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7 **UNITED STATES DISTRICT COURT**
8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

9 SIERRA CLUB; CENTER FOR BIOLOGICAL)
DIVERSITY; EARTHWORKS; ENVIRONMENTAL)
10 DEFENSE FUND; NATIONAL WILDLIFE)
FEDERATION; NATURAL RESOURCES DEFENSE)
11 COUNCIL; THE WILDERNESS SOCIETY; CITIZENS)
FOR A HEALTHY COMMUNITY; DINÉ CITIZENS)
12 AGAINST RUINING OUR ENVIRONMENT;)
ENVIRONMENTAL LAW AND POLICY CENTER;)
13 FORT BERTHOLD PROTECTORS OF WATER AND)
EARTH RIGHTS; MONTANA ENVIRONMENTAL)
14 INFORMATION CENTER; SAN JUAN CITIZENS)
ALLIANCE; WESTERN ORGANIZATION OF)
15 RESOURCE COUNCILS; WILDERNESS)
16 WORKSHOP; WILDEARTH GUARDIANS; and)
17 WYOMING OUTDOOR COUNCIL,)

18 Plaintiffs,)

19 v.)

20)
21 DAVID BERNHARDT, in his official capacity as)
Secretary of the Interior; BUREAU OF LAND)
22 MANAGEMENT; and UNITED STATES)
23 DEPARTMENT OF THE INTERIOR,)

24 Defendants.)
25)
26)
27)
28)

Case No. 3:17-cv-07187-WHO

Related to Case No. 3:17-cv-07186-WHO

**PLAINTIFFS' PETITION FOR
ATTORNEYS' FEES AND COSTS**

1 **L.R. 54-5(B)(1) CERTIFICATION**

2 Plaintiffs and Federal Defendants (also referred to herein as “Bureau of Land Management”
3 or “BLM”) have agreed to engage in good faith negotiations to attempt to settle this issue.
4 Concurrently with this motion, Plaintiffs and Federal Defendants will file a joint motion for
5 continuance and stay of the proceedings for sixty (60) days to enable them to fully explore
6 settlement. If the parties are unable to settle this issue, Plaintiffs will file an amended motion under
7 the EAJA, with updated declarations, timesheets, and other supporting materials.

8 **NOTICE OF MOTION AND MOTION**

9 Plaintiffs have not requested a hearing date pursuant to Civ. L.R. 7-2(a), and respectfully
10 request that the Court wait to set a hearing in this matter to allow the Parties time to attempt to reach
11 a settlement.

12 Plaintiffs seek an order granting them their fees, costs, and litigation expenses in the above-
13 captioned matter under the Equal Access to Justice Act. 28 U.S.C. § 2412(d). Plaintiffs respectfully
14 request that this Court award them \$309,544.38 in attorneys’ fees and \$5,584 in costs and expenses,
15 for a total of \$315,128.38 in fees and costs. This motion is based on this notice of motion, the
16 memorandum of points and authorities in support of this motion, the declarations and timesheets
17 attached as exhibits in support of this motion, and all papers and records on file with the Clerk or
18 which may be submitted prior to or at the time of the hearing, and any further evidence which may
19 be offered.

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I. INTRODUCTION**

22 Plaintiffs, 17 conservation and tribal organizations, brought this lawsuit on December 19,
23 2017 challenging Federal Defendants’ December 8, 2017 decision to suspend most requirements of
24 the Bureau of Land Management’s (BLM) Waste Prevention Rule for one year. *See* Waste
25 Prevention, Production Subject to Royalties, and Resource Conservation; Delay and Suspension of
26 Certain Requirements, 82 Fed. Reg. 58,050 (Dec. 8, 2017) (Suspension Rule). On February 22,
27 2018, Plaintiffs prevailed on two motions: the Court granted Plaintiffs’ motion to preliminarily
28 enjoin the Suspension Rule, and denied BLM’s and Defendant-Intervenors’ motions to transfer the

1 case to the District of Wyoming. *California v. BLM*, 286 F. Supp. 3d 1054 (N.D. Cal. 2018)
2 (*California*). Plaintiffs again prevailed when the Court granted their motion to complete the
3 administrative record. *Sierra Club v. Zinke*, No. 17-CV-07187-WHO, 2018 WL 3126401 (N.D.
4 Cal. June 26, 2018) (*Sierra Club*).

5 **II. STANDARDS**

6 Pursuant to the Equal Access to Justice Act (EAJA), a court shall award fees and costs to a
7 prevailing party who is eligible for an EAJA fee award unless the court finds that the position of the
8 United States was substantially justified or that special circumstances make an award unjust. 28
9 U.S.C. § 2412(d).

10 **III. PLAINTIFFS ARE ENTITLED TO FEES AND COSTS PURSUANT TO EAJA**

11 **A. Plaintiffs Meet EAJA's Eligibility Criteria**

12 A party is eligible for attorneys' fees, costs, and other expenses pursuant to EAJA if it: (1) is
13 a "prevailing party"; that (2) incurred costs of litigation against the federal government; and (3)
14 meets applicable size, net worth, or other criteria. 28 U.S.C. §§ 2412(d)(1)(A), (d)(2)(B).

15 First, all Plaintiffs satisfy the first criterion for eligibility because all are "prevailing parties."
16 EAJA classifies a party as "prevailing" pursuant to EAJA if it "succeed[s] on any significant issue in
17 litigation which achieves some of the benefits [it] sought in bringing suit." *United States v. Real*
18 *Property Known As 22249 Dolorosa St.*, 190 F.3d 977, 981 (9th Cir. 1999) (citing *Hensley v.*
19 *Eckerhart*, 461 U.S. 424, 433 (1983)). Here, Plaintiffs are prevailing parties because they: (1) were
20 awarded a preliminary injunction against the Suspension Rule; (2) prevailed against BLM's attempt
21 to transfer the case to Wyoming; and (3) prevailed in their motion to complete the administrative
22 record.

