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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

CENTER FOR BIOLOGICAL DIVERSITY,
DEFENDERS OF WILDLIFE, SIERRA
CLUB, NATURAL RESOURCES
DEFENSE COUNCIL, NATIONAL PARKS
CONSERVATION ASSOCIATION,
WILDEARTH GUARDIANS, and THE
HUMANE SOCIETY OF THE UNITED
STATES,

Plaintiffs,

v.

DEB HAALAND, U.S. Secretary of the
Interior, U.S. FISH AND WILDLIFE
SERVICE, GINA RAIMONDO, U.S.
Secretary of Commerce, and NATIONAL
MARINE FISHERIES SERVICE,

Defendants,

and

STATE OF ALABAMA, *et al.*,

Defendant-Intervenors.

Case No. 4:19-cv-05206-JST

Related Cases: No. 4:19-cv-06013-JST
No. 4:19-cv-06812-JST

PLAINTIFFS' NOTICE OF CHANGED
POSITION

1 In light of the Court's October 13, 2022 order cancelling the hearing on the pending
2 Motion for Stay (ECF 171) and Rule 59(e) Motion to Alter or Amend Judgment (ECF 180),¹
3 Plaintiffs file this notice pursuant to Local Rule 7-3(d)(2) to bring the Court's attention to a
4 change in their position on the Stay Motion given the Ninth Circuit's September 21, 2022 Writ
5 of Mandamus Order, which was issued after the close of briefing on the pending motions.
6 Plaintiffs had intended to orally inform the Court of this change, but now submit this notice
7 instead.

8 Plaintiffs' position on Defendant-Intervenors' Stay Motion has been overtaken by
9 subsequent events. Specifically, the Ninth Circuit's Mandamus Order staying this Court's July 5
10 Order pending its consideration of Plaintiffs' Rule 59(e) Motion has rendered the Stay Motion
11 moot at the present time. Defendant-Intervenors' Stay Motion would remain moot if the Court
12 grants Plaintiffs' Rule 59(e) Motion, and either rules on the merits of Plaintiffs' claims under the
13 National Environmental Policy Act ("NEPA") or, in the alternative, determines to recommence
14 the paused summary judgment briefing schedule on all claims. The Stay Motion also would be
15 moot if the Court modifies its July 5 Order to remand these cases without vacatur—a course that,
16 Plaintiffs submit, would be unjust and inequitable given the substantial prejudice to Plaintiffs.

17 Moreover, given the Ninth Circuit's Mandamus Order finding that the July 5 Order
18 contained clear error, some modification of the July 5 Order seems necessary. Plaintiffs'
19 requested remedies—resolving Plaintiffs' NEPA claims now or re-initiating summary judgment
20 briefing—offer a path forward. Were the Court to deny Plaintiffs' Rule 59(e) Motion and re-
21 affirm its July 5 Order, however, Plaintiffs would withdraw part of their opposition to the Stay
22 Motion, *see* ECF 181 at 6-12, given the Ninth Circuit's Mandamus Order.

23 Respectfully submitted this 14th day of October, 2022.
24
25

26 ¹ All ECF references are to numbers from the earliest filed case, *Center for Biological Diversity*
27 *v. Haaland*, Case No. 4:19-cv-05206-JST.

s/ Kristen L. Boyles

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**Admitted pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that on today's date, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record and all registered participants.

Dated: October 14, 2022.

s/ Kristen L. Boyles
KRISTEN L. BOYLES (CSBA # 158450)