew out at the *Deepwater Horizon* drilling platform, owned by BP America Production Company and Transocean Holdings, LLC. The explosion killed eleven crewmembers, released 205 million gallons of oil into the Gulf, and devastated marine life, seabirds, and the Gulf economy. *In re Oil Spill by the Oil Rig 'Deepwater Horizon' in the Gulf of Mexico, on April 20, 2010*, -- F. Supp. 2nd--, 2014 WL 4375933 (E.D. La. Sept. 4, 2014).

65. Federal regulators within MMS had approved BP's drilling at the *Deepwater Horizon* platform under categorical exclusions to NEPA, even though

deep-water drilling is a risky and recently developed technology that has not been carefully studied or analyzed for its potential environmental impacts.

66. In the aftermath of the *Deepwater Horizon* disaster, CEQ released a report on former MMS's NEPA procedures, finding that the agency overwhelmingly relied upon categorical exclusions in conducting NEPA analysis for oil and gas exploration plans, APDs, and APMs in the Gulf of Mexico.

67. CEQ found that MMS relied on the "tiering" concept to justify this reliance on categorical exclusions. In some circumstances, the CEQ regulations allow for "tiering" of NEPA documents in order to avoid repetitive environmental analysis. Tiering is permitted: 1) from a program, plan, or policy [EIS] to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis; or 2) from an [EIS] on a specific action at an early stage to a supplemental or subsequent analysis at a later stage. 40 C.F.R. § 1502.20 (1978). In other words, tiering involves reliance on a previous, "bigger picture" or programmatic EIS or EA in review of a subsequent, site-specific proposal.

68. Although CEQ acknowledged that tiering is an appropriate practice under NEPA, it found that MMS had used it in a manner that was not transparent, and that had led to confusion and concern about whether environmental impacts were sufficiently analyzed and disclosed.

69. Based on its findings, CEQ offered several recommended reforms specific to NEPA analysis of offshore oil decisions, including the recommendation that DOI "review the use of categorical exclusions for [OCS] oil and gas exploration and development in light of the increasing levels of complexity and risk." WHITE HOUSE COUNCIL ON ENVIRONMENTAL QUALITY, REPORT REGARDING THE MINERAL MANAGEMENT SERVICE'S NATIONAL ENVIRONMENTAL POLICY ACT POLICIES, PRACTICES, AND PROCEDURES AS THEY RELATE TO OUTER CONTINENTAL SHELF OIL AND GAS EXPLORATION AND DEVELOPMENT 29 (2010). CEQ also recommended that DOI "[c]onsider supplementing existing NEPA practices,

procedures, and analyses to reflect changed assumptions . . . [s]pecifically, conclusions may change about the likelihood, magnitude, and environmental impacts of a major spill in connection with OCS drilling activities." *Id.* at 32.

70. In the wake of the *Deepwater Horizon* disaster, the DOI Inspector General ("IG") made sixty-four recommendations to strengthen the Department's overall management, regulation, and oversight of OCS operations, including seven recommendations intended to improve the offshore oil and gas permitting process.

71. In a September 2014 report, the IG concluded that three of the recommendations were still outstanding. The IG found that BSEE is conducting its drilling permitting activities with limited oversight from its Washington, D.C. headquarters office, and that it has continued to approve permitting actions without current or updated policies or standard operating procedures. The report notes that "[s]ince a formal, integrated process to update policies and procedures remains incomplete, BSEE regional and district engineers continue to review, document, and approve permits without the guidance of current, accurate, or complete Bureauwide policies and procedures on which they can base their decisions." OFFICE OF INSPECTOR GENERAL, U.S. DEPT. OF THE INTERIOR, REPORT NO. CR-EV-BSEE-0006-2013, OFFSHORE OIL AND GAS PERMITTING 6 (2014).

72. Finally, former BOEMRE Director Michael Bromwich announced the agency's intent to conduct a "broad review" of its use of categorical exclusions in the wake of *Deepwater Horizon*. Notice of Intent to Conduct a Review of Categorical Exclusions for Outer Continental Shelf Decisions, 75 Fed. Reg. 62,418 (Oct. 8, 2010).

73. During this period of broad review, BOEM and BSEE were directed to narrow the use of categorical exclusions, and then-Director Bromwich specifically identified the "proposed use of new or unusual technology" as a factor that would trigger more detailed environmental analysis. BOEM, Press Release:

Categorical Exclusion for Gulf Activity to be Limited While Interior Reviews NEPA Process and Develops Revised Policy (Aug. 16, 2010).

