

1 BRENDAN CUMMINGS (CA Bar No. 193952)
2 CLARE LAKEWOOD (CA Bar No. 298479)
3 Center for Biological Diversity
4 1212 Broadway, Ste. 800
5 Oakland, CA 94612
6 Tel: (510) 844-7121
7 Fax: (51) 844-7150
8 Email: bcummings@biologicaldiversity.org
9 clakewood@biologicaldiversity.org

7 DIANA DASCALU-JOFFE (CO Bar No. 50444, *pro hac vice pending*)
8 Center for Biological Diversity
9 1536 Wynkoop St., Ste. 421
10 Denver, CO 80202
11 Tel: (702) 925-2521
12 Fax: (303) 572-0032
13 Email: ddascalujoffe@biologicaldiversity.org

11 NATHAN MATTHEWS (CA Bar No. 264248)
12 Sierra Club
13 2101 Webster St, Ste. 1300
14 Oakland, CA 94612
15 Tel: (415) 977-5695
16 Fax: (415) 977-5793
17 Email: Nathan.matthews@sierraclub.org
18 *Attorneys for Plaintiffs*

17 **UNITED STATES DISTRICT COURT**
18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

19 CENTER FOR BIOLOGICAL
20 DIVERSITY, and SIERRA CLUB

20 Plaintiffs,

21 v.

22 U.S. BUREAU OF LAND
23 MANAGEMENT; DAVID BERNHARDT,
24 in his capacity as Secretary of the
25 Department of the Interior;

25 Defendants.

Civ. No. _____

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1
2
3 1. Plaintiffs Center for Biological Diversity and Sierra Club (collectively “Plaintiffs”) challenge defendants’ approval of a resource management plan amendment affecting California’s
4 Bay Area and Central Coast. The plan amendment makes 725,500 acres of federal public lands and
5 mineral estate available for oil and gas leasing, though defendants failed to consider meaningful
6 alternatives to the plan amendment, failed to analyze and disclose the environmental impacts, and
7 denied the public the opportunity to comment on its environmental analyses as the law requires.
8 Plaintiffs ask this Court to set aside that approval because it violates the National Environmental
9 Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.* and Federal Land Management and Policy Act
10 (“FLPMA”), 42 U.S.C. §§ 1701 *et seq.* and to ensure that federal management of oil and gas leasing
11 and development occurs, if at all, only with federal defendants’ compliance with the law.
12

13 2. Plaintiffs bring this civil action for declaratory and injunctive relief against the
14 decision of the United States Bureau of Land Management and David Bernhardt, Secretary of the
15 Interior (collectively “Defendants”), to approve, through a Record of Decision on October 4, 2019,
16 the Central Coast Field Office’s Resource Management Plan Amendment (“RMP Amendment”) and
17 Final Environmental Impact Statement (“Final EIS”). This action arises under, and alleges
18 violation of, the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706; NEPA; and the
19 statutes’ implementing regulations.

20 3. As set forth below, the RMP Amendment and Final EIS opens hundreds of
21 thousands of acres of federal public lands and mineral estate within the jurisdiction of BLM’s
22 Central Coast Planning Area, which covers the Bay Area and Central Coast regions of California, to
23 fossil fuel extraction, including especially dangerous and polluting techniques like steam injection
24 and hydraulic fracturing (“fracking”).

25 4. Plaintiffs bring this case to overturn Defendants’ unlawful and unwise action and to
26 ensure that California’s precious air and water are properly protected, the risks of earthquakes
27 induced by oil and gas activities are properly considered, and any oil and gas leases and subsequent
28 development be allowed to occur, if at all, following a thorough environmental review that properly

1 informs the public and decision-makers of the full impacts of Defendants’ action and provides for
2 the requisite opportunity for public comment.

3 5. Plaintiffs therefore seek a declaration that the RMP Amendment and Final EIS is
4 contrary to law, an order setting aside the plan and requiring BLM to prepare a supplemental EIS,
5 and an injunction prohibiting BLM from carrying out any oil and gas leasing in the Central Coast
6 Planning Area pending BLM’s compliance with NEPA.

