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16 *Attorneys for Plaintiffs*

17 **IN THE UNITED STATES DISTRICT COURT**
18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN JOSE DIVISION**

HRL

20 CENTER FOR BIOLOGICAL
21 DIVERSITY and SIERRA CLUB,

22 Plaintiffs,

23 v.

24 SALLY JEWELL, Secretary of the
Department of the Interior, and THE
25 BUREAU OF LAND MANAGEMENT,

26 Defendants.
27
28

CV 13 1749
Case No.

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

I. INTRODUCTION

1
2 1. Plaintiffs Center for Biological Diversity and the Sierra Club (“Plaintiffs”) bring this
3 civil action for declaratory and injunctive relief against Sally Jewell, Secretary of the Interior, and the
4 United States Bureau of Land Management (collectively “BLM”), regarding BLM’s decision to lease
5 sensitive lands in California for oil and gas development without analyzing the full environmental
6 effects of doing so. This action arises under, and alleges violation of, the Administrative Procedure Act
7 (“APA”), 5 U.S.C. §§ 701-706; the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321
8 *et seq.*; and the statutes’ implementing regulations.

9 2. On March 7, 2013, BLM’s Hollister field office dismissed Plaintiffs’ timely protest of
10 the agency’s December 12, 2012, oil and gas lease sale, which auctioned 17,832.80 acres of federal
11 mineral estate. The lease sale parcels at issue are in Monterey County, San Benito County, and Fresno
12 County.

13 3. In dismissing Plaintiffs’ protest, BLM relied upon an environmental assessment (“EA”) prepared pursuant to NEPA that severely limited the effects of the lease sale, arbitrarily and incorrectly
14 asserting that the leasing of 17,832.80 acres of land would result in the drilling of only one well on a
15 single acre. This limitation prevented BLM from properly analyzing any of the project’s many impacts.
16 In particular, BLM failed to address the impacts hydraulic fracturing – or “fracking” – could have on
17 water quality, air quality, and other resources.

18 4. Plaintiffs ask the Court to overturn BLM’s unlawful lease sale and ensure that BLM
19 allow oil and gas leasing and subsequent development on the lands at issue, if at all, only following a
20 thorough environmental review that fully considers the potential impacts of fracking and possible
21 effects to, *inter alia*, water quality, air quality, sensitive species, human health, and seismicity.
22

II. PARTIES

23
24 5. Plaintiff Center for Biological Diversity (“the Center”) is a non-profit corporation with
25 offices in San Francisco, California, and elsewhere in the United States. The Center is actively involved
26 in species and habitat protection issues throughout North America and has approximately 40,000
27 members. One of the Center’s primary missions is to protect and restore habitat and populations of
28 imperiled species, including from the impacts of fossil fuel development. The Center’s members and

1 staff include individuals who regularly use and intend to continue to use the areas in Monterey, San
2 Benito, and Fresno counties affected by the leasing at issue here. Center members have visited these
3 lands for recreational, scientific, educational, and other pursuits, and intend to continue to do so in the
4 future, and are particularly interested in protecting the many native, threatened and endangered, or
5 sensitive species and their habitats that oil and gas leasing and development may harm.

6 6. The Sierra Club (“the Club”) is a nationwide non-profit conservation organization
7 headquartered in San Francisco, with over one-hundred-forty thousand members in California. The
8 Club’s purposes are to explore, enjoy, and protect the wild places of the Earth; to practice and promote
9 responsible use of the Earth's ecosystems and resources; to educate and enlist humanity to protect and
10 restore the quality of the natural and human environment; and to use all lawful means to carry out these
11 objectives. The Sierra Club, including its Ventana, Tehipite, and Loma Prieta Chapters, has many
12 members living in and/or recreating in the affected counties. The Club has over two thousand in
13 Monterey County, over one thousand in Fresno County and over one hundred in San Benito County.

14 7. Plaintiffs’ members use and enjoy the wildlife habitat, rivers, streams, and environment
15 in the areas subject to and affected by the oil and gas leases at issue in this case. Plaintiffs’ members
16 derive recreational, aesthetic, and spiritual benefit from their activities. Plaintiffs’ members intend to
17 continue to use and enjoy the wildlife habitat, rivers, streams and healthy environment of the areas
18 affected by the lease sale on an ongoing basis in the future. Plaintiffs’ members also use areas currently
19 suffering from poor air quality, including unsafe ozone levels in Fresno County. Additionally, Plaintiffs
20 and their members and staff have an interest in ensuring that BLM complies with all applicable laws,
21 including the substantive, procedural, and informational provisions of NEPA.