74. More than four years later, Defendants have yet to make further progress on their review of categorical exclusions, and have not announced any future substantive or procedural reforms arising out of that review.

FACTUAL BACKGROUND

A. Offshore Oil Drilling and the Santa Barbara Channel

75. The APDs and APMs that BSEE issued and that are challenged by Plaintiff in this case authorize well stimulation methods during drilling operations from offshore oil platforms located within the Santa Barbara Channel.

76. The Santa Barbara Channel is an arm of the Pacific Ocean separating Santa Barbara, Ventura, and other coastal communities from the northern Channel Islands (including Santa Barbara, Anacapa, Santa Cruz, Santa Rosa, and San Miguel Islands). In 1980, these islands were designated as Channel Islands National Park.

77. Reflecting the environmental importance of the Channel's marine environment, the Channel Islands National Marine Sanctuary was created, encompassing the waters that surround Channel Islands National Park from the mean high tide line to six nautical miles offshore, around each of the five islands. In addition, a network of state and federally-designated Marine Protected Areas (MPAs) has been established in the Santa Barbara Channel.

78. Numerous threatened and endangered species reside in the Santa Barbara Channel on a seasonal or residence basis, including blue, fin, and humpback whales, and the southern sea otter. Minke and killer whales, porpoises, dolphins, seals and sea lions, and hundreds of species of birds, fishes, and

invertebrates also frequent and depend on the habitat of the Santa Barbara Channel and Channel Islands.

79. The Channel's scenic beauty and rich natural resources define the quality of life along California's south-central coast and are the foundation for its largest economic drivers, including recreation and tourism.

80. Over the objections of local residents and officials, the federal government began awarding the first federal leases for oil in the Santa Barbara Channel in 1967. On January 29, 1969, the nation's first large offshore oil spill occurred at Platform "A" in the Santa Barbara Channel. *See Norton*, 311 F.3d at 1165–67 (9th Cir. 2002) (describing factual background prior to spill). The blow out is attributed to federal regulators' waiver of safety requirements. *Id.* at 1166 (noting that the spill "might have been avoided but for a failure of federal oversight").

81. The federal government continued its leasing program in the Santa Barbara Channel after the Santa Barbara Spill. Between 1967 and 1984, Interior sold 311 leases covering more than 1.6 million acres off the California coast.

82. Twenty-two offshore platforms currently operate in federal waters within the Santa Barbara Channel.

B. Hydraulic Fracturing Used Offshore California

83. Hydraulic fracturing (*aka* "fracking") is a well stimulation method that involves pumping a mixture of water, sand (known as "proppant"), and chemicals down a well at extremely high pressures to break apart a hydrocarbon-bearing geologic formation and improve rates of oil or natural gas production.

84. Advancements in the technologies utilized in fracking, together with other developments in horizontal drilling technologies, have served to vastly increase oil and gas production from the dense sedimentary rock known as shale. In 2000, shale gas comprised one percent of domestic supplies; today, that figure exceeds thirty-five percent and is expected to grow further.

85. California's Monterey Shale, encompassing large portions of the central and southern portion of the state, both on and offshore, has been identified as a potential source of significant oil that could be accessed by fracking.

86. The use of fracking off California's shores was largely unknown to the general public, local elected officials, and cooperating state agencies including the California Coastal Commission and the California State Lands Commission, until little more than a year ago, when investigative reporters with Associated Press and Truthout, as well as plaintiff EDC, discovered its use through records obtained under FOIA. *See* Jason Dearen and Alicia Chang, *Oil companies frack in coastal waters off California*, ASSOCIATED PRESS, Aug. 3, 2013 ("California coastal regulators said they were unaware until recently that offshore fracking was even occurring.").

87. In March 2013, Plaintiff EDC submitted a FOIA request to BSEE in order to investigate whether there had been any instances of fracking from offshore platforms located in federal waters off the California coast.

88. EDC's analysis of the FOIA response determined that at least fifteen instances of fracking off California's shores had occurred over the last twenty years as of that date.

89. EDC published its analysis, along with several policy recommendations directed at Defendants, in a report entitled DIRTY WATER: FRACKING OFFSHORE CALIFORNIA. One of the policy recommendations is that BSEE stop relying on categorical exclusions to approve well stimulation methods, until it is has thoroughly studied the impacts and risks these methods pose to human health and the environment, pursuant to an EIS with full opportunity for public participation and comment.

