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**UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
BOARD OF LAND APPEALS**

LOS PADRES FORESTWATCH and)	IBLA No. _____
CENTER FOR BIOLOGICAL DIVERSITY,)	
)	Notice of Appeal and Petition for Stay
)	of Decision Record, Finding of No
Appellants)	Significant Impact, and EA DOI-BLM-
)	CA-C060-2012-0040-EA for E&B
)	Natural Resources Management Corp.
)	Russell Ranch Oil Field; APD for New
)	Well Schlaudeman #354-23
)	
)	
_____)	

NOTICE OF APPEAL AND PETITION FOR STAY

Pursuant to 43 C.F.R. §§ 4.21 and 4.410, Center for Biological Diversity and Los Padres ForestWatch (“Appellants”) file this Notice of Appeal and Petition for Stay of a decision made by Bureau of Land Management (“BLM”) Bakersfield Field Office Field Manager Gabriel Garcia to approve the APD for New Well Schlaudeman #354-23 and a new pipeline. The

decision was documented in a Decision Record signed on March 16, 2018 along with a Finding of No Significant Impact, and a final version of an Environmental Assessment (“EA”) DOI-BLM-CA-C060-2012-0040-EA for E&B Natural Resources Management Corp. Russell Ranch Oil Field; APD for New Well Schlaudeman #354-23. (Exhs. 1-3.)¹ The EA DOI-BLM-CA-C060-2012-0040-EA was first released for public comment in 2012 (“2012 EA,” Exh. 4) and Appellants submitted comments on the EA on April 23, 2012 (Exh. 5). Appellants timely appeal this decision within 30 days of receiving notice of the decision provided to Appellant Los Padres ForestWatch by BLM via email on March 21, 2018. The DR specifically provides that adversely affected parties may appeal the decision to the Department of Interior’s Board of Land Appeals (“IBLA”) “within 30 days after publication of this decision.” (DR at 3.) However, in accordance with 43 C.F.R. § 3165.3(b), on April 18, 2018, Appellants also filed a request for State Director Review with the California State Director’s Office, which is still pending.

A stay is well-justified in this case, because the decision fails to ensure protection of the objects for which the national monument was designated in violation of the Antiquities Act and the NLCS Act; is inconsistent with the terms of the 2010 Carrizo Plain National Monument Resource Management Plan (“CPNM RMP,” Exh. 26), which is also a violation of the Federal Land Policy and Management Act; the decision would allow impacts to air quality, biological resources (including endangered species and their habitats), and visual resources of the Carrizo Plain National Monument to occur without adequate review of these impacts, in violation of the National Environmental Policy Act; and the decision was made without needed site-specific consultation with the U.S. Fish and Wildlife Service under the Endangered Species Act (“ESA”).

¹ All cited references and exhibits are provided on the enclosed CD.

The decision fails to ensure protection of the objects for which the national monument was designated in violation of the Antiquities Act, 54 U.S.C. § 320301(a)-(b),² the Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. § 1731 *et seq.*, and the National Landscape Conservation System (“NLCS”) legislation, 16 U.S.C. §§ 7201-7203. The DR does not directly address these laws and requirements and therefore BLM has not shown that the decision is consistent with these statutory duties and directives.

The DR states that the decision is consistent with the 2010 CPNM RMP. However, the record shows that it is not consistent with the RMP objectives and actions for species including the endangered California condor, air quality, existing leases and others. For example, as detailed below the decision is inconsistent with the objectives that require minimizing fragmentation of habitat, maintaining and abandoning facilities, and contributions to climate change.

In authorizing the new well, BLM failed to analyze, assess, and disclose a number of potentially significant impacts, in violation of the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4331, *et seq.* BLM’s EA fails to clearly and fully disclose the impacts of oil and gas extraction, including GHG emissions, on air quality in the context of climate change and fails to adequately address surface disturbance that would result from the new well and pipeline. The EA briefly mentions activities that have potential to impact rare plants, wildlife species and habitats but fails to fully disclose the extent of those impacts or fully consider alternatives and mitigation measures. The new well and pipeline will also impact visual and aesthetic resources of the monument because the well and over-ground pipeline would be visible from the Caliente

² Antiquities Act of 1906, 54 U.S.C. § 320301(a)-(b) was recodified and edited in 2014 by Congress with the stated intent of “conform[ing] to the understood policy, intent, and purpose of Congress in the original enactments[.]” Pub. L. 113-287, §§ 2-3, 128 Stat. 3093, 3094, 3259 (2014). The original Act is found at 34 Stat. 225 (1906).

Mountain Wilderness Study Area (WSA) and nearby trails, and from Highway 166. (*See* Exh. 22, photo of well pad with Caliente Mountain WSA in the background.) These impacts to visual and aesthetic resources which are part of this important national landscape were not adequately considered in the NEPA review.

In addition, BLM failed to comply with the ESA. The EA shows that the project taken as a whole “may affect” listed wildlife species including California condor, San Joaquin kit fox, blunt-nosed leopard lizard, and giant kangaroo rat as well as listed plants Kern mallow and Lemmon’s jewelflower, triggering BLM’s duty to consult with Fish and Wildlife Service regarding these effects. *See* 50 C.F.R § 402.14(a). However, without providing up to date survey information or analysis, BLM largely dismisses the potential impacts to listed species. The EA acknowledges some impacts may occur but then dismisses them in reliance on the adoption of mitigation measures (Design Features/Conditions of Approval) to reduce impacts to these species. For example, with respect to listed and rare plants the EA states:

BLM cannot discount the possibility that Kern mallow, Hoover’s woolly-star, and Lemmon’s jewelflower are present within the vicinity of the project area. However, since the well development would occur mainly on areas of existing disturbance no impacts to these species are expected. There may be a negligible amount of temporary disturbance due to the installation of a new pipeline, if it becomes necessary to replace the existing line, but this should not impact native vegetation including listed species due to implementation of the project Design Features/Conditions of Approval.

(EA at 26.) Similarly, the EA states: “Mitigation measures put in place by the Project Design Features/Conditions of Approval would avoid impacts to giant kangaroo rat, blunt-nosed leopard lizard, San Joaquin kit fox and California condor.” (EA at 27.) Reliance on such measures shows that BLM acknowledges that impacts to listed species may indeed occur; therefore, BLM was required to consult under the ESA.

Moreover, the statement in the EA of not being able to “discount the possibility” that certain species are present near the project area directly contradicts the BLM’s finding in a separate EA prepared in 2016 for the abandonment of this well pad. Specifically, that 2016 EA states: “a population of Kern Mallow was identified during the onsite inspection and on the CNDDDB for Well Russell Ranch Unit 77-23; this population occurred on the slopes surrounding the well pad and access roads.” 2016 EA at 8 (Exh. 16). The documented presence of a federally-listed species on the slopes surrounding the project area – and potentially in the path of the proposed pipeline – clearly triggers the consultation requirement under the ESA.

The information BLM disclosed in the EA cannot support a “no effects” finding for the project as a whole. Indeed, the only “no effect” determination found in the EA is limited to the well installation on the well pad: “Well installation on the existing pad would result in no significant impacts to wildlife species, and BLM has made a “No Effect” determination for listed species.” 2018 Final EA at 27.³ The BLM failed to comply with the Endangered Species Act (“ESA”), 16 U.S.C. § 1531, *et seq.*, by failing to initiate or complete consultation with the U.S. Fish and Wildlife Service on its decision to authorize the new well and pipeline and maintenance

³ Oddly, although there is no other finding in the EA that goes beyond the well installation only, and no Biological Assessment was provided, the EA claims that BLM somehow made a more general “no effect” determination. (EA at 28 [“Since a “no effect” determination has been made for federally listed species, E&B would not be required to obtain a Section 7 consultation.”]; EA at 29 [“The BLM has made an Effects Determination of “No Effect” to listed Threatened or Endangered Species for the proposed project, thus a consultation with the FWS is not required.”]; EA at 34-35 in response to comments [“Based on the analysis in the EA, the BLM has made a “No Effect” determination for federally listed species associated with the proposed action, because the proposed project would occur on previously disturbed areas, lack disturbance to vegetation and burrows, and the distance to nearest recorded California condor sighting (EA, pg. 27).’].) To the extent BLM argues that it did make a “no effects” finding for all aspects of the proposed project, the failure to explain or support that finding in the EA and DR violates NEPA’s informational requirements and the decision should be vacated on that basis as well.

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of the associated access road that “may affect” listed species. Therefore, BLM is in violation of the ESA Section 7. 16 U.S.C. § 1536(a)(2).

Further, site-specific consultation is contemplated by the 2010 CPNM RMP Biological Opinion (attached as Exh. 7) which states: “Oil and gas activities will proceed with a separate consultation, and no incidental take is authorized for oil and gas activities by this biological opinion.” (Exh. 7 at 73.) Indeed, the CPNM RMP also recognizes the need to consult at the site-specific level for all oil-related projects on the Carrizo Plain National Monument. Specifically, Action BIO-2(S) in the RMP states:

When necessary, oil and gas related actions will require individual Section 7 consultations. Programmatic consultations will not be used for oil and gas related actions.

(CPNM RMP at II-18.) Because no incidental take is authorized and the project may affect listed species, BLM violated its duties under the ESA section 7(a)(2). 16 U.S.C. § 1536(a)(2).

Approval of the new well and pipeline is not only illegal, it threatens immediate and irreparable harm to Appellants and their interests in protecting and restoring the Carrizo Plain National Monument and the objects for which the National Monument was designated including wildlife, rare plants, landscape values and preservation of the objects of the monument for future generations. Further, approval of the new well and pipeline poses irreparable harms to Appellants, yet a stay would pose no harm to BLM or the applicant as this lease has not produced any quantities of oil and gas since 2012, and the EA claims that “it is not reasonably foreseeable how much crude oil would be extracted from the proposed well” (EA at 24). On balance, an immediate stay would protect the public interest, maintaining the status quo and preventing significant environmental harms. For the following reasons, we respectfully request

that the IBLA stay the Decision Record for the March 21, 2018 E&B Natural Resources Management Corp. Russell Ranch Oil Field; APD for New Well Schlaudemman #354-23.

Appellants request that the BLM provide Appellants with a full and complete copy of the “complete administrative record compiled during the officer’s consideration of the matter leading to the decision being appealed,” when BLM forwards a copy to the IBLA pursuant to 43 C.F.R. § 4.411(d)(3). The administrative record should include all records pertaining to BLM’s 2016 decision approving abandonment of the existing well, well pad, and access road at the same project site for the well and pipeline at issue here (see pp. 22-23 below). These records are highly relevant to BLM’s decision to reverse course on its prior commitment to abandon these facilities and allow the challenged project, and should have been considered by BLM when it made this decision.

I. APPELLANTS ARE PARTIES THAT ARE ADVERSELY AFFECTED

To be granted a stay, Appellants must first demonstrate that they can maintain an appeal. *See* 43 C.F.R. § 4.21(a)(2). To maintain an appeal, Appellants must (1) be a party to the case; and (2) be adversely affected by the decision being appealed. 43 C.F.R. § 4.410(a); *National Wildlife Federation v. BLM*, 129 IBLA 124, 125 (1994).

Los Padres ForestWatch (“ForestWatch”) is a non-profit 501(c)(3) organization based in Santa Barbara, California that works to protect the Los Padres National Forest and the adjacent Carrizo Plain National Monument. ForestWatch has approximately 8,000 members and online advocates throughout the region, and has worked on issues pertaining to oil and gas drilling in the Carrizo Plain National Monument since 2005. ForestWatch is particularly interested in ensuring that rare plants and animals in the Carrizo Plain National Monument are protected, and

that the monument's views are protected to safeguard the area's outdoor recreation opportunities. ForestWatch and its members and supporters use the lands in and near the Carrizo Plain National Monument for recreational, scientific, and aesthetic purposes. They also derive recreational, scientific, and aesthetic benefits from these lands through wildlife observation, study, and photography. ForestWatch and its members have an interest in preserving their ability to enjoy such activities in the future. As such, ForestWatch and its members have an interest in helping to ensure their continued use and enjoyment of these activities on these lands. ForestWatch also has a long history of working to ensure that our public lands laws and environmental laws are properly followed and enforced to protect species and habitats. (*See* Declaration of Jeff Kuyper, attached hereto, hereafter "Kuyper Decl.")

The Center for Biological Diversity is a non-profit 501(c)(3) corporation with offices in several states including California, Arizona, Oregon, Colorado, and Washington, D.C. The Center works through science, law, and policy to secure a future for all species, great or small, hovering on the brink of extinction. The Center has approximately 63,000 members throughout the United States, including over 13,000 members in California. The Center has a long history of involvement in species and habitat protection issues on public lands throughout the United States and specifically regarding the public lands and species that depend on the Carrizo Plain National Monument. The Center, its members, and staff members use the lands in and near the Carrizo Plain National Monument, for recreational, scientific, and aesthetic purposes. They also derive recreational, scientific, and aesthetic benefits from these lands through wildlife observation, study, and photography. The Center and its members have an interest in preserving their ability to enjoy such activities in the future. As such, the Center and its members have an interest in helping to ensure their continued use and enjoyment of these activities on these lands. The

Center also has a long history of working to ensure that our public lands laws and environmental laws are properly followed and enforced to protect species and habitats including by requiring adequate analysis of greenhouse gas emissions and climate change impacts to species and habitats. (*See Decl. of Brendan Cummings, attached hereto, hereafter “Cummings Decl.”*)

A. Appellants Are Parties

A party to the case includes a person or group who “participated in the process leading to the decision under appeal.” *See* 43 C.F.R. § 4.410(b). Here, Appellants are parties because they have submitted extensive comments to BLM regarding the proposed APD during the public comment period provided by the BLM. Appellant Los Padres ForestWatch submitted scoping comments on December 1, 2011 (Exh. 3 at 32-35), and a letter of support for a simultaneous proposal to abandon and remediate the well pad and access site on April 20, 2016 (Exh. 17). Appellants Los Padres ForestWatch and Center for Biological Diversity jointly submitted comments on the 2012 EA on April 23, 2012. (Exh. 5.) The issues presented in this Notice of Appeal and Petition for Stay were raised with reasonable specificity in Appellants’ 2011 and 2012 comments.

B. Appellants Are Adversely Affected

To demonstrate that it will be “adversely affected by the decision being appealed,” a party must demonstrate a legally cognizable “interest” and that the decision appealed has caused or is substantially likely to cause injury to that interest. *See* 43 C.F.R. § 4.410(d). This requisite “interest” can be established by cultural, recreational, or aesthetic uses as well as enjoyment of the public lands and wildlife. *See The Coalition of Concerned National Park Retirees, et al.*, 165

IBLA 79, 88 (2005); *Animal Protection Institute of America*, 117 IBLA 208, 210 (1990). The IBLA does not require a showing that an injury has actually occurred. Rather, a colorable allegation of injury suffices. *See Wildlands Defense*, 187 IBLA 233, 240, 241 (2016).

Moreover, it is not necessary for parties to show that they have actually set foot on the impacted parcel or parcels to establish use or enjoyment for purpose of demonstrating adverse effects. Rather, “one may also establish he or she is adversely affected by setting forth interests in resources or in other land or its resources affected by a decision and showing how the decision has caused or is substantially likely to cause injury to those interests.” *The Coalition of Concerned National Park Retirees*, 165 IBLA at 84.

Attached is the declaration of Jeff Kuyper, the Executive Director and a member of Los Padres ForestWatch.

Attached is the declaration of Brendan Cummings, the Conservation Director and a member of the Center for Biological Diversity.

The declarations of Kuyper and Cummings establish that the BLM’s decision to approve a new oil and gas well and pipeline will adversely affect their recreational, aesthetic, spiritual, educational, conservation, and other interests. (*See* Kuyper Decl. ¶¶ 7, 11-19; Cummings Decl. ¶¶ 7-19) These declarations also establish that a favorable ruling in this appeal would redress the harms they would otherwise experience.

II. REQUEST FOR STAY

Appellants respectfully request the IBLA to grant their request for a stay of the BLM’s Decision Record APD for New Well Schlaudeman #354-23 and associated infrastructure including the new above-ground pipeline. In accordance with 43 C.F.R. § 4.21(b)(1), below we show that Appellants are likely to succeed on the merits, that Appellants will suffer immediate

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and irreparable harm if the stay is not granted, that the balance of harms favors a stay, and that the granting of a stay is in the public interest.

A. Appellants Are Likely to Succeed on the Merits

For the following reasons, among others, the BLM's approval of the APD for New Well Schlaudeman #354-23 violates FLPMA, NLCS Act, NEPA and the ESA, and should be overturned by the IBLA.

1. BLM Failed to Consider Protection Of Monument Objects as Required by the Antiquities Act, FLPMA, and NLCS Act.

The decision fails to ensure protection of the objects for which the national monument was designated in violation of the Antiquities Act, 54 U.S.C. § 320301(a)-(b),⁴ the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. § 1731 et seq., and the National Landscape Conservation System ("NLCS") legislation, 16 U.S.C. §§ 7201-7203.

On January 17, 2001, President William J. Clinton established the current boundaries of the Carrizo Plain National Monument in California to protect its unique objects including majestic grasslands and stark ridges dramatically bisected by the San Andreas fault. These monument objects sustain the habitat necessary for the long-term conservation of the many endemic plant and animal species that rely on the Carrizo Plain National Monument for their survival. For example, the Proclamation explains the numerous features as well as the scientific objects related to habitats and wildlife:

Full of natural splendor and rich in human history, the majestic grasslands

⁴ Antiquities Act of 1906, 54 U.S.C. § 320301(a)-(b) was recodified and edited in 2014 by Congress with the stated intent of "conform[ing] to the understood policy, intent, and purpose of Congress in the original enactments[.]" Pub. L. 113-287, §§ 2-3, 128 Stat. 3093, 3094, 3259 (2014). The original Act is found at 34 Stat. 225 (1906).

and stark ridges in the Carrizo Plain National Monument contain exceptional objects of scientific and historic interest. Since the mid-1800s, large portions of the grasslands that once spanned the entire four hundred mile expanse of California's nearby San Joaquin Valley and other valleys in the vicinity have been eliminated by extensive land conversion to agricultural, industrial, and urban land uses. The Carrizo Plain National Monument, which is dramatically bisected by the San Andreas Fault zone, is the largest undeveloped remnant of this ecosystem, providing crucial habitat for the long-term conservation of the many endemic plant and animal species that still inhabit the area.

The monument offers a refuge for endangered, threatened, and rare animal species such as the San Joaquin kit fox, the California condor, the blunt-nosed leopard lizard, the giant kangaroo rat, the San Joaquin antelope squirrel, the longhorn fairy shrimp, and the vernal pool fairy shrimp. It supports important populations of pronghorn antelope and tule elk. The area is also home to many rare and sensitive plant species, including the California jewelflower, the Hoover's woollystar, the San-Joaquin woolly-threads, the pale-yellow layia, the forked fiddleneck, the Carrizo peppergrass, the Lost Hills saltbush, the Temblor buckwheat, the recurved larkspur, and the Munz's tidy-tips. Despite past human use, the size, isolation, and relatively undeveloped nature of the area make it ideal for long-term conservation of the dwindling flora and fauna characteristic of the San Joaquin Valley region.