23 The Ninth Circuit has held that a plaintiff who obtains a preliminary injunction is a
24 prevailing party "even if the underlying case becomes moot because that development 'does not
25 affect the fact that for the pertinent time period [the plaintiff] obtained the desired relief.'" *Tipton-*
26 *Whittingham v. City of Los Angeles*, 316 F.3d 1058 (9th Cir. 2003) (quoting *Williams v. Alioto*, 625
27 F.2d 845, 847-48 (9th Cir. 1980). The Ninth Circuit has explained that "having succeeded in
28 winning a preliminary injunction that prevented" the imminent harm at issue in a lawsuit, the

1 plaintiff “obtained significant, court-ordered relief that accomplished one of the main purposes of his
2 lawsuit . . . even though he failed to prevail on other claims.” *Watson v. Cty. of Riverside*, 300 F.3d
3 1092, 1096 (9th Cir. 2002). The court explained that “[a] preliminary injunction issued by a judge
4 carries all the ‘judicial imprimatur’ necessary to satisfy” the Supreme Court’s test from *Buckhannon*
5 *Bd. & Care Home, Inc. v. W. Va. Dep’t of Health*, 532 U.S. 598 (2001). *Watson*, 300 F.3d at 1096.

6 Thus, “[e]ven in the absence of a final judgment on the merits, plaintiffs are prevailing
7 parties eligible for a fee award where they obtain a preliminary injunction and the case is
8 subsequently rendered moot by the defendant's own action.” *Cal. Native Plants Soc’y v. EPA*, No. C
9 06-3604 PJH, 2013 WL 6700093, at *4 (N.D. Cal. Dec. 19, 2013), *aff’d in part & rev’d in part on*
10 *other grounds*, 647 F. App’x 739 (9th Cir. 2016). Indeed, as a general matter, the Ninth Circuit has
11 recognized that a case becoming moot does not change whether a party is “prevailing” for the
12 purposes of attorney’s fees. *See UFO Chuting of Haw., Inc. v. Smith*, 508 F.3d 1189, 1196–97 (9th
13 Cir. 2007); *Watson*, 300 F.3d at 1096. The relevant question is whether, before the case became
14 moot, the party obtained the desired relief and that relief directly benefited the plaintiff by materially
15 altering the relationship between the parties. *See Cal. Native Plants Soc’y*, 2013 WL 6700093, at *4;
16 *see also Native Ecosystems Council v. Weldon*, 921 F. Supp. 2d 1069, 1073 (D. Mont. 2013). Here,
17 the answer is yes. Although the court did not ultimately reach the merits of the case before it became
18 moot, Plaintiffs achieved the result they sought from filing the lawsuit: an order enjoining the
19 Suspension Rule for nearly 11 months of the 12 months of its effectiveness, until it expired on its
20 own terms. *See Compl. For Declaratory & Injunctive Relief 32* (Dec. 19, 2017), ECF No. 1 (Prayer
21 for Relief requesting that the Court declare the Suspension Rule unlawful and set it aside).

22 Here, although prevailing party status was established when Plaintiffs won their motion for
23 preliminary injunction, Plaintiffs should recover all hours expended by their attorneys in furtherance of
24 their litigation goals, including the hours Plaintiffs’ attorneys spent successfully opposing the motion to
25 transfer the case to Wyoming and the hours Plaintiffs’ attorneys spent successfully moving to complete
26 the record. *See Cal. Native Plant Soc’y v. EPA*, No. C 06-3604 PJH, 2013 WL 6700093, at *6 (N.D. Cal.
27 Dec. 19, 2013), *aff’d in part & rev’d in part on other grounds*, 647 F. App’x 739 (9th Cir. 2016). In
28 *California Native Plant Society*, after the Court found that Plaintiffs had demonstrated prevailing party

1 status by success on a motion for preliminary injunction, the Court then turned to whether all hours
2 expended on the litigation were reasonable. *Id.* The Court found that they were. *Id.* Similarly, here, the
3 Court should grant Plaintiffs full recovery for their reasonable work on the case as a whole. *See Comm'r,*
4 *I.N.S. v. Jean*, 496 U.S. 154, 162 (1990) (“EAJA – like other fee-shifting statutes – favors treating a case
5 as an inclusive whole, rather than as atomized line-items.”).

6 Plaintiffs also satisfy the second criterion for eligibility: they incurred costs of litigation—
7 including attorneys’ fees, costs, and other expenses—in a judicial proceeding against BLM, a federal
8 agency.

9 Finally, 14 of the 17 plaintiffs satisfy the third criterion for eligibility related to maximum
10 number of employees. *See* 28 U.S.C. § 2412(d)(2)(B) (stating standard). Only Environmental
11 Defense Fund (EDF), Sierra Club, and Natural Resources Defense Council are not eligible for fees
12 on this basis. EDF is not seeking attorneys’ fees or costs in this case. Further, pursuant to Ninth
13 Circuit precedent, Plaintiffs account for the Sierra Club’s and Natural Resource Defense Council’s
14 ineligibility through a proportional reduction in our request, as detailed below.