C. Acid Well Stimulation Used Offshore California

90. Unlike many other areas of the country, it remains unclear whether fracking can "unlock" the resources within California's Monterey Shale and other

targeted geologic formations. While shale formations in other areas of the country commonly trap oil in flat layers, seismic forces have folded the Monterey Shale formation.

91. Because of this geologic complexity, many oil producing areas of California, including federal offshore waters, may respond better to alternative stimulation techniques, such as "acid well stimulation treatments," which open small pores in the rock, than to hydraulic fracturing.

92. Acid well stimulation treatment (*aka* "acidizing") is a well stimulation treatment that uses the application of one or more acids, typically hydrofluoric acid and hydrochloric acid, to the well or underground geologic formation. Acid well stimulation treatments may be done at high pressures, and may be used in combination with fracking and other well stimulation treatments.

93. In California, two primary forms of acidizing are utilized: acid fracturing and acid matrix stimulation treatment.

94. Acid fracturing involves the pressured injection of acid into an underground geologic formation in order to fracture the formation, thereby enhancing the production of oil or gas. Fracture acidizing is similar to fracking in that pressures are done at the fracture gradient of the hydrocarbon bearing formation to create the fractures, but differs in that proppants are not used.

95. Acid matrix stimulation, or "matrix acidizing" is similar to fracture acidizing except it is performed below fracture pressure and is used to dissolve chemicals to create wormholes near the wellbore. Matrix acidizing dissolves sediment and mud solids, thereby increasing the permeability of the rock and enlarging the natural pores, facilitating the flow of oil and gas.

96. Today's acid well stimulation treatments rely on drilling fluids containing extensive amounts of chemicals. Like fracking, the exact formula used in these acid fluids varies by company, and is often treated as proprietary

information undisclosed under "trade secret" and other business confidentiality laws.

97. Hydrofluoric acid can corrode glass, steel, and rock. Due to its corrosive nature, operators mix it with other substances, many of which are also utilized in fracking operations. Hydrofluoric acid is often created on site by mixing hydrochloric acid and ammonium fluoride, and then injecting it into the well.

98. After the acid treatment, the used acid, chemicals, oil, and sediments are pumped out in a process called backflush. This backflush, like frac flowback, is either re-injected or discharged directly to the marine environment.

99. Hydrofluoric acid is one of the most dangerous fluids utilized in any industrial process. Hydrofluoric acid can damage lungs and cause severe burns. It is listed by the National Fire Protection Association in the most dangerous category of hazardous materials, and is recognized on the Superfund list as an "extremely hazardous substance." Above sixty-seven degrees, hydrofluoric acid can form a poisonous vapor cloud that stays near the ground.

100. Historically, well stimulation operations typically utilized concentrations of hydrofluoric acid of less than nine percent. Oil companies have publicly stated that they are now experimenting with higher concentrations of hydrofluoric acid in California, as well as experimenting with higher pressures.

101. This "experimentation" includes acid well stimulation treatments authorized pursuant to individual APDs and APMs challenged in this action.

D. The Environmental Impacts of Offshore Well Stimulation Methods are Poorly Understood.

102. Although rudimentary forms of well stimulation techniques have existed for decades, today's technologies bear little resemblance to past practice, and exacerbate the environmental and public health risks of conventional oil and

gas production. Oil and gas development, whether conventional or utilizing well stimulation, poses inherent environmental and public health risks, but the extent of those risks associated modern well stimulation methods are largely unknown and unstudied.

103. Reflecting the distinct, additive, and unstudied risks of today's forms of well stimulation methods, a recent lease sale in California issued by another component agency of DOI—Bureau of Land Management ("BLM")—was found unlawful and enjoined due to the agency's failure to adequately specifically analyze the impacts from well stimulation activities. *Ctr. for Biological Diversity v. Bureau of Land Mgmt.*, 937 F. Supp. 2d 1140, 1157 (N.D. Cal. 2013) ("The evidence before BLM showed that the scale of fracking in shale-area drilling today involves risks and concerns that were not addressed by the [prior programmatic environmental analyses] of oil and drilling development in the area. Because the [prior analysis] does not address these concerns that are specific to these 'new and significant environmental impacts,' further environmental analysis was necessary.").

104. Similar to BLM, Defendants BSEE and BOEM have not prepared any prior environmental analysis of the potential environmental and public health risks and impacts associated with the use of modern well stimulation techniques off the California coastline.

105. While not having any direct legal applicability over this federal lawsuit, in 2013 the California legislature for the first time specifically addressed the use of modern well stimulation techniques, including acid well stimulation and hydraulic fracturing. S.B. 4, 2013–2014 Leg. Sess. (Cal. 2013).

