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DEFENDERS OF WILDLIFE
LOS PADRES FORESTWATCH

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CENTER FOR BIOLOGICAL DIVERSITY;
DEFENDERS OF WILDLIFE; and LOS
PADRES FORESTWATCH,

Plaintiffs,

v.

BERNARD WEINGARDT, Pacific Southwest
Regional Forester; KEN HEFFNER, Acting Forest
Supervisor, Los Padres National Forest; GLORIA
BROWN, Forest Supervisor, Los Padres National
Forest; ABIGAIL R. KIMBELL, Chief, USDA
Forest Service; and USDA FOREST SERVICE,

Defendants.

Case No.

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

(National Environmental Policy Act, 42 U.S.C.
§ 4321 *et seq.*; Administrative Procedure Act,
5 U.S.C. § 706)

INTRODUCTION

1. In this case, Plaintiffs Center for Biological Diversity, Defenders of Wildlife, and Los Padres ForestWatch challenge federal Defendants' actions authorizing the expansion of oil and gas drilling and development in the Los Padres National Forest. Defendants' approval of the Los Padres National Forest Oil and Gas Leasing project (the "Project") increases more than ten-fold the area of Los Padres National Forest subject to oil and gas leasing by making available for drilling more than 52,000 acres of the forest within Santa Barbara, Ventura, and Los Angeles counties. Up to 4,277 acres of the Los Padres National Forest will be directly disturbed by this decision, and many more acres indirectly disturbed, including essential habitat for the federally endangered California condor, arroyo toad, and southern steelhead, the federally threatened California red-legged frog, and many other wildlife species. Plaintiffs are specifically concerned that wild condors are extremely susceptible to human activity and development in and near their habitat, and that opening more of their habitat to oil and gas leasing could undermine the California Condor Recovery Program, placing at risk an intensive investment of public funds and effort.

2. Plaintiffs allege that in approving the expansion of oil and gas drilling in Los Padres National Forest, Defendants violated the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* ("NEPA") and the Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A) and (D) (the "APA").

3. Plaintiffs specifically allege that Defendants failed to adequately disclose, analyze, and mitigate the Project's environmental consequences and failed to prepare an analysis of the Project's conformity with air quality implementation plans as required by law.

4. Plaintiffs bring claims challenging Defendants' decision approving the Project under NEPA and the APA, and seek declaratory and injunctive relief from this Court directing Defendants to withdraw their approval for this oil and gas drilling until they comply with all applicable federal laws.

5. Should Plaintiffs prevail, Plaintiffs will seek to recover their attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

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JURISDICTION AND VENUE

3 6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal
4 question jurisdiction) and 5 U.S.C. § 702 (Administrative Procedure Act); and may issue a declaratory
5 judgment and further relief pursuant to 28 U.S.C. §§ 2201-2202 (declaratory judgments).

6 7. An actual controversy exists between the parties within the meaning of 28 U.S.C. § 2201
7 (declaratory judgments) because Plaintiffs assert that Defendants are violating federal law. Plaintiffs
8 have notified Defendants of these violations through their administrative appeal (“Appeal”) of the
9 Project, but Defendants have not corrected the violations.

10 8. Venue is proper in the District Court for the Eastern District of California pursuant to 28
11 U.S.C. § 1391(e)(1) because Defendant Bernard Weingardt resides in this district and is sued in his
12 official capacity as Southwest Regional Forester for the USDA Forest Service.

13

14

PARTIES

15 9. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (the “Center”) is a non-profit
16 corporation dedicated to the preservation, protection, and restoration of biodiversity and ecosystems
17 throughout the world. The Center has over 32,000 members and offices in San Diego, Joshua Tree, Los
18 Angeles, and San Francisco, California; Washington, D.C.; Portland, Oregon; Tucson and Phoenix,
19 Arizona; and Silver City, New Mexico. The Center submitted timely comments on the Draft
20 Environmental Impact Statement on April 19, 2002.

21 10. Plaintiff DEFENDERS OF WILDLIFE (“Defenders”) is a national, non-profit
22 membership organization dedicated to the protection of all native wild animals and plants in their natural
23 communities. Defenders focuses its programs on what scientists consider two of the most serious
24 environmental threats to the planet: the accelerating rate of extinction of species and the associated loss
25 of biological diversity, and habitat alteration and destruction. Defenders has more than 500,000
26 members and supporters nationwide, of which more than 100,000 are from California, many of whom
27 utilize portions of the Los Padres National Forest for recreation and enjoyment. Defenders submitted
28 timely comments on the Draft Environmental Impact Statement on April 19, 2002.

1 11. Plaintiff LOS PADRES FORESTWATCH is a local, community-based organization
2 (“ForestWatch”) working to protect and restore the Los Padres National Forest and other public lands
3 along California’s Central Coast. A major component of ForestWatch’s work is to ensure that oil
4 drilling in Los Padres National Forest does not pollute the forest’s clean water and air, interfere with the
5 forest’s abundant recreation opportunities, or harm rare plants and animals or their habitat. ForestWatch
6 has more than five hundred dues-paying members and supporters, many of whom use Los Padres
7 National Forest for recreation and enjoyment.

8 12. Plaintiffs’ members and staff use and enjoy, and intend to continue to use and enjoy
9 portions of Los Padres National Forest affected by the Project for aesthetic enjoyment, recreation,
10 hiking, observation, nature photography, and other scientific, research, and educational activities.
11 Plaintiffs’ members and staff have been and are being adversely affected and irreparably injured by
12 Defendants’ actions. Plaintiffs bring this suit on their own behalf and on behalf of their adversely
13 affected members and staff.

14 13. Defendants’ violations of law described in this Complaint cause decision-makers and the
15 public to be deprived of the necessary and proper information needed to make a well-informed decision
16 as mandated by NEPA. Defendants’ violations have caused and will cause injury to the Plaintiffs’
17 members’ and staffs’ interests in Los Padres National Forest. If Defendants’ approval of the Project is
18 invalidated pending preparation of a new, legally adequate EIS, Defendants’ violations will or may be
19 corrected thus redressing the harm that Defendants currently cause and Plaintiffs currently suffer.

