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9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION

13
14 **STATE OF CALIFORNIA, by and**
15 **through GAVIN NEWSOM,**
16 **Governor, XAVIER BECERRA,**
17 **Attorney General, the CALIFORNIA**
18 **AIR RESOURCES BOARD, the**
19 **CALIFORNIA DEPARTMENT OF**
20 **FISH AND WILDLIFE, and the**
21 **CALIFORNIA DEPARTMENT OF**
22 **WATER RESOURCES,**

23 Plaintiff,

24 v.

25 **JOE STOUT, Acting California State**
26 **Director, United States Bureau of**
27 **Land Management; DAVID**
28 **BERNHARDT, Secretary of the**
Interior, United States Department of
the Interior; UNITED STATES
BUREAU OF LAND
MANAGEMENT; UNITED STATES
DEPARTMENT OF THE
INTERIOR,

Defendants.

Case No. 2:20-cv-504

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

(Administrative Procedure Act, 5
U.S.C. § 551 *et seq.*; National
Environmental Policy Act, 42 U.S.C.
§ 4321 *et seq.*; Federal Land Policy and
Management Act, 43 U.S.C. § 1701 *et
seq.*)

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JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (action arising under the laws of the United States), 28 U.S.C. § 1361 (action to compel officer or agency to perform duty owed to Plaintiff), and 5 U.S.C. §§ 701-706 (Administrative Procedure Act). An actual controversy exists between the parties within the meaning of 28 U.S.C. § 2201(a), and this Court may grant declaratory relief, injunctive relief, and other relief pursuant to 28 U.S.C. §§ 2201-2202 and 5 U.S.C. §§ 705-706.

2. Defendants’ issuance of a Record of Decision on December 12, 2019 for the Bakersfield Field Office Hydraulic Fracturing Final Supplemental Environmental Impact Statement is a final agency action and is therefore judicially reviewable within the meaning of the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 704, 706.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because a substantial part of the events and omissions giving rise to Plaintiff’s claims occurred in this District. This case is also related to two previously-filed actions in this District: *Los Padres ForestWatch v. U.S. Bureau of Land Mgmt.*, No. 2:15-cv-04378 MWF (JEMx) (C.D. Cal., complaint filed June 10, 2015); and *Center for Biological Diversity v. U.S. Bureau of Land Mgmt.*, No. 2:20-cv-00371 DSF (SSx) (C.D. Cal., complaint filed Jan. 14, 2020).

INTRODUCTION

4. The State of California, by and through Gavin Newsom, Governor, Xavier Becerra, Attorney General, the California Air Resources Board, the California Department of Fish and Wildlife, and the California Department of Water Resources (collectively, “California”) brings this action to challenge the Final Supplemental Environmental Impact Statement (“Final SEIS”) and Record of Decision (“ROD”) issued by the United States Bureau of Land Management’s Bakersfield Field Office (“BLM”) to address the environmental and public health

1 consequences of allowing hydraulic fracturing on 400,000 acres of public lands and
2 1.2 million acres of federal mineral estate in eight central California counties (the
3 “Planning Area”). BLM conducted this environmental review to update its
4 resource management plan for the Bakersfield region, which governs the
5 management and use of federal lands and public resources in the Planning Area
6 and, specifically, to address deficiencies in its previous review as found by this
7 Court. However, BLM’s analysis again fails to take a “hard look” at many of the
8 significant impacts associated with hydraulic fracturing or provide sufficient
9 evidence regarding its conclusions, in violation of the National Environmental
10 Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.*

11 5. In particular, the Final SEIS relies on the unfounded assumption that only
12 “zero to four” hydraulic fracturing events will occur in the Planning Area each year,
13 distorting its consideration of environmental impacts and findings of significance.
14 The Final SEIS fails to consider reasonable alternatives to the proposed action,
15 including alternatives that could limit or mitigate the adverse impacts of hydraulic
16 fracturing on the environment and nearby communities. Furthermore, the Final
17 SEIS fails to properly consider many issues, including air and water pollution
18 impacts to disadvantaged communities living near federal oil and gas operations,
19 potential groundwater and surface water contamination from hydraulic fracturing
20 fluids and expanded fossil fuel production, impacts on fish and wildlife species,
21 increased seismic activity, impacts to the California Aqueduct from land
22 subsidence, and impacts from extending the life of wells with declining production.
23 The Final SEIS fails to consider conflicts with state plans and policies, including
24 efforts by California to reduce greenhouse gas emissions and fossil fuel
25 consumption to mitigate the devastating consequences of global climate change.
26 Moreover, BLM failed to provide the public with a meaningful opportunity to
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1 participate in the preparation of the Final SEIS, in violation of the requirements of
2 the Federal Land Policy and Management Act (“FLPMA”), NEPA, and the APA.

3 6. Accordingly, California seeks a declaration that Defendants’ issuance of
4 the Final SEIS and ROD violated NEPA, FLPMA, and the APA, and request that
5 the Court vacate and set aside Defendants’ approvals of the Final SEIS and ROD.
6 California also seeks an injunction requiring Defendants to vacate and set aside
7 their approvals until Defendants comply with applicable law.

8 **PARTIES**

9 7. Plaintiff STATE OF CALIFORNIA brings this action by and through
10 Governor Gavin Newsom, Attorney General Xavier Becerra, the California Air
11 Resources Board, the California Department of Fish and Wildlife, and the
12 California Department of Water Resources.

13 8. Governor Gavin Newsom is the chief executive of the State and is
14 responsible for overseeing the operations of the State and ensuring that its laws are
15 faithfully executed. The Governor is the head of California’s executive branch,
16 which includes state agencies whose injuries are discussed in this Complaint. Cal.
17 Const., art. V, § 1.