106. S.B. 4 defines the term "well stimulation treatment" to "mean[] any treatment of a well designed to enhance oil and gas production or recovery by increasing the permeability of the formation," and states that "[w]ell stimulation

treatments include, but are not limited to, hydraulic fracturing treatments and acid well stimulation treatments." S.B. 4, Section 1, Article 3, Section 3157.

107. "Acid well stimulation treatment," in turn, "means a well stimulation treatment that uses, in whole or in part, the application of one or more acids to the well or underground geologic formation. The acid well stimulation treatment may be at any applied pressure and may be used in combination with hydraulic fracturing treatments or other well stimulation treatments. Acid well stimulation treatments include acid matrix stimulation treatments and acid fracturing treatments. Acid matrix stimulation treatments are acid treatments conducted at pressures lower than the applied pressure necessary to fracture the underground geologic formation." S.B. 4, Section 1, Article 3, Section 3158.

108. In its Findings for S.B. 4, the California Legislature declared that "[i]nsufficient information is available to fully assess the science of the practice of . . . well stimulation treatment technologies in California, including environmental, occupational, and public health hazards and risks." S.B. 4, Section 1(b).

109. In addition, the Legislature found that "[p]roviding transparency and accountability to the public regarding well stimulation treatment treatments . . . is of paramount concern." S.B. 4, Section 1(b).

110. In order to address these Findings, S.B. 4 requires that oil companies may only proceed with permit applications to conduct well stimulation after providing for prior public notification, opportunity for input, and environmental review and mitigation.

111. As described above, the lack of meaningful information and environmental analysis with respect to onshore application of modern well stimulation methods is pronounced. This deficiency is even more extreme in relation to the offshore use of such methods, including acidizing and fracking, which was largely unknown to the public and regulators until little more than a year ago. Clearly, the environmental impacts and public health risks of offshore

fracking and other forms of well stimulation in the Santa Barbara Channel have never been adequately analyzed.

E. Recent APD and APM Approvals of Well Stimulation Offshore California

112. As detailed above, Defendants allow no public notification of, or participation in, their consideration and approval of APDs and APMs in federal waters offshore California. In order to determine the recent extent of APD and APM approvals issued by BSEE, EDC has been submitting periodic FOIA requests for those approvals.

113. With one exception, Plaintiff's claims in this action are limited to APDs and APMs authorizing offshore well stimulation issued within the past eighteen months, as well as APDs which have been issued more than a year ago, but which have been modified by an APM within the past eighteen months. With respect to APMs issued authorizing offshore well stimulation from Platform Gilda, Plaintiff's claims include APMs issued since February 2013.

114. In several instances, operators have applied for and received APDs that defer the description of well completion methods to subsequent APMs.

115. Plaintiff challenge fifty-one individual APDs and APMs approved by BSEE pursuant to categorical exclusions and no NEPA documentation, respectively. These permits authorize well stimulation operations from seven offshore oil platforms, located in different regions of the Santa Barbara Channel, off both the Santa Barbara and Ventura County coastlines. The type and number of well stimulation permits challenged by Plaintiff in this action, organized by offshore Platform, is depicted in the following table:

Offshore Platform	Well Stim. APDs	Well Stim. APMs
Gail	1	2
Gilda	4	11
Harmony	7	13
Heritage	3	2
Hondo	0	4
Irene	4	2
(Total)	19	32

116. The APDs issued by BSEE unlawfully authorizing offshore well stimulation treatments pursuant to categorical exclusions are individually addressed in paragraphs 117–121.

117. Plaintiff challenges the issuance of one APD authorizing offshore well stimulation from Platform Gail. Platform Gail was installed in 1979, is part of the Santa Clara Field/Santa Clara Unit, and is located at 739 feet depth. Platform Gail is currently operated by Venoco, Inc., pursuant to Lease OCS-P-217. The Development and Production Plan ("DPP") for Platform Gail was approved in 1980. The well and corresponding issuance date of this APD is as follows:

i. Well E-29, issued July 25, 2014.

118. Plaintiff challenges the issuance of four APDs authorizing offshore well stimulation from Platform Gilda. Platform Gilda was installed in 1981, is part of the Santa Clara Field/Santa Clara Unit, and is located at 205 feet depth. Platform Gilda is currently operated by Dos Cuadras Offshores Resources, Inc., pursuant to Lease OCS-P-216. The Plan of Development for Platform Gilda was approved in 1980. The wells and corresponding issuance dates of these APDs are as follows:

i. Well S-5, issued June 10, 2013.

ii. Well S-33, issued June 10, 2013.

iii. Well S-71, issued June 10, 2013.

iv. Well S-75, issued June 10, 2013.