22 8. This suit is brought by Plaintiffs on behalf of themselves and their adversely affected
23 members and staff. BLM’s determination to sell oil and gas leases in the areas subject to this case will
24 harm Plaintiffs and their members’ present and future interests in and use of those areas. Negative
25 effects include, but are not limited to: (1) impacts to water quality; (2) impacts to native plants and
26 wildlife – especially threatened or endangered species – and their habitats within and around the leases
27 due to oil and gas activities; (3) reduction and impairment of recreation opportunities; (4) impaired
28 aesthetic value; (5) loss of scientific study opportunities; (6) emissions of damaging air pollutants; (7)

1 creation of hazardous waste; and (8) potential threats to regional seismic stability.

2 9. Defendant Sally Jewell is the Secretary of the United States Department of the Interior,
3 and is sued in her official capacity. Secretary Jewell is the official ultimately responsible under federal
4 law for ensuring that the actions and management decisions of BLM comply with applicable laws and
5 regulations.

6 10. Defendant BLM is an agency within the United States Department of the Interior and is
7 responsible for managing federal lands and federal subsurface mineral estates underlying federal, state,
8 and private lands. Its stated mission is to sustain the health, productivity, and diversity of America's
9 public lands for the use and enjoyment of present and future generations. BLM is responsible for
10 implementing and complying with federal law, including the federal laws underlying the lease sale
11 challenged in this action.

12 III. JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT

13 11. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§
14 701-706. The relief requested is authorized by 28 U.S.C. §§ 2201-2202.

15 12. BLM has not remedied its violation of NEPA and is in violation of this statute under the
16 standards of review provided by the APA. Plaintiffs have exhausted all available administrative
17 remedies to the degree such exhaustion is required. There exists an actual controversy between the
18 parties within the meaning of 28 U.S.C. § 2201 (declaratory judgments).

19 13. Venue is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events or
20 omissions giving rise to the claim occurred in this judicial district. BLM's Hollister Field Office, which
21 is in San Benito County, California, was the location from which BLM developed the EA at issue here
22 and made many of the decisions resulting in the issuance of the leases. Moreover, roughly 90 percent of
23 the acres included in the lease sale were in Monterey County or San Benito County.

24 14. Assignment to the San Jose Division is appropriate because BLM's Hollister Field
25 Office, which issued the EA and FONSI and made many of the determinations leading to the dismissal
26 of Plaintiffs' protest, is in San Benito County, and roughly 90 percent of the land subject to the present
27 action is located in San Benito County or Monterey County.

IV. LEGAL BACKGROUND

A. The National Environmental Policy Act

15. NEPA is “our basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). NEPA’s twin aims are to ensure that federal agencies consider the environmental impacts of their proposed actions and to ensure that agencies inform the public that environmental concerns have been considered.

16. NEPA requires “responsible [federal] officials” to prepare an environmental impact statement (“EIS”) to consider the effects of each “major Federal action[] significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C)(i). To determine whether the impacts of a proposed action are significant enough to warrant preparation of an EIS, the agency may prepare an EA.

17. Under NEPA’s implementing regulations, an agency’s EA must include “brief discussions of the need for the proposal, of the alternatives . . . , [and] of the environmental impacts of the proposed action and the alternatives.” 40 C.F.R. § 1508.9. The EA must take a “hard look” at the impacts, and if the agency decides the impacts are not significant, it must supply a convincing statement of reasons why.

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

19. An agency must prepare an EIS for any action that has “individually insignificant but cumulatively significant impacts.” 40 C.F.R. § 1508.27(b)(7). A cumulative impact is defined as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency . . . or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively

1 significant actions taking place over a period of time.” *Id.* § 1508.7.

2 20. If, after preparing an EA, the agency determines an EIS is not required, the agency must
3 provide a “convincing statement of reasons” why the project’s impacts are insignificant and issue a
4 Finding of No Significant Impact or “FONSI.” 40 C.F.R. §§ 1501.4, 1508.9, & 1508.13.

5 V. FACTUAL AND PROCEDURAL BACKGROUND

6 A. Impacts of Oil and Gas Leasing and Development: Fracking; Spills; Air Pollution; 7 Earthquakes; and Harms to Species

8 1. Hydraulic Fracturing

9 21. Under BLM’s lease sale, lessees may use hydraulic fracturing – or “fracking” –
10 technology to develop the oil and gas on the leases.