18 9. Attorney General Xavier Becerra is the chief law enforcement officer of
19 the State, *id.* § 13, and has the authority to file civil actions in order to protect
20 public rights and interests, including actions to protect the natural resources of the
21 State, Cal. Gov. Code §§ 12600-12612. This challenge is brought in part pursuant
22 to the Attorney General’s independent constitutional, statutory, and common law
23 authority to represent the public interest.

24 10. The California Air Resources Board (“CARB”) is a public agency of the
25 State of California within the California Environmental Protection Agency. The
26 mission of CARB is to promote and protect public health and the welfare and
27 ecological resources of California’s citizens through monitoring and protecting air
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1 quality. CARB's major goals include providing safe, clean air to all Californians,
2 reducing California's greenhouse gas emissions, and providing leadership and
3 innovative approaches to implement air pollution controls. In addition to
4 developing statewide rules, CARB works with local California air districts, many of
5 which regulate oil and gas pollution at the regional or county level.

6 11. The California Department of Fish and Wildlife ("CDFW") is a public
7 agency of the State of California within the California Natural Resources Agency.
8 CDFW is California's Trustee Agency for fish and wildlife resources and holds
9 those resources in trust by statute for all the people of the State. Fish & G. Code,
10 §§ 711.7(a) & 1802; Pub. Resources Code, § 21070; 14 Cal. Code Regs.
11 § 15386(a). CDFW, in its trustee capacity, has jurisdiction over the conservation,
12 protection, and management of fish, wildlife, native plants, and habitat necessary
13 for biologically sustainable populations of those species. Fish & G. Code, § 1802.
14 CDFW is charged by law to provide, as available, biological expertise during public
15 agency environmental review efforts, focusing specifically on projects and related
16 activities that have the potential to adversely affect fish and wildlife resources. *See,*
17 *e.g.*, Fish & G. Code, § 711.4(a). CDFW owns and manages many thousands of
18 acres in fee title in the Planning Area, including approximately ten thousand acres
19 that have split estate federal mineral interests. Many of these CDFW lands,
20 including the 3,100-acre Lokern and 14,900-acre Semitropic Ecological Reserves in
21 Kern County, have been set aside as permanent compensatory habitat mitigation to
22 offset the impacts of past development activities. *See* 14 Cal. Code Regs.
23 §§ 630(b)(74) & (118).

24 12. The California Department of Water Resources ("DWR") is a public
25 agency of the State of California within the California Natural Resources Agency.
26 DWR is responsible for monitoring, conserving, and developing California's water
27 resources, providing public safety, and preventing property damage related to water
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1 resources. DWR manages much of California's water supply, including the State
2 Water Project, which is the nation's largest state-built water conveyance program
3 supplying water to almost 27 million Californians through infrastructure spanning
4 the State. State Water Project facilities, including portions of the California
5 Aqueduct and other appurtenant facilities, are located within the Planning Area.

6 13. California has a strong interest in preventing the adverse environmental
7 and public health impacts from the use of hydraulic fracturing and other well
8 stimulation techniques within the State on federal lands, as well as on privately and
9 State-owned lands with underlying federal mineral estate. These include significant
10 adverse impacts to air quality, water quality, biological resources, cultural
11 resources, geology, soils and mineral resources, land use and planning, public and
12 worker safety, and transportation and traffic.

13 14. California also has a strong interest in preventing and mitigating harms
14 that climate change poses to human health and the environment, including
15 increased heat-related deaths, damaged coastal areas, increased wildfire risk,
16 disrupted ecosystems, more severe weather events, and longer and more frequent
17 droughts. *See Massachusetts v. EPA*, 549 U.S. 497, 521 (2007).

18 15. Furthermore, California has an interest in the use and enjoyment of the
19 State's natural resources, which may be negatively affected by oil and gas
20 production through the destruction or adverse modification of habitat, the disposal of
21 toxic chemicals, or the contamination of water supplies, among other impacts. The
22 Planning Area that is the subject of the Final SEIS includes habitat for many rare
23 and federal or state-listed species, including but not limited to the blunt-nosed
24 leopard lizard, California condor, giant kangaroo rat, Tipton kangaroo rat,
25 southwestern willow flycatcher, least Bell's vireo, San Joaquin kit fox, San Joaquin
26 antelope squirrel, Swainson's hawk, golden eagle, white-tailed kite, burrowing owl,
27 Le Conte's thrasher, and numerous special-status plant species. These endangered
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1 and threatened species, among others in California, are of ecological, educational,
2 historical, recreational, aesthetic, economic, and scientific value to the people of
3 this state, and the conservation, protection, and enhancement of these species and
4 their habitat is of statewide concern in California. Fish & G. Code, § 2051.

5 16. Defendants' action will harm California by increasing the potential for
6 adverse environmental and public health impacts from the use of hydraulic
7 fracturing and other well stimulation techniques, and the resulting increase in oil
8 and gas development, on federal lands within the State. These impacts include
9 increased air pollution, increased greenhouse gas emissions that in turn cause
10 climate change, impacts to surface and groundwater resources, impacts to imperiled
11 and protected species and their habitats, impacts to California's water
12 infrastructure, and induced seismicity from hydraulic fracturing and the disposal of
13 wastewater from such operations.

14 17. California relies on Defendants' compliance with the procedural
15 requirements of NEPA in order to obtain timely and accurate information about
16 activities that may have significant adverse effects on the environment and to
17 meaningfully participate in the decision-making process. Defendants' failure to
18 comply with NEPA adversely affects California by thwarting public participation
19 and by failing to adequately protect the State's environment.