119. Plaintiff challenges the issuance of seven APDs authorizing offshore well stimulation from Platform Harmony. Platform Harmony is the largest and deepest platform offshore southern California. Platform Harmony was installed in 1989, is part of the Hondo Field/Santa Ynez Unit, and is located at 1,198 feet depth. Platform Harmony is currently operated by ExxonMobil Corp. pursuant to Lease OCS-P-0190. The DPP for Platform Harmony was prepared in 1982, and updated in 1985 and 1987. The wells and corresponding issuance dates of these APDs are as follows:

i. Well HA-20, issued August 23, 2013.

a. Well HA-20, revised APD issued November 22, 2013.

ii. Well HA-21, issued December 13, 2013.

a. Well HA-21, revised APD issued January 25, 2014.

iii. Well HA-30, issued February 10, 2014.

iv. Well HA-23, issued April 1, 2014.

v. Well HA-28, issued July 15, 2014.

120. Plaintiff challenges the issuance of three APDs authorizing offshore well stimulation from Platform Heritage. Platform Heritage was installed in 1989, is part of the Pescado and Sacate Fields/Santa Ynez Unit, and is located at 1,075 feet depth. Platform Harmony is currently operated by ExxonMobil Corp. pursuant to Lease OCS-P-0182. The DPP for Platform Heritage was approved in 1982. The wells and corresponding issuance dates of these APDs are as follows:

i. Well HE-33, issued April 1, 2013.

a. Well HE-33, revised APD issued June 13, 2013.

b. Well HE-33, revised APD issued July 16, 2013.

121. Plaintiff challenges the issuance of four APDs authorizing offshore well stimulation from Platform Irene. Platform Irene was installed in 1985, is part of the Point Pedernales & Tranquillon Ridge Fields/Point Pedernales Unit, and is located at 242 feet depth. Platform Irene is currently operated by Freeport McMoran Oil & Gas LLC pursuant to Lease OCS-P-0441. The DPP for Platform Irene was approved in 1985. The wells and corresponding issuance dates of these APDs are as follows:

i. Well A-29, issued October 26, 2011.

ii. Well A-31, issued October 17, 2012.

a. Well A-31, revised APD issued November 29, 2012.

iii. Well A-32, issued December 5, 2013.

122. The APMs issued by BSEE unlawfully authorizing offshore well stimulation treatments without any NEPA analysis are individually addressed in paragraphs 123-128.

123. Plaintiff challenges the issuance of two APMs authorizing offshore well stimulation from Platform Gail. The wells and corresponding issuance dates of these APMs are as follows:

i. Well E-4, issued February 4, 2014;

a. Well E-4, revised APM issued March 20, 2014

124. Plaintiff challenges the issuance of eleven APMs authorizing offshore well stimulation from Platform Gilda. The wells and corresponding issuance dates of these APMs are as follows:

i. Well S-3, issued February 27, 2013.

ii. Well S-39, issued February 27, 2013.

iii. Well S-35, issued March 13, 2013.

iv. Well S-87, issued March 13, 2013.

v. Well S-5, issued June 18, 2013 (hydraulic fracturing).

vi. Well S-33, issued June 18, 2013 (hydraulic fracturing).

vii. Well S-71, issued June 18, 2013 (hydraulic fracturing).

viii. Well S-75, issued June 18, 2013 (hydraulic fracturing).

ix. Well S-7, issued December 2, 2013.

x. Well S-27, issued April 4, 2014.

xi. Well S-60, issued June 10, 2014.

125. Plaintiff challenges the issuance of thirteen APMs authorizing offshore well stimulation from Platform Harmony. The wells and corresponding issuance dates of these APMs are as follows:

i. HA-14, issued May 31, 2013.

ii. HA-25, issued May 31, 2013.

a. Revised APM for HA-25, issued July 12, 2013.

b. Revised APM for HA-25, issued August 28, 2013.

iii. HA-26, issued November 7, 2013.

iv. HA-20, issued December 3, 2013.

a. Revised APM for HA-20, issued March 18, 2014.

v. HA-21, issued February 5, 2014,

a. Revised APM for HA-21, issued April 17, 2014.

b. Revised APM for HA-21, issued May 22, 2014.

c. Revised APM for HA-21, issued June 20, 2014.

vi. HA-30, issued March 25, 2014.

a. Revised APM for HA-30, issued April 14, 2014.