11 22. Fracking is an oil and gas production method that blasts large amounts of a base fluid
12 (typically water), mixed with a proppant, like sand or silica, and toxic chemicals, under high pressure
13 deep into the earth, breaking up rock formations to allow oil and gas extraction.

14 23. Presently, fracking is being used to produce oil and gas from unconventional resources,
15 such as shale. An important recent development in fracking is the drilling of extensive horizontal wells,
16 which increases the length a well is in contact with the shale and allows the company to fracture more
17 of the formation. A report notes that “[f]rom 2007 to 2009, the average lateral length of horizontal
18 drilling for shale rock resources increased by a factor of five, allowing for a tripling of the initial
19 production rate in some shale formations.”

20 24. Another important development in fracking is the use of hazardous fracking fluid. A
21 recent study reviewed 632 chemicals used during fracking operations, 353 of which could be identified
22 with Chemical Abstract Service numbers, and found, for instance, that more than 80 percent of the
23 chemicals could adversely affect the skin, eyes, or other sensory organs, more than 80 percent could
24 hurt the respiratory system, 52 percent could harm the nervous system, 40 percent could damage the
25 immune system, 40 percent could damage the kidneys, 46 percent could harm the cardiovascular
26 system and blood, 37 percent could damage the endocrine system, and more than 25 percent could
27 cause cancer and mutations.

28 25. A further development in fracking is the practice of “multi-stage” fracking, meaning the

1 fracking of comparatively short segments of wells, rather than the whole well at once. This can greatly
2 increase the amount of water used during fracking, with the multi-stage fracking of a well consuming
3 millions of gallons of water.

4 26. Fracking has allowed industry to access oil and gas reserves previously considered
5 uneconomical or unrecoverable and is now a very common practice across the country.

6 27. In May of 2012, BLM estimated that about 90 percent of wells currently drilled on
7 Federal and Indian lands are fracked. 77 Fed. Reg. 27,691, 27,693 (May 11, 2012).

8 28. In the EA at issue, BLM recognizes that “recently, natural gas reserves have gained
9 interest nationally and in California with the possibility of expanding production capacity on public
10 lands using hydraulic fracturing technology.”

11 29. The U.S. Department of Energy’s Energy Information Administration (“EIA”) also
12 notes the connection between fracking and the recent explosion in production of shale oil and shale gas.
13 As the EIA explains in a review of shale gas resources dated July 8, 2011, “[t]he use of horizontal
14 drilling in conjunction with hydraulic fracturing has greatly expanded the ability of producers to
15 profitably recover natural gas and oil from low-permeability geologic plays—particularly, shale plays.”
16 *Id.* As the EIA further explains, “only in the past 5 years has shale gas been recognized as a ‘game
17 changer’ for the U.S. natural gas market.”

18 30. For oil, the EIA stated in June 2012 that “[d]omestic crude oil production has increased
19 over the past few years, reversing a decline that began in 1986. U.S. crude oil production increased
20 from 5.0 million barrels per day in 2008 to 5.5 million barrels per day in 2010.” The EIA further stated
21 that the continued development of shale oil deposits over the next 10 years would continue to push
22 domestic crude oil production higher.

23 31. The fracking of an ever increasing number of wells has transformed regions sitting
24 above shale formations and greatly increased oil and gas production. For the Eagle Ford Shale in Texas,
25 in 2007, total oil production averaged less than 21 thousand barrels per day, but this rate reached 74
26 thousand barrels per day in the first half of 2011. The Eagle Ford has also seen a dramatic increase in
27 the number of wells drilled per month, with this number rising from roughly 50 new wells per month in
28 January 2010 up to 350 wells per month in March 2012.

1 32. In the Bakken Shale in North Dakota, fracking was the driving force behind a more than
2 quadrupling of oil production from the formation between September 2005 and September 2011. Oil
3 production in the Bakken Shale has continued to increase rapidly since September 2011.

4 33. California could experience a shale oil boom on an even greater scale.

5 34. Reacting to proliferation of new fracking technology, the EIA commissioned a study of
6 the United States' shale resources. The EIA estimated based on the resulting study that California's
7 Monterey Shale oil deposit is the nation's largest shale oil play, and that the Monterey Shale contains
8 15.4 billion barrels of technically recoverable oil, which is about 64 percent of the total for the United
9 States' lower 48 states.

10 35. The leases at issue sit above the Monterey Shale.

11 36. Oil companies have shown a significant interest in producing oil from the Monterey
12 Shale and have already begun employing fracking techniques to release oil from the formation.