15 **B. Defendants’ Position Was Not Substantially Justified**

16 “Once a party’s eligibility has been proven, an award of fees is mandatory pursuant to EAJA
17 unless the government’s position is substantially justified or special circumstances exist that make an
18 award unjust.” *Love v. Reilly*, 924 F.2d 1492, 1495 (9th Cir. 1991) (*citing* 28 U.S.C. §
19 2412(d)(1)(A)). An agency bears the burden of proving that its position was substantially justified.
20 *Or. Nat. Res. Council v. Marsh*, 52 F.3d 1485, 1492 (9th Cir. 1995). The agency must make a
21 “strong showing” in order to meet its burden. *Nat. Res. Def. Council v. Env’tl Prot. Agency*, 703
22 F.2d 700, 712 (3rd Cir. 1983) (citing H.R. Rep. No. 1418 at 16, 18, 96th Cong., 2nd Sess. 8-9,
23 *reprinted in* 1980 U.S. Code Cong. & Ad. News 4953, 4984, 4986-88).

24 BLM cannot meet that burden here. To determine if an agency’s position was substantially
25 justified, the court considers the reasonableness of the underlying government action and the
26 position asserted by the agency in defending its validity. *Kali v. Bowen*, 854 F.2d 329, 332 (9th Cir.
27 1988). The Ninth Circuit has held that “it will be only a decidedly unusual case in which there is
28 substantial justification under the EAJA even though the agency’s decision was reversed as lacking

1 in reasonable, substantial and probative evidence in the record.” *Thangaraja v. Gonzales*, 428 F.3d
2 870, 874-75 (9th Cir. 2005) (citation omitted); *see also Marsh*, 52 F.3d at 1492 (finding no
3 substantial justification where agency prepared inadequate NEPA document). Here, BLM’s position
4 was not substantially justified, as the Court recognized by ruling that Plaintiffs were likely to
5 succeed on the merits. *See California*, 286 F. Supp. 3d at 1064.

6 The Court held that BLM failed to provide a reasoned analysis to support the Suspension
7 Rule. First, the Court held that BLM failed to justify its position that the Suspension Rule was
8 necessary to protect operators of marginal wells from compliance costs. *Id.* at 1065–66. Second, the
9 Court rejected BLM’s justification that the Suspension Rule relieved burdens imposed on small
10 operators by the Waste Prevention Rule. *Id.* at 1066–67. Third, the Court rejected BLM’s purported
11 concern that the Waste Prevention Rule could reduce royalty payments. *Id.* at 1067. Fourth, the
12 Court agreed that the Suspension Rule reached conclusions unsupported by its own factual findings
13 about whether the Waste Prevention Rule would truly encumber energy production. *Id.* Fifth, the
14 Court rejected BLM’s justification for the Suspension Rule based on “concerns” expressed by the
15 Wyoming court, because BLM’s suspension of the Rule “was not tailored with this in mind.” *Id.* at
16 1067–68. Sixth, the Court rejected BLM’s claim that it would be subject to a predetermination
17 challenge if it provided additional factual support for the Suspension Rule. *Id.* at 1068. The Court
18 concluded that BLM was “casually ignoring all of its previous findings and arbitrarily changing
19 course.” *Id.* (quotations omitted).

20 Next, the Court next addressed, and accepted, Plaintiffs arguments that the Suspension Rule
21 was based on a flawed Regulatory Impact Analysis. The Court first rejected BLM’s claims that the
22 Suspension Rule could have economic benefits without environmental costs. *Id.* at 1069.
23 Additionally, the Court accepted Plaintiffs’ argument that BLM had “assume[d] without evidence . .
24 . that no operators have undergone any compliance activities to meet the original January 17, 2018
25 deadlines under the Waste Prevention Rule, thereby likely overestimating the industry cost savings.”
26 *Id.*

1 Finally, the Court held that BLM likely violated the Administrative Procedure Act (APA)
2 when it deemed comments about the substance and merits of the Waste Prevention Rule as outside
3 the scope of the Suspension Rule, and refused to consider comments on this topic. *Id.* at 1072.

4 The Court's reasoning demonstrates that it did not consider BLM's decision to promulgate
5 the Suspension Rule and the agency's subsequent litigation positions to be substantially justified. In
6 the Court's own words, "[t]aking all parties' concerns into consideration, I agree with Plaintiffs that
7 BLM has failed to provide the requisite reasoned analysis in support of the Suspension Rule, and it is
8 therefore arbitrary and capricious within the meaning of the APA." *Id.*

9 C. No Special Circumstances Exist that Would Make an Award Unjust

10 The "special circumstances" exception to eligibility under EAJA is a "'safety valve' [that] ...
11 gives the court discretion to deny awards where equitable considerations dictate an award should not
12 be made." H.R. Rep. No. 1418, 96th Cong., 2nd Sess. 5, 11, *reprinted in* 1980 U.S.C.C.A.N. 4984,
13 4990. "The burden of proving special circumstances ... rests with the government." *Love*, 924 F.2d
14 at 1495. There are no special circumstances in this case that would make an award unjust. *Cf.*
15 *Meinhold v. U.S. Dept. of Defense*, 123 F.3d 1275, 1277 n.1 (9th Cir. 1997) (noting that the court
16 considered a party's "bad faith" in its consideration under EAJA).