The Carrizo Plain National Monument also encompasses Soda Lake, the largest remaining natural alkali wetland in southern California and the only closed basin within the coastal mountains. As its name suggests, Soda Lake concentrates salts as water is evaporated away, leaving white deposits of sulfates and carbonates. Despite this harsh environment, small plant and animal species are well adapted to the setting, which is also important to migratory birds. During the winter months the lake fills with water and teems with thousands of beautiful lesser sandhill cranes, long-billed curlews, and mountain plovers.

The Carrizo Plain National Monument owes its existence to the geologic processes that occur along the San Andreas Fault, where two of the Earth's five great tectonic plates slide past one another, parallel to the axis of the Plain. Shifting along the fault created the Plain by rumpling the rocks to the northeast into the Temblor Range and isolating the Plain from the rest of the San Joaquin Valley. The area is world-famous for its spectacular exposures of fault-generated landforms. Stream valleys emerge from the adjacent mountains, only to take dramatic right-angle turns where they intersect the fault. Ponds and sags form where the ground is extended and subsides between branches of the fault. Benches form where the fault offsets valley walls. Many dramatic landscape features are products of the interplay between very rapid fault movement and slower erosion. The dry climate of the area produces low erosion rates, thereby

preserving the spectacular effects of fault slip, folding, and warping. On the Plain, these fault-related events happen intermittently, but with great force. In 1857, the strongest earthquake in California's recorded history ripped through the San Andreas Fault, wrenching the western side of the Carrizo Plain National Monument thirty-one feet northward.

The area is also distinguished for its significant fossil assemblages. The Caliente Formation, exposed on the southeast side of the Caliente Range, is host to abundant and diverse terrestrial fossil mammal remains of the Miocene Epoch (from 13 million to 25 million years ago). Fossils of five North American provincial mammalian ages (Arikareean, Hemingfordian, Barstovian, Clarendonian, Hemphillian) are represented in sedimentary rocks in that formation. These terrestrial fossil remains are interlaced with marine sedimentary rocks bearing fossils of mollusks, pectens, turitellas, and oysters. In addition to its geologic and biological wealth, the area is rich in human history. Archaeologists theorize that humans have occupied the Carrizo Plain National Monument area since the Paleo-Indian Period (circa 11,000 to 9,000 B.C.). Bedrock mortar milling features, village middens, and elaborate pictographs are the primary manifestations of prehistoric occupation. Some of these, such as the Painted Rock and Sulphur Springs rock art sites, are recognized as world class.

(66 Fed. Reg. 7339-40 (Jan. 22, 2001) Proclamation Carrizo Plain National Monument-Proclamation 7393.)

The Antiquities Act provides for designation of “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on land owned or controlled by the Federal Government to be national monuments.” 54 U.S.C. § 320301(a). Section 302(a) of FLPMA provides that “the Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 1712 of this title when they are available, *except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.*” 43 U.S.C. § 1732 (emphasis added). Courts have recognized that this provision requires BLM to manage lands in accordance with

monument proclamations.⁵ In Instruction Memorandum 2009-215,⁶ which amended BLM's Land Use Planning Handbook H-1610-1, Appendix C, BLM interpreted the exception clause in section 302(a) to mean:

[W]hen an area of public land is set aside by a presidential proclamation issued under the Antiquities Act of 1906 or an act of Congress, the designating language is the controlling law. Therefore, as a general rule, if the management direction of the proclamation or act of Congress conflicts with FLPMA's multiple use mandate, the designating language superseded that section of the FLPMA. The particular management direction contained in the designating law (proclamation or act of Congress) should be carefully reviewed to determine whether conflicts with the FLPMA exist. Field Offices are encouraged to explore innovative ways to ensure compliance with both the designation and the FLPMA, if appropriate.

In short, FLPMA specifically requires the multiple-use policy to give way when other law requires elevation of a specific use. The identification of an object for protection under the Antiquities Act, and the reservation of land necessary to protect that object, dedicates the land for use for the purposes of the monument and withdraws it from uses incompatible with that purpose. The mandate to protect the Monument's objects imposed by the Antiquities Act, and by the 1996 Proclamation, overrides the multiple-use mandate where incompatible.

In 2009, Congress reaffirmed the importance of proper management of this national monument and others by requiring that monument lands managed by BLM be managed as part of the National Landscape Conservation System ("NLCS"). *See* 16 U.S.C. §§ 7201-7203.

Specifically, the NLCS legislation recognized the need to protect these landscapes and resources

⁵ *See W. Watersheds Project v. Abbey*, 719 F.3d 1035, 1042 (9th Cir. 2013) (FLPMA's "multiple-use-and-sustainable-yield mandate guides BLM's management of public lands 'except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.' 43 U.S.C. § 1732(a). Under this provision, BLM must manage the Breaks Monument in compliance with the terms of the Proclamation.").

⁶ Available at <https://www.blm.gov/policy/im-2009-215>.

for future generations: “In order to conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations, there is established in the Bureau of Land Management the National Landscape Conservation System.” 16 U.S.C. § 7202(a). The NLCS legislation required the Secretary of Interior to manage the lands within the National Landscape Conservation System “in a manner that protects the values for which the components of the system were designated.” 16 U.S.C. § 7202(c)(2). The NLCS Act thus required BLM to consider protection of the landscape values and resources in addition to its duties to protect the objects proclamation.

The CPNM RMP states that as a whole the objectives and management actions are intended to protect monument objects: “The decisions made in this RMP include establishing objectives and associated management actions to protect the Monument objects and to provide direction for other aspects of Monument management, including determining allowable public uses.” (RMP at II-1.) Therefore, BLM must show that it has considered and followed the objectives and actions in the RMP in order to show it has considered protection of monument objects.

For example, the goals for vegetation management throughout the monument state:

- Goal BIO-1(P): Manage the landscape to enhance the CPNM as a significant unique and undeveloped portion of the once vast San Joaquin Valley ecosystem (which is of crucial importance and provides the context for management). (RMP at II-16.)
- Goal BIO-2(P): Restore and maintain a mosaic of natural communities and successional stages to benefit the biodiversity inherent in the ecosystem, including ecological processes that sustain them. Manage resources to emphasize an increase of native and indigenous species. (RMP at II-16.)

At minimum, BLM was required to consider how this site-specific proposed action would impact these and other goals adopted to protect these landscape-level monument goals adopted to

project the monument objects. Because the DR fails to address the critical questions of whether the proposed project would impair objects that the monument was designated to protect including the nationally significant landscapes, BLM violated FLPMA and the NLCS legislation.

2. The DR is Inconsistent with the RMP Objectives and Actions to Protect Monument Objects in Violation of FLPMA and Also Failed to Address Significant New Information

The monument proclamation required BLM to adopt a management plan for the CPNM that addresses actions “necessary to protect the objects identified in this proclamation.” (66 Fed. Reg. 4371). In addition, FLPMA requires that once a resource management plan is developed, “[a]ll future resource management authorizations and actions . . . shall conform to the approved plan.” (*Oregon Natural Resources Council (“ONRC”) v. Brong*, 492 F.3d 1120, 1125 (9th Cir. 2007), [quoting 43 C.F.R. § 1610.5-3(a)].)

Unfortunately, the decision is inconsistent with the objectives and actions adopted in the 2010 CPNM RMP regarding protections for listed and special status species and air quality/climate change.

In addition, given the significant new information regarding increased presence of California condor in the area and the impacts of climate change since the RMP was adopted, BLM needs to go further to address impacts to the monument objects to show that they would be protected under its decision. Unfortunately, here BLM failed to follow the RMP or to address new information regarding condor presence and climate change that must be considered.

a. Objectives and Actions for Species in this Area

One RMP action to protect all wildlife and vegetation resources states:

- Action BIO-2(S): When necessary, oil and gas related actions will require individual Section 7 consultations. Programmatic consultation will not be used for oil and gas related actions. (RMP at II-18.)

As discussed further below, this objective was not followed in this instance. This is both a violation of FLPMA, because BLM failed to follow the RMP management action, and a violation of the ESA.

RMP objectives and actions for the California condor specifically provide for protection of California condor habitat in the project area, which is located in Caliente Mountain South:

Objective BIO-6(P) – California Condor Objective: Maintain unobstructed condor habitat in the Caliente Mountain North, Caliente Mountain South, and Temblor Range subregions. Maintain suitable foraging habitat for condors in the Panorama Hills/Elkhorn Plain, Carrizo Plain Central, and Caliente Foothills South subregions.

California Condor Management Actions

- Action BIO-21(P): Restrict or prohibit the placement of new transmission lines, towers, or other potentially disruptive constructs in condor habitat.
- Action BIO-22(S): Work with existing right-of-way holders to make existing structures condor safe.
- Action BIO-23(S): Support USFWS in implementing recovery actions, such as establishing supplemental feeding stations or condor monitoring.

Development of an oil well and pipeline in the project area would undermine these objectives. Oil wells and equipment are known hazards to condor both because they obstruct habitat use and because they can be an attractive nuisance drawing condors into harm's way. There is ample evidence that condors have been injured by oil and gas operations. Many interactions and incidents are summarized in the 2016 report by Appellant Los Padres Forest Watch entitled: "Documented Impacts of Oil Development on Endangered California Condors," July 27, 2016 (attached as **Exhibit 10**), Condors have landed on well pads and oil pumps and have been injured by oil and microtrash at

these sites.⁷ They are also attracted to standing water or pools of oil that may result from spills.⁸

Historically, a significant amount of condor habitat has been lost or has severely degraded due to oil and gas projects. In one National Wildlife Refuge that allowed oil and gas development, FWS estimated that 63 percent of critical condor habitat was lost.⁹ Condors are known to use a wide acreage of habitat; they separate their nesting area from their foraging areas and have been known to fly more than 200 km and traverse their entire habitat range in one day.¹⁰

The EA failed to address these RMP objectives and actions and to the extent BLM addressed condor at all it was to dismiss potential impacts to condor by relying on “recent records” of limited sightings in the area that appear to be from 2009 and 2010.

The EA states:

The Monument is historically known as a foraging site for California condor however, recent records show the nearest sightings to be several miles from the proposed well site. According to USFWS, condors have not been known to visit any of the pumps that make up the Russell Ranch Oil Field. In 2010 one condor was tracked to a location approximately seven to ten miles west of the proposed well site (USFWS, 2011). Possibly attracted to a dead calf and/or deer, the bird stayed at the site over a period of three days, and then left the area. In 2009 several locations were chosen as potential sites for condor feeding stations within the Chimineas Ranch unit of the CDFG. The unit shares much of the western boundary of the Monument and is located approximately five miles from the proposed project area. Should the USFWS construct a feeding station(s) within

⁷ Exhibit 10 at 2-19.

⁸ *Id.* at 2, 4-6, 8, 12.

⁹ *Id.* at 5.

¹⁰ Meretsky, Vicky J. et al., Demography of the California Condor: Implication for Reestablishment, Conservation Biology 14(4): 957-967 (2000) (“Meretsky 2000”), available at http://www.biologicaldiversity.org/species/birds/California_condor/pdfs/conbio-condorarticle.pdf (Exh. 24).

the Chimineas Ranch, the potential exists for more frequent use by condors of the region.

(EA at 21-22.) BLM's implicit conclusion that this means there will not be impacts to condor is wrong for several reasons:

- First, there is significant new data on condor movements in the area since 2011. The attached maps provided in **Exhibit 8** and **Exhibit 9** are based on readily available USFWS data. **Exhibit 8** shows extensive and increasing California condor presence in the area in 2017 and **Exhibit 9** shows a snapshot of condor data points from 2015 through 2017 in proximity to the proposed well and pipeline site;
- Second, condors can fly over 200 km in one day, therefore even a sighting "several miles" from the proposed project site means that it is highly likely condors could also fly over this site. And as noted above, newer data shows condor frequenting this area and multiple detections approximately a mile away.
- Third, even if condors "have not been known to visit any of the pumps that make up the Russel Ranch Oil Field" in the past, current data shows that they do fly over this area and therefore there is a risk that they will be attracted to oil spills, microtrash and other attractive nuisances created by oil and gas operations (such as standing water and oil spills or slicks). As a result, BLM was required to consider RMP objectives and actions to minimize risk to the condor (and to consult with the USFWS regarding this site specific action as detailed below).

The RMP Objective and Actions specifically address the need to consider impacts to listed species and habitats in the Caliente Mountain South sub-region where the proposed project is situated (*see* RMP map 3-1 at pdf 334). In particular, it calls for maintaining viable populations of giant kangaroo rat, blunt-nosed leopard lizard, and San Joaquin kit fox in this area (along with San Joaquin antelope squirrel).

II.B.4.3.6 Non-Core Area Threatened and Endangered Animals

- Objective BIO-15(P): Maintain viable populations of giant kangaroo rat, blunt-nosed leopard lizard, San Joaquin kit fox, and San Joaquin antelope squirrel (target species) within the Monument, with emphasis on the subregions listed in Table II.B.4-2.

Table II.B.4-2. Target Species and Their Ecological Subregions

	Caliente Mountain South	Temblor Range	Panorama Hills / Elkhorn Plain	Carrizo Plain Central	Carrizo Plain North	Soda Lake	Caliente Foothills South
Giant kangaroo rat	X	X	X	X	X		
Blunt-nosed leopard lizard	X		X	X			X
San Joaquin kit fox	X		X	X	X	X	
San Joaquin antelope squirrel	X	X	X	X	X	X	

Allow the populations of these target species to naturally fluctuate, in number and distribution, but take action to prevent populations from disappearing from the Monument.

Management Actions

- Action BIO-54(S): Monitor populations to determine trends and further define minimum population threshold values. (RMP at II-22.)

The documents do not show that BLM has consistently monitored these populations in the Caliente Mountain South area. In addition, the documents fail to show that BLM considered direct, indirect and cumulative impacts to these four species from the proposed project; therefore BLM has also failed to show it complied with the requirements of the RMP.

b. Objectives and Actions on Existing Leases

The RMP Objectives and Actions for activities on existing leases include:

- Objective MNL-4(I*): Manage leases to minimize fragmentation of habitat (including removal of redundant roads and unused pipelines, storage tanks, and other infrastructure). (II-73 [emphasis added].)
- Objective MNL-7(P): Manage existing leases with additional requirements (above federal standards) to protect Monument resources. (II-73.)
- Action MNL-1(I*): All projects will be reviewed and the SOPs contained in Attachment 3 (SOPs and Implementation Guidelines for Projects Affecting the Biological Environment) and Attachment 4 (Minerals SOPs / BMPs / Implementation Guidelines and Conditions of Approval) will be applied.(II-73.)
- Action MNL-4(I*): Conduct annual surface inspection on all leases within the CPNM to identify and remediate any hazards or impacts to Monument resources such as threatened and endangered species and cultural resources. (II-73 [emphasis added].)
- Action MNL-8(I*): Design roads, well pads, and facilities to impact and fragment the least acreage practicable. New facilities will be designed to maintain natural drainage and runoff patterns, reduce visual impacts, and reduce hazards to wildlife, especially California condors. Encourage operators to modify existing facilities when necessary to achieve the above objectives, and consider providing BLM funds to assist if requiring modifications is beyond BLM’s authority on existing leases. (II-74 [emphasis added].)
- Action MNL-9(I*): Ensure BMPs are followed. Examples include:
 - Placing pipelines along roads and consolidating facilities when feasible. (II-74 [emphasis added].)

The Minerals SOP also states: “Pipelines will be placed within existing disturbed rights-of-way, such as road shoulders, whenever feasible.” (RMP, Att-4-2.)

Instead of following these actions and objectives or the mineral SOPs, BLM approved a new well and pipeline that it admits will fragment habitat and dismissed a feasible alternative, Alternative 3 in the EA, which would have required the new pipeline to be buried along an existing road. Because the DR approved the proposed project despite the fact that BLM admits

that Alternative 3 would reduce impacts to habitat, visual resources and other resources (*see, e.g., EA at 27*), the decision fails to comply with the RMP.

Moreover, BLM's decision is inconsistent with past efforts to abandon the existing well on this well pad, along with the pad, access road, pipelines, transmission lines, and other infrastructure, which would have furthered RMP objectives. In 2016, the same oil company – E&B Natural Resources – submitted a Sundry Notice to BLM on March 11, 2015 to plug and abandon the well. (Exh. 14.) The Sundry Notice states: “Once the wellbore has been abandoned, E&B Natural Resources will be responsible for surface restoration, per BLM/Monument Management requirements. A separate proposal will be submitted for the surface restoration process.” (*Id.*) In response to the Sundry Notice, the BLM issued a scoping notice dated March 22, 2016 inviting public comments. (Exh. 15.) The scoping notice described the abandonment of this well, along with another well on a separate pad, as follows: “The well pad site restoration will include the ripping of both well pads and their associated access roads to a depth of approximately 12 inches, seeding the site with a BLM approved seed mix, and fencing the site to exclude vehicles and to allow for proper restoration.” BLM prepared an EA (Exh. 16), and ForestWatch submitted comments in support of this project on April 20, 2016 (Exh. 17), and the BLM approved it on July 1, 2016. (Exhs. 18 and 19.) The BLM also inspected the pad on March 24, 2016 and noted: “All pads, roads, power poles, and pipe lines will be removed.” (Exh. 20 at 2.)

This comprehensive abandonment project was consistent with the following provisions in the Carrizo Plain RMP:

- Action MNL-3(S): As leases stop producing, process termination or expiration in a timely manner. [Note: the Schlaudeman lease has not produced since 2012].

- Action MNL-6(I*): Manage the existing oil producing acreage on the southern side of the Caliente Range to maintain ecological processes and to assure prompt lease restoration upon final abandonment of the last well (RMP at II-74)
- Action MNL-10(I*): Wells that are not commercially developed must be properly plugged and abandoned and reclaimed to natural contours and revegetated as soon as appropriate; that is, restoration methods will consider timing of planting, acceptable species and evaluation criteria, and will be tailored to area-specific resource conditions and be compatible with the Monument Proclamation (RMP at II-74) [Note: the RRU 77-23 well on the existing pad, approved for abandonment in 2016, has been idle since 1963 and should have been properly plugged and abandoned decades ago.]
- Action MNL-20(S): Prioritize termination of all idle leases in the Monument (RMP at II-75). [Note: This lease has been idle since February 2012, when the last active well (Schlaudeman 78-23) ceased production. This lease has not produced since then. The other Schlaudeman wells are idled or plugged as follows:
 - o Schlaudeman 1 (plugged; drilled in 1948, abandoned in 1948, reentered and reabandoned in 1952)
 - o Schlaudeman 88-23 (plugged; drilled in 1949, proposed for abandonment in 1980 but withdrawn; actually plugged and abandoned in 1985)
 - o Schlaudeman 2 (plugged; drilled and immediately abandoned in 1951)]

Now, by approving the APD on this same pad that was recently slated for full abandonment, the BLM and E&B Natural Resources are retreating from their commitment to restore this area to natural conditions consistent with the Carrizo Plain RMP. Given the long history of non-use of this lease, we suggest that BLM evaluate lease termination as an alternative in the environmental document.