7 **JURISDICTION AND VENUE**

8 6. This action arises under 42 U.S.C. § 4331 et. seq and 5 U.S.C. §§ 702, 704, 706.
9 Jurisdiction is conferred on this Court by 28 U.S.C. § 1331. The relief requested is authorized by 28
10 U.S.C. §§ 2201-2202 and Rule 57 of the Federal Rules of Civil Procedure.

11 7. Defendants have not remedied their violations of NEPA and are in violation of these
12 statutes under the standards of review provided by the APA. Plaintiffs have exhausted all available
13 administrative remedies to the degree such exhaustion is required.

14 8. Pursuant to 28 U.S.C. § 2201, Plaintiffs seek a declaration of rights under the laws of
15 the United States. There exists now between the parties an actual, justiciable controversy between
16 the parties.

17 9. Venue is proper pursuant to 28 U.S.C § 1391 because plaintiff Sierra Club resides in
18 this district and a substantial part of the federal land and mineral estate the subject of this action lies
19 in this district.

20 **INTRADISTRICT ASSIGNMENT**

21 10. Assignment to the San Francisco Division or Oakland Division is proper pursuant to
22 Civil Local Rule 3-2(c) because federal land and mineral estate the subject of this action is located in
23 Alameda, Contra Costa and San Mateo counties and plaintiff Sierra Club resides in Oakland, in
24 Alameda county.

25 **PARTIES**

26 11. Plaintiff Center for Biological Diversity (“the Center”) is a non-profit organization
27 with offices through the United States, including in Oakland and Los Angeles, California. The
28 Center works through science, law, and policy to secure a future for all species, great or small,

1 hovering on the brink of extinction. The Center has and continues to advocate for increased
2 protections for California species and their habitats, a livable climate and healthy communities by
3 engaging at every step of federal fossil fuel planning, leasing and development. The Center brings
4 this action on its own behalf and on behalf of its adversely affected members. The Center has over
5 67,000 members throughout the United States and the world, including those living in California
6 and who have visited the public lands affected by the RMP Amendment for recreational, scientific,
7 educational and other pursuits and intend to do so in future, and are particularly interested in
8 protecting the many native, threatened and endangered, or sensitive species and their habitats that
9 oil and gas leasing and development may harm.

10 12. The Sierra Club is a national nonprofit organization with 67 chapters and more than
11 825,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to
12 practicing and promoting the responsible use of the earth's ecosystems and resources; to educating
13 and enlisting humanity to protect and restore the quality of the natural and human environment; and
14 to using all lawful means to carry out these objectives. There are four Sierra Club chapters in the
15 Central Coast Planning Area. The San Francisco Bay Chapter of the Sierra Club has approximately
16 33,436 members. The Tehipite, Loma Prieta, and Ventana chapters have 2,126, 17,417, and 6,229
17 members, respectively. Sierra Club members use the public lands in California, including the lands
18 and waters affected by the RMP Amendment, for quiet recreation, aesthetic pursuits, and spiritual
19 renewal.

20 13. Plaintiffs have individual members and staff who use and enjoy the public and other
21 lands in the Central Coast Planning Area. Plaintiffs' members and staff live, work and recreate in
22 the Central Coast Planning Area, including on and in the vicinity of mineral estate open for oil and
23 gas leasing and development, and derive recreational, aesthetic, vocational, scientific and spiritual
24 benefit from their activities. Plaintiffs' members and staff intend to continue to use and enjoy the
25 surface lands overlying federal mineral estate that is subject to the RMP Amendment and Final EIS
26 and other land in the Central Coast Planning Area frequently and on an ongoing basis in the future.

27 14. Additionally, Plaintiffs' members and staff have an interest in ensuring that
28 Defendants' complies with all applicable laws, including the substantive, procedural, and

1 informational provisions of NEPA and FLPMA. Plaintiffs participated in Defendants' decision-
2 making around the Central Coast Plan by commenting on the draft EIS, and submitting an
3 administrative protest against the final EIS.

