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8
9 UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

11 CENTER FOR BIOLOGICAL DIVERSITY) Civ. No.
12 and LOS PADRES FORESTWATCH,)
13)
14 Plaintiffs,) **COMPLAINT FOR DECLARATORY**
15 vs.) **AND INJUNCTIVE RELIEF**
16 UNITED STATES BUREAU OF LAND)
17 MANAGEMENT; SALLY JEWELL, in her)
18 capacity as Secretary of the Interior; NEIL)
19 KORNZE, in his capacity as Director,)
20 Bureau of Land Management; JAMES)
21 KENNA, in his capacity as California State)
22 Director, Bureau of Land Management,)
Defendants.)

23 **INTRODUCTION**

24 1. This case challenges a management plan and accompanying
25 environmental impact statement (“EIS”) adopted by the Bakersfield Field Office of
26 the U.S. Bureau of Land Management (the “Bureau”) on December 22, 2014.
27 Because the Bureau approved the plan and EIS in violation of federal environmental
28 laws, this Court has jurisdiction under 28 U.S.C. § 1331.

1 2. As set forth below, the management plan at issue in this case (hereinafter,
2 the “Bakersfield plan”) opens hundreds of thousands of acres of federal property
3 located in central California to oil and gas extraction, including unconventional and
4 environmentally harmful techniques like hydraulic fracturing, or “fracking.”

5 3. Conventional oil and gas extraction in central California has already
6 damaged or permanently destroyed wildlife habitat, degraded air quality, contributed
7 to global climate change, and contaminated California’s groundwater sources.

8 4. Unconventional extraction techniques like fracking have brought new
9 environmental impacts, in part because they entail greater use of water and toxic
10 chemicals. New extraction techniques have also made previously inaccessible gas
11 reserves easier to reach, and thus perpetuate oil and gas activities in areas that have
12 already been drilled while facilitating drilling in undeveloped areas. The
13 environmental impacts associated with fracking in California are compounded by the
14 state’s current drought and unprecedented water scarcity.

15 5. The Bakersfield plan accommodates further conventional and
16 unconventional oil and gas development for another ten to fifteen years, without
17 meaningful analysis and public disclosure of these activities’ environmental impacts.
18 In preparing the Bakersfield plan, the Bureau also failed to identify any genuine
19 alternative to the agency’s business-as-usual oil and gas development trajectory.

20 6. Moreover, since the Bureau prepared the EIS for the Bakersfield plan,
21 significant new information regarding the environmental impacts of unconventional
22 well stimulation and oil and gas activities more generally has become available. This
23 new information demands careful consideration in a supplemental EIS, but the Bureau
24 has declined to do so.

25 7. The Bureau’s failure to take the requisite “hard look” at the
26 environmental impacts associated with oil and gas extraction, and the agency’s
27 additional failure to consider meaningful alternatives to continued extraction violates
28 the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321-4370h, and the

1 regulations implementing that statute. Plaintiffs therefore seek a declaration that the
2 Bakersfield plan is contrary to law, an order setting aside the plan and requiring the
3 Bureau to prepare a supplemental EIS, and an injunction prohibiting the Bureau from
4 carrying out oil and gas leasing under the plan pending compliance with NEPA.

5 **JURISDICTION AND VENUE**

6 8. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 and 28 U.S.C.
7 § 1346, because the United States is a defendant and plaintiffs' claims arise under
8 federal law. An actual justiciable controversy exists between the parties.

9 9. Venue is proper in this district court pursuant to 28 U.S.C. § 1391(e)(1),
10 because plaintiff Los Padres ForestWatch resides in this district and a substantial part
11 of the federal land that is the subject of this action lies in this district.

12 10. Assignment to the Western Division of this district court is proper,
13 because plaintiff Los Padres ForestWatch resides in Santa Barbara County.

14 **PARTIES**

15 11. Plaintiff Center for Biological Diversity ("the Center") is a non-profit
16 organization with offices in San Francisco, Sacramento, Joshua Tree, Los Angeles,
17 and San Diego, California, as well as a number of other states. The Center works
18 through science, law, and policy to secure a future for all species hovering on the
19 brink of extinction. The Center is actively involved in species and habitat protection
20 in central and southern California, including on the federal land at issue in this case.
21 The Center has over 40,000 members throughout the United States and the world.

22 12. Plaintiff Los Padres ForestWatch is a community-based non-profit
23 organization with more than 4,000 members and on-line supporters, headquartered in
24 Santa Barbara, California. The organization's mission is to protect the Los Padres
25 National Forest, the Carrizo Plain National Monument, and other public lands along
26 California's central coast, including certain lands administered by the Bureau's
27 Bakersfield Field Office.