20 18. Therefore, California has suffered legal wrong because of Defendants'
21 actions, has been adversely aggrieved by the approval of the Final SEIS and ROD,
22 and has standing to bring this action.

23 19. Defendant JOE STOUT is the Acting California State Director of the
24 United States Bureau of Land Management, and is sued in his official capacity. Mr.
25 Stout has responsibility for implementing and fulfilling BLM's duties under NEPA,
26 signed the Record of Decision at issue, and thus bears responsibility for the acts
27 complained of in this Complaint.
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1 atmospheric, water resource, and archeological values.” 43 U.S.C. § 1701(a)(8). In
2 developing resource management plans, BLM must “consider present and potential
3 uses of the public lands; . . . the relatively scarcity of the values involved[;] . . .
4 weigh long-term benefits to the public against short-term benefits; [and] provide for
5 compliance with applicable pollution control laws.” *Id.* § 1712(c). Resource
6 management plans are subject to environmental review under NEPA. 43 C.F.R.
7 § 1601.0-6.

8 **II. NATIONAL ENVIRONMENTAL POLICY ACT**

9 25. The National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, is the
10 “basic national charter for the protection of the environment.” 40 C.F.R. § 1500.1.
11 The fundamental purposes of the statute are to ensure that “environmental
12 information is available to public officials and citizens before decisions are made
13 and before actions are taken,” and that “public officials make decisions that are
14 based on understanding of environmental consequences, and take actions that
15 protect, restore, and enhance the environment.” *Id.* § 1500.1(b)-(c).

16 26. To achieve these purposes, NEPA requires the preparation of a detailed
17 environmental impact statement (“EIS”) for any “major federal action significantly
18 affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). In
19 taking a “hard look,” NEPA requires federal agencies to consider the direct,
20 indirect, and cumulative impacts of its proposed action. *Idaho Sporting Cong. v.*
21 *Rittenhouse*, 305 F.3d 957, 973 (9th Cir. 2002); 40 C.F.R. §§ 1508.7, 1508.8(a),
22 (b). Moreover, “an agency may not rely on incorrect assumptions or data.” *Native*
23 *Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 964 (9th Cir. 2005) (citing
24 40 C.F.R. § 1500.1(b)). “The information must be of high quality. Accurate
25 scientific analysis, expert agency comments, and public scrutiny are essential to
26 implementing NEPA.” 40 C.F.R. § 1500.1(b).

1 27. In preparing an EIS, NEPA requires that both the context and the
2 intensity of an action be considered. *Id.* § 1508.27. In evaluating the context,
3 “[s]ignificance varies with the setting of the proposed action” and includes an
4 examination of “the affected region, the affected interests, and the locality.” *Id.* §
5 1508.27(a). Intensity “refers to the severity of impact,” and NEPA’s implementing
6 regulations list ten factors to be considered in evaluating intensity, including “[t]he
7 degree to which the proposed action affects public health or safety,” “[t]he degree
8 to which the effects on the quality of the human environment are likely to be highly
9 controversial,” “[t]he degree to which the possible effects on the human
10 environment are highly uncertain or involve unique or unknown risks,” “[t]he
11 degree to which the action may establish a precedent for future actions with
12 significant effects or represents a decision in principle about a future
13 consideration,” and “[t]he degree to which the action may adversely affect an
14 endangered or threatened species or its habitat that has been determined to be
15 critical under the Endangered Species Act of 1973.” *Id.* § 1508.27(b).

16 28. The Council on Environmental Quality has issued regulations
17 implementing NEPA, which are binding on all federal agencies. 40 C.F.R. Part
18 1500.

19 **III. ADMINISTRATIVE PROCEDURE ACT**

20 29. The Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, governs the
21 procedural requirements for agency decision-making and provides the standard of
22 review for a federal agency’s compliance with NEPA and FLPMA. Under the
23 APA, a “reviewing court shall . . . hold unlawful and set aside” agency action found
24 to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance
25 with law.” 5 U.S.C. § 706. An agency action is arbitrary and capricious under the
26 APA where the agency (i) has relied on factors which Congress has not intended it
27 to consider; (ii) entirely failed to consider an important aspect of the problem;
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1 (iii) offered an explanation for its decision that runs counter to the evidence before
2 the agency; or (iv) is so implausible that it could not be ascribed to a difference of
3 view or the product of agency expertise. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v.*
4 *State Farm Mutual Auto. Ins.*, 463 U.S. 29, 43 (1983).

5 **FACTUAL AND PROCEDURAL BACKGROUND**

6 **I. HYDRAULIC FRACTURING ON FEDERAL LANDS IN CALIFORNIA**

7 30. In recent years, the United States has experienced a boom in oil and gas
8 production through the use of well stimulation treatments such as hydraulic
9 fracturing combined with horizontal drilling. Hydraulic fracturing is a procedure
10 by which oil and gas producers inject water, sand, and certain chemicals at high
11 pressure into tight-rock formations (typically shale) to create fissures in the rock
12 and allow oil and gas to escape for collection in a well. While most of the injection
13 fluid is water, an assortment of chemicals, some of which are known carcinogens or
14 other types of toxins, are added for different purposes such as lubrication of the
15 fracture and minimization of corrosion. Much of the fracturing fluid, along with
16 subsurface fluids, flows back to the surface and is often stored in open, unlined pits
17 or disposed of by subsequent injection into underground wells.