4 15. This suit is brought by Plaintiffs and their adversely affected members and staff.
5 Defendants' determination to open the federal lands and mineral estate subject to this case to fossil
6 fuel exploration and production will harm Plaintiffs' and their members' present and future interests
7 in and use of those areas. For example, new oil and gas leases will allow increased oil and gas
8 development, resulting in noise, visual blight, increased traffic, seismic risks, habitat fragmentation
9 and degradation, harm to wildlife including threatened and endangered species, air pollution
10 including increased emission of pollutants responsible for climate change, increased water pollution
11 and increased water consumption. All of these harms will diminish Plaintiffs' members' ability to
12 enjoy the recreational, spiritual, professional, aesthetic, educational, and other activities in and
13 around the lands the subject of the RMP Amendment.

14 16. Plaintiffs have no adequate remedy at law, and have exhausted all required
15 administrative remedies.

16 17. Plaintiffs' injuries will be redressed by the relief sought herein.

17 18. Defendant Bureau of Land Management is an agency within the United States
18 Department of the Interior and is responsible for managing federal lands and subsurface mineral
19 estates underlying federal, state, and private lands across the United States, including the land and
20 mineral estate that is subject of the Central Coast Plan.

21 19. Defendant David Bernhardt is the Secretary of the United States Department of the
22 Interior, and is sued in his official capacity. Mr. Bernhardt is the official ultimately responsible
23 under federal law for ensuring that the actions and management decisions of the Bureau of Land
24 Management comply with applicable laws and regulations.

25 **LEGAL BACKGROUND**

26 **A. Federal Land Policy and Management Act**

27 20. The Federal Land Policy Management Act of 1976 ("FLPMA") governs the
28 management, protection, development and enhancement of federal property under the jurisdiction of

1 BLM. FLPMA provides that land managed by BLM “be managed in a manner that will protect the
2 quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water
3 resource, and archeological values.” 43 U.S.C. § 1701(a)(8).

4 21. At its core, FLPMA requires BLM to prepare, with public involvement, a “resource
5 management plan” for the public lands in its jurisdiction. 43 U.S.C. § 1712(a). Such plans are
6 expected to provide policy, guidance, and standards for all “site-specific” activities that occur on
7 land in question, effectively outlining BLM’s approach to future management decisions over the
8 next 15 to 20 years.

9 22. In developing a resource management plan, BLM must, among other things,
10 “consider present and potential uses of the public lands . . . consider the relative scarcity of the
11 values involved . . . weigh long-term benefits to the public against short-term benefits; [and] provide
12 for compliance with applicable pollution control laws.” *Id.* § 1712(c). “All future resource
13 management authorizations and actions” by BLM, as well as “subsequent more detailed or specific
14 planning” must conform to approved resource management plans. 43 C.F.R. § 1610.5-3(a).

15 23. It is a responsibility of BLM, through development of an RMP, to balance the use of
16 public lands and minerals to avoid the infliction of permanent damage, to prevent unnecessary and
17 undue degradation, and to minimize adverse impacts on natural, environmental, scientific, cultural,
18 and other resources and values.

19 24. BLM has determined that preparation of a resource management plan “is considered a
20 major federal action significantly affecting the quality of the human environment,” and therefore
21 requires the preparation of an environmental impact statement under NEPA. 43 C.F.R. § 1601.0-6.

22 **B. The National Environmental Policy Act**

23 25. NEPA is “our basic national charter for protection of the environment.” 40 C.F.R. §
24 1500.1(a). Its twin aims are to ensure that federal agencies consider the environmental impacts of
25 their proposed actions and to ensure that agencies inform the public that environmental concerns
26 have been considered. It is NEPA’s purpose, in part, “to promote efforts which will prevent or
27 eliminate damage to the environment and biosphere and stimulate the health and welfare of man.”
28 42 U.S.C. § 4321. Recognizing that “each person should enjoy a healthful environment,” NEPA

1 directs that the federal government use all practicable means to “assure for all Americans safe,
2 healthful, productive, and esthetically and culturally pleasing surroundings,” and to “attain the
3 widest range of beneficial uses of the environment without degradation, risk to health or safety, or
4 other undesirable and unintended consequences.” 42 U.S.C. § 4331(b).