28

1 13. Plaintiffs have many members who live, work, and recreate in and
2 around the federal land at issue in this case who are and will be adversely affected by
3 the Bureau's decision to adopt the Bakersfield plan.

4 14. The federal property that is subject to Bakersfield plan includes habitat
5 for many rare and imperiled species that plaintiffs are working to protect, including
6 the San Joaquin kit fox, California jewelflower, blunt-nosed leopard lizard, and the
7 California condor. These species will be adversely affected by the Bakersfield plan.

8 15. Plaintiffs' board, staff, and members use the federal property that is
9 subject to the Bakersfield plan for recreation, scientific research, aesthetic pursuits,
10 and spiritual renewal. Plaintiffs' board, staff, and members are harmed by the
11 Bureau's decision to adopt the Bakersfield plan. For example, oil and gas
12 development under the Bakersfield plan will degrade air quality and pollute and
13 consume precious water resources used by plaintiffs' board, staff and members.
14 Plaintiffs and their respective members also have a substantial interest in ensuring that
15 the Bureau complies with federal law, including the procedural requirements of
16 NEPA.

17 16. Plaintiffs have been, are being, and will continue to be adversely affected
18 and irreparably injured by the Bureau's decision to adopt the Bakersfield plan.
19 Plaintiffs' injuries are actual and concrete and would be redressed by the relief sought
20 herein. Plaintiffs have no adequate remedy at law. Plaintiffs have exhausted all
21 available administrative remedies.

22 17. Defendant United States Bureau of Land Management is an
23 administrative agency within the Department of Interior responsible for managing
24 over 245 million acres of surface land and 700 million acres of sub-surface mineral
25 estate across the United States, including the property that is subject to the Bakersfield
26 plan.

27 18. Defendant Sally Jewell is the Secretary of the Department of Interior.
28 She is sued in her official capacity.

1 19. Defendant Neil Kornze is the Principal Deputy Director of the Bureau.
2 He is sued in his official capacity.

3 20. Defendant James Kenna is the State Director of the Bureau in California.
4 He is sued in his official capacity.

5 **FACTUAL BACKGROUND**

6 21. The Bureau’s Bakersfield Field Office is located in Bakersfield,
7 California and administers federal property stretching from the coastal islands in the
8 Pacific Ocean across the central valley to the crest of the Sierra Nevada range.
9 Federal land and mineral estate under the Bakersfield Field Office’s jurisdiction falls
10 within Kings, San Luis Obispo, Santa Barbara, Tulare, Ventura, Madera, southern
11 Fresno, and western Kern Counties.

12 22. The Bakersfield Field Office’s “decision area”—*i.e.*, the federal property
13 subject to the Bakersfield plan—includes 400,000 acres of public land and 1.2 million
14 acres of subsurface mineral estate. This property ranges in character from coastal
15 areas near Los Padres National Forest, to dry expanses in the San Joaquin Valley, to
16 rugged hills in the Sierra bioregion.

17 23. The federal property subject to the Bakersfield plan is at the epicenter of
18 oil and gas drilling in California, including fracking. California is the fourth largest
19 oil producing state in the United States, and this production occurs primarily in Kern
20 County and the San Joaquin Valley, as well as Ventura County and Los Angeles
21 County. Much of this production occurs directly within the Bakersfield Field Office’s
22 jurisdiction. According to the Bureau, five of the ten most productive federal oil
23 fields in the United States are in California, and most of these are in Kern County.

24 24. Fracking and other unconventional well stimulation activities are
25 concentrated in the same areas of California as conventional oil and gas drilling. As
26 of 2014, there were 2,361 fracking wells in Kern County and 456 fracking wells in
27 Ventura County. The oil and gas industry has employed fracking with increasing
28 frequency in California for the last several years.

1 25. Portions of the property covered by the Bakersfield plan overlie the
2 Monterey Shale Formation, which extends through the San Joaquin Valley and is
3 estimated to contain between 13.7 and 15 billion barrels of shale oil. Much of this
4 resource can be extracted only by using unconventional techniques, such as fracking.

5 26. Despite hosting some of California's most intense oil and gas production,
6 the federal land managed by the Bakersfield Field Office often remains the last, best
7 home for a significant portion of California's native wildlife. The land at issue in this
8 case is critical for the survival and recovery of endangered species including the San
9 Joaquin kit fox, California jewelflower, blunt-nosed leopard lizard, California condor,
10 and many others. In total, the Bureau's EIS identifies 86 federally listed species (41
11 plant and 45 animal species) that occur in or nearby the land that is subject to the
12 Bakersfield plan.