13 37. Fracking can result in the discharge of hazardous waste, including petroleum products,
14 into drinking water. As noted above, hundreds of chemicals have been found in fracking fluid, many of
15 which are extremely hazardous. Additionally, flowback from a fracked well can contain radionuclides
16 of varying concentrations, depending on the formation, as well as constituents of crude oil, like
17 benzene, which is associated with, *inter alia*, leukemia, anemia, and other blood disorders and
18 immunological effects.

19 38. Fracking and activities associated with fracking can discharge these pollutants into
20 ground or surface waters in numerous ways.

21 39. Fracking fluid can be spilled before it is injected into a well.

22 40. Fracking fluid can reach surface or groundwater aquifers through well casing failure due
23 to improper cementing or other problems;

24 41. Fracking fluid and petroleum can contaminate groundwater through underground
25 migration, through imperfections in the well, natural fractures or fractures created by the fracking
26 operations, or through abandoned wells or other conduits.

27 42. Large amounts of fracking fluid return to the surface after a well is fracked, and these
28 fluids can spill from the well, escape from holding ponds, be purposefully drained into streams or rivers

1 by an operator, or through other means.

2 43. In North Dakota, the location of the Bakken Shale oil boom, for 2011 alone, oil
3 companies reported more than 1,000 accidental releases of oil, drilling wastewater, or other fluids.

4 44. Also, in a draft report, U.S. EPA concluded fracking likely was the cause of
5 groundwater contamination with benzene and other carcinogens and toxins in Pavillion, Wyoming.
6 These findings were confirmed in a follow up analysis performed by EPA, and by a hydrologic
7 consultant.

8 45. Fracking also requires the use of large amounts of water. The EA notes that two to five
9 million gallons of water may be necessary to fracture one horizontal well in a shale formation. The use
10 of this amount of water would deplete water quantity, and further, pumping this large amount of water
11 will require significant amounts of fuel combustion that will result in a corresponding increase in
12 energy use and air pollution.

13 46. Fracking pollutes the air. Fracked natural gas wells emit a high percentage of produced
14 gas to the atmosphere, with life-cycle fugitive emissions perhaps reaching 7.9 percent. These natural
15 gas emissions contain methane, which contributes to ozone formation, and volatile organic compounds
16 (“VOCs”), which include highly hazardous substances that can cause significant harm to human health.

17 47. Ancillary equipment, such as diesel trucks needed to haul fracking fluid, emit a range of
18 air pollutants, such as nitrogen oxides (“NO_x”) and particulate matter. Like VOCs, NO_x contributes to
19 the formation of ozone.

20 48. Around the country, studies have found that oil and gas operations are contributing to
21 ozone concentrations that exceed federal standards established to protect health. For example, in rural
22 Sublette County, Wyoming, ozone levels have reached concentrations surpassing the worst smog days
23 in Los Angeles.

24 49. Fracking has also been linked to earthquakes.

25 50. Fracking is also associated with numerous negative social impacts. Oil and gas
26 development in general can result in boom and bust cycles that leave communities with environmental
27 contamination and little economic stability. These effects are magnified with fracking because it is an
28 especially intensive form of oil and gas development. Also, as seen in places like North Dakota,

1 fracking related booms can increase crime rates rapidly, result in the construction of oil derricks and
2 flares in close proximity to rural homes, and generate increased truck traffic on rural roads.

3 **2. Contamination of the Environment by Spills or Leaks**

4 51. Regardless of whether fracking is employed, oil and gas development under the lease
5 sales can have numerous negative impacts of wildlife and other resources. In particular, all oil and gas
6 operations create a significant risk of harmful substances spilling into the environment.

7 52. Oil and gas operations create a significant amount of waste. For instance, one study
8 found that onshore oil and gas operations in the United States generate 56 million barrels of produced
9 water every day.

10 53. Oil and gas wastes can cause serious health effects in humans. Benzene is commonly
11 found in oil and gas waste and is associated with a range of serious health effects, including increased
12 risk of cancer. Toluene is also found in oil and gas waste and can cause nervous system damage. Other
13 substances found in oil and gas waste that are harmful to human health include acetone, arsenic,
14 barium, and radium.

15 54. Wastes associated with oil and gas activities can destroy lands upon which wildlife
16 depends, disrupt food chains, and prevent wildlife from reproducing. Effects to species include
17 ingestion or absorption toxicity, the loss of thermal stability from the oiling of fur or feathers, and
18 reproductive failure due to the absorption of chemicals. Wastes can also bioaccumulate in wildlife, a
19 process that would cause harmful effects to magnify as they progress up the food chain.