20 14. Defendant BERNARD WEINGARDT is sued in his official capacity as Regional
21 Forester for the Pacific Southwest Region. As Regional Forester, Mr. Weingardt was the reviewing
22 officer for the administrative appeal of the Project filed by Plaintiffs.

23 15. Defendant KEN HEFFNER is sued in his official capacity as Acting Forest Supervisor
24 for Los Padres National Forest.

25 16. Defendant GLORIA BROWN is sued in her official capacity as Forest Supervisor for
26 Los Padres National Forest. As Forest Supervisor, Ms. Brown approved the Record of Decision for the
27 Project.

28 17. Defendant ABIGAIL R. KIMBELL is sued in her official capacity as the Chief of the

1 USDA Forest Service.

2 18. Defendant USDA FOREST SERVICE (“Forest Service”) is an agency of the United
3 States within the Department of Agriculture. The Forest Service has been delegated responsibility for
4 managing U.S. National Forests, including the preparation, amendment, and revision of Land and
5 Resource Management Plans for National Forests.

7 **STATUTORY BACKGROUND**

8 *National Environmental Policy Act, 42 U.S.C. § 4321 et seq.*

9 19. NEPA is intended to ensure that federal agencies fully consider environmental
10 consequences before taking an action, and that the public is fully informed of these consequences. “The
11 NEPA process is intended to help public officials make decisions that are based on understanding of
12 environmental consequences, and take actions that protect, restore, and enhance the environment.” 40
13 C.F.R. § 1500.1(c). “NEPA procedures must insure that environmental information is available to
14 public officials and citizens before decisions are made and before actions are taken.” *Id.* at 1500.1(b).
15 Federal agencies must “to the fullest extent possible . . . [e]ncourage and facilitate public involvement”
16 in decision-making. 40 C.F.R. § 1500.2(d).

17 20. NEPA requires federal agencies to prepare a detailed environmental impact statement
18 (“EIS”) for all “major federal actions significantly affecting the quality of the human environment.” 42
19 U.S.C. § 4332(2)(C). “Major federal action” includes actions with effects that may be major and are
20 potentially subject to federal control and responsibility. The EIS must describe (1) the “environmental
21 impact of the Project,” (2) any “adverse environmental effects which cannot be avoided should the
22 proposal be implemented,” (3) any “alternatives to the Project,” and (4) any “irreversible or irretrievable
23 commitment of resources which would be involved in the Project should it be implemented.” *Id.*

24 21. When determining whether a project is significant and requires an EIS, the term
25 ‘significantly’ takes into account both the context and intensity of a Project. 40 C.F.R. § 1508.27.
26 NEPA’s implementing regulations require the federal action agency to analyze the significance of an
27 action “in several contexts such as society as a whole (human, national), the affected region, the
28

1 affected interests, and the locality. Significance varies with the setting of the Project ... Both short-
2 and long-term effects are relevant.” 40 C.F.R. § 1508.27(a).

3 22. NEPA’s implementing regulations further require the federal action agency to
4 consider the intensity or severity of the impact. 40 C.F.R. § 1508.27(b). The intensity of an action’s
5 impacts involves several factors, including:

- 6 • “Unique characteristics of the geographic area such as proximity to historic or
7 cultural resources, park lands, ... wetlands, wild and scenic rivers, or ecologically
8 critical areas.” 40 C.F.R. § 1508.27(b)(3).
- 9 • “The degree to which the action may establish a precedent for future actions with
10 significant effects or represents a decision in principle about a future consideration.”
11 40 C.F.R. § 1508.27(b)(6).
- 12 • “Whether the action is related to other actions with individually insignificant but
13 *cumulatively* significant impacts. Significance exists if it is reasonable to anticipate a
14 cumulatively significant impact on the environment. Significance cannot be avoided
15 by ... breaking [an action] down into small component parts.” 40 C.F.R.
16 §1508.27(b)(7) (emphasis added).
- 17 • “The degree to which the action may adversely affect an endangered or threatened
18 species or its habitat that has been determined to be critical under the Endangered
19 Species Act of 1973.” 40 C.F.R. § 1508.27(b)(9).
- 20 • “Whether the action threatens a violation of Federal, State, or local law or
21 requirements imposed for the protection of the environment.” 40 C.F.R. §
22 1508.27(b)(10).

23 23. The Council on Environmental Quality (the “CEQ”) regulations define cumulative
24 impact as “the impact on the environment which results from the incremental impact of the action
25 when added to other past, present, and reasonably foreseeable future actions regardless of what
26 agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can
27 result from individually minor but collectively significant actions taking place over a period of time.”
28 40 C.F.R. § 1508.7.

Clean Air Act, 42 U.S.C. § 7401 et seq.

24. The Clean Air Act is a comprehensive federal statutory scheme intended, among other things, “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1).

25. Under the authority of the Clean Air Act, the administrator of the Environmental Protection Agency sets ambient air quality standards for criteria pollutants, including ozone precursors and particulates. 42 U.S.C. § 7408.

26. Each state is required to submit an implementation plan specifying how the ambient air quality standards will be achieved and maintained for each air quality control region. 42 U.S.C. § 7407(a). States must also designate as “nonattainment” areas those areas that do not meet the ambient air quality standards for particular criteria pollutants. 42 U.S.C. § 7407(s).

27. The Clean Air Act provides that “[n]o department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity” which does not conform to an approved state air quality implementation plan. 42 U.S.C. § 7506(c)(1). “The assurance of conformity to such an implementation plan shall be an affirmative responsibility of the head of such department, agency, or instrumentality.”

28. The conformity requirement applies only to nonattainment areas and “each pollutant for which the area is designated as a nonattainment area.” 42 U.S.C. § 7506(c)(5).

National Forest Management Act, 16 U.S.C. § 1600 et seq.