17 IV. PLAINTIFFS SEEK REASONABLE HOURLY RATES

18 A. Plaintiffs are Entitled to Enhanced Rates under EAJA

19 "The most useful starting point for determining the amount of a reasonable fee is the number
20 of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley*, 461
21 U.S. at 433. EAJA provides that a court shall award "reasonable attorney fees" to prevailing parties.
22 28 U.S.C. § 2412(d)(2)(A). EAJA sets a base rate of \$125 per hour but provides that a court may
23 award higher rates if it "determines that an increase in the cost of living or a special factor ...
24 justifies a higher fee." *Id.* Additionally, the Ninth Circuit has recognized that the EAJA base rate is
25 to be adjusted upward to account for cost of living increases. The Ninth Circuit calls this adjusted
26 rate the "lodestar" and has approved its use as "proper." *Real Property Known as 22249 Dolorosa*
27 *Street*, 190 F.3d at 984-85.

1 The lodestar is calculated by enhancing the base hourly rate of \$125 under EAJA by the
2 consumer price index for urban consumers for the year in which fees were earned. *Sorenson v. Mink*,
3 239 F.3d 1140, 1149 (9th Cir. 2001). The Ninth Circuit has established that lodestar hourly rates for
4 attorneys within the circuit were \$196.79 in 2017. *See* Statutory Maximum Rates Under the Equal
5 Access to Justice Act, *available at*
6 http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000039 (last visited April 3, 2018). No
7 rate is given for 2018, so in accord with guidance from the Ninth Circuit, the 2018 lodestar hourly
8 rate is also \$196.79. *Id.*

9 “Where a plaintiff has obtained excellent results, [its] attorney should recover a fully
10 compensatory fee.” *Hensley*, 461 U.S. 435. Recognizing that the EAJA rates might be too low in
11 some instances to enable a litigant to obtain competent legal representation, EAJA provides for fee
12 enhancements where special factors, such as the limited availability of qualified attorneys for the
13 proceedings, are present. In *Pierce v. Underwood*, 487 U.S. 552, 572 (1988), the Supreme Court
14 clarified that reimbursement above the EAJA rate is allowed where an attorney is “‘qualified for the
15 proceedings’ in some specialized sense.” According to the Supreme Court, this “refers to attorneys
16 having some distinctive knowledge or specialized skill needful for the litigation in question – as
17 opposed to an extraordinary level of the general lawyerly knowledge and ability useful in litigation.
18 Examples of the former would be an identifiable practice specialty such as patent law, or knowledge
19 of foreign law or language.” *Pierce*, 487 U.S. at 572.

20 The Ninth Circuit has held that “[e]nvironmental litigation is an identifiable practice
21 specialty that requires distinctive knowledge.” *Love*, 924 F.2d at 1496. Further, “the combination of
22 substantive legal knowledge and litigation expertise possessed by” attorneys at public interest
23 environmental law firms “is found almost exclusively” in such firms. *Wash. Dep’t of Wildlife v.*
24 *Stubblefield*, 739 F. Supp. 1428, 1432 (W.D. Wash. 1989).

25 The Ninth Circuit has identified three factors to be considered in awarding a fee
26 enhancement: (1) the attorney must possess some distinctive knowledge and skills developed
27 through a practice specialty; (2) those distinctive skills must be needed in the litigation; and (3) those
28 skills must not be available elsewhere at the statutory rate. *Love*, 924 F.2d at 1496; *Pollinator*

1 *Stewardship Council v. U.S. EPA*, No. 13-72346, 2017 WL 3096105, at **2-7 (9th Cir. June 27,
2 2017). Each of these factors weighs in favor of a fee enhancement here.

3 As summarized below, and as detailed in the attached declarations, Plaintiffs' attorneys
4 provide distinctive knowledge and skills regarding environmental and administrative law. Plaintiffs'
5 attorneys have extensive experience with federal statutes governing oil and gas development on
6 federal and tribal lands, including the Mineral Leasing Act, as well as the federal leasing program for
7 federal and tribal minerals. Plaintiffs' attorneys also have expertise with respect to the regulatory and
8 technological solutions for mitigating oil and gas methane emissions, issues of law and procedure
9 under the APA, and the interplay between environmental and administrative law. Furthermore,
10 Plaintiffs' attorneys have been intensively engaged in a multi-year effort (for at least one attorney,
11 more than a decade) to advocate that BLM reduce methane pollution and waste from oil and gas
12 development on public lands.

13 Plaintiffs' attorneys are also involved in the whole suite of litigation that has developed as a
14 result of the 2016 Waste Prevention Rule. They represent roughly the same organizations in
15 litigation regarding the underlying merits of the Waste Prevention Rule before the U.S. District
16 Court for the District of Wyoming (*Wyoming v. U.S. Department of the Interior*, No. 16-cv-285-
17 SWS (D. Wyo.), consolidated with *Western Energy Alliance v. Zinke*, No. 16-cv-280-SWS (D.
18 Wyo.)), and the Tenth Circuit (Case Nos. 18-8027 & 18-8029). They successfully represented the
19 same Plaintiffs in litigation before this Court challenging BLM's first attempt to stay the Waste
20 Prevention Rule pursuant to § 705 of the APA. *Cal. ex rel. Becerra v. BLM*, 277 F. Supp. 3d 1106,
21 1110 (N.D. Cal. 2017). And during the pendency of this case, they filed a new lawsuit on behalf of
22 roughly the same Plaintiffs challenging BLM's ultimate Rescission of the Waste Prevention Rule.
23 *California v. Bernhardt*, No. 4:18-cv-05712-YGR (consolidated with *Sierra Club v. Bernhardt*, No.
24 4:18-cv-05984-YGR).

25 **1. Plaintiffs' attorneys each possess distinctive knowledge and skills needed**
26 **in this litigation that are unavailable elsewhere at the statutory rate**

27 As set forth below, Plaintiffs' attorneys possess distinctive knowledge and skills needed to
28 successfully prosecute this litigation given the novel issues it presented at the intersection of

1 administrative and environmental law, its deeply technical aspects, and the complex legal playing
2 field governing the Waste Prevention Rule. Adequate representation was unavailable if not
3 nonexistent elsewhere at the statutory rate.