20 55. Common causes of environmental contamination include surface pits and unintentional
21 or intentional spills.

22 56. The underground injection of waste can also result in the contamination of the
23 environment. Although U.S. Government Accountability Office indicated that it was likely that more
24 incidents had occurred, it reported that the U.S. Environmental Protection Agency was aware of at least
25 23 cases across the country where Class II injection wells had contaminated drinking water supplies.

26 57. Surface pits storing waste are a major hazard. New Mexico data show 743 instances of
27 groundwater contamination, with 398 of those occurrences resulting from faulty surface pits containing
28 waste.

1 58. In California, a Kern County farmer was awarded \$8.5 million in damages after an oil
2 and gas producer had dumped waste water into surface pits and that waste had leached into the
3 environment.

4 59. Birds are also attracted to pits, mistaking them for bodies of water, and the sticky nature
5 of some of the fluids contained in the pits can entrap the birds.

6 60. The underground injection of waste is one of the most widely used disposal methods of
7 the fluids associated with oil and gas production, and sometimes the formation into which the waste is
8 injected does not properly seal in the waste and it can escape into the environment. There are numerous
9 examples of injection wells contaminating drinking water supplies.

10 61. Spills are a common result of oil and gas operations. The spills can result from
11 equipment failure, accidents, negligence, or intentional dumping. For example, a January 2007 oil spill
12 at the Sespe Oil Field – Tar Creek Lease released more than 800 gallons of oil and an unknown amount
13 of wastewater into Tar Creek, coating more than three miles of the edge of Sespe Condor Sanctuary
14 with oil.

15 **3. Air Pollution**

16 62. All oil and gas development results in air pollution, regardless of whether it employs
17 fracking.

18 63. Oil and gas activities result in the leakage of large amounts of natural gas.

19 64. The majority of natural gas is methane. According to a U.S. EPA inventory, dated April
20 2011, oil and gas systems are the largest human-made source of methane emissions, accounting for 37
21 percent of United States methane emissions. Emissions of methane are associated with increases in
22 ozone concentrations. In addition to harming human health, ozone pollution harms vegetation,
23 including agricultural crops.

24 65. VOCs make up roughly 3.5 percent of natural gas emissions.

25 66. VOCs include highly hazardous substances, like benzene and toluene, which have
26 direct and substantial negative effects on human health. VOC emissions also contribute to the formation
27 of ozone, also known as smog, which has serious effects on human health.

28 67. These methane and VOC emissions damage air quality and contribute to climate change.

1 Methane and VOC lead to increased formation of ozone, a pollutant associated with a wide range of
2 negative human health effects, including pulmonary and cardiovascular damage.

3 68. The potential for the lease sale to result in additional ozone formation is of particular
4 concern in those areas – particularly in Fresno County – that are not in compliance with ambient air
5 quality standards for ozone.

6 69. Operations also have the potential to flare large amounts of produced gas. Pollutants
7 emitted from natural gas flares include benzene, formaldehyde, polycyclic aromatic hydrocarbons
8 (PAHs, including naphthalene), acetaldehyde, acrolein, propylene, toluene, xylenes, ethyl benzene
9 hexane, particulate matter, and NO_x.

10 **4. Oil and Gas Activities Cause Earthquakes**

11 70. Oil and gas operations resulting from the lease sale could cause earthquakes.

12 71. Scientists have known for decades that the injection and withdrawal of fluids into and
13 from the subsurface can cause earthquakes, with reports of such induced seismicity going back to the
14 1920s.

15 72. The National Research Council has linked large earthquakes to oil activities, with at
16 least two occurring in relatively close proximity to lease sale parcels.

17 73. In May 1983, oil extraction activities likely triggered a magnitude 6.5 earthquake in
18 Coalinga, Fresno County. The parcels in Unit 3 of the lease sale are located in the Panoche Coalinga
19 area of critical environmental concern.

20 74. In August 1985, oil extraction activities likely triggered a magnitude 6.1 earthquake at
21 the Kettleman North Dome, which covers parts of both Fresno County and Kings County.

22 75. In October 1987, oil extraction activities likely caused a magnitude 5.9 earthquake in
23 Wittier Narrows, Southern California.

24 76. Around the country, reports have linked the fracking boom in particular to increased
25 seismicity. Earthquakes have resulted from both the fracking of a well, and the disposal of waste water.

