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Attorneys for Federal Defendants

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA
14 SAN DIEGO DIVISION

15 WHITEWATER DRAW NATURAL
16 RESOURCE CONSERVATION
17 DISTRICT, *et al.*,

18 Plaintiffs,

19 v.

20 KIRSTJEN M. NIELSEN, *et al.*,

21 Federal Defendants.

Case No. 3:16-cv-2583

**FEDERAL DEFENDANTS’
NOTICE OF MOTION AND
PARTIAL MOTION TO DISMISS
COUNTS I AND II OF THE
AMENDED COMPLAINT**

Date: March 12, 2018

No Oral Argument Unless Requested by
the Court

Hon. H. James Lorenz

1 PLEASE TAKE NOTICE THAT on March 12, 2018, before the Honorable H.
2 James Lorenz, in the United States Courthouse for the Southern District of California,
3 located at 221 West Broadway, San Diego, California, Kirstjen M. Nielsen, Secretary of
4 Homeland Security, and the United States Department of Homeland Security (“DHS”)
5 will and hereby do move the Court to dismiss, in part, Plaintiffs’ Amended Complaint.

6 Federal Defendants move to dismiss Counts I and II in Plaintiffs’ Amended
7 Complaint. Count I is not reviewable under the Administrative Procedure Act (“APA”),
8 5 U.S.C. §§ 701–706. Count II is a non-justiciable programmatic challenge that fails to
9 allege a discrete agency action that DHS was required to take. Plaintiffs’ challenge to the
10 policy known as DACA in Count II further fails because judicial review is precluded
11 under NEPA. Federal Defendants ask the Court to dismiss Counts I and II under Federal
12 Rule of Civil Procedure 12(b)(1) and 12(b)(6).

13 This Motion is based upon this Notice and Motion, the accompanying
14 Memorandum of Points and Authorities, and upon such other evidence as may be
15 received by the Court.

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17
18 Respectfully submitted,

19 DATED: January 22, 2018

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