4 Plaintiffs have outlined the qualifications and relevant experience of each of their counsel for
5 whom they are seeking fees below.

6 **a. Robin Cooley**

7 Robin Cooley attended University of Colorado School of Law, and graduated Order of the Coif
8 in 1999. Ms. Cooley has worked as an Honors Program Attorney in the Solicitors Office of the U.S.
9 Department of the Interior, as an attorney for the Western Environmental Law Center, a full time lecturer
10 in law in the environmental law clinic at the University of Denver Sturm College of Law, and an attorney
11 at Earthjustice. Since 2007, Ms. Cooley has been a staff attorney at Earthjustice, which is the equivalent
12 to a partner-level position at a for-profit law firm.

13 In the nearly 19 years that Ms. Cooley has been practicing law, her legal practice has focused
14 exclusively on environmental and administrative law. Ms. Cooley has particular expertise in oil and gas
15 development on federal and tribal lands, both the legal and technical aspects of regulating methane
16 emissions from the oil and gas industry, and the intersection between environmental and administrative
17 law. Ms. Cooley has litigated numerous cases involving oil and gas development on public lands,
18 including two cases interpreting the Mineral Leasing Act in the Tenth Circuit and a successful request for
19 a temporary retaining order preventing BLM from issuing oil and gas leases on sensitive lands in Utah,
20 in part, because of air quality concerns. Starting in 2009, Ms. Cooley began to develop expertise in
21 regulation of air emission from the oil and gas industry. Ms. Cooley has served as lead counsel in many
22 different proceedings seeking to promote methane emission reductions from the oil and gas industry,
23 including (1) federal litigation seeking to force EPA to regulate methane emissions, (2) formal
24 rulemakings at the state level, including Colorado's 2014 rulemaking by which it adopted the first-ever
25 regulations to cover methane emissions from the oil and gas industry and a subsequent 2017 rulemaking
26 strengthening those standards in part of the state, (3) BLM's rulemaking process that resulted in the 2016
27 Methane Waste Rule, including all the litigation that has resulted from the rulemaking, and (4) litigation
28 under federal public land statutes and the APA seeking to force BLM to consider methane and other

1 emissions from the oil and gas industry prior to leasing or allowing drilling on public lands. Ms. Cooley
2 also has been involved in rulemakings involving regulation of drilling emissions within Indian Country
3 and has extensive experience litigating federal rulemaking proceedings and addressing legal, procedural,
4 and remedy issues related to the APA.

5 **b. Joel Minor**

6 Joel Minor has practiced law since 2014 and has been an Associate Attorney at Earthjustice
7 since 2015. In addition to his law degree, Mr. Minor earned a Master's of Science from the Stanford
8 School of Earth, Energy, and Environmental Science, where he focused on air quality issues caused
9 by oil and gas sector emissions. During law school, Mr. Minor completed several internships,
10 externships, and clinics in which he developed expertise in federal and state regulations of oil and
11 gas sector emissions regulations, as well as Indian Law issues. After law school, Mr. Minor served
12 as a law clerk for the Honorable Carlos F. Lucero of the U.S. Court of Appeals for the Tenth Circuit.
13 At Earthjustice, Mr. Minor's litigation docket has consisted almost entirely of administrative law and
14 environmental law cases challenging nationally-applicable oil and gas sector regulations, including
15 the BLM Waste Prevention Rule, the BLM Hydraulic Fracturing Rule, and the EPA New Source
16 Performance Standards for the Oil and Gas Sector. Mr. Minor has applied his expertise in the
17 scientific and engineering basis for oil and gas sector emissions in this case, as well as numerous
18 administrative rulemaking proceedings involving oil and gas sector emissions before BLM, EPA,
19 and at the state level.

20 **c. Stacey Geis**

21 Stacey Geis has nearly 25 years of experience in environmental litigation. Since 2014, Ms.
22 Geis has been the Managing Attorney of Earthjustice's California Regional Office, which has
23 locations in San Francisco, Los Angeles, and Sacramento. At Earthjustice, Ms. Geis has litigated
24 and/or managed litigation of numerous complex cases at the intersection of environmental and
25 administrative law, including cases raising issues closely parallel to those presented in this case
26 about an agency attempting to temporarily suspend or stay a regulation's effectiveness pending
27 reconsideration.

28 Prior to joining Earthjustice, Ms. Geis spent over ten years prosecuting environmental crimes

1 at the U.S. Attorney's Office in San Francisco. While there, she criminally prosecuted pollution,
2 fisheries, and wildlife cases, including the criminal prosecution of Walmart in 2013 for nationwide
3 illegal hazardous waste practices and the criminal prosecution of the shipping company and the bar
4 pilot who caused the 2007 Cosco Busan oil spill in the San Francisco Bay. Before that, she was the
5 senior prosecutor for the California Circuit Prosecutor Project and prosecuted over 100 criminal and
6 civil environmental enforcement cases around the State. For her work, she has been named one of
7 California's Top 100 Lawyers by the Daily Journal and, in 2014, received the California Lawyer
8 Attorney of the Year award.

9 Ms. Geis is a graduate of Brown University and a 1994 graduate of University of Virginia
10 School of Law. Before starting her career as a litigator, Ms. Geis clerked for the Honorable Samuel
11 Conti of the Northern District of California.