126. Plaintiff challenges the issuance of two APMs authorizing offshore well stimulation from Platform Heritage. The wells and corresponding issuance dates of these APMs are as follows:

i. HE-33, issued August 1, 2013

a. Revised APM for HA-33, issued August 15, 2013.

127. Plaintiff challenges the issuance of four APMs authorizing offshore well stimulation from Platform Hondo. Platform Hondo was installed in 1976, is

part of the Pescado and Sacate Fields/Santa Ynez Unit, and is located at 154 feet depth. Platform Hondo is currently operated by ExxonMobil Corp. pursuant to Lease OCS-P-0188. The DPP for Platform Hondo was approved in 1982. The wells and corresponding issuance dates of these APMs are as follows:

i. Well H-6, issued January 13, 2014.

ii. Well H-40, issued February 7, 2014.

iii. Well H-24, issued February 20, 2014.

iv. Well H-39, issued February 20, 2014.

128. Plaintiff challenges the issuance of two APMs authorizing offshore well stimulation from Platform Irene. The wells and corresponding issuance dates of these APMs are as follows:

i. Well A-29, issued September 11, 2013.

ii. Well A-31, issued June 6, 2013.

129. BSEE has not prepared any environmental review for any of these APDs and APMs more detailed than a categorical exclusion. It has approved all of these APDs and APMs without any prior notice or opportunity for public participation.

130. In approving the APDs challenged in this action, BSEE has relied upon the categorical exclusion in the DOI Departmental Manual which provides for an exclusion for "[a]pproval of an Application for Permit to Drill (APD) an offshore oil and gas exploration or development well, when said well and appropriate mitigation measures are described in an approved exploration plan, development plan, production plan, or Development Operations Coordination Document." 516 DM 15.4(12).

131. As detailed above, the DPPs governing development and production operations from the offshore Platforms at issue in this action are several decades old. None of these DPPs provide a detailed analysis of offshore well stimulation methods including acid well stimulation and hydraulic fracturing. Defendants have

not prepared any prior NEPA analysis of offshore well stimulation methods including acid well stimulation and hydraulic fracturing. Even if these DPPs did provide detailed analysis of offshore well stimulation, that analysis would be several decades old, and therefore outdated and insufficient to address the risks and impacts of well stimulation methods as they are utilized today.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
Failure to Provide for Public Participation

132. Paragraphs 1 through 131 are fully incorporated into this paragraph.

133. NEPA requires that federal agencies, such as BSEE, involve the public in preparing and considering environmental documents that implement the Act. 40 C.F.R. § 1506.6 (1978); *id.* § 1506.6(b)(1) (requiring federal agencies to "[p]rovide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected").

134. The CEQ regulations further direct federal agencies to "insure that environmental information is available to public officials and citizens before decisions are made," and mandate that "public scrutiny [is] essential to implementing NEPA." 40 C.F.R. § 1500.1(b) (1978).

135. The Ninth Circuit has held that a "complete failure to involve or even inform the public" about the agency's preparation of a NEPA document violates the statute's public participation requirements. *Citizens for Better Forestry v. U.S. Dep't of Agric.*, 341 F.3d 961, 970 (9th Cir. 2003); *Brodsky v. Nuclear Regulatory Comm'n*, 704 F.3d 113, 122 (2d Cir. 2013) ("The record before us fails to provide any agency explanation for why *no* public participation was deemed practicable or appropriate with respect to the challenged exemption.") (emphasis in original).

136. According to the records provided by BSEE in response to these FOIA requests, BSEE routinely issues APDs and APMs to oil and gas operators in federal waters offshore California authorizing well stimulation methods including acid well stimulation and hydraulic fracturing. This action challenges the approval of fifty-one specific APDs and APMs authorizing either acid well stimulation or hydraulic fracturing. BSEE has issued all of these individual well approvals without any form of public notice or opportunity for public participation.

137. As a consequence of BSEE's failure to provide for any public participation in its approval of the APDs and APMs at issue in this action, EDC and other members of the public did not have any opportunity to obtain information about and provide input prior to approval of the APDs and APMs.

138. BSEE's failure to provide for any public participation in relation to its approval of the fifty-one APDs and APMs authorizing well stimulation methods including acid well stimulation and hydraulic fracturing in federal waters off California's coast violates NEPA and the CEQ regulations. The decisions are therefore arbitrary and capricious, an abuse of discretion, not in accordance with law, and without observance of procedure required by law, and is subject to judicial review pursuant to 5 U.S.C. §§ 702–704.