13 27. Groundwater quality throughout the Bakersfield plan planning area is
14 generally suitable for most urban and agricultural uses, and is valuable for that reason.
15 Due to historic, multiyear drought conditions and surface water scarcity in California,
16 water users have increased groundwater pumping dramatically, thereby reducing
17 groundwater availability. Groundwater resources are anticipated to continue to be
18 over-drafted to compensate for insufficient surface-water deliveries.

19 28. The impacts of oil and gas production on public lands include but are not
20 limited to destruction and loss of habitat, air pollution emissions, and generation of
21 waste water and drilling wastes. Air pollutants include nitrogen oxides, sulfur
22 dioxide, particulate matter and volatile organic compounds. Oil and gas production
23 also produces greenhouse gases, which contribute directly to climate change. Water
24 produced during conventional extraction procedures must be disposed of after
25 extraction, as must wastes from drilling processes, such as drilling muds and well-
26 bore cuttings.

27 29. Fracking and other unconventional extraction techniques have
28 particularly adverse environmental and human health impacts. Human health impacts

1 associated with fracking result from the use of toxic chemicals during the fracking
2 process and the subsequent release of additional toxic chemicals and radioactive
3 materials during well production. Fracking fluid flowback—the fluid pumped out of
4 the well and separated from oil and gas—not only contains the chemical additives
5 used in the drilling process, but also contains heavy metals, radioactive materials, and
6 hazardous air pollutants such as benzene. Numerous pathways exist throughout the
7 fracking process for the release of these toxic materials. Fracking is also water
8 intensive, and every fracked well creates many gallons of toxic wastewater each day
9 when in operation.

10 **STATUTORY BACKGROUND**

11 30. The Federal Land Policy Management Act of 1976 (“FLPMA”) governs
12 the management, protection, development and enhancement of federal property under
13 the jurisdiction of the Bureau. FLPMA provides that land managed by the Bureau “be
14 managed in a manner that will protect the quality of scientific, scenic, historical,
15 ecological, environmental, air and atmospheric, water resource, and archeological
16 values.” 43 U.S.C. § 1701(a)(8).

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

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

1 33. The Bureau has determined that preparation of a resource management
2 plan “is considered a major federal action significantly affecting the quality of the
3 human environment,” and therefore requires the preparation of an EIS under NEPA.
4 43 C.F.R. § 1601.0-6.

5 **PROCEDURAL BACKGROUND**

6 34. On March 4, 2008, the Bureau published notice of its intent to prepare a
7 new resource management plan for the federal property under the Bakersfield Field
8 Office’s jurisdiction.

9 35. On September 9, 2011, the Bureau made available to the public a draft of
10 the Bakersfield plan and corresponding EIS, thereby initiating the 90-day public
11 comment period.

12 36. On August 31, 2012, the Bureau announced the availability of the
13 proposed Bakersfield plan and final EIS, thereby initiating a 30-day “protest period”
14 under the Bureau’s regulations. 43 C.F.R. 1610.5-2(a).

15 37. On September 27, 2012, plaintiffs herein filed timely protest letters
16 raising concerns regarding the Bureau’s failure to analyze and disclose the
17 environmental impacts associated with the Bakersfield plan and alternatives that
18 would restrict oil and gas development.

19 38. On December 22, 2014, the Bureau’s State Director, James Kenna,
20 signed the final record of decision for the Bakersfield plan. The final plan and EIS are
21 substantively identical to the proposed plan and draft EIS.

22 39. The final Bakersfield plan opens over 1 million acres of surface land and
23 mineral estate—88 percent of the total land subject to the Bakersfield plan—to
24 continued oil and gas extraction.

25 40. The Bakersfield plan closes only 149,600 acres to oil and gas extraction.
26 A number of these closed acres—including numerous “areas of critical environmental
27 concern” and river areas—are “discretionary” closures. Only wilderness designated
28

1 land, wilderness study areas, the Piedras Blancas outstanding natural area and the
2 Pacific Crest national scenic trail are closed with certainty.

3 41. In an effort to estimate the environmental impacts associated with oil and
4 gas extraction under the Bakersfield plan, the Bureau's EIS relies on what it terms the
5 "reasonably foreseeable development assumption." According to the Bureau, that
6 assumption reflects historical oil and gas activity and forecasts that between 100 and
7 400 new wells will be drilled in the decision area per year over the next ten years.

8 42. The reasonably foreseeable development assumption for oil and gas does
9 not vary by alternative. As a result, all of the final EIS alternatives are improperly
10 based on identical oil and gas development trajectories.