12 **d. Erik Schlenker-Goodrich**

13 Erik Schlenker-Goodrich is the Executive Director of and an attorney with the Western
14 Environmental Law Center. Mr. Schlenker-Goodrich is a 1996 graduate of Cornell University with a
15 Bachelor's of Science degree in Natural Resources and a concentration in American Indian Studies
16 as well as a 1999 graduate of the University of Oregon School of Law with certificates in
17 Environmental and Natural Resources Law and Pro Bono Law. In the nearly 19 years that Mr.
18 Schlenker-Goodrich has been practicing law, Mr. Schlenker-Goodrich has worked as a solo
19 practitioner within the field of public interest environmental and natural resources law, as an
20 attorney fellow with The Wilderness Society centered on BLM public lands management, and as an
21 attorney with the Western Environmental Law Center. Since 2012, Mr. Schlenker-Goodrich has
22 overseen WELC's entire legal practice, including oversight of all litigation and advocacy.

23 In December 2006, Mr. Schlenker-Goodrich began to develop a distinctive expertise on oil
24 and gas methane pollution and waste issues. At that time, he was tasked with engaging a state-
25 agency lead working group initiated by then-Governor Bill Richardson that provided a series of
26 recommendations regarding the quantification and reduction of methane pollution and waste and was
27 a catalyst for a successful 2009 greenhouse gas reporting rulemaking before New Mexico's
28 Environmental Improvement Board. At the federal level, Mr. Schlenker-Goodrich conceived, in

1 January 2008, of a campaign to advocate, *inter alia*, that the U.S. Bureau of Land Management
2 reduce methane pollution and waste from oil and gas development on public lands. That campaign
3 evolved into an intensive, multi-year advocacy effort that culminated in the November 2016 BLM
4 Methane Waste Rule that Federal Defendants, in this litigation, unlawfully sought to stay pursuant to
5 5 U.S.C. § 705. Over the course of that rulemaking, Mr. Schlenker-Goodrich developed a distinctive
6 and specialized expertise in the application of administrative law to BLM's rulemaking
7 responsibilities regarding the prevention of methane pollution and waste. Mr. Schlenker-Goodrich,
8 for example, co-authored numerous legal and technical comment letters to BLM, advocated for a
9 strong methane waste rule before BLM and administration officials in Washington, D.C., and in
10 public forums hosted by BLM.

11 Mr. Schlenker-Goodrich's legal practice necessarily compelled his development of a
12 comprehensive understanding of the APA, and how the APA intersects with specific statutory
13 authorities, such as the Mineral Leasing Act and Federal Land Policy and Management Act, through
14 rulemakings and policy actions, planning decisions, and oil and gas leasing and permitting decisions.
15 At three points in his career—in 2001, 2009, and in 2017—Mr. Schlenker-Goodrich has evaluated
16 the administrative law (i.e., APA) implications of a transition from an outgoing presidential
17 administration to a newly-elected incoming administration, with his most recent experience centered
18 squarely on the 2016 methane waste rule, and the authority of an agency to, in effect, change its
19 mind. In this case, that specialized knowledge proved critical to conclude that Federal Defendants
20 were not entitled to unilaterally use 5 U.S.C. § 705 to postpone the Methane Waste Rule's
21 compliance dates and to develop the successful litigation strategy executed and result obtained in
22 this case.

23 **e. Laura King**

24 Ms. King has practiced exclusively state and federal environmental law since 2013. She is a
25 2013 graduate of Harvard Law School, where she was an editor on the Harvard Environmental Law
26 Review and a research assistant in Harvard's environmental law clinic. Ms. King also taught
27 environmental law at Boston College and contributed over 1,600 hours of pro bono work on
28 environmental litigation, including on oil and gas issues, while in law school. Ms. King has

1 presented at multiple continuing legal education seminars. Ms. King joined Western Environmental
2 Law Center in 2013 as a Maria, Gabriella and Robert A. Skirnick Public Interest Law Fellow and
3 became a staff attorney the following year. Since November 2014, Ms. King has been developing a
4 practice specialty with regard to oil and gas litigation, with an emphasis on methane pollution and
5 waste. In this role, Ms. King (1) co-authored a report on the interplay between federal and state rules
6 to control methane waste; (2) has requested, litigated, and reviewed the results of multiple Freedom
7 of Information Act requests associated with federal regulation of methane pollution and waste; (3)
8 and has engaged on multiple fronts, including rulemaking and multiple pieces of litigation (as well
9 as associated administrative engagement), regarding BLM's management of oil and gas on public
10 lands, which has required an understanding of the interplay between the APA and other specific
11 statutory authorities.

12 **f. Darin Schroeder**

13 Darin Schroeder graduated Vermont Law School *cum laude* in 2009 and was admitted to the
14 State of Maryland bar in December 2009. He is also admitted to the bars for the U.S. Court of
15 Appeals for the District of Columbia, as well as the U.S. District Courts for the District of Columbia
16 and the Western District of Wisconsin.

17 Mr. Schroeder began working as a legal fellow at the Law Office of Robert Ukeiley in
18 January 2010, where he focused on Clean Air Act litigation, which often included many
19 administrative law issues. In 2011, Mr. Schroeder began working at Clean Air Task Force (CATF)
20 as a legal fellow, and was elevated to Associate Attorney¹ in 2013. While at CATF, Mr. Schroeder
21 has focused primarily on methane emissions from the oil and gas sector, developing and drafting
22 comments on proposed state and federal policies and rulemakings including BLM's Waste
23 Prevention Rule and EPA's *Oil and Natural Gas Sector: Emission Standards for New,
24 Reconstructed, and Modified Sources*, 81 Fed. Reg. 35824 (June 3, 2016). In both instances, his
25 engagement with these issues has resulted in a heightened knowledge of the APA and the
26

27 _____
28 ¹ This is CATF's equivalent of a Senior Associate Attorney.