18 31. This technology has become controversial because growing scientific
19 evidence ties hydraulic fracturing and related activities with water and air pollution
20 and a prolonged dependence on fossil fuels. For example, inadequate well casings
21 in the ground can break during operation and allow hydraulic fracturing fluids to
22 escape into groundwater. Air pollution can result from the handling of the fluids,
23 which contain toxic chemicals that could evaporate if stored in open pits.

24 32. In July 2015, the California Geologic Energy Management Division
25 (“CalGEM,” formerly known as the Division of Oil, Gas, and Geothermal
26 Resources, or “DOGGR”) certified an environmental impact report that found well
27 stimulation treatments including hydraulic fracturing, depending on site-specific
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1 conditions and well stimulation intensity, could cause significant and unavoidable
2 impacts to the environment. For example, CalGEM’s analysis found that in Kern
3 County, air emissions from hydraulic fracturing “would occur at levels that could
4 violate an air quality standard or contribute substantially to an existing or projected
5 air quality violation.” CalGEM also found that “[w]ell-stimulation activities could
6 affect endangered, rare, or threatened species of fish, wildlife or plants,” and
7 mitigation would be required to “avoid hazards such as vehicle strikes, nest
8 disturbance, entrapment, collision, electrocution, and hazardous materials.”

9 33. The California Council on Science and Technology also identified
10 several potential impacts from hydraulic fracturing in a July 2015 study, including
11 the release of volatile organic compounds (“VOCs”) from retention ponds and tanks
12 storing well stimulation fluids, and induced seismicity (i.e., earthquakes) from the
13 disposal of wastewater in disposal wells.

14 34. BLM is the agency responsible for overseeing over 245 million acres of
15 federal public lands and 700 million acres of subsurface mineral estate across the
16 United States. In California, BLM oversees 15 million acres of public lands (about
17 15 percent of the Golden State’s total land mass) and 47 million acres of subsurface
18 mineral estate. BLM manages approximately 500 producing oil and gas leases
19 covering more than 190,000 acres and 7,900 producible oil and gas wells. During
20 fiscal year 2018, producers extracted about 9.5 million barrels of oil and 13.9
21 billion cubic feet of natural gas from federal lands in California. California has the
22 sixth highest number of well completions on federal lands of any state. BLM has
23 previously estimated that 90 percent of new wells drilled on federal lands are now
24 being stimulated using hydraulic fracturing.

25 35. More than 95 percent of federal drilling in California occurs in Kern
26 County, much of which is in nonattainment with the 2008 federal 8-hour ozone
27 standard and federal fine particulate matter standards, as well as numerous state
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1 ambient air quality standards. Excess pollution in this part of California—including
2 particulate matter, VOCs, methane (as an ozone precursor), and toxic air pollution
3 from oil and gas operations—significantly increases the rates and risks of asthma,
4 heart disease, lung disease, and cancer. Much of federal oil and gas activities occur
5 in close proximity to California’s most vulnerable communities, who already are
6 disproportionately exposed to pollution and its health effects.

7 36. In addition, California is already experiencing the adverse effects of
8 climate change, which is aggravated by greenhouse gas emissions released through
9 oil and gas extraction. These effects include increased risk of wildfires, reduced
10 average annual snowpack that provides approximately 35 percent of the State’s
11 water supply, increased erosion of beaches and low-lying coastal properties from
12 rising sea levels, and increased formation of ground-level ozone (or smog), which is
13 linked to asthma, heart attacks, and pulmonary problems, especially in children and
14 the elderly. Since 2007, California has witnessed 14 of the 20 most destructive
15 wildfires in state history.

16 37. California law establishes targets to reduce the State’s greenhouse gas
17 emissions to 1990 levels by 2020 and 40 percent below 1990 levels by 2030, and to
18 achieve 100 percent of electricity sales from renewable energy and zero-carbon
19 resources by 2045. California has also set a goal of reaching 5 million zero-carbon
20 emission vehicles on the State’s roads by 2030, a 15-fold increase from current
21 levels.

22 38. On November 19, 2019, Governor Gavin Newsom announced a series of
23 initiatives to safeguard public health and the environment from hydraulic fracturing
24 and other well stimulation techniques to advance California’s goal to become
25 carbon-neutral by 2045, and to manage the decline of oil production and
26 consumption in the State. In particular, California instituted a scientific review, to
27 be conducted by independent experts from the Lawrence Livermore National
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1 Laboratory, of pending permit applications for hydraulic fracturing and other well
2 stimulation techniques to ensure that the State's technical standards for public
3 health, safety, and environmental protection are being met.

4 39. The Governor also imposed a moratorium on new extraction wells that
5 use a high-pressure cyclic steaming process to break oil formations below the
6 ground to determine whether the process can be done safely and in compliance with
7 state regulations. In addition, the Governor announced a process to strengthen
8 public health and safety protections near oil and gas extraction facilities, including
9 by evaluating a prohibition on oil and gas activities close to homes, schools,
10 hospitals, and parks.

11 **II. BLM'S NEPA REVIEW FOR THE BAKERSFIELD RESOURCE** 12 **MANAGEMENT PLAN**

13 40. The BLM Bakersfield Field Office manages the Planning Area, which
14 contains 400,000 acres of public lands and an additional 1.2 million acres of federal
15 mineral estate in the counties of Fresno, Kern, Kings, Madera, San Luis Obispo,
16 Santa Barbara, Tulare, and Ventura Counties.

17 41. On March 4, 2008, BLM's Bakersfield Field Office published a notice of
18 intent to prepare a new resource management plan for the Planning Area. This
19 planning effort sought to update two existing plans from 1984 and 1997.