Finally, as detailed in section 3(a) below, BLM ignored potential hazards and impacts to condors which the RMP expressly calls out as a resource to be protected in making site-specific decisions regarding existing mineral leases. Indeed, the existing lease area is not in compliance with the cleanliness and maintenance standards in the Carrizo Plain RMP, posing a significant

threat to California condor. Our recent inspection of the area revealed several sections of abandoned pipeline, decaying power infrastructure, and trash and microtrash strewn about. Moreover, the existing well at the proposed drilling site was missing its sign indicating the lease name and well number; it was found on the ground outside of the well pad. These conditions are inconsistent with the Objective MNL-3(S) of the RMP, which states: “Enforce good housekeeping requirements (that is, require operators to maintain a neat and orderly appearance of sites, remove junk and trash, and otherwise minimize landscape intrusions).” Nor is the current lease compliant with Action MNL-4(I*), which states: “Conduct annual surface inspection on all leases within the CPNM to identify and remediate any hazards or impacts to Monument resources such as threatened and endangered species and cultural resources.” This trash was noted in a 2015 BLM inspection of the lease (Exh. 21 at 2), and current conditions are not much different from that depicted in the 2015 inspection photos (*see* Exh. 23, documenting project site conditions as of this month). E&B’s failure to comply with the terms of its permit and lease should militate against issuing a new drilling permit to this operator so long as it remains out of compliance with its existing permit.

c. Objectives and Actions Regarding Air Quality and Climate Change

The RMP acknowledges that at the time it was adopted:

the body of information and predictive models for climate change is in its infancy regarding prediction of site-specific impacts to areas such as the Carrizo, and the plan assumes that knowledge will advance quickly with the current emphasis on climate research and model development. Where appropriate, studies would include components to assess the impacts of changing climate. In the event that climate change made achievement of RMP objectives themselves infeasible, the plan would need to be amended accordingly.

(RMP at III-38). The RMP recognized the need to use adaptive management to address the impacts of climate change on the monument objects and the need to minimize the contribution to climate change from the monument activities (primarily oil and gas activities on existing leases). The Objectives and Actions for Air Quality address the need to consider climate change in several ways.

- Objective AIR-2(P): Utilize the Monument adaptive management program to implement techniques, BMPs, and SOPs to increase beneficial effects and minimize the contribution to global climate change. (II-34 [emphasis added].)
- Action AIR-2(I*): Consider impacts of climate change on Monument resources and evaluate the contribution of management actions and program activities on climate change. (II-34 [emphasis added].)

Therefore, in considering a site-specific project on an existing lease, the BLM was required to evaluate the contribution of that proposed project to climate change and minimize those contributions. The DR, FONSI and EA show that rather than squarely address these issues, BLM first acknowledges the seriousness of the issue but then attempts to rely on vague generalizations and diminish the importance of the proposed project's GHG contributions by reference to the problem of climate change as a whole—an approach that is completely at odds with the RMP's objective of minimizing contributions to global climate change from activities at the CPNM.

Unlike the 2012 EA, the 2018 EA acknowledges that climate change is a serious concern and is caused by GHG emissions:

Global climate change is the term commonly used to refer to any significant change in measures of climate (such as temperature, precipitation, or wind) lasting for an extended period (decades or longer) (Bakersfield RMP, 2014). Emissions of GHGs such as carbon dioxide and its equivalents (methane, nitrous oxide, hydro fluorocarbons, perfluorocarbons, and sulfur hexafluoride) are known to contribute to the global phenomenon of climate change. Based on research conducted by the Intergovernmental Panel on Climate Change (IPCC), evidence suggests, even with mitigation efforts, a strong, consistent, a positive linear relationship between GHGs and temperature, changes in precipitation patterns, oceanic warming, oceanic acidification, and reductions in Arctic sea ice. In

addition, species extinction, threats to food security, and threats to human health are predicted. In general, “Climate change will amplify existing risks and create new risks for natural and human systems” (IPCC, 2014).

The current scientific consensus holds that emissions from human activities, particularly the consumption of fossil fuels for electricity production and transportation, have resulted in much higher concentrations of GHGs in the atmosphere than would be expected to occur naturally. In the last decade, increased GHGs are believed to have resulted in increases in global temperature and other climate change effects never previously recorded. Data show that the earth's average surface temperature has increased by about 1.2 to 1.4 degrees Fahrenheit in the last 100 years (Bakersfield RMP, 2014).

(2018 EA at 18.) However, then BLM ignores the cumulative and additive nature of the problem and attempts to dismiss additional contributions from this proposed project based on its small relative contribution and, oddly, on the number of wells that may be abandoned. This analysis ignores the fact that wells that are being abandoned have already contributed GHGs to the atmosphere and impacted climate change, and that abandoning those wells after the operations have ceased does nothing to reduce GHGs or minimize impacts to climate change.

CARB completed a GHG inventory for 2000-2014 by sector and activity; in 2014, oil and gas extraction was estimated at 19.25 million tons of CO₂ equivalents, which accounted for 18.5 percent of the annual industrial GHG emissions. In total, oil and gas extraction accounted for 4.4 percent of total California GHG emissions. In addition, off road equipment was estimated at 2.43 million tons, which accounted for 1.5 percent of the annual transportation GHG emissions. In total, off road equipment accounted for 0.06 percent of total California GHG emissions (CARB, 2016). Based on this data provided by CARB, the drilling of Schlaudeman #354-23 would represent a very miniscule and insignificant portion of GHG emissions in California. In addition, it is not reasonably foreseeable how much crude oil would be extracted from the proposed well because the Schlaudeman lease has no producing wells in which to base this estimation; this makes calculating indirect GHG emissions associated with the total produced crude oil from the well highly speculative.

However, there are approximately 80 million barrels of oil produced in the world per day (https://lycharts.com/indicators/world_crude_oil_production); one crude oil well in one region of California would add a potential 0.43 metric tons per barrel of oil to global GHG emissions. This amount is insignificant at the local, regional, and global scale, and likely negated considering the number of wells

being abandoned in California per year. Thus, the proposed action would contribute insignificant GHG emissions at a local, regional, and global scale. In addition, E&B must comply with local and state requirements that are intended to mitigate and reduce annual GHG emissions in California.

(EA at 24-25 [emphasis added].)

In addition, the EA fails to acknowledge or address significant new information regarding climate change that has been developed since the 2010 RMP was adopted. California experienced extended and persistent drought for over 4 years and the drought appears to be returning this year. Climate change modeling also shows that drought is likely to occur more frequently and be more severe going forward. (*See* Exhibit 11 and Exhibit 12.) The proposed new well and pipeline, and direct, indirect, and particularly cumulative impacts to resources including air quality and species, need to be reevaluated in light of increased likelihood of drought and future outlook for resources in this area given the changing climate. In addition, studies show that even without new oil and gas leasing, development of oil and gas production on already leased federal public lands (including the lands at issue here) will undermine efforts to reduce emissions and mitigate the impacts of climate change. If all of these already leased federal lands are put into production “global carbon budgets necessary to maintain a likely chance of limiting global warming to 1.5°C (2021) and 2°C (2036) will be exceeded if current global emission levels continue.” (**Exhibit 13** at 6.)

Because BLM dismissed the contributions to global climate change from the proposed project’s new well as “insignificant”, BLM failed to even consider ways to minimize the contribution to global climate change as required in the RMP and as a result violated FLPMA.

3. The BLM Failed to Comply with NEPA.

a. BLM Failed to Adequately Address Potential Impacts to Threatened and Endangered Species, as Required by NEPA

BLM failed to adequately address in the EA the potential impacts from the proposed oil and gas well, pipeline and associated activities on species that are federally designated as threatened or endangered with extinction, including the California condor, San Joaquin kit fox, and others. The EA failed to provide the required hard look at the potential impacts to listed species and their habitat.

As an initial matter, the EA lacks important information about baseline conditions in the project area. In order to properly assess the potential environmental impacts of a proposed action, it is first necessary to assess the affected environment. *See* 40 C.F.R. § 1502.15. It remains unclear whether surveys for and of the threatened and endangered species and their habitats have been performed, when they were performed, or the results. The EA states “During field surveys of the site completed by BLM biologists T. Arbogast, D. Faires, J. Hodge, L. Ashley and K. Sharum, in addition to previous surveys by BLM personnel, there were no observations of giant kangaroo rat or San Joaquin kit fox within the project site, nor was there any sign of their presence.” (EA at 21.) This does not provide a sufficient basis to document baseline conditions and identify issues of concern for these two species or the areas of the CPNM that may be affected by the proposed project. The EA also does not provide dates of these “surveys of the site”, any data sheets, or indicate what methodology or protocols were followed to show whether they comport with USFWS or CDFW survey protocol standards for these imperiled species. *See* 40 C.F.R. § 1502.24 (NEPA’s implementing regulations requiring agency to “identify any methodologies used and... make explicit reference by footnote to the scientific and other sources relied upon for conclusions,” and to ensure the scientific accuracy and integrity of environmental

analysis”) Similarly the EA states that “aerial surveys conducted by the California Department of Fish and Game (CDFG), in 2010 and 2011 did not show any presence of giant kangaroo rat (Bean, 2011).” This information is more than seven years old and current kangaroo rat survey protocols require live trapping as the only method for reliable identification of any kangaroo rat species in the region.¹¹

Similarly, BLM fails to follow basic survey protocol for rare plants that may be affected by the project (i.e. pipeline construction and maintenance of the road and well pad).¹²

For the endangered California condor, the EA relies on old data from 2010 and 2011 to dismiss potential impacts to this species. (EA at 21-22.) However, readily available newer data clearly shows significant condor presence in the area. (**Exhibit 8** [screen prints of 2017 data available on USGS Science Base website].) In preparing the 2018 EA, FONSI and DR, BLM failed to use readily available recent data from other government websites and instead relied on outdated information from 2010 and 2011 to dismiss potential impacts. As a result, BLM failed to meet even the most basic requirements to adequately identify the baseline condition or potential impacts to California condor from the proposed project in violation of NEPA and other laws.

¹¹ U.S. Fish & Wildlife Service. 2013. “Survey Protocol for Determining Presence of San Joaquin Kangaroo Rats, Sacramento Field Office.” Available at <https://www.fws.gov/sacramento/es/Survey-Protocols-Guidelines/Documents/SFWO%20Final%20San%20Joaquin%20K-Rat%20Trapping%20Protocol-2013.pdf>

¹² California Department of Fish & Wildlife. 2018. “Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities.” Available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline> . *See also* U.S. Fish & Wildlife Service. 1996. “Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed, Proposed and Candidate Plants. Available at https://www.fws.gov/sacramento/es/Survey-Protocols-Guidelines/Documents/Listed_plant_survey_guidelines.pdf . *See also* Cypher, E.A. 2002. “General Rare Plant Survey Guidelines.” Available at https://www.fws.gov/sacramento/es/Survey-Protocols-Guidelines/Documents/rare_plant_protocol.pdf

Moreover, despite acknowledging the presence of the federally-listed Kern mallow at the project site in 2016, the BLM fails to adequately evaluate potential impacts to this rare plant in the 2018 EA in violation of NEPA and other laws.

In authorizing the new well BLM failed to analyze, assess, and disclose a number of potentially significant impacts in violation of NEPA. BLM's EA fails to adequately address surface disturbance that would result from the new well and pipeline, both of which may directly, indirectly or cumulatively affect listed species. It also fails to analyze impacts on the monument's visual resources, despite that the new well and pipeline would be visible from the Caliente Mountain Wilderness Study Area (WSA) and nearby trails, and from Highway 166. (See Exh. 22, photo of well pad with Caliente Mountain WSA in the background.)

Further, the EA briefly mentions activities that have potential to impact species and habitats but fails to fully disclose the extent of those impacts or fully consider alternatives and mitigation measures. The EA only provides conclusions regarding impacts and minimization measures but no information or analysis. Regarding wildlife the EA segments the discussion regarding the well installation on the well pad, activities around the well pad to facilitate the well installation and operation, and the pipeline, although all of these activities are approved in this DR. The EA admits that the proposed project would have impacts to species:

The installation of the new well, by itself, would not destroy existing habitat. If a new pipeline needs to be installed, a small amount of temporary ground disturbance would be expected. The disturbance footprint would be limited to areas traversed by workers installing the pipeline and the pipeline itself. Nearby vegetation may also be impacted by the dust generated by the well and pipeline installation and by the increased use of the access road by company vehicles. The proposed action is to give E&B the authority to drill Well Schlaudeman #354-23, which would be accomplished by utilizing an existing pad and production line so as to reduce hazards to wildlife; E&B and would follow industry standards for SOP's, BMP's, and Implementation guidelines for project implementation. In the event that the existing production line does not have

structural integrity and a new production line is needed, it would be constructed above ground and pushed/pulled into the existing pipeline corridor to reduce the potential for impacts to biological resources. An above ground pipeline does have the potential to fragment habitat, though temporal and spatial effects would be expected to be minimal.

(EA at 26 [emphasis added].) Habitat fragmentation from a new above ground pipeline is a long term impact, it is not a temporary impact. This impact is not adequately addressed in the EA.

Regarding Alternative 3 which would require a buried pipeline within the existing road disturbance, BLM admits it would reduce impacts to habitat:

While project activities would increase in duration and intensity along the access road and during the installation of the production line, this alternative would be expected to have the same impacts to biological resources as the proposed action. There would be no impacts to burrows in and around the path of the above-ground flowline. The potential long term effects to species would be reduced under this alternative since a buried flowline would be less likely to fragment habitat and to have effects to biological resources. Vegetation would not be impacted directly from the actions described under alternative 3; however some plants near the pad and access road may be impacted by dust generated by the project.

(EA at 27 [emphasis added].) The EA admits this will reduce impacts despite earlier statements that no effects would occur.

Even when the EA admits impacts will occur, it fails to analyze them and relies on unspecified measures to dismiss the significance of the impacts. For example, the following paragraph provides information regarding impacts and then an unsupported conclusion:

Well installation on the existing pad would result in no significant impacts to wildlife species, and BLM has made a "No Effect" determination for listed species. Since no burrows were sighted on the pad itself, burrowing animals would not be impacted. Activities including vehicle traffic, transportation of equipment, and other human activities on and around the pad may result in the disturbance, collapse or destruction of burrows in the berm surrounding the pad. Some species may be inadvertently killed by vehicles travelling to and from the site. Noise from well installation is likely to cause a temporary disturbance to wildlife in the general area. Any night-time activities may temporarily disrupt natural activities for nocturnal species utilizing the surrounding area and may disrupt birds from sleeping causing disorientation and possible predation. If a new

flowline is required, existing burrows in the path of the line may also be disturbed or collapsed during installation, inadvertently crushing or entombing individuals. No federally listed species are expected to be impacted by these activities. Mitigation measures put in place by the Project Design Features/Conditions of Approval would avoid impacts to giant kangaroo rat, blunt-nosed leopard lizard, San Joaquin kit fox and California condor.

(EA at 27.) BLM fails to provide any reasoned explanation as to how mitigation measures would avoid impacts to listed species.

The FONSI is unsupported with respect to listed and special status species because even the scant information in the EA shows significant impacts to listed species and other resources may in fact occur and the EA's alternatives analysis shows that such impacts could be lessened under an alternative pipeline route and by undergrounding the pipeline. (*See, e.g.*, EA at 27 [alternative 3 would reduce impacts to habitat fragmentation].)

b. The EA Fails to Adequately Consider Impacts to Air Quality and Climate Change

As discussed above regarding the RMP requirements, the EA fails to adequately address air quality, particularly GHG emissions both, in identifying the extent of potential emissions and analyzing their impacts on climate change. The EA is unclear and contradictory regarding what information is available. For example, in response to Appellants' comment regarding the need to quantify GHG emissions from oil and gas production, the EA states that "it is not reasonably foreseeable how much crude oil would be extracted from the proposed well because the Schlaudemann lease has no producing wells in which to base this estimation; this makes calculating indirect GHG emissions associated with the total produced crude oil from the well highly speculative." (EA at 24.) However, the EA also states that the company seeking the permit does have producing wells in the area: "E&B has operated producing oil wells and petroleum production facilities on both private and public lands within the Russell Ranch Oil

Field since 2003.” (EA at 1.) The EA provides no explanation why BLM could not use information regarding crude production by the same company at other nearby wells to estimate the likely crude production here.

Even when the EA does attempt to quantify the possible GHG emissions, it fails to fully consider the cumulative nature of the problem and dismisses any impacts as “discountable” given the large amount of emissions in the region and globally. Meaningful consideration of greenhouse gas emissions (GHGs) is clearly within the scope of required NEPA review. (*See Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1216 (9th Cir. 2008) [“The impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct. Any [project] might have an “individually minor” effect on the environment, but these [] are “collectively significant actions taking place over a period of time.” (quoting 40 C.F.R. § 1508.7)].) NEPA requires the BLM to consider climate change impacts, including indirect and cumulative combustion impacts foreseeably resulting from a decision to issue a new well and pipeline permit. (*See Sierra Club v. FERC*, 867 F.3d 1357, 1375 (D.C. Cir. 2017); *WildEarth Guardians v. BLM*, 870 F. 3d 1222, 1236 (10th Cir. 2017); *Mid States Coal. For Progress v. Surface Transp. Bd.*, 345 F.3d 520, 532, 550 (8th Cir. 2003); *Montana Environmental Information Center v. U.S. Office of Surface Mining*, 274 F. Supp. 3d 1074, 1094-99 (D. Mont. 2017); *High Country Conservation Advocates v. U.S. Forest Serv.*, 52 F.Supp. 3d 1174, 1197-98 (D.Colo. 2014).) And the EA fails entirely to address the likely impacts of climate change on the resources of the national monument in this area as a cumulative impact along with direct and indirect impacts of the project.

c. The DR’s Reliance on the Finding of No Significant Impacts and EA is Inappropriate.

i. An EIS is needed to fully address impacts of the proposed project

If a federal action “significantly affect[s] the quality of the human environment” the agency must prepare an EIS. 42 U.S.C. § 4332(c); *Anderson v. Evans*, 371 F.3d 475, 487 (9th Cir. 2004) (agency prepared an EA, court held an EIS was required). The CEQ regulations, 40 C.F.R. § 1508.27, define the term “significantly” for purposes of NEPA and provides that “significantly” “requires consideration of both context and intensity.” *See also, Consol. Salmonid Cases*, 688 F. Supp. 2d 1013, 1019 (E.D. Cal. 2010). Many of the “significance” factors set forth in the NEPA Regulations are implicated by adding a new oil and gas well and pipeline in this area.