29. The National Forest Management Act (“NFMA”) requires the Forest Service to prepare and implement comprehensive land management plans for each National Forest. These plans determine how resources are managed on the forest, the level of resource production and management, and the standards by which resources such as wildlife and habitat will be managed and protected. Forest plans may be amended in accordance with the applicable NFMA regulations. 16 U.S.C. § 1604.

30. NFMA provides that “[r]esource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans.” 16 U.S.C. § 1604(i).

1 *Endangered Species Act, 16 U.S.C. § 1531 et seq.*

2 31. The purposes of the Endangered Species Act (the “ESA”) are “to provide a means
3 whereby the ecosystems upon which endangered species and threatened species depend may be
4 conserved,” and “to provide a program for the conservation of such endangered species and threatened
5 species.” 16 U.S.C. § 1531(c)(1).

6 32. The ESA requires federal agencies to consult with the U.S. Fish and Wildlife Service
7 (“FWS”) and/or NOAA Fisheries to ensure that any action is not likely to jeopardize the continued
8 existence of a protected species or destroy or adversely modify the critical habitat of such species. 16
9 U.S.C. § 1536(a)(2).

10 33. Upon conclusion of a Section 7 consultation, the FWS and/or NOAA Fisheries must
11 provide the action agency with a biological opinion “detailing how the agency action affects the species
12 or its critical habitat.” 16 U.S.C. § 1536(b)(3)(A); see also 50 C.F.R. § 402.02.

13 34. If the FWS or NOAA Fisheries determines the agency action will jeopardize the species
14 or adversely modify its critical habitat, the biological opinion must suggest reasonable and prudent
15 alternatives that could be implemented without jeopardizing the species or adversely modifying its
16 critical habitat. 16 U.S.C. § 1536(b)(3)(A).

17 35. If the FWS or NOAA Fisheries determines the action will not jeopardize the species or
18 adversely modify its critical habitat, that agency must provide a biological opinion that: (1) specifies the
19 impact of the action on the species; (2) specifies the reasonable and prudent measures it considers
20 necessary or appropriate to minimize such impact; and (3) sets forth terms and conditions under which
21 the federal action agency must implement these reasonable and prudent measures. 16 U.S.C. §
22 1536(b)(4).

23 *Administrative Procedure Act, 5 U.S.C. §§ 701-706*

24 36. The APA, 5 U.S.C. §§ 701-706, provides for judicial review of final agency action.

25 37. Under the authority of the APA, a reviewing court must hold unlawful and set aside
26 agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or
27 otherwise not in accordance with law, 5 U.S.C. § 706(2)(A). A reviewing court must also set aside
28

agency action, findings, and conclusions found to be without observance of procedure required by law.
5 U.S.C. § 706(2)(D).

FACTUAL BACKGROUND

The Los Padres National Forest

38. The Los Padres National Forest (the “Los Padres”) spans more than 220 miles of California’s central coast, from the famed Big Sur coast south to the Los Angeles County line. Nestled between the highly developed urban areas of San Francisco, Los Angeles, and the southern San Joaquin Valley, the Los Padres serves as an island-like refuge of relatively undeveloped land.

39. The Los Padres serves as the hub of a vast matrix of publicly owned lands in central California. Adjacent to the Los Padres are the Carrizo Plain National Monument, the Bitter Creek National Wildlife Refuge, the Hopper Mountain National Wildlife Refuge, and other federal lands.

40. The Los Padres attracts more than 1.7 million visitors per year who seek out the wide range of recreational opportunities offered here, including hiking, camping, backpacking, horseback riding, fishing, hunting, bicycling, and driving, making it one of the most visited national forests in the country.

41. Due to complex influences of geography and climate, the Los Padres is one of the most biologically diverse national forests in the country. The Los Padres provides habitat for more than twenty federally protected threatened and endangered plants and animals. Another three hundred plant and animal species on the Los Padres are classified as sensitive, species of concern, or species at risk by the Forest Service. This is a result of the long history of resource extraction in the forest, and intensive agricultural and urban development of lands surrounding the forest. The Los Padres contains the majority of designated critical habitat on public lands for the California condor, one of the world’s most endangered birds, and is an important component of the California Condor Recovery Program.

42. Most of the Los Padres is composed of steep, rugged coastal mountains containing watersheds that supply water to communities near the forest. The Forest Service has classified many of these streams as “areas of high ecological significance,” including Sespe Creek, Piru Creek, and the Upper Cuyama River Valley.

1 43. The Los Padres National Forest is the only national forest in California with commercial
2 quantities of oil and gas. Existing oil and gas development is located primarily in two areas of the forest
3 – the Sespe Oil Field and the South Cuyama Oil Field. The Sespe Oil Field is nestled between the Sespe
4 Wilderness, the Sespe Condor Sanctuary, the Sespe Wild & Scenic River, and the Hopper Mountain
5 National Wildlife Refuge. The South Cuyama Oil Field is situated between the San Rafael and Dick
6 Smith Wilderness Areas and the remote Cuyama Valley.

7 44. Currently, there are approximately 21 oil leases inside the boundary of the Los Padres
8 National Forest. These leases contain more than 240 oil wells and cover 4,863 acres of land in the Los
9 Padres. In addition, there is a backlog of an additional 29 oil and gas lease applications covering some
10 25,000 acres of the Los Padres.

11 *The Reasonably Foreseeable Development Scenario*

12 45. The Federal Onshore Oil and Gas Leasing Reform Act of 1987 and the implementing
13 regulations (36 C.F.R. § 228.102) require the Forest Service to conduct a “leasing analysis” showing
14 which lands of the Los Padres National Forest are open to oil development, which lands are open to oil
15 development but subject to constraints (called “leasing stipulations”), and which areas are closed to
16 leasing altogether.

17 46. The Federal Onshore Oil and Gas Leasing Reform Act of 1987 and implementing
18 regulations also require the Forest Service to “[p]roject the type/amount of post-leasing activity that is
19 reasonably foreseeable as a consequence of conducting an [oil] leasing program” and to “analyze the
20 reasonable foreseeable impacts of post-leasing activity projected.” 36 C.F.R. § 228.102.