26 77. A recent United States Geological Survey (“USGS”) study notes “[a] remarkable
27 increase in the rate of [magnitude] 3 and greater earthquakes is currently in progress in the US
28 midcontinent. The average number of [magnitude] ≥ 3 earthquakes/year increased starting in 2001,

1 culminating in a six-fold increase over 20th century levels in 2011.” The USGS stated that a possible
2 explanation for the higher rate of these induced seismic events “is the increase in the number of wells
3 drilled over the past decade and the increase in fluid used in the hydraulic fracturing of each well.”

4 78. The Ohio Department of Natural Resources has linked twelve recent earthquakes near
5 Youngstown to the injection of wastewater from hydraulic fracturing into a single well.

6 79. In January 2011 in Oklahoma, hydraulic fracturing may have resulted in a swarm of
7 earthquakes. An analysis of the events reports that “shortly after hydraulic fracturing began small
8 earthquakes started occurring, and more than 50 were identified, of which 43 were large enough to be
9 located.” Most of the earthquakes occurred within 24 hours of the cessation of the fracking, and most of
10 them had epicenters located within five kilometers of the well.

11 80. Homeowners in Prague, Oklahoma, reported about \$50,000 in damage to their home
12 from earthquakes in November, 2011, that might also have been caused by wastewater injection.

13 81. Injection wells near Dallas have repeatedly been linked to earthquakes.

14 82. The lease sale could result in the injection or withdrawal of substantial amounts of
15 fluids, including wastewater and oil. This creates the risk that earthquakes will result.

16 83. Onshore oil and gas operations in the United States produce an estimated 56 million
17 barrels of produced water per day.

18 84. A report from the California Department of Oil, Gas, and Geothermal Resources
19 indicates that oil and gas wells in California produced almost 3 billion barrels of water in 2011.

20 85. Fracking can involve the injection of up to 11 million gallons of water, and the majority
21 of this fluid can return to the surface as flowback.

22 86. The produced water and flowback from the wells resulting from the lease sale will likely
23 be injected into a waste disposal well.

24 87. The lease sale parcels are on or near significant fault lines.

25 88. The Monterey County Water Resource Agency noted that the Rinconada Fault – which a
26 report on seismicity in the area described as a “well-recognized major active” fault – runs beneath
27 Lease 27, as well as the nearby San Antonio Reservoir dam.

28 89. An added danger of seismic activity near wells is that earthquakes can lead to well

1 failure, and thus, contribute to spills and contamination of the environment.

2 **5. The Species and Habitat of the Lease Sale Area**

3 90. The areas leased by BLM are within the habitat of threatened and endangered species.
4 Among the endangered species potentially affected by BLM's lease sale are San Joaquin kit fox, the
5 blunt-nosed leopard lizard, steelhead trout, the California condor, and the giant kangaroo rat.

6 91. Oil and gas operations can directly cause mortality to species and can also harm species
7 by destroying, degrading, or fragmenting habitat.

8 92. Direct causes of mortality or injury include entombment, entrapment in sumps or oil
9 spills, exposure to contaminants, vehicle strikes, and consumption of trash.

10 93. Habitat destruction, degradation, and fragmentation can result from the construction of
11 facilities related to oil and natural gas production, such as well pads, wells, storage tanks, sumps,
12 pipelines, and associated service roads. The dumping of waste oil and highly saline wastewater into
13 natural drainage systems also degrades habitat. Noise and lights from oil and gas operations can also
14 degrade habitat.

15 **B. BLM's Lease Sale and Environmental Assessment**

16 94. On July 6, 2012, BLM notified the public of the availability of a draft EA for a proposed
17 sale of oil and gas leases to take place on December 12, 2012. The EA presents an analysis for the sale
18 of parcels covering approximately 17,847 acres of land in BLM's Salinas Management Area, San
19 Benito Management Area, and San Joaquin Management Area in Monterey County, San Benito
20 County, and Fresno County, respectively

21 95. BLM made the draft EA available for a 30-day public comment period, ending August
22 6, 2012. BLM later extended the comment period to run through August 21, 2012.

23 96. During the public comment period BLM received comments from numerous individuals,
24 groups, and agencies, including Plaintiffs. Plaintiffs filed comments on August 20, 2012.

25 97. In response to comments, BLM made only minor changes to the draft EA, and on
26 September 13, 2012, issued a final EA and FONSI under NEPA and a Decision Record indicating the
27 Hollister Office's intent to offer for competitive auction the fifteen parcels covering 17,847 acres.