The context of the action includes “society as a whole (human, national), the affected region, the affected interests, and the locality.” *Anderson v. Evans*, 371 F.3d 475, 487 (9th Cir. 2004); 40 C.F.R. § 1508.27(a). In the EA, the context is not analyzed. Thus, the context shows that the proposed action will have a significant effect as it is contrary to law and current policy.

The consideration of “intensity” required by section 1508.27 refers to the severity of impact. 40 C.F.R. § 1508.27(b); *Anderson v. Evans*, 371 F.3d at 487. In order for an EIS to be required, the public “need not demonstrate that significant effects will occur. A showing that there are ‘substantial questions whether a project may have a significant effect’ on the environment is sufficient.” *Anderson v. Evans*, 371 F.3d at 488; *Consol. Salmonid Cases*, 688 F. Supp. 2d at 1033.

As explained above, the BLM admits in the EA, the proposed actions may affect listed species but then dismisses those impacts either as too small to be considered or because they will ostensibly be avoided by mitigation measures. NEPA requires more. Conclusions without

analysis cannot be relied on to comply with NEPA. *Great Basin Mine Watch et al. v. Hankins*, 456 F.3d 955, 973 (9th Cir. 2006) (holding that “vague and conclusory statements, without any supporting data, do not constitute a “hard look” at the environmental consequences of the action as required by NEPA.”)

An EIS is required here under several intensity factors because the EA shows that construction and operation activities could have adverse consequences to monument objects, listed species, and other resources and it would set a precedent as the first new well and pipeline permitted since the CPNM was designated, 40 C.F.R. § 1508.27(b)(3) (unique characteristics of the area including proximity to historic or cultural resources or ecologically critical areas); § 1508.27(b)(4) (degree to which effects are likely to be highly controversial); § 1508.27(b)(6) (degree to which the action may establish a precedent for future actions with significant effects); § 1508.27(b)(7) (whether the action is related to other actions with individually insignificant but cumulatively significant impacts); § 1508.27(b)(8) (may adversely affect significant scientific resources); § 1508.27(b)(9) (adverse effects on endangered species or their critical habitat); § 1508.27(b)(10) (threatens violation of the ESA). In addition, habitats used by other wildlife, such as the antelope squirrel and golden eagles, may be significantly affected due to permanent as well as temporary impacts such as noise and air quality impairment associated with the project activities. *See* EA at 20-22. These impacts should also have been fully evaluated in an EIS.

In addition, there is a substantial dispute about the importance and effect of additional oil and gas production on GHG emissions and climate change. While BLM attempts to minimize the importance of this one new well, studies show that climate change is advancing and will significantly impact the resources of California including within the CPNM and that developing already leased oil and gas on federal lands will bust the global carbon budget. (*See Exhibits 11*,

12, 13.) BLM should have considered the contribution in this context but did not. Thus, the proposal is significant under this intensity factor as well. 40 C.F.R. § 1508.27(b)(4) (effects controversy).

The cumulative significance factor is also triggered here: “Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.” 40 C.F.R. § 1508.27(b)(7). While the area that is looked at in the cumulative effects section of the EA may be appropriate for the direct effects, it is far too truncated an area for analysis of the effects of GHG emissions and impacts to species and objects protected in the monument. The NEPA decision-making process is designed to address significant effects that could otherwise be masked by “the tyranny of small decisions.” See *Kern v. Bureau of Land Mgmt*, 284 F.3d 1062, 1078 (9th Cir. 2002); *Pac. Coast Fed’n of Fishermen’s Ass’ns v. Nat’l Marine Fisheries Serv.*, 265 F.3d 1028 (9th Cir. 2001).

In conclusion, even the scant information provided in the EA shows that the proposed action would admittedly fragment habitat, construction and operations could crush burrows and may kill individual animals, and the risk of spills and other accidents were not even addressed; therefore, BLM should have found that the proposed action may significantly affect the quality of the human environment. Many of the “significance factors,” both of context and intensity, are triggered by the proposal including the potential effects on listed species and critical habitats, impacts to other species and habitats, the controversy regarding the importance of the contributions of additional oil and gas production in this area to climate change, and impacts to visual resources. Therefore, an EIS is required.

To the extent that BLM intended to consider this a “mitigated FONSI” it failed to meet the required standards because BLM did not provide the needed identification and analysis of impacts or details of the Design Criteria/Conditions of Approval or other mitigation measures to the public with the EA. As the CEQ Guidance explains: “the decision document following the EA should – and a Record of Decision (ROD) must – identify those mitigation measures that the agency is adopting and committing to implement, including any monitoring and enforcement program applicable to such mitigation commitments.” (CEQ Guidance, January 14, 2011 “Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact,” at 6-7.¹³)

4. BLM Violated Section 7 of the ESA by Failing to Consult with FWS on the Impacts of the Proposed Project on Threatened and Endangered Species

Congress enacted the ESA to provide “a program for the conservation of . . . endangered species and threatened species.” 16 U.S.C. § 1531(b). Section 2(c) of the ESA establishes that it is “the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.” 16 U.S.C. § 1531(c)(1). The ESA defines “conservation” to mean “the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this [Act] are no longer necessary.” 16 U.S.C. § 1532(3). Section 7(a)(1) of the ESA explicitly directs that all federal agencies “utilize their authorities in furtherance of the [aforesaid] purposes” of the ESA. 16 U.S.C. § 1536(a)(1).

¹³ available at <https://www.energy.gov/nepa/downloads/appropriate-use-mitigation-and-monitoring-and-clarifying-appropriate-use-mitigated>

Section 7 of the ESA requires BLM, in consultation with FWS, to insure that any action authorized, funded, or carried out by the agency is not likely to (1) jeopardize the continued existence of any threatened or endangered species, or (2) result in the destruction or adverse modification of the critical habitat of such species. 16 U.S.C. § 1536(a)(2). For each proposed federal action, BLM must request from FWS whether any listed or proposed species may be present in the area of the agency action. 16 U.S.C. § 1536(c)(1); 50 C.F.R. § 402.12. If listed or proposed species may be present in such area, BLM must prepare a “biological assessment” to determine whether the listed species may be affected by the proposed action. *Id.*

If BLM determines that its proposed action may affect any listed species or critical habitat, the agency must engage in formal consultation with FWS. 50 C.F.R. § 402.14. To complete formal consultation, FWS must provide BLM with a “biological opinion” explaining how the proposed action will affect the listed species or habitat. 16 U.S.C. § 1536(b); 50 C.F.R. § 402.14. If FWS concludes that the proposed action will jeopardize the continued existence of a listed species, or result in the destruction or adverse modification of critical habitat, the biological opinion must outline “reasonable and prudent alternatives.” 16 U.S.C. § 1536(b)(3)(A).

The EA shows that the project taken as a whole¹⁴ “may affect” listed species including California condor, San Joaquin kit fox, blunt-nosed leopard lizard, and giant kangaroo rat (as detailed above), triggering BLM’s duty to consult with U.S. Fish and Wildlife regarding these

¹⁴ BLM’s “no effect” determination is limited to the well installation on the well pad: “Well installation on the existing pad would result in no significant impacts to wildlife species, and BLM has made a “No Effect” determination for listed species.” 2018 Final EA at 27.

effects. BLM, however, failed to initiate or complete consultation with the U.S. Fish and Wildlife Service on its decision to authorize the new well and pipeline.

BLM's prior programmatic consultation over the 2010 CPNM RMP does not satisfy its duty to consult over the project. The Biological Opinion for the 2010 CPNM RMP (attached as Exh. 7) clearly states: "Oil and gas activities will proceed with a separate consultation, and no incidental take is authorized for oil and gas activities by this biological opinion." (Exh. 7 at 73.) Because no incidental take is authorized and the project may affect listed species, BLM violated its duties under the ESA section 7(a)(2) and the Biological Opinion. 16 U.S.C. § 1536(a)(2). Indeed, the CPNM RMP also recognizes the need to consult at the site-specific level for all oil-related projects on the Carrizo Plain National Monument. Specifically, Action BIO-2(S) in the RMP states:

When necessary, oil and gas related actions will require individual Section 7 consultations. Programmatic consultations will not be used for oil and gas related actions.

(CPNM RMP at II-18.)

As explained in detail above, even the limited discussion in the EA shows listed species may be affected by this proposed project. BLM's attempts to discount these potential impacts do not change that fact. Further, BLM did not adequately address baseline status of several species in the area including California condor, which readily available data show is currently present in the area of the proposed project. Because BLM's decision may affect the threatened and endangered species in the action area, and near the action area, BLM violated the ESA by failing to consult with FWS concerning the impacts of the proposed APD on these listed species. 16 U.S.C. § 1536(a)(2). And because BLM has failed to comply with the Section 7 consultation

procedures, it cannot insure that the proposed project will not jeopardize any listed species, or destroy or adversely modify any critical habitat, in further violation of Section 7 of the ESA. *Id.*

B. The Balance of Harms Clearly Favors Granting a Stay

While Appellants will be harmed as a result of the decision, *see* section I.B above and section II.C below, the BLM will suffer no harm from the granting of a stay. Nothing in the BLM's EA, Finding of No Significant Impact, or Decision Record indicates there is any overriding emergency or urgency around approving the APD at this time, six years after the EA was circulated for public comment and six years since any Schlaudeman well has produced any oil or gas. Nor will the applicant suffer any harm due to a stay as this lease is not currently producing. The EA states that "E&B has operated producing oil wells and petroleum production facilities on both private and public lands within the Russell Ranch Oil Field since 2003," (EA at 1), however at this time the "Schlaudeman lease has no producing wells," (EA at 24; *see also* EA at 1 ("A total of 5 wells have been drilled on this lease from 5 separate locations including 1 shut in well and 4 abandoned wells.")). Further, the EA states that "it is not reasonably foreseeable how much crude oil would be extracted from the proposed well" (EA at 24). In light of these facts, any potential harm from imposing a stay during the pendency of this appeal, so that these issues can be fully reviewed by the IBLA, is speculative and unquantifiable.

On the other hand, Appellants will most certainly be harmed if the new well drilling and pipeline activities area allowed to go forward without having conducted proper environmental review of those impacts. The commitment of resources without full public disclosure of significant environmental impacts or consultation with Fish and Wildlife Service would deprive the public and decision-makers of valuable information and a meaningful opportunity for them to

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recommend measures to reduce or avoid these impacts, thereby increasing the chances of environmental harm. Moreover, it would be difficult, if not impossible, for the harms to be undone if the new well and other infrastructure are allowed to be constructed.

C. Appellants Will Suffer Immediate and Irreparable Harm if the Stay Is Not Granted

As established by the declarations of Jeff Kuyper and Brendan Cummings, Appellants Los Padres ForestWatch and the Center for Biological Diversity will likely suffer immediate and irreparable harm to their interests absent a stay. For example, both declarants enjoy wildlife viewing within or near the Caliente Mountains and the Cuyama Valley, but the project may harm wildlife and reduce their habitat, and therefore reduce each individual's opportunities for wildlife viewing. *See* Kuyper Decl ¶¶ 16; Cummings Decl ¶¶ 13-16. Each of these declarants also attest to their concern that harm to the monument objects and/or listed species and habitats would reduce their aesthetic and recreational enjoyment of the CPNM. *See* Kuyper Decl ¶¶ 18; Cummings Decl ¶¶ 15-16, 18.

Without a stay, the APD will be issued without having first been subject to the appropriate levels of agency foresight and deliberation required by NEPA and the ESA. The public will also be deprived of important information and a meaningful opportunity to participate in the agency's decision. Whether or not this APD for a new well and pipeline should be approved, and under what conditions, are critical questions that will be effectively bypassed if BLM's decision is not stayed. The agencies' glaring NEPA violations are themselves the source of considerable irreparable harm. *Sierra Club v. U.S. Army Corps of Engineers*, 645 F.3d 978, 995 (8th Cir. 2011) (upholding preliminary injunction because "the failure to comply with NEPA's requirements causes harm itself, specifically the risk that 'real environmental harm will

occur through inadequate foresight and deliberation.”) (citing *Sierra Club v. Marsh*, 872 F.2d 497, 503-04 (1st Cir. 1989)); *see also*, *Marsh*, 872 F.2d 500-01 (“NEPA’s object is to minimize [...] the risk of uninformed choice, a risk that arises in part from the practical fact that bureaucratic decisionmakers (when the law permits) are less likely to tear down a nearly completed project than a barely started project.”).

Furthermore, in the absence of a stay, it is highly likely the new well will be drilled and the new pipeline will be developed resulting in surface disturbance; habitat destruction and fragmentation; increased vehicular traffic; air pollution; light pollution; noise pollution; and considerable risks to listed species and long term habitat connectivity. All of these impacts are direct and irreparable harms to the environment and to Appellants’ recreational, aesthetic, conservation, education, and spiritual interests in that environment.

D. The Public Interest Favors Granting a Stay

Here, the public interest favors granting a stay for a number of reasons. Ensuring that protection of monument objects as required under the Antiquities Act is fully addressed as well as impacts to the national landscape resources protected under the NLCS legislation and FLPMA justifies staying the decision until the issues raised in this appeal can be heard. In addition, ensuring that national environmental policies and standards, as enumerated under NEPA and the ESA favors the requested stay. *See California ex rel. Van de Kamp v. Tahoe Regional Planning Agency*, 766 F.2d 1319, 1324 (9th Cir. 1985) (finding that public interest may be defined “by reference to the policies expressed in legislation”) (citation omitted). In this case, BLM clearly fell short of meeting legal requirements to ensure protection of monument objects and national landscapes, and failed to meet the requirements of NEPA and the ESA.

Furthermore, in passing laws such as the Antiquities Act, NLCS legislation, FLPMA, NEPA and the ESA, Congress clearly meant to ensure consideration of protected resources was to occur before decisions were made that could impact such resources to avoid potentially irreversible consequences to objects protected within the national monument, landscape resources, human health and the environment as a whole. As Congress stated in the preamble to NEPA, its purpose was “[t]o declare a national policy which will encourage productive and enjoyable harmony between man and environment [and] to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man[.]” 42 U.S.C. § 4332(a).

Given the FLPMA, Antiquities Act, NCLS legislation, NEPA and ESA violations detailed above, moving forward with BLM’s decision on this new well and pipeline is clearly against the public interest. Given that BLM is required to meaningfully evaluate the environmental impacts of this site-specific project that will affect several listed species, the IBLA should grant a stay to protect the public interest.

III. CONCLUSION

In light of the foregoing, we respectfully request the IBLA grant a stay of the Decision Record, Finding of No Significant Impact, and EA DOI-BLM-CA-C060-2012-0040-EA for E&B Natural Resources Management Corp. Russell Ranch Oil Field; APD for New Well Schlaudeman #354-23. Pursuant to 43 C.F.R. § 4.412, a Statement of Reasons will be filed within 30 days.

Respectfully submitted,

Date: April 19, 2018

/s/ Lisa Belenky

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Attachments (provided in electronic format on disk):

Exhibit 1: Decision Record for approved APD

Exhibit 2: FONSI for approved APD

Exhibit 3: 2018 EA for approved APD

Exhibit 4: 2012 EA for approved APD

Exhibit 5: Los Padres ForestWatch and Center for Biological Diversity comments on Draft EA
(April 23, 2012)

Exhibit 6: Email Correspondence re: effective date of decision

Exhibit 7: USFWS, Biological Opinion dated April 2, 2010, Formal Section 7 Endangered Species Act Consultation on the Implementation of the Carrizo Plain National Monument Resource Management Plan. San Luis Obispo and Kern Counties, California

Exhibit 8: 2017 Condor data maps from Science Base

Exhibit 9: Los Padres ForestWatch Condor Map

Exhibit 10: Los Padres ForestWatch. Documented Impacts of Oil and Gas Development on Endangered California Condors (July 27, 2016)

Exhibit 11: Williams, A. Park, et al., Contribution of anthropogenic warming to California drought during 2012–2014, *Geophys. Res. Lett.*, 42, 6819–6828 (2015), doi:10.1002/2015GL064924;

Exhibit 12: Pagán, Brianna R., et al., Extreme hydrological changes in the southwestern US drive reductions in water supply to Southern California by mid-century, *Environ. Res. Lett.* 11, 8, 9 (2016) 094026, doi:10.1088/1748-9326/11/9/094026.

Exhibit 13: Dustin Mulvaney, Alexander Gershenson, Ben Toscher, Over-Leased: How Production Horizons of Already Leased Federal Fossil Fuels Outlast Global Carbon Budgets, EcoShift Consulting (2016)

Exhibit 14: E&B Natural Resources, Sundry Notice for Well Abandonment (March 11, 2015)

Exhibit 15: BLM, Scoping Notice for E&B Resources' Well Abandonment (March 22, 2016)

Exhibit 16: BLM, Environmental Assessment for E&B Resources' Well Abandonment (July 1, 2016)

Exhibit 17: Los Padres ForestWatch, Comment Letter on Abandonment of Oil Wells (April 20, 2016)

Exhibit 18: BLM, FONSI on E&B Resources' Well Abandonment (July 1, 2016)

Exhibit 19: BLM, Decision Record on E&B Resources' Well Abandonment (July 1, 2016)

Exhibit 20: BLM, Inspection of E&B Well (March 24, 2016)

Exhibit 21: BLM, Inspection of E&B Well (May 7, 2015)

Exhibit 22: Photo of well pad for the approved well (New Well Schlaudeman #354-23)

Exhibit 23: Los Padres ForestWatch, Evidence of Non-Compliance with Good Housekeeping Requirements, Schlaudeman Lease, Russell Ranch Oil Field (April 16, 2018)

Exhibit 24: Meretsky, Vicky J. et al., Demography of the California Condor: Implication for Reestablishment, *Conservation Biology* 14(4): 957-967 (2000)

Exhibit 25: BLM, Email from California State Office to Wendy Park, Center for Biological Diversity (April 19, 2018)

Exhibit 26: BLM, Carrizo Plain National Monument RMP and ROD (2010)

Exhibit 27: USFWS, Survey Protocol for Determining Presence of San Joaquin Kangaroo Rats, Sacramento Field Office (2013)

Exhibit 28: California Department of Fish & Wildlife, Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (2018)

Exhibit 29: USFWS, Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed, Proposed and Candidate Plants (1996)

Exhibit 30: Cypher, E.A. General Rare Plant Survey Guideline (2002)

CERTIFICATE OF SERVICE

I certify that, on April 19, 2018, in accordance with all applicable rules, I served this

Notice of Appeal and Petition for Stay by Federal Express delivery, upon:

Gabriel Garcia, Field Manager
Bureau of Land Management
Bakersfield Field Office
3801 Pegasus Drive
Bakersfield, CA 93308

Regional Solicitor
United States Dept. of the Interior
Office of the Solicitor, Pacific Southwest Region
2800 Cottage Way, Room E-1712
Sacramento, CA 95825-1890

The United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy Street, Suite 300
Arlington, Virginia 22203

E&B Natural Resources Management Corp.
1600 Norris Road
Bakersfield, CA 93308

Wendy Park, Senior Attorney
Center for Biological Diversity

LOS PADRES FORESTWATCH * CENTER FOR BIOLOGICAL DIVERSITY

April 18, 2018

Via Email

Jerry Perez
California State Director
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2800 Cottage Way, Suite W1623
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**REQUEST FOR CALIFORNIA STATE DIRECTOR REVIEW, REQUEST FOR STAY,
AND REQUEST FOR EXTENTION OF TIME**

Re: Decision Record, Finding of No Significant Impact, and EA DOI-BLM-CA-C060-2012-0040-EA for E&B Natural Resources Management Corp. Russell Ranch Oil Field; APD for New Well Schlaudeman #354-23

Dear Director Perez:

Pursuant to 43 C.F.R. § 3165.3(b), Center for Biological Diversity and Los Padres ForestWatch (“Petitioners”) file this Request for State Director Review of a decision made by Bureau of Land Management (“BLM”) Bakersfield Field Office Field Manager Gabriel Garcia to approve the APD for New Well Schlaudeman #354-23 and a new pipeline, and request the opportunity for oral presentation. The decision was documented in a Decision Record signed on March 16, 2018 along with a Finding of No Significant Impact, and a final version of an Environmental Assessment (“EA”) DOI-BLM-CA-C060-2012-0040-EA for E&B Natural Resources Management Corp. Russell Ranch Oil Field; APD for New Well Schlaudeman #354-

23. The EA DOI-BLM-CA-C060-2012-0040-EA was first released for public comment in 2012 (“2012 EA”) and Petitioners submitted comments on the EA on April 23, 2012 (attached as Exh. 1).¹ Petitioners timely appeal this decision within 20 business days of receiving notice of the decision provided to Petitioner Los Padres ForestWatch by BLM via email on March 21, 2018. Pursuant to 43 C.F.R. § 3165.3(b), Petitioners also request a stay of the decision pending the State Director’s review and an extension of time of at least two weeks for submitting supporting data. Unfortunately, the DR does not indicate that State Director Review is available or required and only references appeal to the IBLA, stating that “Notices of appeal must be filed in this office within 30 days after publication of this decision.” (DR at 3.) The incorrect notice as to when and with whom an appeal must be filed provides good cause to justify an extension of time in this matter. Moreover, a time extension would allow the BLM to fulfill Petitioners’ request for a copy of the current lease and stipulations for this facility. Petitioner Los Padres ForestWatch requested the lease documents on March 21, 2018, yet despite repeated follow-up requests, the BLM has been unwilling or unable to provide us with a copy of the lease and stipulations.