21 47. The Forest Service prepared a report titled “Reasonably Foreseeable Oil and Gas
22 Development Scenarios for the Los Padres National Forest California” in 1993, written by Desmond
23 Bain (“Bain Report”). In the 14 years since finishing the Bain report, the Forest Service never revised or
24 updated it.

25 48. The Bain Report identifies the price of oil as the first “key factor” influencing the rate of
26 oil and gas exploration on the Los Padres National Forest. The Bain Report predicts \$27 per barrel as
27 the “most likely” oil price for 2005.

1 49. Even adjusting for inflation, this estimate is significantly lower than current oil prices,
2 which have consistently hovered around \$60 per barrel since the approval of the Record of Decision for
3 the Project in July 2005.

4 *The Los Padres Oil and Gas Leasing Analysis and the Project*

5 50. In 1995, after working on the Los Padres leasing analysis for several years, the Forest
6 Service began the public scoping process for potential expansion of oil and gas leasing in Los Padres,
7 distributing an initial information package and conducting a series of public meetings.

8 51. Also in 1995, the Forest Service publicly announced that it was conducting an analysis to
9 identify lands within the Los Padres National Forest that should or should not be made available for oil
10 and gas leasing. 60 Fed. Reg. 47929 (Sept. 15, 1995). At that time, the Forest Service announced that it
11 would document this analysis in an Environmental Impact Statement (“EIS”). *Id.*

12 52. The Forest Service publicly released a Draft EIS (“DEIS”) in November 2001. Final EIS
13 (“FEIS”) at S-10. The Project was defined as the Forest Supervisor’s proposal “to make a portion of
14 Los Padres National Forest (LPNF) lands available for oil and gas exploration, development, and
15 production by selecting among alternative leasing scenarios, which vary in the amount of area available
16 for leasing as well as the conditions (stipulations) under which the lands would be leased.” FEIS at S-3.
17 With the release of the DEIS, the Forest Service also announced that it would accept public comments
18 on the DEIS. Plaintiffs submitted detailed comments on the DEIS.

19 53. The DEIS identified ten High Oil and Gas Potential Areas (“HOGPAs”) covering more
20 than 144,000 acres of the Los Padres National Forest. The draft EIS also included projections on the
21 amount of oil drilling reasonably expected to occur under several alternative scenarios. These
22 projections were based on the Reasonably Foreseeable Oil and Gas Development Scenarios and oil price
23 assumptions contained in the Bain Report.

24 54. The Forest Service received more than 7,800 comments during the public comment
25 period. The vast majority of the comments were opposed to further oil and gas leasing in the Los Padres
26 National Forest. Record of Decision at 12.

1 55. The Forest Service publicly released the FEIS in July 2005. Like the DEIS, the FEIS
2 included projections on the amount of oil drilling reasonably expected to occur under several alternative
3 scenarios. These projections were also based on the Bain Report.

4 *Endangered and Threatened Species*

5 56. On or about April 5, 2004, the Forest Service wrote a letter to the U.S. Fish and Wildlife
6 Service requesting initiation of formal consultation regarding the oil and gas leasing analysis. The
7 Forest Service and U.S. Fish and Wildlife Service subsequently conducted formal consultation pursuant
8 to the ESA.

9 57. At the end of this consultation process, the U.S. Fish and Wildlife Service produced a
10 Biological Opinion (“BiOp”). The BiOp concluded that proposed oil and gas leasing analysis and
11 subsequent development would not likely jeopardize the continued existence of the protected animal
12 species found within the Project area. BiOp at 33.

13 58. The U.S. Fish and Wildlife Service based this determination in its BiOp on the
14 conclusion in the Bain Report that only 20.4 acres of surface disturbance would occur. BiOp at 6, 32,
15 33.

16 59. Nevertheless, the BiOp also concluded that “although California condors may be
17 adversely affected, few or none are likely to be killed.” BiOp at 32.

18 60. The California condor (*Gymnogyps californianus*) is one of the world’s most endangered
19 species, listed as federally endangered since 1967, 32 Fed. Reg. 4001 (March 11, 1967), and state
20 endangered since 1971.

21 61. The condor population was reduced to 22 individuals in 1985, leading to a massive effort
22 that removed all remaining condors from the wild to breed them in captivity. Beginning in 1992,
23 officials painstakingly released captive-bred condors into a few select parts of the country that provided
24 the best remaining habitat, primarily in the Los Padres and surrounding lands, and specifically the Sespe
25 Condor Sanctuary and the Hopper Mountain National Wildlife Refuge.

26 62. As a result of this massive effort, approximately 53 condors now soar above the Los
27 Padres, including 25 condors in the southern portion of the project where the proposed new oil drilling is
28 concentrated.

63. Condors fly up to 150 miles a day in search of food, using most of the forest and surrounding areas for foraging, roosting and nesting.

64. Condors are harmed by loss of habitat, habituation to human activity, and ingestion of lead, other metals, and small trash items, among other threats.

65. Condors are specifically harmed by oil and gas activities. “General human activity associated with oil and gas extraction could discourage condor use of habitat” that may otherwise be suitable. BiOp at 30. Also, “[p]roject-related noise...could cause adult birds to repeatedly flush from, or eventually abandon, an active nest, or prevent them from choosing otherwise suitable habitat as a nest site.” *Id.* The Fish & Wildlife Service estimated in 1980 that oil and gas activities at Hopper Mountain National Wildlife Refuge had eliminated about 63 percent of the potential feeding habitat for condors on the refuge.

66. Condors have also been known to visit oil well pads and to have become oiled as a result of oil and gas activity. BiOp at 31. In April 2002, the U.S. Fish and Wildlife Service had to flush condor number 100 from an oil pad, and later recorded oil on its face and wings. The U.S. Fish and Wildlife Service determined that the condor became oiled while trying to tear an oily rag from a pipe. The U.S. Forest Service also noted in 2005 that a condor became oiled due to “a small spill of oil that occurred when the condor was present and flew down to the spill before the workers could remove the oil.” According to the Biological Opinion, other condors have been found with oil on their heads as well. BiOp at 31.