5 26. To accomplish NEPA’s purpose, NEPA requires “responsible [federal] officials” to
6 prepare an environmental impact statement (“EIS”) to consider the effects of each “major Federal
7 action[] significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C)(i).

8 27. This environmental impact statement must, among other things, describe the
9 “environmental impact of the proposed action,” and evaluate “alternatives to the proposal.” *Id.* §
10 4332(2)(C)(ii), (iii). The agency must analyze not only the direct impacts of a proposed action, but
11 also the indirect and cumulative impacts. 40 C.F.R. §§ 1508.7, 1508.8.

12 28. In its analysis, the agency must disclose if information is incomplete or unavailable
13 and explain “the relevance of the incomplete or unavailable information to evaluating reasonably
14 foreseeable significant adverse impacts.” *Id.* § 1502.22(b)(1). The agency must also directly and
15 explicitly respond to dissenting scientific opinion. *Id.* § 1502.9(b). Further, NEPA’s implementing
16 regulations require that the agency “shall identify any methodologies used and shall make explicit
17 reference by footnote to the scientific and other sources relied upon for conclusions,” and shall
18 ensure the scientific accuracy and integrity of environmental analysis. *Id.* § 1502.24.

19 29. NEPA regulations also direct that BLM to the fullest extent possible “encourage and
20 facilitate public involvement” in the NEPA process. *Id.* § 1500.2(d).

21 **C. The Administrative Procedure Act**

22 30. The Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706, provides for
23 judicial review of administrative actions, and waives the sovereign immunity of the United States,
24 its agencies, officers, and employees, 5 U.S.C. § 702. Actions that are reviewable under the APA
25 include final agency actions “for which there is no other adequate remedy in a court.” *Id.*

26 31. The APA provides that a reviewing court shall “hold unlawful and set aside agency
27 action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or
28 otherwise not in accordance with law.” 5 U.S.C. § 706(2). Agency actions may also be set aside in

1 other circumstances, such as where the action is “without observance of procedure required by
2 law.” *Id.* § 706(2)(B)-(F).

3 32. The APA also provides that a reviewing court shall “compel agency action
4 unlawfully withheld or unreasonably delayed.”

5 **FACTUAL AND PROCEDURAL BACKGROUND**

6 **A. The Central Coast Field Office Planning Area**

7 33. The Central Coast Planning Area is an administrative geographic subdivision of
8 federal land and mineral estate managed by BLM. The Central Coast Planning Area covers all or
9 part of 12 counties in California’s Bay Area and Central Coast: Alameda, Contra Costa, Fresno,
10 Merced, Monterey, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz
11 and Stanislaus. There are BLM-managed federal lands or mineral estate in all of these counties but
12 San Francisco.

13 34. The Central Coast Planning Area includes beautiful and diverse landscapes.
14 Vegetation across the Planning Area ranges from the desert scrublands of the San Joaquin Desert, to
15 the mixed conifer forests of the Santa Cruz mountains. This diversity of habitat means the Central
16 Coast Planning Area is home to a variety of rare, threatened or endangered species, including the
17 California jewelflower, the San Joaquin woollythread, the San Joaquin kit fox, the blunt-nosed
18 leopard lizard, the California red-legged frog, the Giant kangaroo rat and the steelhead trout.

19 35. The Planning Area includes the Panoche-Coalinga Area of Critical Environmental
20 Concern, an area that stretches from Panoche Hills in Fresno county, southward to Coalinga,
21 connecting a vast landscape of desert-like habitats of extraordinary scenic beauty and recreational
22 value. The Panoche-Coalinga Area of Critical Environmental Concern was established to protect its
23 significant habitat for rare, threatened, and endangered plants and wildlife, and to protect its
24 paleontological resources.