SECOND CLAIM FOR RELIEF
Unlawful Reliance on Categorical Exclusions Despite Evidence of Significant Individual and Cumulative Environmental Effects

139. Paragraphs 1 through 138 are fully incorporated into this paragraph.

140. Pursuant to NEPA regulations, categorical exclusions only cover actions which "do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations . . ." 40 C.F.R. § 1508.4 (1978). Accordingly, BSEE may only grant categorical

exclusions when it concludes that there will be no "significant effect on the human environment" from the proposed agency action. *Id*.

141. In violation of NEPA and its implementing regulations, BSEE has granted nineteen APDs authorizing offshore well stimulation pursuant to categorical exclusions despite their potential environmental impacts and lack of analysis of those impacts, and without any explanation of how the authorized well stimulation will not individually or cumulatively have a significant effect on the environment.

142. An agency must provide a reasoned explanation for its reliance on categorical exclusions. *California v. Norton*, 311 F.3d at 1176 ("It is difficult for a reviewing court to determine if the application of a [categorical] exclusion is arbitrary and capricious where there is no contemporaneous documentation to show that the agency considered the environmental consequences of its action and decided to apply a categorical exclusion to the facts of a particular decision."); *Jones v. Gordon*, 792 F.2d 821, 828–829 (9th Cir. 1986) ("An agency cannot . . . avoid its statutory responsibilities under NEPA merely by asserting that an activity it wishes to pursue will have an insignificant effect on the environment . . . . [T]he Service, in issuing the permit, provided no reasoned explanation—indeed, no explanation at all—of how these conditions would prevent application of an exception to the categorical exclusions.") (citation omitted).

143. BSEE's decision to approve the nineteen APDs despite evidence that such approvals may result in significant individual and cumulative environmental effects violates NEPA and the CEQ regulations. In addition, BSEE failed to provide a reasoned decision for its action or show that it has taken a hard look at the potential environmental consequences. The decisions are therefore arbitrary and capricious, an abuse of discretion, not in accordance with law, and without observance of procedure required by law, and is subject to judicial review pursuant to 5 U.S.C. §§ 702–704.

THIRD CLAIM FOR RELIEF
Unlawful Reliance on Categorical Exclusions
Despite Extraordinary Circumstances

144. Paragraphs 1 through 143 are fully incorporated into this paragraph.

145. Even if a proposed action falls within a previously defined category, an agency cannot rely on a categorical exclusion if "extraordinary circumstances" may be present. *See* 40 C.F.R. § 1508.4 (1978) ("Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.").

146. BSEE has failed to explain how "extraordinary circumstances," as defined in CEQ and DOI regulations, do not preclude the application of categorical exclusions to the nineteen APDs. The offshore drilling operations in general, and offshore well stimulation methods in particular, permitted under these actions trigger several of the extraordinary circumstances outlined in both regulation and policy, including: potential "significant impacts on public health or safety," *see* 43 C.F.R. §46.215(a) (2008); potential "significant impacts on . . . natural resources and unique geographic characteristics" in the Santa Barbara Channel, *see id*. §46.215(b); "highly controversial environmental effects . . . ," *see id*. §46.215(c); "highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks," *see id*. §46.215(d); "a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects" *see id.* §46.215(f); and potential "significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species or have significant impacts on designated Critical Habitat for these species," *see id.* §46.215(h). Finally, approval of offshore fracking and other forms of well stimulation "[e]stablish[es] a precedent for future action or represent[s] a decision in principle about future actions with potentially significant environmental effects." *See id.* §46.215(e).

147. The Ninth Circuit Court of Appeals has expressly recognized the presence of such extraordinary circumstances in relation to OCS oil and gas production offshore California. *Norton*, 311 F.3d at 1176–1177 (finding substantial evidence of extraordinary circumstances including the potential adverse impacts on threatened and endangered species including the southern sea otter; the potential adverse effects on ecologically significant or critical areas including the Channel Islands National Marine Sanctuary; and the existence of highly controversial environmental effects of offshore oil drilling); *id*. at 1177 ("That there has been continuous and significant public controversy over the environmental effects of offshore oil activities in California for the past thirty years, and that there is significant public controversy over these lease extensions in particular is beyond debate."). These "extraordinary circumstances" are equally, if not more, applicable today to offshore oil drilling and the use of fracking, acidizing, and other well stimulation methods in particular.