67. In addition, condors are known to ingest small trash items associated with human activity. BiOp at 31. While condors pick up trash at multiple sites, observations of condors especially in 2002 and 2003 suggest that condors pick up trash at oil pads. One condor biologist who retrieved a dead condor chick from a nest also observed many trash items in the nest consistent with items found on oil pads, including electrical fittings, piping, and other objects. All but one of six dead chicks to date had ingested substantial quantities of trash (e.g. up to 200 items removed from a single chick).

68. A condor researcher has recently reported condor nesting within the Sespe HOGPA and active condor roosting area and pre-breeding courtship activities along Sespe Creek in the San Cayetano

1 HOGPA. *Id.* In addition, condors have historically nested in the San Cayetano HOGPA on or near
2 areas proposed for oil and gas leasing. BiOp at 27.

3 69. Condors have been and continue to be killed and otherwise harmed by power lines and
4 other infrastructure that will be necessary for oil and gas operations. Out of nineteen confirmed condor
5 deaths in the wild between January 14, 1992 and October 4, 2002, five died from collisions with power
6 lines and one of electrocution or trauma after colliding with a power line. Appeal at 53. Also during
7 this time, 14 condors had to be captured and brought to the Los Angeles Zoo due to habituation to
8 perching on power poles, landing on man-made structures, and approaching humans. *Id.*

9 70. Other Los Padres endangered species found in or near the HOGPAs established by the
10 Project include the arroyo toad (*Bufo californicus*), California red-legged frog (*Rana draytonii*), and
11 steelhead (*Oncorhynchus mykiss*).

12 71. The arroyo toad was listed as an endangered species throughout its range, which is
13 entirely within California, in 1994. Critical habitat for the arroyo toad was finalized on May 13, 2005,
14 after finalization of the BiOp. 70 Fed. Reg. 19561. One of these critical habitat areas is Sespe Creek,
15 which flows through the Sespe HOGPA. 70 Fed. Reg. 19584 (April 13, 2005). Sespe Creek in this
16 critical habitat unit contains “[o]ne of the largest arroyo toad populations on the [Los Padres]” and “is
17 undammed and retains its natural flooding regime.” *Id.* Arroyo toads use riparian habitat as well as a
18 variety of upland habitats. BiOp at 10.

19 72. The California red-legged frog was listed as threatened under the ESA on May 23, 1996.
20 61 Fed. Reg. 25813. FWS finalized designation of critical habitat for the California red-legged frog on
21 April 13, 2006. 71 Fed. Reg. 19224. Piru Creek, in the Sespe HOGPA, contains features that are
22 essential for the conservation of the species. 71 Fed. Reg. 19272. The FWS does “not know the current
23 status of the species within the Sespe HOGPA.” BiOp at 24. Essential habitat for California red-legged
24 frogs includes both riparian habitat and adjacent upland habitat. BiOp at 28.

25 73. According to the BiOp, individual arroyo toads and California red-legged frogs could be
26 injured or killed by a wide range of activities associated with the Project, including “vehicles or heavy
27 equipment involved in road construction, off-road vehicle travel, exploration, field development,
28

1 reclamation activities, water contamination, or other activities related to oil and gas development.”

2 BiOp at 28.

3 74. A portion of the HOGPAs include areas designated as critical habitat for the arroyo toad,
4 California red-legged frog, and steelhead, in addition to the California condor.

5 75. On or about January 30, 2007, an oil spill occurred near areas used by the California
6 condor in the Los Padres National Forest. A burst pipeline caused the spill, which spread for three miles
7 along a creek that forms the southern boundary of the Sespe Condor Sanctuary. The initial spill report
8 stated that five barrels (210 gallons) of oil and fifty barrels (2,100 gallons) of wastewater were spilled.
9 Cleanup took nearly three weeks and involved more than eighty workers. While the Forest Service
10 noted that no condors were affected by the spill, the Forest Service also stated in several official press
11 releases that “the incident is significant given the importance of the Sespe Condor Sanctuary in recovery
12 of the endangered California condor.”

13 *Regional Air Quality*

14 76. The HOGPAs that would be open to oil and gas development in the New Preferred
15 Alternative are located in Santa Barbara County, Ventura County, and a small portion of Los Angeles
16 County. Ventura County is designated as a nonattainment area for federal and state ambient ozone
17 standards. Both Santa Barbara County and Ventura County are also nonattainment areas for the state
18 particulate standard. Air basins adjacent to Los Padres National Forest, including the San Joaquin
19 Valley and South Coast, are also designated as nonattainment areas for federal and state ozone and
20 particulate standards. Appeal at 55; FEIS at 3-14, 3-15.

21 *The Forest Service’s Decision*

22 77. The Forest Service issued its Record of Decision (“Decision”) on or around July 15,
23 2005. In the Decision, Los Padres National Forest Supervisor Gloria Brown documented her decision to
24 adopt the Project’s New Preferred Alternative, making portions of three HOGPAs – the Sespe, San
25 Cayetano, and South Cuyama HOGPAs – available for oil and gas leasing.

26 78. The Decision made 52,075 acres of land available for oil and gas leasing. Of this area,
27 4,277 acres are dedicated to surface occupancy and can be converted to some form of oil and gas
28 infrastructure, including well pads, roads, pipelines, storage tanks, or other industrial infrastructure.

1 Under the Decision, oil and gas under the remaining 47,798 acres will be removed by drilling at an angle
2 from oil and gas facilities on adjacent parcels of private land, or from private inholdings within the
3 forest boundary.

4 79. At the time of the Decision, 4,863 acres of Los Padres land were under lease for oil and
5 gas drilling activities. This Decision represented more than a ten-fold increase in the amount of land
6 available for oil and gas leasing on the Los Padres National Forest.