20 42. On August 31, 2012, BLM issued a Final EIS purporting to evaluate the
21 environmental impacts of its proposed resource management plan for the Planning
22 Area. Under the preferred alternative (Alternative B), 1,011,470 acres of federal
23 mineral estate, or about 85 percent of the Planning Area, would be open to oil and
24 gas leasing. BLM also completed a Reasonably Foreseeable Development Scenario
25 that projected the exploration, drilling, and production activities that would likely
26 occur in the next 10 years. BLM estimated that 100 to 400 wells will be drilled on
27 federal mineral estate each year, including 90 to 360 wells on existing leases and 10
28 to 40 wells on new leases. BLM estimated that 25 percent of these wells would be

1 hydraulically fractured. BLM approved the record of decision for the resource
2 management plan on December 22, 2014.

3 43. On June 10, 2015, the Center for Biological Diversity and Los Padres
4 ForestWatch challenged that approval in this Court. *Los Padres ForestWatch v.*
5 *U.S. Bureau of Land Mgmt.*, Case No. 2:15-cv-04378 MWF (JEMx) (C.D. Cal.,
6 complaint filed June 10, 2015).

7 44. On September 6, 2016, this Court ruled on the parties' cross-motions for
8 summary judgment, finding that BLM violated NEPA by failing to analyze the
9 impacts of hydraulic fracturing in the Planning Area and required BLM to
10 supplement its analysis. *ForestWatch*, 2016 WL 5172009, at *10-13 (C.D. Cal.
11 Sept. 6, 2016).

12 45. On May 3, 2017, this Court approved a settlement agreement in which
13 BLM agreed to prepare appropriate NEPA documentation to address the
14 deficiencies identified by the Court, and to issue a new decision document that
15 would amend or supersede the 2014 resource management plan, if appropriate.

16 46. On August 8, 2018, BLM issued a notice of intent to prepare a Draft
17 Supplemental EIS and potential resource management plan amendment for the
18 Planning Area, and requested scoping comments. 83 Fed. Reg. 39,116. Among
19 other commenters, six California state agencies—the Department of Conservation,
20 CDFW, DWR, Department of Parks and Recreation, CARB, and the State Water
21 Resources Control Board—submitted a joint letter expressing concerns with the
22 potential significant adverse effects of this activity and its impact on the State's
23 ability to meet its fossil fuel and greenhouse gas emissions reduction goals. In a
24 cover letter, then-Governor Jerry Brown wrote that BLM "should abandon this
25 effort and not pursue opening any new areas for oil and gas leases in this state,"
26 given that such an approach is "contrary to the course California has set to combat
27 climate change and to meet its share of the goals outlined in the Paris Agreement."
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1 47. On April 26, 2019, BLM issued a Draft SEIS “to analyze the
2 environmental effects of the use of hydraulic fracturing technology in oil and gas
3 development on new leases within the Planning Area and to determine whether
4 changes are needed to the fluid minerals decisions in the 2014 RMP.” BLM
5 “carried-forward” the prior alternatives into its Draft SEIS, including Alternative B,
6 which would open 1,011,470 acres of federal mineral estate to oil and gas leasing
7 (the “Proposed Action”). For its updated analysis, BLM assumed that 40 wells on
8 new leases would be drilled each year, and that “zero to four” of these wells would
9 be hydraulically fractured. Given this low estimate, BLM concluded that no
10 significant impacts would result, including impacts related to greenhouse gas
11 emissions, air quality, water resources, biological resources, and induced seismic
12 events. Because BLM did not find any “notable increase in total impacts” resulting
13 from the Proposed Action, it also determined that an amendment to the 2014
14 resource management plan was “unnecessary.”

15 48. On June 6, 2019, CDFW submitted comments on the Draft SEIS,
16 followed by the Attorney General, CARB, and DWR on June 10, 2019. As
17 discussed in the Attorney General’s comments, the Draft SEIS improperly relied on
18 the unfounded assumption that only “zero to four” hydraulic fracturing events will
19 occur in the Planning Area each year, distorting its consideration of environmental
20 impacts and its findings of significance; failed to consider reasonable alternatives to
21 the Proposed Action, including alternatives that could limit or mitigate the adverse
22 impacts of hydraulic fracturing on the environment and nearby communities; and
23 failed to properly consider many impacts, including potential groundwater
24 contamination from hydraulic fracturing fluids, increased seismic activity, other
25 types of well stimulation treatments and enhanced oil recovery techniques, and the
26 fact that hydraulic fracturing would extend the life of wells with declining
27 production. In addition, BLM’s analysis of impacts from increased air pollution
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1 and groundwater contamination on disadvantaged communities living near federal
2 oil and gas operations was particularly deficient. Furthermore, the Draft SEIS
3 failed to consider conflicts with state plans and policies, including efforts by
4 California to reduce greenhouse gas emissions and fossil fuel consumption to
5 mitigate the devastating consequences of global climate change. Finally, BLM
6 failed to provide the public with a meaningful opportunity to participate in the
7 preparation of this Draft SEIS by failing to provide for a full 90-day comment
8 period. For these reasons, the Attorney General recommended that BLM withdraw
9 its Draft SEIS and prepare a new analysis that fully considers the environmental
10 impacts of opening over one million acres of public lands in California to oil and
11 gas leasing.