1 appropriate procedures that an agency must go through during the normal and legal course of a
2 rulemaking.

3 In particular, Mr. Schroeder has played a leading role advocating for change to BLM's
4 regulatory structure addressing waste from public lands by drafting and co-authoring numerous
5 documents submitted to BLM providing input on the appropriate measures that should be taken,
6 participating in and speaking at multiple public hearings, and organizing extensive legal and
7 technical comments to BLM on its proposed rulemakings.

8 **g. Scott Strand**

9 Scott Strand graduated from the University of California School of Law at Berkeley (Boalt)
10 in 1982 and has been practicing law since 1983. He is licensed to practice law in Minnesota, as well
11 as before the U.S. Supreme Court, the U.S. Courts of Appeals for the Eighth and D.C. Circuits, and
12 the U.S. District Courts for the District of Minnesota, the Western District of Wisconsin, the
13 Northern and Central Districts of Illinois, and the Northern District of California.

14 From 1982, Mr. Strand worked in the Minnesota Office of the Attorney General, first as an
15 assistant attorney general and then as deputy counsel, and his work included litigation involving
16 public lands and waters and environmental protection. From 1999 to 2006, he was a general
17 litigation partner in the Robins, Kaplan, Miller and Ciresi law firm in Minneapolis, with a practice
18 focusing on intellectual property and land use cases. After that, Mr. Strand became the executive
19 director of the Minnesota Center for Environmental Advocacy (MCEA), where he supervised a team
20 of lawyers with a public interest environmental law practice. In 2016, he became a senior attorney at
21 ELPC, also a public interest environmental legal and policy advocacy organization, which works to
22 protect natural resources and public health throughout the Midwest. At ELPC, his focus is on
23 litigation, with an emphasis on natural resources, clean air, clean water, and clean energy cases. In
24 total, Mr. Strand has had over thirty years of experience in administrative law, including working
25 with virtually all aspects of the federal APA.

26 **h. Rachel Granneman**

27 Rachel Granneman graduated from the University of Michigan Law School *cum laude* in
28 2013 and was admitted to the State of Illinois bar in 2013. She is also licensed to practice in the U.S.

1 District Court for the Northern District of Illinois and has been admitted *pro hac vice* in the United
2 States District Court for the District of Wyoming (2016) and the Northern District of California
3 (2017). In addition, she has appeared before the Illinois Commerce Commission and the Michigan
4 Public Service Commission, and participated in dockets before the Public Service Commission of
5 Wisconsin and the Surface Transportation Board. Ms. Granneman began working at ELPC in 2013
6 as an associate attorney and was promoted to a staff attorney in 2015. While in law school, she took
7 seven environmental, administrative, and energy law courses, participated in the environmental law
8 clinic for two semesters, was an Executive Editor for the Michigan Journal of Environmental and
9 Administrative Law, and interned with the Michigan Department of Environmental Quality and
10 ELPC.

11 Ms. Granneman's work at ELPC has covered a variety of topics including transportation
12 litigation, analysis of issues under the National Environmental Policy Act, clean energy policy,
13 rulemakings and contested cases before state utility commissions, natural resource protection, and
14 federal rulemakings. She represented non-profit environmental and conservation organizations and
15 obtained positive outcomes in two cases challenging agency actions related to a proposed tollway
16 under the National Environmental Policy Act and the APA. *Openlands v. U.S. DOT*, 13-cv-4950
17 (N.D. Ill.) and *Openlands v. U.S. DOT*, 15-cv-4529 (N.D. Ill). Ms. Granneman's legal career has
18 consisted entirely of environmental- and energy-related litigation and advocacy, and much of her
19 work involves administrative law. Accordingly, she has developed significant expertise in
20 environmental and administrative law.

21 **2. Plaintiffs Seek Reasonable Rates**

22 Plaintiffs' counsel are entitled to San Francisco market rates for their time spent prosecuting
23 this litigation. To determine appropriate market rates, Plaintiffs have consulted with attorneys who
24 regularly practice federal environmental and administrative law in the forum, and reviewed fee
25 award decisions from the Northern District of California and the Ninth Circuit Court of Appeals.
26 *See, e.g., Pollinator Stewardship Council*, 2017 WL 3096105, at *6 (awarding \$550/hour for
27 attorney with 12 to 14 years of experience, \$700/hour for attorney with 27 to 29 years of experience,
28 and \$189/hour for law clerk); *G. F. v. Contra Costa Cty.*, No. 13-CV-03667-MEJ, 2015 WL

1 7571789, at *13 (N.D. Cal. Nov. 25, 2015) (awarding \$895/hour for attorney with 40 years of
2 experience, \$845/hour for attorney with 19 years of experience, \$690/hour for attorney with 15 years
3 of experience, \$580/hour for attorney with 10 years of experience, \$405/hour for attorney with 5
4 years of experience, \$370 for attorney with 4 years of experience, \$350/hour for attorney with 3
5 years of experience, and \$325/hour for attorney with 2 years of experience); *Gutierrez v. Wells*
6 *Fargo Bank, N.A.*, No. C 07-05923 WHA, 2015 WL 2438274, at *5 (N.D. Cal. May 21, 2015)
7 (awarding rates between \$975-\$475/hour for partner-attorneys and \$150-\$490 for associate-
8 attorneys, based on years of experience); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 262
9 (N.D. Cal. 2015) (awarding rates of \$650/hour for attorney with 14 to 15 years of experience,
10 \$425/hour for attorney with 4 to 5 years of experience, and \$375/hour for attorney with 2 to 3 years
11 of experience); *Wynn v. Chanos*, No. 14-CV-04329-WHO, 2015 WL 3832561, at *2 (N.D. Cal. June
12 19, 2015), *aff'd*, 685 F. App'x 578 (9th Cir. 2017) (awarding rates of \$1,035-1,085/hour for attorney
13 with approximately 40 years of experience and \$875-920/hour for attorney with approximately 20
14 years of experience).