7 80. The Decision would produce an estimated 17 million barrels of oil over the 10-15 year
8 life of the plan. This represents less than a day's supply of oil for the United States, based on our
9 current rate of consumption.

10 81. The Decision allows surface drilling immediately adjacent to three Congressionally
11 protected wilderness areas – the Chumash, Dick Smith, and Sespe wilderness areas. The Decision also
12 allows surface disturbance within a few hundred feet of a fourth wilderness area, the San Rafael
13 Wilderness.

14 82. The Decision allows slant drilling beneath Sespe Creek and Piru Creek. Sespe Creek
15 provides critical habitat for several protected animal species, including the endangered southern
16 steelhead. At the time of the Decision, portions of both these creeks were under study for protection
17 under the federal Wild & Scenic Rivers Act.

18 83. The Decision may affect the federally endangered California condor, arroyo toad, blunt-
19 nosed leopard lizard, least Bell's vireo, southwestern willow flycatcher, giant kangaroo rat, and San
20 Joaquin kit fox, and the federally threatened California red-legged frog.

21 84. The Decision allows surface disturbance in and near habitat used by the endangered
22 California condor. Specifically, the Decision makes 135 acres of suitable condor habitat subject to
23 development. FEIS at 4-76. The Decision also allows surface drilling directly adjacent to the Sespe
24 Condor Sanctuary, and allows surface drilling within a few hundred feet of the Hopper Mountain
25 National Wildlife Refuge. Both areas are critical for the survival and recovery of the endangered
26 California condor, and are closed to public entry. The Decision allows surface drilling on the Sierra
27 Madre Ridge, a former condor reintroduction site and a primary flight path used by condors to travel
28 between northern and southern populations.

1 *Plaintiffs' Appeal, Defendants' Denial, and This Lawsuit*

2 85. Plaintiffs filed an administrative appeal of this decision on or about September 15, 2005.
3 The Appeal was timely submitted to Defendant Bernard Weingardt, Southwest Regional Forester.

4 86. On or about April 6, 2006, the Forest Service affirmed the Decision and denied every
5 single one of Plaintiffs' Appeal points.

6 87. On or about April 21, 2006, the Reviewing Officer for the Chief of the Forest Service
7 elected not to exercise discretionary review of the Regional Forester's denial of Plaintiffs' Appeal. This
8 action constituted the final administrative determination of the U.S. Department of Agriculture.

9 88. On June 13, 2006, Plaintiffs provided notice of their intent to sue the Secretaries of
10 Agriculture, Interior, and Commerce for violations of the Endangered Species Act associated with the
11 Project and the BiOp.

12 89. By letter dated August 10, 2006, the U.S. Fish and Wildlife Service advised the Forest
13 Service to reinitiate formal consultation pursuant to section 7(a)(2) of the ESA for the Project. On or
14 about August 21, 2006, the Forest Service requested the reinitiation of formal consultation pursuant to
15 section 7(a)(2) of the ESA. On Plaintiffs' information and belief, this consultation has not yet
16 concluded.

17 90. Having exhausted all administrative remedies, Plaintiffs now hereby file this lawsuit, and
18 respectfully request relief from this Court.

19
20 **CLAIMS FOR RELIEF**

21 CLAIM ONE

22 (Violation of NEPA – 42 U.S.C. § 4332(2)(C))

23 91. Each and every allegation set forth in this Complaint is incorporated herein by reference.
24 *Failure to Insure Integrity of EIS Analysis*

25 92. The CEQ's NEPA regulations require that a federal agency "shall insure the professional
26 integrity, including scientific integrity, of the discussions and analyses in environmental impact
27 statements." 40 C.F.R. § 1502.24. "The information must be of high quality. Accurate scientific
28 analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." 40 C.F.R.

§ 1500.1(b). The EIS evaluates the environmental effects of the Project based on a reasonably foreseeable development scenario that relies on a highly outdated economic analysis. Much more recent and accurate economic information was widely available – indeed, Plaintiffs brought such information to the Forest Service’s attention in their comments on the EIS and subsequent administrative appeal. Accordingly, the Forest Service failed to ensure the accuracy and integrity of the EIS as required by NEPA.

The EIS Improperly Understates Impacts of the Project

93. Defendants have substantially understated the environmental effects of the Project by relying on an outdated economic analysis and by ignoring reasonably foreseeable consequences of the Project. By relying on oil prices projections and other economic data from 1993, the analysis in the EIS underestimates the economic incentive for oil development in Los Padres National Forest, and thus improperly underestimates the magnitude and duration of the surface disturbance associated with the Project. For example, the Final EIS anticipates that the Project will result in only 20.5 acres of surface disturbance when the actual area that will be disturbed is likely to be significantly higher. This defect fundamentally taints the impact analysis in the EIS, the comparison of alternatives, and the choice of mitigation measures.

94. The EIS further understates the environmental impacts of the Project by:

- failing to adequately disclose and evaluate the surface disturbance and biological impacts associated with oil and gas exploration activities;
- assuming without sufficient basis that oil and gas development will be clustered with multiple wells on each well pad;
- assuming without sufficient basis that surface disturbance will be reduced by interim site reclamation; and
- failing to adequately evaluate the direct and cumulative effects of road construction, pipeline construction, and other secondary impacts of expanded oil and gas development.

Inadequate Analysis of Cumulative Impacts and Connected Actions

95. According to the CEQ NEPA regulations, an EIS must evaluate the cumulative impacts of the Project and the effects of connected actions. A cumulative impact “is the impact on the

environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” 40 C.F.R. § 1508.7. “Cumulative actions, which when viewed with other Projects have cumulatively significant impacts” should be discussed in the same EIS as the Project. 40 C.F.R. § 1508.25(a)(2). The EIS should also discuss connected actions, which include “interdependent parts of a larger action and depend on the larger action for their justification.” 40 C.F.R. § 1508.25(a)(1).