12 49. CARB also commented that the Draft SEIS significantly underestimated
13 the amount of hydraulic fracturing that will occur by relying on the unfounded
14 assumption that only “zero to four” hydraulic fracturing events will annually occur.
15 In addition, the Draft SEIS failed to consider impacts of toxic air contaminants
16 from hydraulic fracturing equipment and ponds storing produced water. The Draft
17 SEIS failed to analyze the Proposed Action’s air quality impacts on residents in
18 nearby environmental justice communities, who already are disproportionately
19 affected by pollution. Furthermore, BLM deprived the public of a meaningful
20 opportunity to comment on the Draft EIS by failing to provide for a 90-day
21 comment period and by failing to publish documents supporting its assumption that
22 zero to four wells per year will be hydraulically fractured. CARB recommended
23 that BLM revise and republish the Draft SEIS to correct for these deficiencies.

24 50. CDFW pointed out that the Draft SEIS failed to address the Proposed
25 Action’s impacts to lands that were previously set aside for habitat protection to
26 offset impacts from past land developments; failed to consider the significant
27 impacts of hydraulic fracturing to special status species, including but not limited to
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1 the blunt-nosed leopard lizard, San Joaquin kit fox, San Joaquin antelope squirrel,
2 Tipton kangaroo rat, and giant kangaroo rat; and failed to consider impacts to
3 streams from the Proposed Action's diversion or obstruction of water flow. In
4 addition, the Draft SEIS failed to provide for adequate mitigation measures to
5 address these impacts, so CDFW detailed feasible measures to avoid or minimize
6 these impacts, including: survey protocols to avoid the taking of protected species,
7 implementing no-disturbance buffers to minimize ground disturbance, conducting
8 habitat surveys in the Planning Area to proactively protect suitable habitats,
9 ensuring the restoration of normal water flow immediately after disruptive activities
10 to maintain the integrity of streams, and habitat compensation to account for
11 impacts to lands previously set aside for protection. CDFW recommended that
12 BLM adopt these mitigation measures because existing measures in the 2012 Final
13 EIS were insufficient for protecting species and habitats.

14 51. Finally, as discussed in DWR's comments, the Draft SEIS unreasonably
15 limited its analysis to the immediate impacts from hydraulic fracturing, and failed
16 to analyze foreseeable impacts from the expansion of fossil fuel production driven
17 by hydraulic fracturing. In particular, the Draft SEIS failed to consider impacts
18 from an expansion of fossil fuel production such as land subsidence, alteration of
19 surface water topography, damage to state water delivery infrastructure, and
20 drinking water contamination. In addition, BLM failed to consider the Proposed
21 Action's conflicts with requirements of the California Sustainable Groundwater
22 Management Act, Cal. Water Code § 10720 *et seq.* DWR recommended that BLM
23 address these deficiencies in its Final SEIS.

24 52. On November 1, 2019, BLM issued a notice of availability of the Final
25 SEIS. 84 Fed. Reg. 58,739 (Nov. 1, 2019). Other than providing some additional
26 discussion on a few topics, the Final SEIS did not materially differ from the Draft
27 SEIS.
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1 53. In its notice of availability, BLM stated that “no amendment to the 2014
2 RMP is necessary” because the Final SEIS “did not show a notable increase in total
3 impacts,” “[n]o conflicts were found between the estimated impacts of hydraulic
4 fracturing and the resource or program management goals and objectives stated in
5 the 2014 RMP,” and “[t]he range of alternatives has not changed between the
6 approved 2014 RMP and its 2012 Final EIS and the Final Supplemental EIS. *Id.* at
7 58,739. Consequently, BLM stated that “[b]ecause there are no changes to the
8 RMP, no protest period is required and none is given.” *Id.*

9 54. On December 12, 2019, BLM issued its Record of Decision for the Final
10 SEIS.

11 **FIRST CAUSE OF ACTION**

12 **(Violations of NEPA and the APA:**

13 **Failure to Properly Consider Environmental Impacts**

14 **42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1500.1, 1508.9; 5 U.S.C. § 706)**

15 55. Paragraphs 1 through 54 are re-alleged and incorporated herein by
16 reference.

17 56. “[T]he fundamental purpose of NEPA . . . is to ensure that federal
18 agencies take a ‘hard look’ at the environmental consequences of their actions . . .
19 early enough so that it can serve as an important contribution to the decision
20 making process.” *California v. Norton*, 311 F.3d 1162, 1175 (9th Cir. 2002).
21 When preparing an EIS, an agency must disclose and consider the direct, indirect,
22 and cumulative impacts of its decision on the environment. 40 C.F.R. §§ 1502.16,
23 1508.7, 1508.8, 1508.25(c).

24 57. “To take the required ‘hard look’ at a proposed project’s effects, an
25 agency may not rely on incorrect assumptions or data.” *Native Ecosystems*
26 *Council*, 418 F.3d at 964. An agency must provide sufficient evidence and analysis
27 to support its conclusions. *See* 40 C.F.R. § 1502.1 (requiring that EIS “shall be
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1 supported by evidence that the agency has made the necessary environmental
2 analyses”). Moreover, “[t]he information must be of high quality. Accurate
3 scientific analysis, expert agency comments, and public scrutiny are essential to
4 implementing NEPA.” *Id.* § 1500.1(b).

5 58. Here, the Final SEIS fails to take the requisite “hard look” at the
6 environmental and public health impacts of hydraulic fracturing and other
7 unconventional forms of well stimulation, or to support its conclusions with
8 adequate analysis. For example, the Final SEIS ignores potential impacts to
9 groundwater from the management and disposal of flow back fluids in unlined
10 ponds and from direct groundwater injection; fails to adequately analyze and
11 disclose air pollution impacts, including impacts of toxic air contaminants from
12 hydraulic fracturing equipment and ponds storing produced water, and cumulative
13 impacts from other oil and gas development activities; fails to address foreseeable
14 impacts such as land subsidence and water contamination from an expansion of
15 fossil fuel production caused by hydraulic fracturing; fails to consider or mitigate
16 impacts to several special status species or to lands and streams supporting habitats;
17 fails to adequately consider recent science connecting hydraulic fracturing and the
18 underground injection of waste fluids to induced seismicity; and disregards impacts
19 from other types of well stimulation treatments and enhanced oil recovery
20 techniques, among other deficiencies.

