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

13 STATE OF CALIFORNIA, *et al.*,

14 Plaintiffs,

15 v.

16 HAALAND, *et al.*,

17 Defendants,

18 and

19 STATE OF ALABAMA, *et al.*,

20 Defendant-Intervenors.

Case No. 4:19-cv-06013-JST

Related Cases: No. 4:19-cv-05206-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 as to 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.

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.

Respectfully submitted this 14th day of October, 2022.

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* In compliance with Civil Local Rule 5-1(h)(3), the filer of this document attests that all signatories listed have concurred in the filing of this document.

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/ George Torgun
GEORGE TORGUN (State Bar #222085)