96. The EIS fails to include an adequate analysis of the cumulative effects of the Project. The EIS provides only cursory information on past, current, and approved but undeveloped oil and gas leases in Los Padres National Forest. The EIS also fails to disclose other actions in and adjacent to Los Padres National Forest that may result in cumulatively significant impacts. The information provided in the EIS is insufficient to determine the cumulative impacts of the Project in light of other past, present, and reasonably foreseeable activities in Los Padres National Forest. The EIS accordingly includes an inadequate analysis of the cumulative impacts of the Project on biological resources, habitat fragmentation, water quality, air quality, heritage and cultural resources, recreational resources, and scenic views.

97. Instead of fully evaluating the effects of connected actions, including specific leasing actions undertaken pursuant to the Project, the EIS improperly defers the analysis of connected actions to future site-specific environmental review. As a result, the EIS lacks meaningful analysis of the reasonably foreseeable environmental effects of the Project on biological resources, water quality, air quality, heritage and cultural resources, and traffic, among other impacts.

98. The EIS represents the last – and only – opportunity for the Forest Service to consider the impacts of the whole Project in light of other past, present, and reasonably foreseeable oil and gas development in Los Padres National Forest.

The EIS Contains an Inadequate Analysis of the Project’s Biological Impacts

99. The EIS improperly defers surveys and impact analysis for wildlife and plants until future site-specific leasing decisions.

1 100. Although the Project would allow ground-disturbing activities up to the boundaries of the
2 Sespe Condor Sanctuary and the Hopper Mountain National Wildlife Refuge, and in or near other
3 condor habitat in Los Padres National Forest, the EIS does not adequately evaluate the potential for
4 expanded oil and gas activities to harm or disturb condors. In addition, the EIS fails to include effective
5 measures to reduce or avoid impacts to condors.

6 101. The EIS does not adequately analyze the Project's potential impacts on steelhead,
7 although areas designated for surface occupancy occur in the Sespe Creek watershed, which contains
8 steelhead. The EIS further fails to consider steelhead mitigation measures recommended by NOAA
9 Fisheries.

10 102. The EIS does not adequately analyze or mitigate the Project's potential impacts on other
11 listed species, including the arroyo toad, blunt-nosed leopard lizard, southwestern willow flycatcher,
12 giant kangaroo rat, San Joaquin kit fox, least Bell's vireo, and California red-legged frog.

13 103. The EIS fails to provide any conditions or measures to protect non-listed sensitive and
14 management indicator species.

15 104. The EIS fails to evaluate the Project's consistency with final recovery plans for species
16 listed under the ESA, including the California condor, California red-legged frog, arroyo toad, and
17 southwestern willow flycatcher.

18 105. The EIS incorrectly concludes that the Project will have no impact on riparian areas,
19 although measures to avoid direct impacts to riparian areas are purely discretionary and ineffective.

20 106. Due to its failure to disclose and analyze these impacts, the EIS thwarts any meaningful
21 understanding of the full scope of the Project's potential environmental consequences. The Project's
22 impacts on biological resources are reasonably foreseeable and must be disclosed and evaluated in the
23 EIS.

24 *The EIS Does Not Adequately Analyze and Mitigate the Impacts of Oil Spills*

25 107. The EIS fails to include an adequate analysis of the Project's potential impacts associated
26 with oil spills. The EIS does not disclose any information regarding past spills from existing oil and gas
27 operations in Los Padres National Forest. In addition, the EIS does not evaluate the potential impacts of
28 oil spills on wildlife including the California condor. The EIS further fails to propose effective

1 mitigation measures to reduce the threat of spills from the Project.

2 *The EIS Does Not Fully Disclose and Evaluate Air Quality Impacts*

3 108. The EIS does not adequately analyze how Project-related emissions of criteria air
4 pollutants will affect air quality implementation plans and attainment goals for Ventura County, Santa
5 Barbara County, and the San Joaquin Valley and South Coast air basins.

6 109. The EIS does not adequately evaluate the potential for air emissions from oil and gas
7 development authorized by the Project to cause exceedances of applicable ambient criteria pollutant
8 standards, despite concerns by the U.S. Environmental Protection Agency that these emissions could
9 further degrade air quality in Ventura County, which is in non-attainment for the 8-hour ozone standard,
10 and threaten attainment for the 8-hour ozone standard in Santa Barbara County.

11 110. The EIS does not adequately evaluate the potential for Project-related emissions of
12 criteria pollutants to exceed established air quality significance thresholds in affected nonattainment
13 areas.

14 111. The EIS improperly defers analysis of the Project's air quality impacts until future
15 leasing actions. The EIS thus fails to evaluate the reasonably foreseeable impacts of the Project,
16 including potential exceedances of applicable air quality thresholds, exceedances of applicable ambient
17 air quality standards, inconsistencies with applicable air quality management plans, and contributions to
18 off-site odors.

19 112. Mitigation measures proposed by the EIS are insufficient to reduce the Project's air
20 quality impacts. Additional feasible mitigation measures and lease conditions are available that would
21 further reduce the Project's air quality impacts, but the Forest Service failed to adopt these measures
22 when it approved the Project.

23 113. The EIS fails to analyze impacts on visibility in designated wilderness areas within Los
24 Padres National Forest.

25 114. The EIS does not adequately analyze the potential transport of air pollutants generated by
26 the Project to the adjacent San Joaquin Valley and South Coast air basins. In addition, the EIS does not
27 adequately consider the nonattainment status of the San Joaquin Valley and South Coast air basins. The
28 San Joaquin Valley and South Coast areas are nonattainment areas for federal and state ozone and

1 particulate standards.

2 *The EIS Does Not Adequately Analyze and Mitigate Water Quality Impacts*

3 115. The Project will result in reasonably foreseeable impacts to water quality due to polluted
4 runoff, risk of spills, increased impermeable surfaces, road construction, and sedimentation from pad
5 grading, among other causes.

6 116. The EIS relies on mitigation measures of unknown and/or uncertain effectiveness that
7 purportedly reduce or avoid the Project's water quality impacts.