21 59. The Final SEIS also fails to consider how the Proposed Action will
22 impact low-income communities and communities of color from increased air
23 pollution and groundwater contamination, despite the fact that the Planning Area is
24 home to several “disadvantaged communities” under California law.

25 60. Moreover, rather than providing the sufficient analysis or evidence
26 required by NEPA to take a “hard look” at the impacts of its Proposed Action, the
27 Final SEIS is based on the unfounded assumption that only “zero to four” hydraulic
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1 fracturing events will occur in the Planning Area each year. This assumption is
2 contrary to the data before the agency and greatly distorted BLM's consideration of
3 environmental impacts and significance factors. While BLM claims that it
4 "conducted an analysis of existing data to determine" the estimated number of
5 hydraulic fracturing events, it fails to provide any of the underlying data or analysis
6 that would support this crucial assumption.

7 61. Defendants' failure to take the required "hard look" at the impacts of the
8 Proposed Action in the Final SEIS is arbitrary and capricious, an abuse of
9 discretion, and contrary to the requirements of NEPA and the APA.

10 **SECOND CAUSE OF ACTION**

11 **(Violations of NEPA and the APA:**

12 **Failure to Consider Reasonable Alternatives**

13 **42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1508.9; 5 U.S.C. § 706)**

14 62. Paragraphs 1 through 61 are re-alleged and incorporated herein by
15 reference.

16 63. NEPA requires that Defendants provide a "detailed statement" regarding
17 the "alternatives to the proposed action." 42 U.S.C. § 4332(2)(C); *see* 40 C.F.R.
18 § 1502.14(a). The requirement to consider reasonable alternatives "lies at the heart
19 of any NEPA analysis." *California ex rel. Lockyer v. U.S. Dept. of Agric.*, 459 F.
20 Supp. 2d 874, 905 (N.D. Cal. 2006). Agencies must "rigorously explore and
21 objectively evaluate all reasonable alternatives" to a proposed action, and briefly
22 discuss the reasons for eliminating any alternatives from detailed study. 40 C.F.R.
23 § 1502.14(a). "The existence of a viable but unexamined alternative renders" an
24 EIS inadequate. *W. Watersheds Project v. Abbey*, 719 F.3d 1035, 1050 (9th Cir.
25 2013) (internal quotations and citations omitted).

26 64. Here, the Final SEIS considered the same alternatives that BLM
27 previously evaluated in 2014, including "No Action" (Alternative A), the Proposed
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1 Action to open 1,011,470 acres to leasing (Alternative B), and three additional
2 actions (Alternatives C through E) that are similar to the Proposed Action but differ
3 slightly in terms of their emphasis on conservation, livestock grazing, and natural
4 resource production. However, BLM failed to consider any alternatives related to
5 the purpose of the Final SEIS to analyze the environmental impacts of hydraulic
6 fracturing in the Planning Area, including alternatives suggested by California and
7 other commenters. These reasonable alternatives included closing more public
8 lands to mineral leasing; placing ecologically sensitive areas off-limits to hydraulic
9 fracturing; prohibiting leasing in areas with low or no potential for oil and gas
10 development; limiting oil and gas leasing near communities; and limiting the
11 number of hydraulic fracturing operations in a given year.

12 65. Defendants' failure to consider reasonable alternatives to the Proposed
13 Action in the Final SEIS is arbitrary and capricious, an abuse of discretion, and
14 contrary to the requirements of NEPA and the APA.

15 **THIRD CAUSE OF ACTION**

16 **(Violations of NEPA and the APA:**

17 **Failure to Identify and Discuss Feasible Mitigation Measures**

18 **40 C.F.R. §§ 1508.20, 1502.14(f), 1502.16(h); 5 U.S.C. § 706)**

19 66. Paragraphs 1 through 65 are re-alleged and incorporated herein by
20 reference.

21 67. NEPA requires that Defendants identify feasible mitigation measures for
22 any adverse environmental impact and provide detailed discussions of such
23 measures. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351-52
24 (1989); 40 C.F.R. §§ 1502.14(f), 1502.16(h). Mitigation includes avoiding,
25 minimizing, rectifying, reducing over time, or compensating for an impact. 40
26 C.F.R. § 1508.20. Omitting a thorough discussion of feasible mitigation measures
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1 undermines the action-forcing goals of NEPA. *City of Carmel-By-The-Sea v. U.S.*
2 *Dep't of Transp.*, 125 F.3d 1142, 1154 (9th Cir. 1997).

3 68. Here, the Final SEIS fails to identify and discuss feasible mitigation
4 measures for the Proposed Action's impacts on special status species and habitats.
5 These measures include: state-recommended survey protocols to avoid the taking of
6 protected species, implementing no-disturbance buffers to minimize ground
7 disturbance, conducting habitat surveys in the Planning Area to proactively protect
8 suitable habitats, ensuring the restoration of normal water flow immediately after
9 disruptive activities to maintain the integrity of streams, and habitat compensation
10 to account for impacts to lands previously set aside for protection.

11 69. Defendants' failure to identify and discuss feasible mitigation measures
12 to the Proposed Action in the Final SEIS is arbitrary and capricious, an abuse of
13 discretion, and contrary to the requirements of NEPA and the APA.