Petitioners request that the State Director reverse and remand the Bakersfield Field Office’s Decision Record and Finding of No Significant Impact approving the APD for New Well Schlaudeman #354-23, and request an immediate stay of the decision pending the State Director’s final determination on Petitioners’ request for review. A stay and reversal of the decision are well-justified in this case, because the decision fails to ensure protection of the objects for which the national monument was designated in violation of the Antiquities Act and the NLCS Act; is inconsistent with the terms of the 2010 Carrizo Plain National Monument

¹ All cited references and exhibits are provided on a CD, which will be delivered to your office via Federal Express on April 19.

Resource Management Plan (“CPNM RMP”), which is also a violation of the Federal Land Policy and Management Act; the decision would allow impacts to air quality, biological resources (including endangered species and their habitats), and visual resources of the Carrizo Plain National Monument to occur without adequate review of these impacts, in violation of the National Environmental Policy Act; and the decision was made without needed site-specific consultation with the U.S. Fish and Wildlife Service under the Endangered Species Act (“ESA”).

The decision fails to ensure protection of the objects for which the national monument was designated in violation of the Antiquities Act, 54 U.S.C. § 320301(a)-(b),² the Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. § 1731 *et seq.*, and the National Landscape Conservation System (“NLCS”) legislation, 16 U.S.C. §§ 7201-7203. The DR does not directly address these laws and requirements and therefore BLM has not shown that the decision is consistent with these statutory duties and directives.

The DR states that the decision is consistent with the 2010 CPNM RMP. However, the record shows that it is not consistent with the RMP objectives and actions for species including the endangered California condor, air quality, existing leases and others. For example, as detailed below the decision is inconsistent with the objectives that require minimizing fragmentation of habitat, maintaining and abandoning facilities, and contributions to climate change.

In authorizing the new well, BLM failed to analyze, assess, and disclose a number of potentially significant impacts, in violation of the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4331, *et seq.* BLM’s EA fails to clearly and fully disclose the impacts of oil and gas

² Antiquities Act of 1906, 54 U.S.C. § 320301(a)-(b) was recodified and edited in 2014 by Congress with the stated intent of “conform[ing] to the understood policy, intent, and purpose of Congress in the original enactments[.]” Pub. L. 113-287, §§ 2-3, 128 Stat. 3093, 3094, 3259 (2014). The original Act is found at 34 Stat. 225 (1906).

extraction, including GHG emissions, on air quality in the context of climate change and fails to adequately address surface disturbance that would result from the new well and pipeline. The EA briefly mentions activities that have potential to impact rare plants, wildlife species and habitats but fails to fully disclose the extent of those impacts or fully consider alternatives and mitigation measures. The new well and pipeline will also impact visual and aesthetic resources of the monument because the well and over-ground pipeline would be visible from the Caliente Mountain Wilderness Study Area (WSA) and nearby trails, and from Highway 166. (*See* Attachment A, photo of well pad with Caliente Mountain WSA in the background.) These impacts to visual and aesthetic resources which are part of this important national landscape were not adequately considered in the NEPA review.

In addition, BLM failed to comply with the ESA. The EA shows that the project taken as a whole “may affect” listed wildlife species including California condor, San Joaquin kit fox, blunt-nosed leopard lizard, and giant kangaroo rat as well as listed plants Kern mallow and Lemmon’s jewelflower, triggering BLM’s duty to consult with Fish and Wildlife Service regarding these effects. *See* 50 C.F.R § 402.14(a). However, without providing up to date survey information or analysis, BLM largely dismisses the potential impacts to listed species. The EA acknowledges some impacts may occur but then dismisses them in reliance on the adoption of mitigation measures (Design Features/Conditions of Approval) to reduce impacts to these species. For example, with respect to listed and rare plants the EA states:

BLM cannot discount the possibility that Kern mallow, Hoover’s woolly-star, and Lemmon’s jewelflower are present within the vicinity of the project area. However, since the well development would occur mainly on areas of existing disturbance no impacts to these species are expected. There may be a negligible amount of temporary disturbance due to the installation of a new pipeline, if it becomes necessary to replace the existing line, but this should not impact native

vegetation including listed species due to implementation of the project Design Features/Conditions of Approval.

(EA at 26.) Similarly, the EA states: “Mitigation measures put in place by the Project Design Features/Conditions of Approval would avoid impacts to giant kangaroo rat, blunt-nosed leopard lizard, San Joaquin kit fox and California condor.” (EA at 27.) Reliance on such measures shows that BLM acknowledges that impacts to listed species may indeed occur; therefore, BLM was required to consult under the ESA.

Moreover, the statement in the EA of not being able to “discount the possibility” that certain species are present near the project area directly contradicts the BLM’s finding in a separate EA prepared in 2016 for the abandonment of this well pad. Specifically, that 2016 EA states: “a population of Kern Mallow was identified during the onsite inspection and on the CNDDDB for Well Russell Ranch Unit 77-23; this population occurred on the slopes surrounding the well pad and access roads.” 2016 EA at 8 (Exh. 16). The documented presence of a federally-listed species on the slopes surrounding the project area – and potentially in the path of the proposed pipeline – clearly triggers the consultation requirement under the ESA.

The information BLM disclosed in the EA cannot support a “no effects” finding for the project as a whole. Indeed, the only “no effect” determination found in the EA is limited to the well installation on the well pad: “Well installation on the existing pad would result in no significant impacts to wildlife species, and BLM has made a “No Effect” determination for listed species.” 2018 Final EA at 27.³ The BLM failed to comply with the Endangered Species Act

³ Oddly, although there is no other finding in the EA that goes beyond the well installation only, and no Biological Assessment was provided, the EA claims that BLM somehow made a more general “no effect” determination. (EA at 28 [“Since a “no effect” determination has been made for federally listed species, E&B would not be required to obtain a Section 7 consultation.”]; EA at 29 [“The BLM has made an Effects Determination of “No Effect” to listed Threatened or

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(“ESA”), 16 U.S.C. § 1531, *et seq.*, by failing to initiate or complete consultation with the U.S. Fish and Wildlife Service on its decision to authorize the new well and pipeline and maintenance of the associated access road that “may affect” listed species. Therefore, BLM is in violation of the ESA Section 7. 16 U.S.C. § 1536(a)(2).

Further, site-specific consultation is contemplated by the 2010 CPNM RMP Biological Opinion (attached as Exh. 7) which states: “Oil and gas activities will proceed with a separate consultation, and no incidental take is authorized for oil and gas activities by this biological opinion.” (Exh. 7 at 73.) Indeed, the CPNM RMP also recognizes the need to consult at the site-specific level for all oil-related projects on the Carrizo Plain National Monument. Specifically, Action BIO-2(S) in the RMP states:

When necessary, oil and gas related actions will require individual Section 7 consultations. Programmatic consultations will not be used for oil and gas related actions.

(CPNM RMP at II-18.) Because no incidental take is authorized and the project may affect listed species, BLM violated its duties under the ESA section 7(a)(2). 16 U.S.C. § 1536(a)(2).

Approval of the new well and pipeline is not only illegal, it threatens immediate and irreparable harm to Petitioners and their interests in protecting and restoring the Carrizo Plain National Monument and the objects for which the National Monument was designated including wildlife, rare plants, landscape values and preservation of the objects of the monument for future

Endangered Species for the proposed project, thus a consultation with the FWS is not required.”]; EA at 34-35 in response to comments [“Based on the analysis in the EA, the BLM has made a “No Effect” determination for federally listed species associated with the proposed action, because the proposed project would occur on previously disturbed areas, lack disturbance to vegetation and burrows, and the distance to nearest recorded California condor sighting (EA, pg. 27).’].) To the extent BLM argues that it did make a “no effects” finding for all aspects of the proposed project, the failure to explain or support that finding in the EA and DR violates NEPA’s informational requirements and the decision should be vacated on that basis as well.

generations. Further, approval of the new well and pipeline poses irreparable harms to Petitioners, yet a stay would pose no harm to BLM or the applicant as this lease has not produced any quantities of oil and gas since 2012, and the EA claims that “it is not reasonably foreseeable how much crude oil would be extracted from the proposed well” (EA at 24). On balance, an immediate stay would protect the public interest, maintaining the status quo and preventing significant environmental harms. For the following reasons, we respectfully request that the State Director reverse and remand the Decision Record for the March 21, 2018 E&B Natural Resources Management Corp. Russell Ranch Oil Field; APD for New Well Schlaudemman #354-23, and immediately stay the implementation of this decision pending the State Director’s final determination.

I. PETITIONERS ARE PARTIES THAT ARE ADVERSELY AFFECTED

Petitioners are proper parties to maintain and pursue this review request and petition for stay. In order to be a party to the case, a person or group must have actively participated in the decision making process regarding the subject matter of the appeal. Also, the Petitioners will be adversely affected by the approval in question.

Los Padres ForestWatch (“ForestWatch”) is a non-profit 501(c)(3) organization based in Santa Barbara, California that works to protect the Los Padres National Forest and the adjacent Carrizo Plain National Monument. ForestWatch has approximately 8,000 members and online advocates throughout the region, and has worked on issues pertaining to oil and gas drilling in the Carrizo Plain National Monument since 2005. ForestWatch is particularly interested in ensuring that rare plants and animals in the Carrizo Plain National Monument are protected, and that the monument’s views are protected to safeguard the area’s outdoor recreation opportunities.

ForestWatch and its members and supporters use the lands in and near the Carrizo Plain National Monument for recreational, scientific, and aesthetic purposes. They also derive recreational, scientific, and aesthetic benefits from these lands through wildlife observation, study, and photography. ForestWatch and its members have an interest in preserving their ability to enjoy such activities in the future. As such, ForestWatch and its members have an interest in helping to ensure their continued use and enjoyment of these activities on these lands. ForestWatch also has a long history of working to ensure that our public lands laws and environmental laws are properly followed and enforced to protect species and habitats. (*See* Declaration of Jeff Kuyper, attached hereto, hereafter “Kuyper Decl.”)

The Center for Biological Diversity is a non-profit 501(c)(3) corporation with offices in several states including California, Arizona, Oregon, Colorado, and Washington, D.C. The Center works through science, law, and policy to secure a future for all species, great or small, hovering on the brink of extinction. The Center has approximately 63,000 members throughout the United States, including over 13,000 members in California. The Center has a long history of involvement in species and habitat protection issues on public lands throughout the United States and specifically regarding the public lands and species that depend on the Carrizo Plain National Monument. The Center, its members, and staff members use the lands in and near the Carrizo Plain National Monument, for recreational, scientific, and aesthetic purposes. They also derive recreational, scientific, and aesthetic benefits from these lands through wildlife observation, study, and photography. The Center and its members have an interest in preserving their ability to enjoy such activities in the future. As such, the Center and its members have an interest in helping to ensure their continued use and enjoyment of these activities on these lands. The Center also has a long history of working to ensure that our public lands laws and environmental

laws are properly followed and enforced to protect species and habitats including by requiring adequate analysis of greenhouse gas emissions and climate change impacts to species and habitats. (*See* Decl. of Brendan Cummings, attached hereto, hereafter “Cummings Decl.”)

A. Petitioners Are Parties

A party to the case includes a person or group who “participated in the process leading to the decision under appeal.” *See* 43 C.F.R. § 4.410(b).⁴ Here, Petitioners are parties because they have submitted extensive comments to BLM regarding the proposed APD during the public comment period provided by the BLM. Petitioner Los Padres ForestWatch submitted scoping comments on December 1, 2011 (Exh. 3 at 32-35), and a letter of support for a simultaneous proposal to abandon and remediate the well pad and access site on April 20, 2016 (Exh. 17). Petitioners Los Padres ForestWatch and Center for Biological Diversity jointly submitted comments on the 2012 EA on April 23, 2012. (Exh. 5.) The issues presented in this Request for State Director Review and Request for Stay were raised with reasonable specificity in Petitioners’ 2011 and 2012 comments.

B. Petitioners Are Adversely Affected

To demonstrate that it will be “adversely affected” by the decision for which State Director review is requested, a party must demonstrate a legally cognizable “interest” and that the decision appealed has caused or is substantially likely to cause injury to that interest. *See* 43 C.F.R. § 4.410(d). This requisite “interest” can be established by cultural, recreational, or aesthetic uses as well as enjoyment of the public lands and wildlife. *See The Coalition of*

⁴ As there are no regulatory criteria or guidance for who qualifies as an “adversely affected party” entitled to State Director review under 43 C.F.R. 3165.3(b), Petitioners rely on the IBLA’s criteria for showing that they are parties to the case and adversely affected by the challenged decision.

Concerned National Park Retirees, et al., 165 IBLA 79, 88 (2005); *Animal Protection Institute of America*, 117 IBLA 208, 210 (1990). The IBLA does not require a showing that an injury has actually occurred. Rather, a colorable allegation of injury suffices. *See Wildlands Defense*, 187 IBLA 233, 240, 241 (2016).

Moreover, it is not necessary for parties to show that they have actually set foot on the impacted parcel or parcels to establish use or enjoyment for purpose of demonstrating adverse effects. Rather, “one may also establish he or she is adversely affected by setting forth interests in resources or in other land or its resources affected by a decision and showing how the decision has caused or is substantially likely to cause injury to those interests.” *The Coalition of Concerned National Park Retirees*, 165 IBLA at 84.

Attached is the declaration of Jeff Kuyper, the Executive Director and a member of Los Padres ForestWatch.

Attached is the declaration of Brendan Cummings, the Conservation Director and a member of the Center for Biological Diversity.

The declarations of Kuyper and Cummings establish that the BLM’s decision to approve a new oil and gas well and pipeline will adversely affect their recreational, aesthetic, spiritual, educational, conservation, and other interests. (*See Kuyper Decl.* ¶¶ 7, 11-19; *Cummings Decl.* ¶¶ 7-19) These declarations also establish that a favorable ruling in this appeal would redress the harms they would otherwise experience.

II. REQUEST FOR STAY OF DEVELOPMENT PENDING STATE DIRECTOR DECISION

Based on the Petitioners’ review of the relevant documents and concern for unnecessary and undue degradation and irreversible impacts to ESA-listed species and habitat on public

lands, Petitioners feel it is necessary at the outset of this request to request an immediate stay of all development related activities in the project area to prevent irreparable harm to these resources.

Although there are no regulatory criteria or other guidance for determining whether a stay is warranted while State Director Review is pending,⁵ 43 C.F.R. § 3165.4(c) establishes criteria for a stay by the Interior Board of Land Appeals. Thus, those criteria are discussed below.

Petitioners respectfully request the State Director to grant their request for a stay of the BLM's Decision Record APD for New Well Schlaudeman #354-23 and associated infrastructure including the new above-ground pipeline. In accordance with 43 C.F.R. § 4.21(b)(1), below we show that Petitioners are likely to succeed on the merits, that Petitioners will suffer immediate and irreparable harm if the stay is not granted, that the balance of harms favors a stay, and that the granting of a stay is in the public interest.

A. Petitioners Are Likely to Succeed on the Merits

For the following reasons, among others, the BLM's approval of the APD for New Well Schlaudeman #354-23 violates FLPMA, NLCS Act, NEPA and the ESA, and should be overturned by the State Director.

1. BLM Failed to Consider Protection Of Monument Objects as Required by the Antiquities Act, FLPMA, and NLCS Act.

⁵ According to regulation, the state office should issue its decision within ten working days after receipt of this request for State Director Review. It is probably because of this short timeline that there are no regulations for issuing a stay of the decision pending this review. Of course, one way of avoiding the stay issue is to reach a decision within the regulatory timeframe, and we encourage the state office to pursue that avenue.

The decision fails to ensure protection of the objects for which the national monument was designated in violation of the Antiquities Act, 54 U.S.C. § 320301(a)-(b),⁶ the Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. § 1731 et seq., and the National Landscape Conservation System (“NLCS”) legislation, 16 U.S.C. §§ 7201-7203.

On January 17, 2001, President William J. Clinton established the current boundaries of the Carrizo Plain National Monument in California to protect its unique objects including majestic grasslands and stark ridges dramatically bisected by the San Andreas fault. These monument objects sustain the habitat necessary for the long-term conservation of the many endemic plant and animal species that rely on the Carrizo Plain National Monument for their survival. For example, the Proclamation explains the numerous features as well as the scientific objects related to habitats and wildlife:

Full of natural splendor and rich in human history, the majestic grasslands and stark ridges in the Carrizo Plain National Monument contain exceptional objects of scientific and historic interest. Since the mid-1800s, large portions of the grasslands that once spanned the entire four hundred mile expanse of California’s nearby San Joaquin Valley and other valleys in the vicinity have been eliminated by extensive land conversion to agricultural, industrial, and urban land uses. The Carrizo Plain National Monument, which is dramatically bisected by the San Andreas Fault zone, is the largest undeveloped remnant of this ecosystem, providing crucial habitat for the long-term conservation of the many endemic plant and animal species that still inhabit the area.