25 36. While the Central Coast Planning Area encompasses extraordinary landscapes and
26 biodiversity, water scarcity is an ever-present concern. Groundwater is essential to agriculture and
27 other sectors of the economy, as well as providing about 75 percent of California’s population with
28 at least some drinking water. In the southern and central portions of the Central Coast Planning

1 Area, groundwater supplies more than 80 percent of the demand for water.

2 37. Groundwater quality and quantity in the area is affected by drought-related
3 decreased precipitation, reduced snowpack and consequential increased reliance on groundwater
4 pumping. Of the 20 groundwater basins in the Planning Area that contain federal mineral estate,
5 four are in critical overdraft.

6 38. Like most of California, the Central Coast Planning Area is seismically active. A
7 number of faults, including the San Andreas fault, run through the Planning Area. Because faults
8 can either trap crude oil, or act as a conduit, oil and gas fields are frequently located in the vicinity
9 faults.

10 **B. The Impacts of Oil and Gas Production**

11 39. The Central Coast Planning Area contains 35 active oil fields and gas fields and a
12 total of 4,292 producing and service wells. As well as conventional oil and gas extraction methods,
13 operators in the Planning Area use particularly hazardous methods such as hydraulic “fracking” and
14 enhanced oil recovery techniques to extract oil and gas. Enhanced oil recovery techniques, including
15 steam injection and water flood, are used in all the most productive oil and gas fields in the Planning
16 Area, including Coalinga and San Ardo oil and gas fields, and result in more than three quarters of
17 oil production.

18 40. Steam injection is an enhanced oil recovery technique by which pressurized steam is
19 forced underground, to heat the thick crude oil, allowing it to flow to production wells. Cyclic steam
20 injection is a form of steam injection where steam is injected intermittently into the production well.
21 Steam flooding involves continually injecting steam underground from injection wells that
22 intersperse an area with oil production wells.

23 41. Water flooding is an enhanced oil recovery technique by which water is injected
24 underground, usually to increase the pressure of the reservoir to stimulate production, but also to
25 wash oil out of the reservoir and into a production well.

26 42. Fracking, also referred to as “well stimulation,” is a technique by which fluid,
27 chemicals and a proppant are injected underground at a pressure high enough to break up the
28 underlying rock formation, freeing oil to flow to the surface.

1 43. Steam injection, water flooding and fracking all require large volumes of water. In the
2 Central Coast Planning Area, that water is assumed to be sourced from groundwater.

3 44. Two of the most productive fields in the Planning Area, Coalinga oil and gas field
4 and San Ardo oil and gas field, are within critically over drafted groundwater basins.

5 45. Conventional oil and gas production, enhanced oil recovery techniques and fracking
6 can all involve the use of dangerous chemicals, including chemicals that harm human respiratory and
7 reproductive systems and cause cancer. Waste fluid from oil and gas wells can contain chemicals
8 added to the well, as well as harmful constituents that naturally occur in oil and gas formations, such
9 as heavy metals, naturally occurring radioactive materials and other carcinogens.

10 46. Oil and gas production also results in the release of air pollutants including nitrogen
11 oxides, sulfur dioxide, particulate matter and volatile organic compounds. Oil and gas production
12 also produces greenhouse gases, such as carbon dioxide and methane that cause global warming and
13 climate change. Oilfields in the Central Coast Planning Area produce some of the most carbon-
14 intensive, or climate-damaging, crude oil in California.

15 47. Oil and gas production on public lands can also result in the destruction and
16 fragmentation of habitat for rare, threatened and endangered species; induced seismicity; and
17 contamination of soils, surface water and groundwater.

18 **C. BLM's Resource Management Plan Amendment**

19 48. The Central Coast RMP establishes a framework for the U.S. Bureau of Land
20 Management to manage the 792,430 acres of federal mineral estate within the Central Coast
21 Planning Area. The RMP Amendment at issue here determines which BLM-managed lands and
22 federal mineral estate is open or closed to oil and gas leasing, and which stipulations or restrictions
23 will be applied to future leases to protect environmental resources.

24 49. On January 6, 2017, BLM notified the public of the availability of a draft Resource
25 Management Plan Amendment and Environmental Impact Statement for oil and gas leasing and
26 development ("Draft EIS").