14 **FOURTH CAUSE OF ACTION**

15 **(Violations of NEPA and the APA:**

16 **Failure to Consider Conflicts with State Policies**

17 **40 C.F.R. §§ 1506.2(d), 1502.16(c); 5 U.S.C. § 706)**

18 70. Paragraphs 1 through 69 are re-alleged and incorporated herein by
19 reference.

20 71. When preparing an EIS, NEPA requires that an agency include a
21 discussion of "[p]ossible conflicts between the proposed action and the objectives
22 of" state plans and policies. 40 C.F.R. § 1502.16(c); *see also* 43 C.F.R. § 1610.3-2.
23 An EIS must also "[d]iscuss any inconsistency of a proposed action with any
24 approved State or local plan and laws." 40 C.F.R. § 1506.2(d).

25 72. As discussed in the Attorney General's comment letter, the Proposed
26 Action would open up more than 1 million acres of the Planning Area to new oil
27 and gas leasing, and extend the life of existing leases through the use of well
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1 stimulation treatments such as hydraulic fracturing. Such activities are inconsistent
2 with California's statutory target of reducing greenhouse gas emissions by 40
3 percent below 1990 levels by 2030, Cal. Health & Safety Code § 38566, CARB's
4 plan to reduce fossil fuel consumption by 45 percent by 2030 to meet this target,
5 and the State's policy to achieve carbon neutrality by 2045, Executive Order B-55-
6 18. California also has enacted several statutes to protect the state's most
7 disadvantaged communities from air and water pollution, including State Assembly
8 Bill 617 and Water Code § 106.3.

9 73. As discussed in CDFW's comment letter, the Proposed Action is
10 inconsistent with, and fails to take into account, the requirements of state statutes,
11 regulations, and local plans, including the California Endangered Species Act and
12 the Metropolitan Bakersfield Habitat Conservation Plan, which set aside as
13 permanent compensatory habitat mitigation many acres of CDFW lands within the
14 Planning Area to offset the impacts of past development activities. *See* Fish & G.
15 Code § 2050 *et seq.*; 14 Cal. Code Regs. §§ 630(b)(74) & (118).

16 74. As discussed in DWR's comment letter, the Proposed Action is also
17 inconsistent with, and fails to take into account, the requirements of the California
18 Sustainable Groundwater Management Act, Cal. Water Code § 10720 *et seq.*, given
19 the potentially significant impacts to groundwater from contamination, overdraft,
20 and land subsidence.

21 75. Increasing oil and gas development on BLM lands is contrary to and
22 inconsistent with these state plans and policies. However, nowhere does the Final
23 SEIS discuss these conflicts and inconsistencies, as required by NEPA.

24 76. Defendants' failure to consider conflicts and inconsistencies between the
25 Proposed Action and state plans and policies is arbitrary and capricious, an abuse of
26 discretion, and contrary to the requirements of NEPA and the APA.
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FIFTH CAUSE OF ACTION

(Violations of NEPA, FLPMA, and the APA:

Failure to Provide Adequate Opportunity for Public Comment

40 C.F.R. § 1502.9; 43 C.F.R. § 1610.2(e); 5 U.S.C. § 706)

77. Paragraphs 1 through 76 are re-alleged and incorporated herein by reference.

78. BLM’s regulations for implementing FLPMA require that the agency provide a 90-day public comment period for any draft EIS relating to a resource management plan. 43 C.F.R. § 1610.2(e). In addition, a supplemental EIS must be circulated for public comment in the same fashion as a draft EIS. *Id.* § 1610.2(e); 40 C.F.R. § 1502.9; BLM NEPA Handbook H-1790-1 at 102. Moreover, “[t]he public shall be provided opportunities to meaningfully participate in and comment on the preparation” of such plans. 43 C.F.R. §1610.2(a); *see* 40 C.F.R. § 1506.6 (agencies shall “[m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures”).

79. Here, BLM provided the public with just 45 days to comment on the Draft SEIS, only half the time required by its own regulations. Although BLM held three public meetings relating to the Draft SEIS, it refused to accept oral comments into the record at those hearings. Moreover, despite community requests for interpretation services and BLM’s knowledge of significant Hispanic populations in the Planning Area, BLM did not provide interpretation services at its hearings. Finally, BLM failed to provide the documents or data supporting its assumption that zero to four wells per year in the Planning Area will be hydraulically fractured.

80. Defendants’ failure to provide an adequate opportunity for public comment on the Draft SEIS is arbitrary and capricious, an abuse of discretion, and contrary to the requirements of its implementing regulations, FLPMA, NEPA, and the APA.

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PRAYER FOR RELIEF

WHEREFORE, California respectfully requests that this Court:

1. Issue a declaratory judgment that Defendants acted arbitrarily, capriciously, contrary to law, abused their discretion, and failed to follow the procedures required by law in their approval of the Final SEIS and ROD, in violation of NEPA, FLPMA, and the APA;
2. Issue an order setting aside Defendants’ approval of the Final SEIS and ROD;
3. Enjoin BLM from authorizing or otherwise proceeding with oil and gas leasing or other oil and gas activities that rely on the Final SEIS and ROD, unless and until they comply with NEPA, FLPMA, and the APA;
4. Award California its costs, expenses, and reasonable attorneys’ fees; and
5. Award such other relief as this Court deems just and proper.

Dated: January 17, 2020

Respectfully submitted,

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 DAVID A. ZONANA
 Supervising Deputy Attorney General
 CHRISTIE VOSBURG
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