The monument offers a refuge for endangered, threatened, and rare animal species such as the San Joaquin kit fox, the California condor, the blunt-nosed leopard lizard, the giant kangaroo rat, the San Joaquin antelope squirrel, the longhorn fairy shrimp, and the vernal pool fairy shrimp. It supports important populations of pronghorn antelope and tule elk. The area is also home to many rare and sensitive plant species, including the California jewelflower, the Hoover’s

⁶ Antiquities Act of 1906, 54 U.S.C. § 320301(a)-(b) was recodified and edited in 2014 by Congress with the stated intent of “conform[ing] to the understood policy, intent, and purpose of Congress in the original enactments[.]” Pub. L. 113-287, §§ 2-3, 128 Stat. 3093, 3094, 3259 (2014). The original Act is found at 34 Stat. 225 (1906).

woollystar, the San-Joaquin woolly-threads, the pale-yellow layia, the forked fiddleneck, the Carrizo peppergrass, the Lost Hills saltbush, the Temblor buckwheat, the recurved larkspur, and the Munz's tidy-tips. Despite past human use, the size, isolation, and relatively undeveloped nature of the area make it ideal for long-term conservation of the dwindling flora and fauna characteristic of the San Joaquin Valley region.

The Carrizo Plain National Monument also encompasses Soda Lake, the largest remaining natural alkali wetland in southern California and the only closed basin within the coastal mountains. As its name suggests, Soda Lake concentrates salts as water is evaporated away, leaving white deposits of sulfates and carbonates. Despite this harsh environment, small plant and animal species are well adapted to the setting, which is also important to migratory birds. During the winter months the lake fills with water and teems with thousands of beautiful lesser sandhill cranes, long-billed curlews, and mountain plovers.

The Carrizo Plain National Monument owes its existence to the geologic processes that occur along the San Andreas Fault, where two of the Earth's five great tectonic plates slide past one another, parallel to the axis of the Plain. Shifting along the fault created the Plain by rumpling the rocks to the northeast into the Temblor Range and isolating the Plain from the rest of the San Joaquin Valley. The area is world-famous for its spectacular exposures of fault-generated landforms. Stream valleys emerge from the adjacent mountains, only to take dramatic right-angle turns where they intersect the fault. Ponds and sags form where the ground is extended and subsides between branches of the fault. Benches form where the fault offsets valley walls. Many dramatic landscape features are products of the interplay between very rapid fault movement and slower erosion. The dry climate of the area produces low erosion rates, thereby preserving the spectacular effects of fault slip, folding, and warping. On the Plain, these fault-related events happen intermittently, but with great force. In 1857, the strongest earthquake in California's recorded history ripped through the San Andreas Fault, wrenching the western side of the Carrizo Plain National Monument thirty-one feet northward.

The area is also distinguished for its significant fossil assemblages. The Caliente Formation, exposed on the southeast side of the Caliente Range, is host to abundant and diverse terrestrial fossil mammal remains of the Miocene Epoch (from 13 million to 25 million years ago). Fossils of five North American provincial mammalian ages (Arikareean, Hemingfordian, Barstovian, Clarendonian, Hemphillian) are represented in sedimentary rocks in that formation. These terrestrial fossil remains are interlaced with marine sedimentary rocks bearing fossils of mollusks, pectens, turitellas, and oysters. In addition to its geologic and biological wealth, the area is rich in human history. Archaeologists theorize that humans have occupied the Carrizo Plain National Monument area since the Paleo-Indian Period (circa 11,000 to 9,000 B.C.).

Bedrock mortar milling features, village middens, and elaborate pictographs are the primary manifestations of prehistoric occupation. Some of these, such as the Painted Rock and Sulphur Springs rock art sites, are recognized as world class.

(66 Fed. Reg. 7339-40 (Jan. 22, 2001) Proclamation Carrizo Plain National Monument-Proclamation 7393.)

The Antiquities Act provides for designation of “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on land owned or controlled by the Federal Government to be national monuments.” 54 U.S.C. § 320301(a). Section 302(a) of FLPMA provides that “the Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 1712 of this title when they are available, *except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.*” 43 U.S.C. § 1732 (emphasis added). Courts have recognized that this provision requires BLM to manage lands in accordance with monument proclamations.⁷ In Instruction Memorandum 2009-215,⁸ which amended BLM’s Land Use Planning Handbook H-1610-1, Appendix C, BLM interpreted the exception clause in section 302(a) to mean:

[W]hen an area of public land is set aside by a presidential proclamation issued under the Antiquities Act of 1906 or an act of Congress, the designating language is the controlling law. Therefore, as a general rule, if the management direction of the proclamation or act of Congress conflicts with FLPMA’s multiple use

⁷ See *W. Watersheds Project v. Abbey*, 719 F.3d 1035, 1042 (9th Cir. 2013) (FLPMA’s “multiple-use-and-sustainable-yield mandate guides BLM’s management of public lands ‘except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.’ 43 U.S.C. § 1732(a). Under this provision, BLM must manage the Breaks Monument in compliance with the terms of the Proclamation.”).

⁸ Available at <https://www.blm.gov/policy/im-2009-215>.

mandate, the designating language superseded that section of the FLPMA. The particular management direction contained in the designating law (proclamation or act of Congress) should be carefully reviewed to determine whether conflicts with the FLPMA exist. Field Offices are encouraged to explore innovative ways to ensure compliance with both the designation and the FLPMA, if appropriate.

In short, FLPMA specifically requires the multiple-use policy to give way when other law requires elevation of a specific use. The identification of an object for protection under the Antiquities Act, and the reservation of land necessary to protect that object, dedicates the land for use for the purposes of the monument and withdraws it from uses incompatible with that purpose. The mandate to protect the Monument's objects imposed by the Antiquities Act, and by the 1996 Proclamation, overrides the multiple-use mandate where incompatible.

In 2009, Congress reaffirmed the importance of proper management of this national monument and others by requiring that monument lands managed by BLM be managed as part of the National Landscape Conservation System ("NLCS"). *See* 16 U.S.C. §§ 7201-7203. Specifically, the NLCS legislation recognized the need to protect these landscapes and resources for future generations: "In order to conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations, there is established in the Bureau of Land Management the National Landscape Conservation System." 16 U.S.C. § 7202(a). The NLCS legislation required the Secretary of Interior to manage the lands within the National Landscape Conservation System "in a manner that protects the values for which the components of the system were designated." 16 U.S.C. § 7202(c)(2). The NLCS Act thus required BLM to consider protection of the landscape values and resources in addition to its duties to protect the objects proclamation.

The CPNM RMP states that as a whole the objectives and management actions are intended to protect monument objects: "The decisions made in this RMP include establishing

objectives and associated management actions to protect the Monument objects and to provide direction for other aspects of Monument management, including determining allowable public uses.” (RMP at II-1.) Therefore, BLM must show that it has considered and followed the objectives and actions in the RMP in order to show it has considered protection of monument objects.

For example, the goals for vegetation management throughout the monument state:

- Goal BIO-1(P): Manage the landscape to enhance the CPNM as a significant unique and undeveloped portion of the once vast San Joaquin Valley ecosystem (which is of crucial importance and provides the context for management). (RMP at II-16.)
- Goal BIO-2(P): Restore and maintain a mosaic of natural communities and successional stages to benefit the biodiversity inherent in the ecosystem, including ecological processes that sustain them. Manage resources to emphasize an increase of native and indigenous species. (RMP at II-16.)

At minimum, BLM was required to consider how this site-specific proposed action would impact these and other goals adopted to protect these landscape-level monument goals adopted to project the monument objects. Because the DR fails to address the critical questions of whether the proposed project would impair objects that the monument was designated to protect including the nationally significant landscapes, BLM violated FLPMA and the NLCS legislation.

2. The DR is Inconsistent with the RMP Objectives and Actions to Protect Monument Objects in Violation of FLPMA and Also Failed to Address Significant New Information

The monument proclamation required BLM to adopt a management plan for the CPNM that addresses actions “necessary to protect the objects identified in this proclamation.” (66 Fed. Reg. 4371). In addition, FLPMA requires that once a resource management plan is developed, “[a]ll future resource management authorizations and actions . . . shall conform to the approved

plan.” (*Oregon Natural Resources Council (“ONRC”) v. Brong*, 492 F.3d 1120, 1125 (9th Cir. 2007), [quoting 43 C.F.R. § 1610.5-3(a)].)

Unfortunately, the decision is inconsistent with the objectives and actions adopted in the 2010 CPNM RMP regarding protections for listed and special status species and air quality/climate change.

In addition, given the significant new information regarding increased presence of California condor in the area and the impacts of climate change since the RMP was adopted, BLM needs to go further to address impacts to the monument objects to show that they would be protected under its decision. Unfortunately, here BLM failed to follow the RMP or to address new information regarding condor presence and climate change that must be considered.

a. Objectives and Actions for Species in this Area

One RMP action to protect all wildlife and vegetation resources states:

- Action BIO-2(S): When necessary, oil and gas related actions will require individual Section 7 consultations. Programmatic consultation will not be used for oil and gas related actions. (RMP at II-18.)

As discussed further below, this objective was not followed in this instance. This is both a violation of FLPMA, because BLM failed to follow the RMP management action, and a violation of the ESA.

RMP objectives and actions for the California condor specifically provide for protection of California condor habitat in the project area, which is located in Caliente Mountain South:

Objective BIO-6(P) – California Condor Objective: Maintain unobstructed condor habitat in the Caliente Mountain North, Caliente Mountain South, and Temblor Range subregions. Maintain suitable foraging habitat for condors in the Panorama Hills/Elkhorn Plain, Carrizo Plain Central, and Caliente Foothills South subregions.

California Condor Management Actions

- Action BIO-21(P): Restrict or prohibit the placement of new transmission lines, towers, or other potentially disruptive constructs in condor habitat.
- Action BIO-22(S): Work with existing right-of-way holders to make existing structures condor safe.
- Action BIO-23(S): Support USFWS in implementing recovery actions, such as establishing supplemental feeding stations or condor monitoring.

Development of an oil well and pipeline in the project area would undermine these objectives. Oil wells and equipment are known hazards to condor both because they obstruct habitat use and because they can be an attractive nuisance drawing condors into harm's way. There is ample evidence that condors have been injured by oil and gas operations. Many interactions and incidents are summarized in the 2016 report by Petitioner Los Padres Forest Watch entitled: "Documented Impacts of Oil Development on Endangered California Condors," July 27, 2016 (attached as **Exhibit 10**), Condors have landed on well pads and oil pumps and have been injured by oil and microtrash at these sites.⁹ They are also attracted to standing water or pools of oil that may result from spills.¹⁰

Historically, a significant amount of condor habitat has been lost or has severely degraded due to oil and gas projects. In one National Wildlife Refuge that allowed oil and gas development, FWS estimated that 63 percent of critical condor habitat was lost.¹¹ Condors are known to use a wide acreage of habitat; they separate their nesting area from

⁹ Exhibit 10 at 2-19.

¹⁰ *Id.* at 2, 4-6, 8, 12.

¹¹ *Id.* at 5.

their foraging areas and have been known to fly more than 200 km and traverse their entire habitat range in one day.¹²

The EA failed to address these RMP objectives and actions and to the extent BLM addressed condor at all it was to dismiss potential impacts to condor by relying on “recent records” of limited sightings in the area that appear to be from 2009 and 2010.

The EA states:

The Monument is historically known as a foraging site for California condor however, recent records show the nearest sightings to be several miles from the proposed well site. According to USFWS, condors have not been known to visit any of the pumps that make up the Russell Ranch Oil Field. In 2010 one condor was tracked to a location approximately seven to ten miles west of the proposed well site (USFWS, 2011). Possibly attracted to a dead calf and/or deer, the bird stayed at the site over a period of three days, and then left the area. In 2009 several locations were chosen as potential sites for condor feeding stations within the Chimineas Ranch unit of the CDFG. The unit shares much of the western boundary of the Monument and is located approximately five miles from the proposed project area. Should the USFWS construct a feeding station(s) within the Chimineas Ranch, the potential exists for more frequent use by condors of the region.

(EA at 21-22.) BLM’s implicit conclusion that this means there will not be impacts to condor is wrong for several reasons:

- First, there is significant new data on condor movements in the area since 2011. The attached maps provided in **Exhibit 8** and **Exhibit 9** are based on readily available USFWS data. **Exhibit 8** shows extensive and increasing California condor presence in the area in 2017 and **Exhibit 9** shows a snapshot of condor data points from 2015 through 2017 in proximity to the proposed well and pipeline site;

¹² Meretsky, Vicky J. et al., Demography of the California Condor: Implication for Reestablishment, Conservation Biology 14(4): 957-967 (2000) (“Meretsky 2000”), available at http://www.biologicaldiversity.org/species/birds/California_condor/pdfs/conbio-condorarticle.pdf .

- Second, condors can fly over 200 km in one day, therefore even a sighting “several miles” from the proposed project site means that it is highly likely condors could also fly over this site. And as noted above, newer data shows condor frequenting this area and multiple detections approximately a mile away.
- Third, even if condors “have not been known to visit any of the pumps that make up the Russel Ranch Oil Field” in the past, current data shows that they do fly over this area and therefore there is a risk that they will be attracted to oil spills, microtrash and other attractive nuisances created by oil and gas operations (such as standing water and oil spills or slicks). As a result, BLM was required to consider RMP objectives and actions to minimize risk to the condor (and to consult with the USFWS regarding this site specific action as detailed below).

The RMP Objective and Actions specifically address the need to consider impacts to listed species and habitats in the Caliente Mountain South sub-region where the proposed project is situated (*see* RMP map 3-1 at pdf 334). In particular, it calls for maintaining viable populations of giant kangaroo rat, blunt-nosed leopard lizard, and San Joaquin kit fox in this area (along with San Joaquin antelope squirrel).

II.B.4.3.6 Non-Core Area Threatened and Endangered Animals

- Objective BIO-15(P): Maintain viable populations of giant kangaroo rat, blunt-nosed leopard lizard, San Joaquin kit fox, and San Joaquin antelope squirrel (target species) within the Monument, with emphasis on the subregions listed in Table II.B.4-2.

Table II.B.4-2. Target Species and Their Ecological Subregions

	Caliente Mountain South	Temblor Range	Panorama Hills / Elkhorn Plain	Carrizo Plain Central	Carrizo Plain North	Soda Lake	Caliente Foothills South
Giant kangaroo rat	X	X	X	X	X		
Blunt-nosed leopard lizard	X		X	X			X
San Joaquin kit fox	X		X	X	X	X	
San Joaquin antelope squirrel	X	X	X	X	X	X	

Allow the populations of these target species to naturally fluctuate, in number and distribution, but take action to prevent populations from disappearing from the Monument.

Management Actions

- Action BIO-54(S): Monitor populations to determine trends and further define minimum population threshold values. (RMP at II-22.)

The documents do not show that BLM has consistently monitored these populations in the Caliente Mountain South area. In addition, the documents fail to show that BLM considered direct, indirect and cumulative impacts to these four species from the proposed project; therefore BLM has also failed to show it complied with the requirements of the RMP.

b. Objectives and Actions on Existing Leases

The RMP Objectives and Actions for activities on existing leases include:

- Objective MNL-4(I*): Manage leases to minimize fragmentation of habitat (including removal of redundant roads and unused pipelines, storage tanks, and other infrastructure). (II-73 [emphasis added].)
- Objective MNL-7(P): Manage existing leases with additional requirements (above federal standards) to protect Monument resources. (II-73.)
- Action MNL-1(I*): All projects will be reviewed and the SOPs contained in Attachment 3 (SOPs and Implementation Guidelines for Projects Affecting the

Biological Environment) and Attachment 4 (Minerals SOPs / BMPs / Implementation Guidelines and Conditions of Approval) will be applied.(II-73.)

- Action MNL-4(I*): Conduct annual surface inspection on all leases within the CPNM to identify and remediate any hazards or impacts to Monument resources such as threatened and endangered species and cultural resources. (II-73 [emphasis added].)
- Action MNL-8(I*): Design roads, well pads, and facilities to impact and fragment the least acreage practicable. New facilities will be designed to maintain natural drainage and runoff patterns, reduce visual impacts, and reduce hazards to wildlife, especially California condors. Encourage operators to modify existing facilities when necessary to achieve the above objectives, and consider providing BLM funds to assist if requiring modifications is beyond BLM’s authority on existing leases. (II-74 [emphasis added].)
- Action MNL-9(I*): Ensure BMPs are followed. Examples include:
 - Placing pipelines along roads and consolidating facilities when feasible. (II-74 [emphasis added].)

The Minerals SOP also states: “Pipelines will be placed within existing disturbed rights-of-way, such as road shoulders, whenever feasible.” (RMP, Att-4-2.)

Instead of following these actions and objectives or the mineral SOPs, BLM approved a new well and pipeline that it admits will fragment habitat and dismissed a feasible alternative, Alternative 3 in the EA, which would have required the new pipeline to be buried along an existing road. Because the DR approved the proposed project despite the fact that BLM admits that Alternative 3 would reduce impacts to habitat, visual resources and other resources (*see, e.g.,* EA at 27), the decision fails to comply with the RMP.

Moreover, BLM’s decision is inconsistent with past efforts to abandon the existing well on this well pad, along with the pad, access road, pipelines, transmission lines, and other infrastructure, which would have furthered RMP objectives. In 2016, the same oil company – E&B Natural Resources – submitted a Sundry Notice to BLM on March 11, 2015 to plug and abandon the well. (Exh. 14.) The Sundry Notice states: “Once the wellbore has been abandoned,

E&B Natural Resources will be responsible for surface restoration, per BLM/Monument Management requirements. A separate proposal will be submitted for the surface restoration process.” (*Id.*) In response to the Sundry Notice, the BLM issued a scoping notice dated March 22, 2016 inviting public comments. (Exh. 15.) The scoping notice described the abandonment of this well, along with another well on a separate pad, as follows: “The well pad site restoration will include the ripping of both well pads and their associated access roads to a depth of approximately 12 inches, seeding the site with a BLM approved seed mix, and fencing the site to exclude vehicles and to allow for proper restoration.” BLM prepared an EA (Exh. 16), and ForestWatch submitted comments in support of this project on April 20, 2016 (Exh. 17), and the BLM approved it on July 1, 2016. (Exhs. 18 and 19.) The BLM also inspected the pad on March 24, 2016 and noted: “All pads, roads, power poles, and pipe lines will be removed.” (Exh. 20 at 2.)