28 98. Plaintiffs filed a protest of the parcels included in the lease sale with BLM on October

1 12, 2012, arguing, *inter alia*, that the EA failed to take a hard look at environmental impacts of the oil
2 and gas leases and that clear significant impacts demanded that BLM prepare an EIS. Plaintiffs' Protest
3 requested that BLM cancel the lease sale and prepare an EIS as required by NEPA.

4 99. On December 3, 2012, BLM issued a public notice indicating it had received eleven
5 protests on parcels included in the December 12, 2012, lease sale, and that it intended to offer the
6 parcels at the lease sale pending the official review of the protests received. It further stated that the
7 issuance of the leases would be subject to the outcome of the review, and that depending on the review,
8 the leases might be issued without change, with changed terms, or not at all.

9 100. On December 11, 2012, Plaintiffs filed additional comments on the December 12, 2012,
10 lease sale, highlighting new evidence that underscores the environmental threats posed by the issuance
11 of the leases.

12 101. BLM held the lease sale on December 12, 2012, without resolving the protests it had
13 received, including Plaintiffs'.

14 102. At the December 12, 2012, lease sale, BLM successfully auctioned all of the parcels and
15 a total of 17,832.80 acres. The agency did not issue the leases, however, because the protests were still
16 unresolved.

17 103. On March 7, 2013, BLM dismissed Plaintiffs' protest of the parcels included in the lease
18 sale.

19 104. In dismissing Plaintiffs' protest, BLM ignored its EA's arbitrary failure to analyze
20 numerous impacts associated with and flowing from the lease sale. In justifying the EA's refusal to
21 analyze numerous potential impacts, the agency relied repeatedly and extensively on its alleged ability
22 to analyze potential impacts at later stages of development.

23 105. Among the fundamental flaws of the EA is the scope of its analysis. The EA looks at the
24 environmental impacts associated with only a single well on one acre of habitat, even though the
25 drilling of a much larger number of wells on the 17,832.80 acres of land actually leased reasonably
26 could be expected to occur.

27 106. The EA also justifies its limited analysis upon the assertion that future activity on the
28 leases will require subsequent environmental review. However, the EA also states that, as a general

1 matter, BLM “cannot deny a lessee the right to drill once a lease is issued unless the action is in direct
2 conflict with another existing law.”

3 VI. CLAIM FOR RELIEF

4 [Violation of NEPA and the APA; Preparation of an Unlawful EA and FONSI]

5 107. Each and every allegation set forth in the Complaint above is incorporated herein, by
6 reference.

7 108. NEPA requires the preparation of an EIS for all “major federal actions significantly
8 affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.4.

9 109. BLM’s lease sale is a major federal action significantly affecting the quality of the
10 human environment.

11 110. In determining whether an EIS is necessary, Defendants must take a “hard look” at the
12 consequences, environmental impacts, and adverse effects of the proposed actions. 42 U.S.C. §
13 4332(2)(C); 40 C.F.R. § 1508.9. NEPA requires that BLM consider all reasonably foreseeable
14 environmental effects of its actions. If an agency finds that a project’s reasonably foreseeable impacts
15 are not significant, the agency must provide a convincing statement of reasons why. 40 C.F.R. §
16 1501.4.

17 111. BLM failed to take the requisite hard look at the impacts of the project because it failed
18 to consider all reasonably foreseeable effects of the proposed action. In particular, BLM unreasonably
19 failed to consider how fracking could affect the development of the leased parcels.

20 112. BLM arbitrarily assumed for the purposes of the EA that only one well on one acre of
21 habitat would result from the lease sale. BLM’s assumption that only one well will be drilled is
22 arbitrary because the agency unlawfully relied on unrepresentative information and ignored more recent
23 data regarding increases in oil and gas activity both nationally and regionally as a result of fracking.
24 BLM’s projection was a drastic underestimate of the reasonably foreseeable activities that could result
25 from the lease sale, and the limitation of the analysis to the impact of one well on one acre of habitat
26 infected every aspect of BLM’s final analysis in the EA. In particular, BLM understated potential
27 environmental impacts and failed to analyze the nature, intensity, and extent of the lease sale’s actual
28 effects.

1 113. BLM also understated impacts by unlawfully determining that few environmental effects
2 result from the lease sale stage, based on flawed assumptions regarding BLM's ability to prohibit harm
3 to the environment at the exploration and development stages.