27 50. The Draft EIS considered five alternatives, "A" through "E," each of which
28 proposed opening different acreages for oil and gas leasing and development.

1 51. In an effort to estimate the environmental impacts associated with oil and gas
2 development and extraction under RMP Amendment, the Draft EIS relied on a “reasonably
3 foreseeable development scenario” that projected anticipated future oil and gas production in the
4 area. For every alternative but Alternative B, BLM assumed up to 37 wells will be drilled on federal
5 mineral estate in the next 15 to 20 years. BLM assumed Alternative B would result in up to 32 wells
6 being drilled.

7 52. The Draft EIS identified as BLM’s preferred alternative “Alternative C,” which
8 would open a total of 398,600 acres of federal mineral estate for oil and gas development. Under
9 Alternative C, federal mineral estate underlying giant kangaroo rat core population habitat areas and
10 in California’s coastal zone would be closed to oil and gas development, and no surface occupancy
11 would be allowed on land designated by U.S. Fish and Wildlife Services as designated critical
12 habitat for threatened or endangered species. All federal mineral estate in Alameda, Contra Costa,
13 Santa Clara, Santa Cruz and San Mateo counties would be closed to oil and gas leasing and
14 development.

15 53. During the public comment period, Plaintiffs submitted comments on the Draft EIS
16 on April 6, 2017. Plaintiff Center for Biological Diversity submitted supplemental comments on
17 June 1, 2017, November 20, 2018 and December 14, 2018. All Plaintiffs’ comments were focused
18 on, and exclusively addressed, the impacts of BLM’s preferred alternative, Alternative C.

19 54. On May 10, 2019, BLM published a notice of availability for the final Resource
20 Management Plan Amendment and Environmental Impact Statement (“Final EIS”). The Final EIS
21 identified as BLM’s preferred alternative “Alternative F”—a wholly new alternative that was not
22 included or analyzed in the Draft EIS. Alternative F opens for oil and gas development a total of
23 725,500 acres of federal mineral estate, more than 91 percent of all land and mineral estate in the
24 Planning Area under BLM’s control, and nearly double the mineral estate open under the previous
25 preferred alternative.

26 55. Unlike Alternative C, Alternative F opens federal mineral estate in Alameda, Contra
27 Costa, Santa Cruz, Santa Clara and San Mateo counties for oil and gas development.

28 56. Alternative F also opens for oil and gas development, including surface occupancy,

1 mineral estate underlying designated critical habitat for threatened and endangered species, and
2 within California's coastal zone.

3 57. Alternative F open for oil and gas development mineral estate overlying portions of
4 all 20 groundwater basins in the Planning Area.

5 58. Alternative F also opens for oil and gas leasing, including surface occupancy, federal
6 lands within portions of Panoche-Coalinga Area of Critical Environmental Concern; and federal
7 lands subject to Recreation & Public Purpose leases. There are Recreation & Public Purpose lease
8 lands in Mt. Diablo State Park and Henry W. Coe State Park that are now open for oil and gas
9 leasing with surface occupancy.

10 59. The Final EIS fails to analyze many of the impacts associated with and flowing from
11 its decision to open the Central Coast Planning Area to oil and gas development.

12 60. The Final EIS also did not contain any stipulations or other limitations to prevent the
13 use of fracking or enhanced oil recovery techniques on oil and gas development leases.

14 61. Plaintiffs timely filed a protest on June 7, 2019. The basis for Plaintiffs' protest
15 included that the Final EIS failed to consider an adequate range of alternatives; that BLM should
16 have prepared a supplemental EIS to give the public the opportunity to comment on the newly-
17 developed Alternative F; and that the final EIS failed to take a hard look at the impacts of opening
18 the Central Coast Planning Area for oil and gas development, as NEPA requires.

19 62. On October 4, 2019, BLM dismissed the Plaintiffs' protest and published its Record
20 of Decision adopting Alternative F of the RMP Amendment and Final EIS, and opening 725,500
21 acres of federal public land and mineral estate in the Bay Area and Central Coast for oil and gas
22 exploration and development.