This comprehensive abandonment project was consistent with the following provisions in the Carrizo Plain RMP:

- Action MNL-3(S): As leases stop producing, process termination or expiration in a timely manner. [Note: the Schlaudeman lease has not produced since 2012].
- Action MNL-6(I*): Manage the existing oil producing acreage on the southern side of the Caliente Range to maintain ecological processes and to assure prompt lease restoration upon final abandonment of the last well (RMP at II-74)
- Action MNL-10(I*): Wells that are not commercially developed must be properly plugged and abandoned and reclaimed to natural contours and revegetated as soon as appropriate; that is, restoration methods will consider timing of planting, acceptable species and evaluation criteria, and will be tailored to area-specific resource conditions and be compatible with the Monument Proclamation (RMP at II-74) [Note: the RRU 77-23 well on the existing pad, approved for abandonment in 2016, has been idle since 1963 and should have been properly plugged and abandoned decades ago.]

- Action MNL-20(S): Prioritize termination of all idle leases in the Monument (RMP at II-75). [Note: This lease has been idle since February 2012, when the last active well (Schlaudeman 78-23) ceased production. This lease has not produced since then. The other Schlauderman wells are idled or plugged as follows:
 - Schlaudeman 1 (plugged; drilled in 1948, abandoned in 1948, reentered and reabandoned in 1952)
 - Schlaudeman 88-23 (plugged; drilled in 1949, proposed for abandonment in 1980 but withdrawn; actually plugged and abandoned in 1985)
 - Schlaudeman 2 (plugged; drilled and immediately abandoned in 1951)]

Now, by approving the APD on this same pad that was recently slated for full abandonment, the BLM and E&B Natural Resources are retreating from their commitment to restore this area to natural conditions consistent with the Carrizo Plain RMP. Given the long history of non-use of this lease, we suggest that BLM evaluate lease termination as an alternative in the environmental document.

Finally, as detailed in section 3(a) below, BLM ignored potential hazards and impacts to condors which the RMP expressly calls out as a resource to be protected in making site-specific decisions regarding existing mineral leases. Indeed, the existing lease area is not in compliance with the cleanliness and maintenance standards in the Carrizo Plain RMP, posing a significant threat to California condor. Our recent inspection of the area revealed several sections of abandoned pipeline, decaying power infrastructure, and trash and microtrash strewn about. Moreover, the existing well at the proposed drilling site was missing its sign indicating the lease name and well number; it was found on the ground outside of the well pad. These conditions are inconsistent with the Objective MNL-3(S) of the RMP, which states: “Enforce good housekeeping requirements (that is, require operators to maintain a neat and orderly appearance

of sites, remove junk and trash, and otherwise minimize landscape intrusions).” Nor is the current lease compliant with Action MNL-4(I*), which states: “Conduct annual surface inspection on all leases within the CPNM to identify and remediate any hazards or impacts to Monument resources such as threatened and endangered species and cultural resources.” This trash was noted in a 2015 BLM inspection of the lease (Exh. 21 at 2), and current conditions are not much different from that depicted in the 2015 inspection photos (*see* Attachment B documenting project site conditions as of this month). E&B’s failure to comply with the terms of its permit and lease should militate against issuing a new drilling permit to this operator so long as it remains out of compliance with its existing permit.

c. Objectives and Actions Regarding Air Quality and Climate Change

The RMP acknowledges that at the time it was adopted:

the body of information and predictive models for climate change is in its infancy regarding prediction of site-specific impacts to areas such as the Carrizo, and the plan assumes that knowledge will advance quickly with the current emphasis on climate research and model development. Where appropriate, studies would include components to assess the impacts of changing climate. In the event that climate change made achievement of RMP objectives themselves infeasible, the plan would need to be amended accordingly.

(RMP at III-38). The RMP recognized the need to use adaptive management to address the impacts of climate change on the monument objects and the need to minimize the contribution to climate change from the monument activities (primarily oil and gas activities on existing leases). The Objectives and Actions for Air Quality address the need to consider climate change in several ways.

- Objective AIR-2(P): Utilize the Monument adaptive management program to implement techniques, BMPs, and SOPs to increase beneficial effects and minimize the contribution to global climate change. (II-34 [emphasis added].)

- Action AIR-2(I*): Consider impacts of climate change on Monument resources and evaluate the contribution of management actions and program activities on climate change. (II-34 [emphasis added].)

Therefore, in considering a site-specific project on an existing lease, the BLM was required to evaluate the contribution of that proposed project to climate change and minimize those contributions. The DR, FONSI and EA show that rather than squarely address these issues, BLM first acknowledges the seriousness of the issue but then attempts to rely on vague generalizations and diminish the importance of the proposed project's GHG contributions by reference to the problem of climate change as a whole—an approach that is completely at odds with the RMP's objective of minimizing contributions to global climate change from activities at the CPNM.

Unlike the 2012 EA, the 2018 EA acknowledges that climate change is a serious concern and is caused by GHG emissions:

Global climate change is the term commonly used to refer to any significant change in measures of climate (such as temperature, precipitation, or wind) lasting for an extended period (decades or longer) (Bakersfield RMP, 2014). Emissions of GHGs such as carbon dioxide and its equivalents (methane, nitrous oxide, hydro fluorocarbons, perfluorocarbons, and sulfur hexafluoride) are known to contribute to the global phenomenon of climate change. Based on research conducted by the Intergovernmental Panel on Climate Change (IPCC), evidence suggests, even with mitigation efforts, a strong, consistent, a positive linear relationship between GHGs and temperature, changes in precipitation patterns, oceanic warming, oceanic acidification, and reductions in Arctic sea ice. In addition, species extinction, threats to food security, and threats to human health are predicted. In general, "Climate change will amplify existing risks and create new risks for natural and human systems" (IPCC, 2014).

The current scientific consensus holds that emissions from human activities, particularly the consumption of fossil fuels for electricity production and transportation, have resulted in much higher concentrations of GHGs in the atmosphere than would be expected to occur naturally. In the last decade, increased GHGs are believed to have resulted in increases in global temperature and other climate change effects never previously recorded. Data show that the earth's average surface temperature has increased by about 1.2 to 1.4 degrees Fahrenheit in the last 100 years (Bakersfield RMP, 2014).

(2018 EA at 18.) However, then BLM ignores the cumulative and additive nature of the problem and attempts to dismiss additional contributions from this proposed project based on its small relative contribution and, oddly, on the number of wells that may be abandoned. This analysis ignores the fact that wells that are being abandoned have already contributed GHGs to the atmosphere and impacted climate change, and that abandoning those wells after the operations have ceased does nothing to reduce GHGs or minimize impacts to climate change.

CARB completed a GHG inventory for 2000-2014 by sector and activity; in 2014, oil and gas extraction was estimated at 19.25 million tons of CO₂ equivalents, which accounted for 18.5 percent of the annual industrial GHG emissions. In total, oil and gas extraction accounted for 4.4 percent of total California GHG emissions. In addition, off road equipment was estimated at 2.43 million tons, which accounted for 1.5 percent of the annual transportation GHG emissions. In total, off road equipment accounted for 0.06 percent of total California GHG emissions (CARB, 2016). Based on this data provided by CARB, the drilling of Schlaudemman #354-23 would represent a very miniscule and insignificant portion of GHG emissions in California. In addition, it is not reasonably foreseeable how much crude oil would be extracted from the proposed well because the Schlaudemman lease has no producing wells in which to base this estimation; this makes calculating indirect GHG emissions associated with the total produced crude oil from the well highly speculative.

However, there are approximately 80 million barrels of oil produced in the world per day (https://llycharts.com/indicators/world_crude_oil_production); one crude oil well in one region of California would add a potential 0.43 metric tons per barrel of oil to global GHG emissions. This amount is insignificant at the local, regional, and global scale, and likely negated considering the number of wells being abandoned in California per year. Thus, the proposed action would contribute insignificant GHG emissions at a local, regional, and global scale. In addition, E&B must comply with local and state requirements that are intended to mitigate and reduce annual GHG emissions in California.

(EA at 24-25 [emphasis added].)

In addition, the EA fails to acknowledge or address significant new information regarding climate change that has been developed since the 2010 RMP was adopted. California experienced extended and persistent drought for over 4 years and the drought appears to be

returning this year. Climate change modeling also shows that drought is likely to occur more frequently and be more severe going forward. (*See* Exhibit 11 and Exhibit 12.) The proposed new well and pipeline, and direct, indirect, and particularly cumulative impacts to resources including air quality and species, need to be reevaluated in light of increased likelihood of drought and future outlook for resources in this area given the changing climate. In addition, studies show that even without new oil and gas leasing, development of oil and gas production on already leased federal public lands (including the lands at issue here) will undermine efforts to reduce emissions and mitigate the impacts of climate change. If all of these already leased federal lands are put into production “global carbon budgets necessary to maintain a likely chance of limiting global warming to 1.5°C (2021) and 2°C (2036) will be exceeded if current global emission levels continue.” (**Exhibit 13** at 6.)

Because BLM dismissed the contributions to global climate change from the proposed project’s new well as “insignificant”, BLM failed to even consider ways to minimize the contribution to global climate change as required in the RMP and as a result violated FLPMA.

3. The BLM Failed to Comply with NEPA.

a. BLM Failed to Adequately Address Potential Impacts to Threatened and Endangered Species, as Required by NEPA

BLM failed to adequately address in the EA the potential impacts from the proposed oil and gas well, pipeline and associated activities on species that are federally designated as threatened or endangered with extinction, including the California condor, San Joaquin kit fox, and others. The EA failed to provide the required hard look at the potential impacts to listed species and their habitat.

As an initial matter, the EA lacks important information about baseline conditions in the project area. In order to properly assess the potential environmental impacts of a proposed action, it is first necessary to assess the affected environment. *See* 40 C.F.R. § 1502.15. It remains unclear whether surveys for and of the threatened and endangered species and their habitats have been performed, when they were performed, or the results. The EA states “During field surveys of the site completed by BLM biologists T. Arbogast, D. Faires, J. Hodge, L. Ashley and K. Sharum, in addition to previous surveys by BLM personnel, there were no observations of giant kangaroo rat or San Joaquin kit fox within the project site, nor was there any sign of their presence.” (EA at 21.) This does not provide a sufficient basis to document baseline conditions and identify issues of concern for these two species or the areas of the CPNM that may be affected by the proposed project. The EA also does not provide dates of these “surveys of the site”, any data sheets, or indicate what methodology or protocols were followed to show whether they comport with USFWS or CDFW survey protocol standards for these imperiled species. *See* 40 C.F.R. § 1502.24 (NEPA’s implementing regulations requiring agency to “identify any methodologies used and... make explicit reference by footnote to the scientific and other sources relied upon for conclusions,” and to ensure the scientific accuracy and integrity of environmental analysis”) Similarly the EA states that “aerial surveys conducted by the California Department of Fish and Game (CDFG), in 2010 and 2011 did not show any presence of giant kangaroo rat (Bean, 2011).” This information is more than seven years old and current kangaroo rat survey protocols require live trapping as the only method for reliable identification of any kangaroo rat species in the region.¹³

¹³ U.S. Fish & Wildlife Service. 2013. “Survey Protocol for Determining Presence of San Joaquin Kangaroo Rats, Sacramento Field Office.” Available at
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Similarly, BLM fails to follow basic survey protocol for rare plants that may be affected by the project (i.e. pipeline construction and maintenance of the road and well pad).¹⁴

For the endangered California condor, the EA relies on old data from 2010 and 2011 to dismiss potential impacts to this species. (EA at 21-22.) However, readily available newer data clearly shows significant condor presence in the area. (**Exhibit 8** [screen prints of 2017 data available on USGS Science Base website].) In preparing the 2018 EA, FONSI and DR, BLM failed to use readily available recent data from other government websites and instead relied on outdated information from 2010 and 2011 to dismiss potential impacts. As a result, BLM failed to meet even the most basic requirements to adequately identify the baseline condition or potential impacts to California condor from the proposed project in violation of NEPA and other laws.

Moreover, despite acknowledging the presence of the federally-listed Kern mallow at the project site in 2016, the BLM fails to adequately evaluate potential impacts to this rare plant in the 2018 EA in violation of NEPA and other laws.

In authorizing the new well BLM failed to analyze, assess, and disclose a number of potentially significant impacts in violation of NEPA. BLM's EA fails to adequately address surface disturbance that would result from the new well and pipeline, both of which may

<https://www.fws.gov/sacramento/es/Survey-Protocols-Guidelines/Documents/SFWO%20Final%20San%20Joaquin%20K-Rat%20Trapping%20Protocol-2013.pdf>

¹⁴ California Department of Fish & Wildlife. 2018. "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities." Available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>. See also U.S. Fish & Wildlife Service. 1996. "Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed, Proposed and Candidate Plants. Available at https://www.fws.gov/sacramento/es/Survey-Protocols-Guidelines/Documents/Listed_plant_survey_guidelines.pdf. See also Cypher, E.A. 2002. "General Rare Plant Survey Guidelines." Available at https://www.fws.gov/sacramento/es/Survey-Protocols-Guidelines/Documents/rare_plant_protocol.pdf

directly, indirectly or cumulatively affect listed species. It also fails to analyze impacts on the monument's visual resources, despite that the new well and pipeline would be visible from the Caliente Mountain Wilderness Study Area (WSA) and nearby trails, and from Highway 166. (See Attachment A, photo of well pad with Caliente Mountain WSA in the background.)

Further, the EA briefly mentions activities that have potential to impact species and habitats but fails to fully disclose the extent of those impacts or fully consider alternatives and mitigation measures. The EA only provides conclusions regarding impacts and minimization measures but no information or analysis. Regarding wildlife the EA segments the discussion regarding the well installation on the well pad, activities around the well pad to facilitate the well installation and operation, and the pipeline, although all of these activities are approved in this DR. The EA admits that the proposed project would have impacts to species:

The installation of the new well, by itself, would not destroy existing habitat. If a new pipeline needs to be installed, a small amount of temporary ground disturbance would be expected. The disturbance footprint would be limited to areas traversed by workers installing the pipeline and the pipeline itself. Nearby vegetation may also be impacted by the dust generated by the well and pipeline installation and by the increased use of the access road by company vehicles. The proposed action is to give E&B the authority to drill Well Schlaudemman #354-23, which would be accomplished by utilizing an existing pad and production line so as to reduce hazards to wildlife; E&B and would follow industry standards for SOP's, BMP's, and Implementation guidelines for project implementation. In the event that the existing production line does not have structural integrity and a new production line is needed, it would be constructed above ground and pushed/pulled into the existing pipeline corridor to reduce the potential for impacts to biological resources. An above ground pipeline does have the potential to fragment habitat, though temporal and spatial effects would be expected to be minimal.

(EA at 26 [emphasis added].) Habitat fragmentation from a new above ground pipeline is a long term impact, it is not a temporary impact. This impact is not adequately addressed in the EA.

Regarding Alternative 3 which would require a buried pipeline within the existing road disturbance, BLM admits it would reduce impacts to habitat:

While project activities would increase in duration and intensity along the access road and during the installation of the production line, this alternative would be expected to have the same impacts to biological resources as the proposed action. There would be no impacts to burrows in and around the path of the above-ground flowline. The potential long term effects to species would be reduced under this alternative since a buried flowline would be less likely to fragment habitat and to have effects to biological resources. Vegetation would not be impacted directly from the actions described under alternative 3; however some plants near the pad and access road may be impacted by dust generated by the project.

(EA at 27 [emphasis added].) The EA admits this will reduce impacts despite earlier statements that no effects would occur.

Even when the EA admits impacts will occur, it fails to analyze them and relies on unspecified measures to dismiss the significance of the impacts. For example, the following paragraph provides information regarding impacts and then an unsupported conclusion:

Well installation on the existing pad would result in no significant impacts to wildlife species, and BLM has made a "No Effect" determination for listed species. Since no burrows were sighted on the pad itself, burrowing animals would not be impacted. Activities including vehicle traffic, transportation of equipment, and other human activities on and around the pad may result in the disturbance, collapse or destruction of burrows in the berm surrounding the pad. Some species may be inadvertently killed by vehicles travelling to and from the site. Noise from well installation is likely to cause a temporary disturbance to wildlife in the general area. Any night-time activities may temporarily disrupt natural activities for nocturnal species utilizing the surrounding area and may disrupt birds from sleeping causing disorientation and possible predation. If a new flowline is required, existing burrows in the path of the line may also be disturbed or collapsed during installation, inadvertently crushing or entombing individuals. No federally listed species are expected to be impacted by these activities. Mitigation measures put in place by the Project Design Features/Conditions of Approval would avoid impacts to giant kangaroo rat, blunt-nosed leopard lizard, San Joaquin kit fox and California condor.

(EA at 27.) BLM fails to provide any reasoned explanation as to how mitigation measures would avoid impacts to listed species.

The FONSI is unsupported with respect to listed and special status species because even the scant information in the EA shows significant impacts to listed species and other resources may in fact occur and the EA's alternatives analysis shows that such impacts could be lessened under an alternative pipeline route and by undergrounding the pipeline. (*See, e.g.*, EA at 27 [alternative 3 would reduce impacts to habitat fragmentation].)

b. The EA Fails to Adequately Consider Impacts to Air Quality and Climate Change

As discussed above regarding the RMP requirements, the EA fails to adequately address air quality, particularly GHG emissions both, in identifying the extent of potential emissions and analyzing their impacts on climate change. The EA is unclear and contradictory regarding what information is available. For example, in response to Petitioners' comment regarding the need to quantify GHG emissions from oil and gas production, the EA states that "it is not reasonably foreseeable how much crude oil would be extracted from the proposed well because the Schlaudeman lease has no producing wells in which to base this estimation; this makes calculating indirect GHG emissions associated with the total produced crude oil from the well highly speculative." (EA at 24.) However, the EA also states that the company seeking the permit does have producing wells in the area: "E&B has operated producing oil wells and petroleum production facilities on both private and public lands within the Russell Ranch Oil Field since 2003." (EA at 1.) The EA provides no explanation why BLM could not use information regarding crude production by the same company at other nearby wells to estimate the likely crude production here.