11 43. The final EIS acknowledges that new oil and gas technologies can
12 significantly increase the percentage of oil recovered profitably, and it concedes that
13 new technologies will prolong the life of many oil wells. However, the final EIS does
14 not analyze the environmental impacts that will result from increased oil and gas
15 production facilitated by new drilling technologies, like fracking. Likewise, the
16 reasonably foreseeable development assumption does not address the likelihood that
17 fracking will expand the scope and intensity of oil and gas activities, thereby
18 expanding or intensifying surface disturbance impacts.

19 44. With respect to air quality, the final EIS concludes that emissions under
20 the Bakersfield plan will be below *de minimis* threshold values, based on the
21 reasonably foreseeable development assumption. In reaching this conclusion,
22 however, the Bureau analyzed the impacts of only 40 new wells per year, despite the
23 fact that 4,000 wells are anticipated during the lifetime of the Bakersfield plan. The
24 Bureau failed to analyze ten year projected emission impacts in its cumulative impacts
25 analysis.

26 45. The final EIS also does not adequately analyze and disclose the
27 greenhouse gas emissions and related climate change impacts that will result from the
28 plan's oil and gas development scenario. Instead, the final EIS improperly dismisses

1 these impacts on the grounds that the specific greenhouse gas effects of
2 “anthropogenic activities cannot be determined.”

3 46. The final EIS notes that approximately 70 percent of the planning area is
4 underlain by distinct groundwater systems. The final EIS does not, however, discuss
5 the impacts of fracking or other well stimulation techniques on these groundwater
6 systems, nor does it frame its discussion of water-related impacts in the context of the
7 state’s historic drought conditions.

8 47. The Bureau’s record of decision for the Bakersfield plan acknowledges
9 new science on fracking, primarily citing its own report “An Independent Review of
10 Scientific and Technical Information on Advanced Well Stimulation Technologies in
11 California.” The record of decision claims that the Bureau will consider information
12 about well stimulation technology at the leasing stage, including “the likelihood that
13 the parcels offered for sale will require the use of well stimulation technologies, and
14 disclose the impacts and risks of well stimulation technology based on the best
15 available information at that time, and how those risks can be avoided, minimized or
16 mitigated.” The record of decision then asserts, despite overwhelming evidence to the
17 contrary, that “overall, in California, for industry practice of today, the direct
18 environmental impacts of well stimulation practice appear to be relatively limited.”

19 48. On April 8, 2015, the Center provided the Bureau with a letter notifying
20 the agency of its legal obligation to prepare a supplemental EIS in light of significant
21 new information on the impacts of well stimulation that had come to light since the
22 release of the final EIS. The Center’s letter discusses new information regarding the
23 significant impacts that result from fracking, including impacts on air quality, water
24 quality, water use and public health. At the time of this filing, the Center has not
25 received a response from the Bureau to its April 8, 2015 letter.

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FIRST CLAIM FOR RELIEF

(Violation of NEPA: Failure to Identify Alternatives)

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3 49. Plaintiffs re-allege, as if fully set forth herein, each and every allegation
4 contained in the preceding paragraphs.

5 50. NEPA requires that all agencies of the federal government prepare a
6 detailed EIS that discusses the environmental effects of, and reasonable alternatives
7 to, all “major federal actions significantly affecting the quality of the human
8 environment.” 42 U.S.C. § 4332(C).

9 51. The Bakersfield plan is a major federal action significantly affecting the
10 quality of the human environment. *See* 43 C.F.R. § 1601.0-6.

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

17 53. The final EIS for the Bakersfield plan fails to set forth and analyze, in
18 accordance with NEPA, a range of alternatives to Bakersfield plan. For example, the
19 final EIS does not analyze an alternative that would prohibit or substantially curtail
20 new oil and gas development or unconventional well-stimulation techniques like
21 fracking.

22 54. The “alternatives” considered in the final EIS are not genuine alternatives
23 as required by NEPA, because all are premised on the same reasonably foreseeable
24 development assumption. Because the final EIS uses the same reasonably foreseeable
25 development assumption to estimate the impacts associated with every alternative
26 described in the final EIS, no alternative considers an oil and gas development
27 scenario that is more restrictive than the preferred alternative scenario. As a result, the
28 final EIS’s alternatives discussion is impermissibly narrow.

1 55. The Bureau’s failure to analyze a range of alternatives, including
 2 alternatives that meaningfully restrict oil and gas development, deprives the public
 3 and agency decision makers of the information needed to make a fully informed
 4 decision and precludes analysis of all of the environmental effects of the proposed
 5 action as required by NEPA.