23 **FIRST CLAIM FOR RELIEF**

24 **[Violation of NEPA: Failure to Identify Alternatives]**

25 63. Plaintiffs reallege and incorporate by reference the allegations set forth in the
26 preceding paragraphs.

27 64. NEPA requires that all agencies of the federal government prepare a detailed EIS
28 that discusses the environmental effects of, and reasonable alternatives to, all "major federal actions

1 significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(C).

2 65. The RMP Amendment is a major federal action significantly affecting the quality of
3 the human environment. *See* 43 C.F.R. § 1601.0-6.

4 66. NEPA and its implementing regulations require that an EIS “rigorously explore and
5 objectively evaluate all reasonable alternatives” to a proposed action. 40 C.F.R. § 1502.14. An EIS
6 must devote “substantial treatment” to each alternative considered in detail, “so that reviewers may
7 evaluate their comparative merits.” *Id.* Moreover, agencies must ensure that “the proposal which is
8 the subject of an environmental impact statement is properly defined.” *Id.* § 1502.4(a).

9 67. The “alternatives” considered in the Final EIS are not genuine alternatives as
10 required by NEPA, because all but one are premised on the same reasonably foreseeable
11 development scenario. The remaining alternative presents nothing more than a nominally different
12 development scenario resulting in no meaningful difference in impacts. Because the Final EIS uses
13 essentially the same reasonably foreseeable development scenario to estimate the impacts
14 associated with every alternative described in the Final EIS, no alternative considers an oil and gas
15 development scenario that is meaningfully more restrictive than the preferred alternative scenario
16 and therefore results in meaningfully different environmental impacts.

17 68. The Final EIS for the RMP Amendment therefore fails to set forth and analyze, in
18 accordance with NEPA, a range of alternatives to the adopted alternative.

19 69. BLM’s failure to analyze a range of alternatives, including alternatives that
20 meaningfully restrict oil and gas development, deprives the public and agency decision makers of
21 the information needed to make a fully informed decision and precludes analysis of all of the
22 environmental effects of the proposed action as required by NEPA.

23 70. BLM’s failure to identify and analyze the requisite range of alternatives is contrary
24 to NEPA and its implementing regulations and is arbitrary, capricious, and contrary to the
25 procedures required by law.

26 **SECOND CLAIM FOR RELIEF**

27 **[Violation of NEPA and APA; Failure to Analyze Environmental Impacts]**

28 71. Plaintiffs reallege and incorporate by reference the allegations set forth in the

1 preceding paragraphs.

2 72. NEPA and its implementing regulations require that an EIS “provide full and fair
3 discussion of significant environmental impacts.” 40 C.F.R. § 1502.1. An EIS must analyze the
4 environmental impacts of the proposed action and alternatives, including direct effects, indirect
5 effects, and cumulative effects. *Id.* §§ 1502.16, 1508.7, 1508.8; 42 U.S.C. § 4332(C). To comply
6 with NEPA, agencies must take a “hard look” at the potential environmental consequences of the
7 proposed action. *Oregon Natural Res. Council Fund v. Brong*, 492 F.3d 1120, 1132 (9th Cir. 2007).

8 73. The Final EIS failed to provide the requisite “full and fair discussion” of the impacts
9 of oil and gas development, including the use of fracking and enhanced oil recovery techniques. As
10 a result, the Final EIS fails to disclose and analyze adequately significant environmental effects of
11 adopting the Resource Management Plan Amendment, including the effects of oil and gas
12 development on:

- 13 A. air quality;
- 14 B. greenhouse gas emissions and the climate;
- 15 C. groundwater quality and availability;
- 16 D. surface water quality and availability;
- 17 E. seismicity; and
- 18 F. wildlife and plant species, including threatened and endangered species.

19 74. BLM’s failure to disclose and analyze adequately the effects of the Central Coast
20 Resource Management Plan Amendment is arbitrary, capricious, an abuse of discretion and
21 contrary to NEPA and its implementing regulations and the APA.