Even when the EA does attempt to quantify the possible GHG emissions, it fails to fully consider the cumulative nature of the problem and dismisses any impacts as "discountable"

given the large amount of emissions in the region and globally. Meaningful consideration of greenhouse gas emissions (GHGs) is clearly within the scope of required NEPA review. (*See Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1216 (9th Cir. 2008) [“The impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct. Any [project] might have an “individually minor” effect on the environment, but these [] are “collectively significant actions taking place over a period of time.” (quoting 40 C.F.R. § 1508.7)].) NEPA requires the BLM to consider climate change impacts, including indirect and cumulative combustion impacts foreseeably resulting from a decision to issue a new well and pipeline permit. (*See Sierra Club v. FERC*, 867 F.3d 1357, 1375 (D.C. Cir. 2017); *WildEarth Guardians v. BLM*, 870 F.3d 1222, 1236 (10th Cir. 2017); *Mid States Coal. For Progress v. Surface Transp. Bd.*, 345 F.3d 520, 532, 550 (8th Cir. 2003); *Montana Environmental Information Center v. U.S. Office of Surface Mining*, 274 F. Supp. 3d 1074, 1094-99 (D. Mont. 2017); *High Country Conservation Advocates v. U.S. Forest Serv.*, 52 F.Supp. 3d 1174, 1197-98 (D.Colo. 2014).) And the EA fails entirely to address the likely impacts of climate change on the resources of the national monument in this area as a cumulative impact along with direct and indirect impacts of the project.

c. The DR's Reliance on the Finding of No Significant Impacts and EA is Inappropriate.

i. An EIS is needed to fully address impacts of the proposed project

If a federal action “significantly affect[s] the quality of the human environment” the agency must prepare an EIS. 42 U.S.C. § 4332(c); *Anderson v. Evans*, 371 F.3d 475, 487 (9th Cir. 2004) (agency prepared an EA, court held an EIS was required). The CEQ regulations, 40 C.F.R. § 1508.27, define the term “significantly” for purposes of NEPA and provides that

“significantly” “requires consideration of both context and intensity.” *See also, Consol. Salmonid Cases*, 688 F. Supp. 2d 1013, 1019 (E.D. Cal. 2010). Many of the “significance” factors set forth in the NEPA Regulations are implicated by adding a new oil and gas well and pipeline in this area.

The context of the action includes “society as a whole (human, national), the affected region, the affected interests, and the locality.” *Anderson v. Evans*, 371 F.3d 475, 487 (9th Cir. 2004); 40 C.F.R. § 1508.27(a). In the EA, the context is not analyzed. Thus, the context shows that the proposed action will have a significant effect as it is contrary to law and current policy.

The consideration of “intensity” required by section 1508.27 refers to the severity of impact. 40 C.F.R. § 1508.27(b); *Anderson v. Evans*, 371 F.3d at 487. In order for an EIS to be required, the public “need not demonstrate that significant effects will occur. A showing that there are ‘substantial questions whether a project may have a significant effect’ on the environment is sufficient.” *Anderson v. Evans*, 371 F.3d at 488; *Consol. Salmonid Cases*, 688 F. Supp. 2d at 1033.

As explained above, the BLM admits in the EA, the proposed actions may affect listed species but then dismisses those impacts either as too small to be considered or because they will ostensibly be avoided by mitigation measures. NEPA requires more. Conclusions without analysis cannot be relied on to comply with NEPA. *Great Basin Mine Watch et al. v. Hankins*, 456 F.3d 955, 973 (9th Cir. 2006) (holding that “vague and conclusory statements, without any supporting data, do not constitute a “hard look” at the environmental consequences of the action as required by NEPA.”)

An EIS is required here under several intensity factors because the EA shows that construction and operation activities could have adverse consequences to monument objects,

listed species, and other resources and it would set a precedent as the first new well and pipeline permitted since the CPNM was designated, 40 C.F.R. § 1508.27(b)(3) (unique characteristics of the area including proximity to historic or cultural resources or ecologically critical areas); § 1508.27(b)(4) (degree to which effects are likely to be highly controversial); § 1508.27(b)(6) (degree to which the action may establish a precedent for future actions with significant effects); § 1508.27(b)(7) (whether the action is related to other actions with individually insignificant but cumulatively significant impacts); § 1508.27(b)(8) (may adversely affect significant scientific resources); § 1508.27(b)(9) (adverse effects on endangered species or their critical habitat); § 1508.27(b)(10) (threatens violation of the ESA). In addition, habitats used by other wildlife, such as the antelope squirrel and golden eagles, may be significantly affected due to permanent as well as temporary impacts such as noise and air quality impairment associated with the project activities. *See* EA at 20-22. These impacts should also have been fully evaluated in an EIS.

In addition, there is a substantial dispute about the importance and effect of additional oil and gas production on GHG emissions and climate change. While BLM attempts to minimize the importance of this one new well, studies show that climate change is advancing and will significantly impact the resources of California including within the CPNM and that developing already leased oil and gas on federal lands will bust the global carbon budget. (*See Exhibits 11, 12, 13.*) BLM should have considered the contribution in this context but did not. Thus, the proposal is significant under this intensity factor as well. 40 C.F.R. § 1508.27(b)(4) (effects controversy).

The cumulative significance factor is also triggered here: “Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment.

Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.” 40 C.F.R. § 1508.27(b)(7). While the area that is looked at in the cumulative effects section of the EA may be appropriate for the direct effects, it is far too truncated an area for analysis of the effects of GHG emissions and impacts to species and objects protected in the monument. The NEPA decision-making process is designed to address significant effects that could otherwise be masked by “the tyranny of small decisions.” *See Kern v. Bureau of Land Mgmt*, 284 F.3d 1062, 1078 (9th Cir. 2002); *Pac. Coast Fed’n of Fishermen’s Ass’ns v. Nat’l Marine Fisheries Serv.*, 265 F.3d 1028 (9th Cir. 2001).

In conclusion, even the scant information provided in the EA shows that the proposed action would admittedly fragment habitat, construction and operations could crush burrows and may kill individual animals, and the risk of spills and other accidents were not even addressed; therefore, BLM should have found that the proposed action may significantly affect the quality of the human environment. Many of the “significance factors,” both of context and intensity, are triggered by the proposal including the potential effects on listed species and critical habitats, impacts to other species and habitats, the controversy regarding the importance of the contributions of additional oil and gas production in this area to climate change, and impacts to visual resources. Therefore, an EIS is required.

To the extent that BLM intended to consider this a “mitigated FONSI” it failed to meet the required standards because BLM did not provide the needed identification and analysis of impacts or details of the Design Criteria/Conditions of Approval or other mitigation measures to the public with the EA. As the CEQ Guidance explains: “the decision document following the EA should – and a Record of Decision (ROD) must – identify those mitigation measures that the agency is adopting and committing to implement, including any monitoring and enforcement

program applicable to such mitigation commitments.” (CEQ Guidance, January 14, 2011

“Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact,” at 6-7.¹⁵)

4. BLM Violated Section 7 of the ESA by Failing to Consult with FWS on the Impacts of the Proposed Project on Threatened and Endangered Species

Congress enacted the ESA to provide “a program for the conservation of . . . endangered species and threatened species.” 16 U.S.C. § 1531(b). Section 2(c) of the ESA establishes that it is “the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.” 16 U.S.C. § 1531(c)(1). The ESA defines “conservation” to mean “the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this [Act] are no longer necessary.” 16 U.S.C. § 1532(3). Section 7(a)(1) of the ESA explicitly directs that all federal agencies “utilize their authorities in furtherance of the [aforesaid] purposes” of the ESA. 16 U.S.C. § 1536(a)(1).

Section 7 of the ESA requires BLM, in consultation with FWS, to insure that any action authorized, funded, or carried out by the agency is not likely to (1) jeopardize the continued existence of any threatened or endangered species, or (2) result in the destruction or adverse modification of the critical habitat of such species. 16 U.S.C. § 1536(a)(2). For each proposed federal action, BLM must request from FWS whether any listed or proposed species may be present in the area of the agency action. 16 U.S.C. § 1536(c)(1); 50 C.F.R. § 402.12. If listed or

¹⁵ available at <https://www.energy.gov/nepa/downloads/appropriate-use-mitigation-and-monitoring-and-clarifying-appropriate-use-mitigated>

proposed species may be present in such area, BLM must prepare a “biological assessment” to determine whether the listed species may be affected by the proposed action. *Id.*

If BLM determines that its proposed action may affect any listed species or critical habitat, the agency must engage in formal consultation with FWS. 50 C.F.R. § 402.14. To complete formal consultation, FWS must provide BLM with a “biological opinion” explaining how the proposed action will affect the listed species or habitat. 16 U.S.C. § 1536(b); 50 C.F.R. § 402.14. If FWS concludes that the proposed action will jeopardize the continued existence of a listed species, or result in the destruction or adverse modification of critical habitat, the biological opinion must outline “reasonable and prudent alternatives.” 16 U.S.C. § 1536(b)(3)(A).

The EA shows that the project taken as a whole¹⁶ “may affect” listed species including California condor, San Joaquin kit fox, blunt-nosed leopard lizard, and giant kangaroo rat (as detailed above), triggering BLM’s duty to consult with U.S. Fish and Wildlife regarding these effects. BLM, however, failed to initiate or complete consultation with the U.S. Fish and Wildlife Service on its decision to authorize the new well and pipeline.

BLM’s prior programmatic consultation over the 2010 CPNM RMP does not satisfy its duty to consult over the project. The Biological Opinion for the 2010 CPNM RMP (attached as Exh. 7) clearly states: “Oil and gas activities will proceed with a separate consultation, and no incidental take is authorized for oil and gas activities by this biological opinion.” (Exh. 7 at 73.) Because no incidental take is authorized and the project may affect listed species, BLM violated

¹⁶ BLM’s “no effect” determination is limited to the well installation on the well pad: “Well installation on the existing pad would result in no significant impacts to wildlife species, and BLM has made a “No Effect” determination for listed species.” 2018 Final EA at 27.

its duties under the ESA section 7(a)(2) and the Biological Opinion. 16 U.S.C. § 1536(a)(2).

Indeed, the CPNM RMP also recognizes the need to consult at the site-specific level for all oil-related projects on the Carrizo Plain National Monument. Specifically, Action BIO-2(S) in the RMP states:

When necessary, oil and gas related actions will require individual Section 7 consultations. Programmatic consultations will not be used for oil and gas related actions.

(CPNM RMP at II-18.)

As explained in detail above, even the limited discussion in the EA shows listed species may be affected by this proposed project. BLM's attempts to discount these potential impacts do not change that fact. Further, BLM did not adequately address baseline status of several species in the area including California condor, which readily available data show is currently present in the area of the proposed project. Because BLM's decision may affect the threatened and endangered species in the action area, and near the action area, BLM violated the ESA by failing to consult with FWS concerning the impacts of the proposed APD on these listed species. 16 U.S.C. § 1536(a)(2). And because BLM has failed to comply with the Section 7 consultation procedures, it cannot insure that the proposed project will not jeopardize any listed species, or destroy or adversely modify any critical habitat, in further violation of Section 7 of the ESA. *Id.*

B. The Balance of Harms Clearly Favors Granting a Stay

While Petitioners will be harmed as a result of the decision, *see* section I.B above and section II.C below, the BLM will suffer no harm from the granting of a stay. Nothing in the BLM's EA, Finding of No Significant Impact, or Decision Record indicates there is any overriding emergency or urgency around approving the APD at this time, six years after the EA

was circulated for public comment and six years since any Schlaudeman well has produced any oil or gas. Nor will the applicant suffer any harm due to a stay as this lease is not currently producing. The EA states that “E&B has operated producing oil wells and petroleum production facilities on both private and public lands within the Russell Ranch Oil Field since 2003,” (EA at 1), however at this time the “Schlaudeman lease has no producing wells,” (EA at 24; see also EA at 1 (“A total of 5 wells have been drilled on this lease from 5 separate locations including 1 shut in well and 4 abandoned wells.”)). Further, the EA states that “it is not reasonably foreseeable how much crude oil would be extracted from the proposed well” (EA at 24). In light of these facts, any potential harm from imposing a stay during the pendency of this appeal, so that these issues can be fully reviewed by the IBLA, is speculative and unquantifiable.

On the other hand, Petitioners will most certainly be harmed if the new well drilling and pipeline activities area allowed to go forward without having conducted proper environmental review of those impacts. The commitment of resources without full public disclosure of significant environmental impacts or consultation with Fish and Wildlife Service would deprive the public and decision-makers of valuable information and a meaningful opportunity for them to recommend measures to reduce or avoid these impacts, thereby increasing the chances of environmental harm. Moreover, it would be difficult, if not impossible, for the harms to be undone if the new well and other infrastructure are allowed to be constructed.

C. Petitioners Will Suffer Immediate and Irreparable Harm if the Stay Is Not Granted

As established by the declarations of Jeff Kuyper and Brendan Cummings, Petitioners Los Padres ForestWatch and the Center for Biological Diversity will likely suffer immediate and irreparable harm to their interests absent a stay. For example, both declarants enjoy wildlife

viewing within or near the Caliente Mountains and the Cuyama Valley, but the project may harm wildlife and reduce their habitat, and therefore reduce each individual's opportunities for wildlife viewing. *See* Kuyper Decl ¶¶ 16; Cummings Decl ¶¶ 13-16. Each of these declarants also attest to their concern that harm to the monument objects and/or listed species and habitats would reduce their aesthetic and recreational enjoyment of the CPNM. *See* Kuyper Decl ¶¶ 18; Cummings Decl ¶¶ 15-16, 18.

Without a stay, the APD will be issued without having first been subject to the appropriate levels of agency foresight and deliberation required by NEPA and the ESA. The public will also be deprived of important information and a meaningful opportunity to participate in the agency's decision. Whether or not this APD for a new well and pipeline should be approved, and under what conditions, are critical questions that will be effectively bypassed if BLM's decision is not stayed. The agencies' glaring NEPA violations are themselves the source of considerable irreparable harm. *Sierra Club v. U.S. Army Corps of Engineers*, 645 F.3d 978, 995 (8th Cir. 2011) (upholding preliminary injunction because "the failure to comply with NEPA's requirements causes harm itself, specifically the risk that 'real environmental harm will occur through inadequate foresight and deliberation.'") (citing *Sierra Club v. Marsh*, 872 F.2d 497, 503-04 (1st Cir. 1989)); *see also, Marsh*, 872 F.2d 500-01 ("NEPA's object is to minimize [...] the risk of uninformed choice, a risk that arises in part from the practical fact that bureaucratic decisionmakers (when the law permits) are less likely to tear down a nearly completed project than a barely started project.").

Furthermore, in the absence of a stay, it is highly likely the new well will be drilled and the new pipeline will be developed resulting in surface disturbance; habitat destruction and

fragmentation; increased vehicular traffic; air pollution; light pollution; noise pollution; and considerable risks to listed species and long term habitat connectivity. All of these impacts are direct and irreparable harms to the environment and to Petitioners' recreational, aesthetic, conservation, education, and spiritual interests in that environment.

D. The Public Interest Favors Granting a Stay

Here, the public interest favors granting a stay for a number of reasons. Ensuring that protection of monument objects as required under the Antiquities Act is fully addressed as well as impacts to the national landscape resources protected under the NLCS legislation and FLPMA justifies staying the decision until the issues raised in this appeal can be heard. In addition, ensuring that national environmental policies and standards, as enumerated under NEPA and the ESA favors the requested stay. *See California ex rel. Van de Kamp v. Tahoe Regional Planning Agency*, 766 F.2d 1319, 1324 (9th Cir. 1985) (finding that public interest may be defined “by reference to the policies expressed in legislation”) (citation omitted). In this case, BLM clearly fell short of meeting legal requirements to ensure protection of monument objects and national landscapes, and failed to meet the requirements of NEPA and the ESA.

Furthermore, in passing laws such as the Antiquities Act, NLCS legislation, FLPMA, NEPA and the ESA, Congress clearly meant to ensure consideration of protected resources was to occur before decisions were made that could impact such resources to avoid potentially irreversible consequences to objects protected within the national monument, landscape resources, human health and the environment as a whole. As Congress stated in the preamble to NEPA, its purpose was “[t]o declare a national policy which will encourage productive and enjoyable harmony between man and environment [and] to promote efforts which will prevent or

eliminate damage to the environment and biosphere and stimulate the health and welfare of man[.]” 42 U.S.C. § 4332(a).

Given the FLPMA, Antiquities Act, NCLS legislation, NEPA and ESA violations detailed above, moving forward with BLM’s decision on this new well and pipeline is clearly against the public interest. Given that BLM is required to meaningfully evaluate the environmental impacts of this site-specific project that will affect several listed species, the IBLA should grant a stay to protect the public interest.

III. REQUEST FOR STATE DIRECTOR REVIEW

As fully explained above, BLM’s approval of the project fails to ensure the protection of monument resources, in violation of the Antiquities Act, FLPMA, and NLCS Act, and violates BLM’s obligations under NEPA and the ESA. Accordingly, the State Director should reverse and remand BLM’s approvals of the DR, Finding of No Significant Impact, and EA. Petitioners hereby incorporate their arguments made above in section II(A) addressing their likelihood of success on the merits in support of a stay.

IV. CONCLUSION

In light of the foregoing, we respectfully request the State Director reverse and remand the Decision Record, Finding of No Significant Impact, and EA DOI-BLM-CA-C060-2012-0040-EA for E&B Natural Resources Management Corp. Russell Ranch Oil Field; APD for New Well Schlaudemann #354-23, and immediately stay the decision pending a final determination of Petitioners’ request for State Director review.

Respectfully submitted,

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Attachments (provided in electronic format on disk):

Exhibit 1: DR

Exhibit 2: FONSI

Exhibit 3: EA 2018

Exhibit 4: 2012 EA

Exhibit 5: LPFW and CBD comments on Draft EA, April 23, 2012

Exhibit 6: Email Correspondence re: effective date of decision

Exhibit 7: USFWS, Biological Opinion dated April 2, 2010, Formal Section 7 Endangered Species Act Consultation on the Implementation of the Carrizo Plain National Monument Resource Management Plan. San Luis Obispo and Kern Counties, California

Exhibit 8: 2017 Condor data maps from Science Base

Exhibit 9: Condor map from LPFW

Exhibit 10: Los Padres ForestWatch. Documented Impacts of Oil and Gas Development on Endangered California Condors (July 27, 2016)

- Exhibit 11:** Williams, A. Park, et al., Contribution of anthropogenic warming to California drought during 2012–2014, *Geophys. Res. Lett.*, 42, 6819–6828 (2015), doi:10.1002/2015GL064924;
- Exhibit 12:** Pagán, Brianna R., et al., Extreme hydrological changes in the southwestern US drive reductions in water supply to Southern California by mid-century, *Environ. Res. Lett.* 11, 8, 9 (2016) 094026, doi:10.1088/1748-9326/11/9/094026.
- Exhibit 13:** Dustin Mulvaney, Alexander Gershenson, Ben Toscher. 2016. Over-Leased:How Production Horizons of Already Leased Federal Fossil Fuels Outlast Global Carbon Budgets. EcoShift Consulting
- Exhibit 14:** E&B Natural Resources Sundry Notice for Well Abandonment (March 11, 2015)
- Exhibit 15:** BLM Scoping Notice for E&B Resources’ Well Abandonment (March 22, 2016)
- Exhibit 16:** BLM Environmental Assessment for E&B Resources’ Well Abandonment
- Exhibit 17:** LPFW Comment Letter on Abandonment of Oil Wells (April 20, 2016)
- Exhibit 18:** BLM FONSI on E&B Resources’ Well Abandonment
- Exhibit 19:** BLM Decision Record on E&B Resources’ Well Abandonment
- Exhibit 20:** BLM Inspection of E&B Well (March 24, 2016)
- Exhibit 21:** BLM Inspection of E&B Well (May 7, 2015)