6 56. The Bureau’s failure to identify and analyze the requisite range of
 7 alternatives is contrary to NEPA and its implementing regulations and is arbitrary,
 8 capricious, and contrary to the procedures required by law.

9 **SECOND CLAIM FOR RELIEF**

10 **(Violation of NEPA: Failure to Analyze Environmental Impacts)**

11 57. Plaintiffs re-allege, as if fully set forth herein, each and every allegation
 12 contained in the preceding paragraphs.

13 58. NEPA and its implementing regulations require that an EIS “provide full
 14 and fair discussion of significant environmental impacts.” 40 C.F.R. § 1502.1. An
 15 EIS must analyze the environmental impacts of the proposed action and alternatives,
 16 including direct effects, indirect effects, and cumulative effects. *Id.* §§ 1502.16,
 17 1508.7, 1508.8; 42 U.S.C. § 4332(C). To comply with NEPA, agencies must take a
 18 “hard look” at the potential environmental consequences of the proposed action.
 19 *Oregon Natural Res. Council Fund v. Brong*, 492 F.3d 1120, 1132 (9th Cir. 2007).

20 59. The final EIS for the Bakersfield plan fails to provide the requisite “full
 21 and fair discussion” of the impacts of fracking, acidization, and other unconventional
 22 forms of well stimulation, which involve the use of hundreds of chemicals, many of
 23 which are known to be carcinogenic or otherwise harmful to human health. As a
 24 result, the final EIS fails to disclose and analyze adequately significant environmental
 25 effects of adopting the Bakersfield plan, including the impacts of fracking on:

- 26 A. surface water quality and availability;
- 27 B. groundwater quality and availability;
- 28 C. air quality;

- 1 D. land disturbance;
- 2 E. fish, wildlife, and plants, including imperiled species;
- 3 F. climate; and
- 4 G. seismicity.

5 60. The Bureau's failure to disclose and analyze adequately the Bakersfield
6 plan's significant and adverse environmental impacts is contrary to NEPA and its
7 implementing regulations and therefore is arbitrary, capricious, and contrary to the
8 procedures required by law.

9 **THIRD CLAIM FOR RELIEF**

10 **(Violation of NEPA: Failure to Prepare Supplemental EIS)**

11 61. Plaintiffs re-allege, as if fully set forth herein, each and every allegation
12 contained in the preceding paragraphs.

13 62. Consistent with NEPA, federal agencies must prepare a supplemental EIS
14 whenever they are presented with "significant new circumstances or information
15 relevant to environmental concerns and bearing on the proposed action or its impacts."
16 40 C.F.R. § 1502.9(c)(1)(ii). Thus, agencies must assess information made available
17 after the completion of an EIS to determine whether a supplemental EIS is warranted.
18 *See Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 371 (1989).

19 63. In the three years since the Bureau prepared the final EIS for the
20 Bakersfield plan, significant new research and information has become available
21 regarding the environmental impacts of unconventional oil and gas extraction
22 techniques.

23 64. In addition, significant new information not considered in the final EIS
24 for the Bakersfield plan indicates that unconventional extraction techniques will
25 increase the overall amount of oil and gas development in the state, as well as the
26 spatial intensity of oil and gas wells, beyond what was considered in the final EIS.

27 65. New evidence of increasing use of unconventional well stimulation in
28 California and recent scientific research on the related environmental impacts, post-

1 dating the 2012 final EIS, including but not limited to the intensifying drought, are
2 “significant new circumstances or information” relevant to environmental concerns.

3 66. The Bureau’s failure to prepare a supplemental EIS and the approval of
4 the project in the absence of the supplemental EIS is arbitrary, capricious, and
5 contrary to the procedures required by law.

6 **REQUEST FOR RELIEF**

7 WHEREFORE, plaintiffs respectfully request that the Court:

8 A. Find and declare that the Bureau adopted the Bakersfield plan in
9 violation of NEPA and related federal regulations;

10 B. Set aside the Bakersfield plan, enjoin the Bureau from authorizing or
11 otherwise proceeding with oil and gas leasing or other oil and gas activities pursuant
12 to the plan, and order the Bureau to prepare a supplemental EIS that, among other
13 things, (a) analyzes a range of alternatives with varying levels of oil and gas
14 development scenarios, and (b) analyzes the environmental impacts associated with
15 oil and gas development pursuant to those alternatives;

16 C. Award plaintiffs their costs of litigation, including reasonable attorneys’
17 fees and costs, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and

18 D. Grant plaintiffs such additional relief as the Court may deem proper.

19 Respectfully submitted,

20 Dated: June 10, 2015

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