22 **THIRD CLAIM FOR RELIEF**

23 **[Violation of NEPA; Failure to Prepare a Supplemental EIS]**

24 75. Plaintiffs reallege and incorporate by reference the allegations set forth in the
25 preceding paragraphs.

26 76. Pursuant to NEPA, Defendants must prepare a supplemental EIS if “[t]he agency
27 makes substantial changes in the proposed action that are relevant to environmental concerns;” or
28

1 where “[t]here are significant new circumstances or information relevant to environmental concerns
2 and bearing on the proposed action or its impacts.” 40 C.F.R. § 1502.9(c).

3 77. Introduction in a final EIS of a new alternative that is outside “the range of
4 alternatives the public could have reasonably anticipated,” and to which the “public’s comments on
5 the draft EIS alternatives” do not “also apply to the chosen alternative and inform [the agency]
6 meaningfully of the public’s attitudes toward the chosen alternative” is sufficient to require a
7 supplemental EIS. *California v. Block*, 690 F.2d 753, 772 (9th Cir. 1982).

8 78. BLM’s Record of Decision adopted an alternative presented for the first time in the
9 Final EIS.

10 79. The adopted Alternative, Alternative F, was outside the range of the alternatives the
11 public could reasonably have anticipated that BLM was considering.

12 80. Comments from the public, including from Plaintiffs, other environmental groups,
13 government agencies and elected officials, were therefore insufficient to inform BLM of the
14 public’s view of the chosen alternative and its impacts. *Id.*, 772.

15 81. BLM’s failure to prepare and circulate for public comment a supplemental EIS
16 describing Alternative F and identifying it as BLM’s preferred alternative is therefore arbitrary,
17 capricious, and not in accordance with law as required by NEPA, its implementing regulations, and
18 the APA, and is subject to judicial review under the APA. 5 U.S.C. §§701-706, 706(2). The failure
19 to prepare a supplemental EIS also constitutes agency action that has been unreasonably delayed
20 and unlawfully withheld. *Id.* § 706(1).

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs respectfully request that this Court:

23 A. Declare that BLM’s adoption of the Resource Management Plan Amendment and Final
24 EIS violated NEPA and the regulations promulgated thereunder;

25 B. Vacate and set aside BLM’s actions taken in reliance on the Resource Management Plan
26 Amendment and Final EIS;

27 C. Enjoin BLM and its agents, employees, officers and representatives from approving the
28 leasing or development of oil and gas resources in the Central Coast Planning Area pursuant to the

1 Resource Management Plan Amendment and Final EIS until BLM has demonstrated compliance
2 with NEPA.

3 D. Retain continuing jurisdiction of this matter until BLM fully remedies the violations of
4 law complained of herein;

5 E. Award Plaintiffs their fees, costs and other expenses of this action, including reasonable
6 attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and

7 F. Grant such other relief as the Court deems just and proper.
8

9 DATED: October 30, 2019

Respectfully submitted,

10 /s/ Clare Lakewood
11 Attorneys for Plaintiffs

12 BRENDAN CUMMINGS (CA Bar No. 193952)
13 CLARE LAKEWOOD (CA Bar No. 298479)
14 Center for Biological Diversity
15 1212 Broadway, Ste. 800
16 Oakland, CA 94612
17 Tel: (510) 844-7121
18 Fax: (51) 844-7150
19 Email: bcummings@biologicaldiversity.org
20 clakewood@biologicaldiversity.org

21 DIANA DASCALU-JOFFE (CO Bar No. 50444, *pro*
22 *hac vice pending*)
23 Center for Biological Diversity
24 1536 Wynkoop St., Ste. 421
25 Denver, CO 80202
26 Tel: (702) 925-2521
27 Fax: (303) 572-0032
28 ddascalujoffe@biologicaldiversity.org

NATHAN MATTHEWS (CA Bar No. 264248)
Sierra Club
2102 Webster St, Ste. 1300
Oakland, CA 94612
Tel: (415) 977-5695
Fax: (415) 977-5793
Email: Nathan.matthews@sierraclub.org