4 114. BLM failed to take a hard look at the impacts of the sale because it ignored the
5 cumulative impacts of other oil and gas activities in conjunction with this lease sale.

6 115. In evaluating the significance of the impact of the proposed action, an agency must
7 consider both the context of the action and the intensity. 40 C.F.R. § 1508.27.

8 116. The significance of an action must be analyzed in several contexts, such as society as a
9 whole, the affected region, the affected interests, and the locality. 40 C.F.R. § 1508.27.

10 117. The Council on Environmental Quality ("CEQ") regulations list ten factors that must be
11 considered in determining the intensity of an action's environmental effects. 40 C.F.R. § 1508.27. The
12 presence of any or all of these factors renders an agency's decision to not prepare an EIS arbitrary,
13 capricious, and inconsistent with the law.

14 118. BLM's consideration of the CEQ intensity factors was arbitrary. Among the factors that
15 BLM failed to consider sufficiently are whether the action affects "ecologically critical areas," is
16 "highly controversial," involves possible effects that are "highly uncertain or involve unique or
17 unknown risks," is related to other actions with "cumulatively significant impacts," and "may adversely
18 affect an endangered or threatened species." 40 C.F.R. §§ 1508.27(b)(3), (4), (5), (7), & (9).

19 119. For example, BLM erroneously determined that the leases were not highly controversial,
20 even though the record demonstrates that a controversy exists regarding the nature of the drilling to
21 occur on the leases and the potential impacts oil activities would impose on nearby communities. This
22 controversy is seen in the numerous comments and multiple protests submitted to BLM, including
23 comments from the Monterey County Water Resources Agency stating that it did not recommend the
24 approval of fracking operations on the leases because of the proximity of the San Antonio and
25 Nacimiento Reservoirs, the presence of nearby faults, and the potential for fracking to cause seismicity
26 and water pollution.

27 120. BLM also ignored potential effects to public health and safety.

28 121. BLM failed to take a hard look at impacts resulting from hydraulic fracturing, including

1 the risk it poses to water, even though the fracking on the leases would raise a serious risk of water
2 contamination. Importantly, the leases are in close proximity to the San Antonio Reservoir, which is an
3 important water resource for the Salinas Valley. The leases are also within the Salinas River watershed,
4 which includes freshwater aquifers and supplies water for nearby communities and agriculture.

5 122. BLM failed to take a hard look at potential impacts to water quality from other types of
6 oil and gas operations as it did not consider water usage or waste storage and disposal.

7 123. BLM failed to take a hard look at the air pollution that will occur as a result of the
8 leasing despite available methods of doing so.

9 124. BLM failed to take a hard look at seismic impacts, including impacts from fracking, the
10 injection of waste water, and fluid extraction.

11 125. BLM also unreasonably ignored that uncertainty regarding the impacts of the lease sale
12 could be resolved through the collection of additional data. For example, with respect to fracking, BLM
13 never collected any data particular to the region potentially affected by the lease sale in order to further
14 determine and describe potential impacts, instead opting to provide a very general and cursory
15 overview of fracking.

16 126. In addition, BLM unreasonably failed to consider the degree to which the lease sale
17 could adversely affect a threatened or endangered species or its habitat.

18 127. For each of the above reasons, and others, BLM unreasonably concluded that the lease
19 sale would have no significant environmental impact and therefore an EIS was not necessary. The
20 agency's adoption of an inadequate EA and a FONSI for the lease sale is arbitrary, capricious, and not
21 in accordance with law as required by NEPA, its implementing regulations, and the APA, and is subject
22 to judicial review under the APA. 5 U.S.C. §§701-706, 706(2).

23 **VII. PRAYER FOR RELIEF**

24 Therefore, Plaintiffs respectfully request that this Court:

25 1. Declare that BLM violated NEPA and the APA in issuing its EA and FONSI for the lease
26 sale;

27 2. Declare that BLM violated NEPA and the APA by failing to prepare an EIS before holding
28 the lease sale;

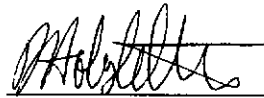
1 3. Issue an order setting aside as unlawful the lease sale, the underlying EA and FONSI, and
2 any leases issued pursuant to such sale;

3 4. Award Plaintiffs the costs of this action, including reasonable attorney's fees pursuant to the
4 Equal Access to Justice Act, 28 U.S.C. § 2412; and

5 5. Grant such other relief as the Court deems just and proper.
6

7 Dated: April 18, 2013

Respectfully submitted,

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