8 117. The EIS fails to fully disclose and consider effective mitigation measures for erosion and
9 sedimentation impacts associated with new road construction. The EIS fails to consider that even
10 temporary roads may have a significant effect on water quality and watersheds.

11 *The EIS Does Not Adequately Evaluate Impacts to Recreation, Designated Wilderness, Inventoried*
12 *Roadless Areas, and Wild and Scenic Rivers*

13 118. The Project anticipates that new energy exploration and development activities would
14 occur within and adjacent to recreational areas of Los Padres National Forest. These activities have the
15 potential to reduce recreational opportunities and/or diminish the recreational experience of forest
16 visitors.

17 119. In addition, the Project would allow new oil and gas development immediately adjacent
18 to or within a few hundred feet of the federally designated Chumash, Dick Smith, San Rafael, and Sespe
19 wilderness areas. These activities have the potential to impair wilderness values and/or diminish the
20 wilderness experience of visitors to these areas.

21 120. Although the Project does not allow surface occupancy in inventoried roadless areas and
22 existing or eligible Wild and Scenic River corridors, it would allow drilling adjacent to and under these
23 areas.

24 121. The EIS lacks any detailed analysis of the recreational assets, including existing
25 campsites and trailheads, that lie within the HOGPAs established for the Project.

26 122. The EIS fails to adequately analyze the impacts of the Project on recreation and the
27 recreational experience.

28 123. The EIS fails to analyze the impacts of the Project on designated wilderness areas.

124. The EIS fails to analyze the impacts of the Project on inventoried roadless areas, existing Wild and Scenic Rivers, Wild and Scenic River study areas, and areas designated as eligible for Wild and Scenic River status.

The EIS Improperly Defers the Analysis of Impacts to Heritage Resources

125. New oil and gas exploration and development activities associated with the Project have the potential to affect “heritage resources” within Los Padres National Forest, including important archaeological, cultural, and historical sites.

126. The EIS, however, defers surveys and impact analysis for heritage resources until future, site-specific development plans are submitted.

127. By deferring all heritage resource surveys and analysis, however, the EIS prevents any understanding of the range of potential heritage resource impacts under various alternatives. These impacts are reasonably foreseeable on the 4,277 acres subject to surface occupancy and must be evaluated in the EIS.

128. By preparing a legally inadequate EIS for the Project, Defendants failed to comply with the procedures required by NEPA, depriving decision-makers and the public of a full understanding of the Project’s environmental consequences, and ensuring that these consequences were not addressed before approval of the Project.

CLAIM TWO

(Approval of Project Without Clean Air Act Conformity Analysis – 42 U.S.C. § 7506(c) and APA 5 U.S.C. § 706)

129. Each and every allegation set forth in this Complaint is incorporated herein by reference.

130. With the Project, the Forest Service is engaging in, supporting, or approving an activity that may emit quantities of criteria air pollutants in excess of established thresholds. 40 C.F.R. § 51.853. The Project is thus a federal action subject to the Clean Air Act’s conformity requirement. 42 U.S.C. § 7506(c). Accordingly, the Forest Service must demonstrate the Project’s conformity to air quality implementation plans in affected nonattainment areas.

131. The Forest Service has not prepared a conformity analysis for the Project. Instead, the EIS states that a conformity analysis will be performed in the future when an applicant proposes to conduct operations on a particular lease. FEIS at 3-16.

132. As the EIS acknowledges, however, the Project will result in reasonably foreseeable and quantifiable emissions of criteria air pollutants that are potentially in excess of applicable conformity thresholds for affected nonattainment areas. FEIS at 4-27. According to the regulations implementing the conformity requirement, “a conformity determination is required for each criteria pollutant or precursor where the total of direct and indirect emissions of the criteria pollutant or precursor in a nonattainment or maintenance area caused by a Federal action would equal or exceed” defined thresholds. 40 C.F.R. § 93.153(b). “Indirect emissions” are emissions of criteria pollutants that “(1) [a]re caused by the Federal action, but may occur later in time and/or may be further removed in distance from the action itself but are still reasonably foreseeable; and (2) The Federal agency can practicably control and will maintain control over due to a continuing program responsibility of the Federal agency.” 40 C.F.R. § 93.152.

133. The Project-related emissions disclosed in the EIS are understated due to reliance on a reasonably foreseeable development scenario that is based on outdated economic projections.

134. The Project is not expressly exempted from the conformity requirement. Under the Forest Service's proposed approach, however, emissions from individual operations are likely to be below de minimis thresholds, thus allowing the entire Project to evade the Clean Air Act's federal conformity requirement. Performing a conformity analysis only on individual future operations thus does not allow analysis of the entire leasing proposal.

135. Defendants' approval of the Project without any analysis of its conformity to applicable air quality implementation plans should be set aside under the APA as arbitrary, capricious, an abuse of discretion, otherwise not in accordance with the law, and without observance of procedure required by law. 5 U.S.C. § 706(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment providing the following relief:

1. Declare that Defendants violated NEPA by approving the Record of Decision for the Los Padres National Forest Oil and Gas Leasing proposal based on a legally inadequate EIS;

2. Declare that Defendants' approval of the Record of Decision for the Los Padres National Forest Oil and Gas Leasing proposal without a Clean Air Act federal conformity analysis pursuant to 42 U.S.C. section 7506(c) was arbitrary, capricious, an abuse of discretion, otherwise not in accordance with the law, and without observance of procedure required by law;

3. Order Defendants, through a permanent injunction, to set aside and vacate their approval of the Record of Decision for the Los Padres National Forest Oil and Gas Leasing proposal;

4. Order Defendants, through a permanent injunction, to halt all activities associated with the Los Padres National Forest Oil and Gas Leasing proposal;

5. Award Plaintiffs' costs, including reasonable attorney's fees and expert witness fees; and

6. Provide such other relief as the court deems just and proper.

Respectfully Submitted,

Dated: April 23, 2007

/s/ John Buse

John Buse

Lisa Belenky

CENTER FOR BIOLOGICAL DIVERSITY

Attorneys for Plaintiffs