15 Pursuant to these cases, Plaintiffs determined that the following represent market rates in the
16 for attorneys with a practice specialty in federal environmental and administrative law, based on
17 years of experience:

- 18 ▪ Robin Cooley is entitled to \$675 per hour.
- 19 ▪ Joel Minor is entitled to \$350 per hour.
- 20 ▪ Stacey Geis is entitled to \$725 per hour.
- 21 ▪ Erik Schlenker-Goodrich is entitled to \$675 per hour.
- 22 ▪ Laura King is entitled to \$350 per hour.
- 23 ▪ Darin Schroeder is entitled to \$500 per hour.
- 24 ▪ Scott Strand is entitled to \$850 per hour.
- 25 ▪ Rachel Granneman is entitled to \$350 per hour.

26 **B. Plaintiffs Seek Reasonable Time**

27 Plaintiffs seek fees for a reasonable amount of time spent by their attorneys in prosecuting
28 this litigation. Timesheets for each attorney are attached to this motion. “The most useful starting

1 point for determining the amount of a reasonable fee is the number of hours reasonably expended on
 2 the litigation multiplied by a reasonable hourly rate.” *Hensley*, 461 U.S. at 433. The Ninth Circuit
 3 has held that “[b]y and large, the court should defer to the winning lawyer’s professional judgment
 4 as to how much time he was required to spend on the case; after all, he won, and might not have, had
 5 he been more of a slacker.” *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008).

6 This case involved multiple parties, complex procedural issues, complex legal issues arising
 7 under the APA, briefing on a motion for preliminary injunction, a motion to transfer venue, a motion
 8 to complete the administrative record, and oral argument on all three motions. In this context, the
 9 attorneys have gone through their timesheets and applied billing judgment to omit time that is
 10 arguably non-compensable. For example, Mr. Minor has omitted 142.5 of the 358.9 hours he worked
 11 on this case, including time spent on preparing comments on BLM’s proposed Suspension Rule,
 12 travel, BLM’s Ninth Circuit appeal, and other administrative or arguably paralegal tasks.

13 Plaintiffs’ attorneys have gone through their timesheets and applied billing judgment to omit
 14 time that is arguably non-compensable. Plaintiffs account for Sierra Club’s and NRDC’s ineligibility
 15 for fees by reducing the total number of hours for which we seek EAJA fees based on the ratio of
 16 eligible plaintiffs to total plaintiffs in this case (14/16, or 12.5%). *See Pollinator Stewardship*
 17 *Council*, 2017 WL 3096105, at **15-18 (approving of this approach). Plaintiffs do not include EDF
 18 in these calculations. Additionally, at the juncture of this motion, Plaintiffs’ attorneys have not
 19 included their time preparing a settlement letter and this motion. If the parties are unable to settle,
 20 however, those amounts of time will be included in an amended motion.

21 The following table applies the requested hourly rates to the time expended:

Attorney	Hourly Rate	Hours Expended	Total
Joel Minor	\$350	211.1	\$73,885.00
Rachel Granneman	\$350	13.75	\$4,812.5
Laura King	\$350	277.7	\$97,195
Darin Schroeder	\$500	35.5	\$17,750
Robin Cooley	\$675	196.75	\$132,806.25
Erik Schlenker-Goodrich	\$675	19.65	\$13,263.75
Stacey Geis	\$725	5.9	\$4,277.50
Scott Strand	\$850	11.5	\$9,775
	TOTAL	771.85	\$353,765.00

1
2 Reducing that amount by 12.5% results in a total fee request of \$309,544.38.

3 **V. PLAINTIFFS ARE ENTITLED TO RECOVER THEIR COSTS AND EXPENSES**

4 EAJA authorizes an award of “costs” as enumerated at 28 U.S.C. § 1920, 28 U.S.C. §
5 2412(a)(1), as well as “expenses,” 28 U.S.C. § 2412(d)(1)(A). The Ninth Circuit has interpreted
6 “expenses” under EAJA to include “expenses normally billed to a client,” such as telephone calls,
7 postage, and attorney travel expenses. *Int’l Woodworkers of America v. Donovan*, 792 F.2d 762, 767
8 (9th Cir. 1986); *see also In re Application of Mgndichian*, 312 F. Supp. 2d 1250, 1266 (C.D. Cal.
9 2003) (recoverable EAJA expenses include Westlaw research, photocopying, and delivery service).
10 Plaintiffs seek \$5,583.59 in recoverable costs and expenses, including filing fees (excepting pro hac
11 vice fees, which we have omitted), copying, postage, Westlaw research, travel expenses, and other
12 costs and expenses. These expenses are enumerated in attachments to this letter.

13 **VI. CONCLUSION**

14 As detailed in the attached timesheets, Plaintiffs respectfully request that this Court award
15 them \$309,544.38 in attorneys’ fees and \$5,584 in costs and expenses, for a total of \$315,128.38 in
16 fees, costs, and expenses.

17
18 Respectfully submitted this 30th day of April, 2019.

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