148. BSEE's decision to approve the nineteen APDs despite evidence of extraordinary circumstances violates NEPA and the CEQ regulations. In addition, BSEE failed to provide a reasoned decision for its actions or show that it has taken a hard look at the potential environmental consequences. The decisions are therefore arbitrary and capricious, an abuse of discretion, not in accordance with law, and without observance of procedure required by law, and is subject to judicial review pursuant to 5 U.S.C. §§ 702–704.

FOURTH CLAIM FOR RELIEF
Unlawful Reliance on Categorical Exclusions to Approve APDs Despite Lack of Applicability

149. Paragraphs 1 through 148 are fully incorporated into this paragraph.

150. In approving the nineteen APDs, BSEE has relied upon the categorical exclusion for the "Approval of an Application for Permit to Drill

(APD) an offshore oil and gas exploration or development well." 516 DM 15.4 (12).

151. This categorical exclusion, by its plain language, only applies "when said well and appropriate mitigation measures are described in an approved exploration plan, development plan, production plan, or Development Operations Coordination Document." 516 DM 15.4 (12).

152. BSEE's reliance on this categorical exclusion is unlawful because the drilling authorized under the APDs includes offshore well stimulation methods including acid well stimulation and hydraulic fracturing that are not described in the DPPs (and older Plans of Development) governing the offshore oil platforms at issue in this action.

153. The DPPs are devoid of any analysis of offshore well stimulation methods, and do not contain mitigation that addresses the impacts of the offshore well stimulation methods authorized under the APDs. Approval of the APDs falls outside the scope of the relied-upon categorical exclusion.

154. BSEE's approval of APDs pursuant to categorical exclusion 15.4 of the Departmental Manual despite substantial evidence that such approvals do not meet the plain language of that categorical exclusion violates NEPA and the CEQ regulations. The decisions are therefore arbitrary and capricious, an abuse of discretion, not in accordance with law, and without observance of procedure required by law, and is subject to judicial review pursuant to 5 U.S.C. §§ 702–704

FIFTH CLAIM FOR RELIEF
Failure to Conduct Any NEPA Analysis for APMs

155. Paragraphs 1 through 154 are fully incorporated into this paragraph.

156. BSEE approved the thirty-two APMs at issue in this action without conducting any prior NEPA analysis. These APMs authorized offshore well stimulation methods including acid well stimulation and hydraulic fracturing.

157. BSEE's approval of APMs without any NEPA analysis whatsoever violates NEPA and the CEQ regulations. The decisions are therefore arbitrary and capricious, an abuse of discretion, not in accordance with law, and without observance of procedure required by law, and is subject to judicial review pursuant to 5 U.S.C. §§ 702-704.

SIXTH CLAIM FOR RELIEF
Unlawful Reliance on Categorical Exclusions for APMs

158. Paragraphs 1 through 157 are fully incorporated into this paragraph.

159. To the extent Defendants allege that the thirty-two APMs at issue in this action were issued pursuant to categorical exclusions authorizing the underlying APD, such reliance on categorical exclusions is unlawful and in violation of NEPA and the CEQ regulations, for the same reasons articulated in claims two through four with regards to the issuance of APDs. The decisions are therefore arbitrary and capricious, an abuse of discretion, not in accordance with law, and without observance of procedure required by law, and are subject to judicial review pursuant to 5 U.S.C. §§ 702–704.

RELIEF REQUESTED

For the foregoing reasons, Plaintiff respectfully requests that the Court:

A. Declare that BSEE's failure to provide opportunity for public participation in its approval of the fifty-one APDs and APMs at issue in this action violates NEPA and its implementing regulations;

B. Declare that BSEE's approval of the 19 APDs at issue in this action pursuant to categorical exclusions violates NEPA and its implementing regulations and is unlawful on the following bases:

   a. Improper reliance on categorical exclusions despite evidence of significant individual and cumulative environmental impacts;

b. Improper reliance on categorical exclusions despite evidence of extraordinary circumstances;

c. Improper reliance on categorical exclusions for APDs despite lack of applicability;

C. Declare that BSEE's approval of the 32 APMs at issue in this action without conducting any prior NEPA analysis, or in the alternative, in reliance upon categorical exclusions, violates NEPA and its implementing regulations;

D. Enjoin Defendants from further implementing the APDs and APMs for each and every one of the 51 approvals at issue in this action, as well as all pending and future APDs and APMs authorizing offshore well stimulation, until and unless Defendant BSEE complies with NEPA and all other applicable laws; and

E. Award Plaintiff its reasonable costs of litigation, including reasonable attorneys' fees and costs, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, or other authority; and

F. Grant such additional relief as the Court deems just and proper.

Respectfully submitted this 3rd day of December, 2014

/s/

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