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Gray Davis, Governor of California, and Bill Lockyer, Attorney General of the State of
California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THE STATE OF CALIFORNIA EX REL. THE CALIFORNIA COASTAL
COMMISSION, GRAY DAVIS, GOVERNOR OF CALIFORNIA AND BILL
LOCKYER, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, Plaintiffs,
v. BRUCE BABBITT, Secretary of the Interior, UNITED STATES DEPARTMENT OF
INTERIOR, MINERALS MANAGEMENT SERVICE, REGIONAL SUPERVISOR OF
THE MINERALS MANAGEMENT SERVICE, Defendants.

Case]

PLAINTIFFS THE STATE OF CALIFORNIA EX REL. THE
CALIFORNIA COASTAL COMMISSION, GRAY DAVIS, GOVERNOR OF
CALIFORNIA, AND BILL LOCKYER, ATTORNEY GENERAL OF THE STATE OF
CALIFORNIA, ALLEGE AS FOLLOWS:

JURISDICTION AND VENUE

1. Jurisdiction is proper in this Court pursuant to 28 United States Code section 1331 because this case involves a civil action arising under the laws of the United States, specifically 16 United States Code section 1451 et seq., the Coastal Zone Management Act, 43 United States Code section 1331 et seq., the Outer Continental Shelf Lands Act and 43 United States Code section 4332 et seq., the National Environmental Policy Act. Jurisdiction is also proper under 5 United States Code section 702 because plaintiffs allege that they have been aggrieved by the actions of defendants and each of them, under 28 United States Code section 1361 because plaintiffs seek to compel defendants to comply with the requirements of the Federal Coastal Zone Management Act (“CZMA”) and the Outer Continental Shelf Lands Act (“OCSLA”) as well as the requirements of the National Environmental Policy Act (“NEPA”), and under 28 United States Code section 2201 because plaintiffs seeks a declaration of the rights of the parties herein as set forth in full below. Pursuant to 28 United States Code section 1391(e)(3), venue is proper in the Northern District of California since plaintiff California Coastal Commission’s headquarters are located in San Francisco, California at 45 Fremont Street, Suite 2000, San Francisco, CA 94105-2219.

DESCRIPTION OF ACTION

2. This case involves a dispute over whether plaintiff California Coastal Commission has jurisdiction to review consistency certifications for requests for suspensions of exploration, development and production or operation for thirty-six undeveloped oil and gas leases on submerged lands located on the Outer Continental Shelf off the coast of California under the Federal Coastal Zone Management Act, the Outer Continental Shelf Lands Act and the federally-approved California Coastal Management Program. Since the leases were issued between 1968 and 1984 and since the plans of exploration, development and production or operation for these leases were originally approved, there are changed circumstances, including but not limited to the establishment of marine sanctuaries off the California coast, the increased range and

distribution of the southern sea otter, changes in water quality and air quality regulations, new information on the effects of undersea noise on marine mammals and marine life, and changes in drilling technology. The defendant federal agencies contend that the Minerals Management Service within the Department of Interior may approve the requests for suspensions of exploration, production or operation without prior review and approval by the California Coastal Commission. The California Coastal Commission, Gray Davis, Governor of California, and Bill Lockyer, Attorney General for the State of California, further contend that defendants approved the requests for suspensions without complying with the National Environmental Policy Act.

PARTIES AND ENABLING LEGISLATION

3. On January 1, 1977, Division 20 of the Public Resources Code (§ 30000, et seq.), known as the California Coastal Act of 1976 (“Coastal Act”), became effective. The Coastal Act specifies that “[t]his division shall be liberally construed to accomplish its purposes and objectives.” Cal. Pub. Resources Code, § 30009. Pursuant to the federal Coastal Zone Management Act (16 U.S.C. § 1451 et seq.), in 1978 the Secretary of Commerce approved the California Coastal Management Program (“CCMP”). The CCMP is comprised of the Coastal Act and such local coastal programs as have been approved and incorporated into the program. The CCMP includes a list of federal licenses and permits that are subject to consistency review by the California Coastal Commission (hereinafter “Commission”). This list identifies permits and licenses for drilling and mining on public lands as requiring consistency review; such permits and licenses include requests for suspensions of production or operation for leases on the Outer Continental Shelf, such as those at issue here.

4. Plaintiffs bring claims for relief. The Commission is a state agency created by the Coastal Act and has the power to sue and be sued. Cal. Pub. Resources Code, §§ 30300, 30334. Plaintiff Commission is designated the state coastal zone planning and management agency for any and all purposes and may exercise any and all

powers set forth in the CZMA. 16 U.S.C. § 1451 et seq. The Commission is authorized to grant or issue any statement required pursuant to such federal law that an activity of any person, including a federal agency, is in conformity with the provisions of the California Coastal Act of 1976 (Cal. Pub. Resources Code, § 30000 et seq.) which is California's federally approved coastal zone management program. Cal. Pub. Resources Code, § 30330. The Commission is the state agency charged with reviewing activities requiring a federal license or permit for conformity with the CCMP. 16 U.S.C. §1456(c)(3). As the authorized agency under the Coastal Act and the CZMA, the Commission is aggrieved by the activities of defendants and has standing to bring this action. Plaintiff Gray Davis is the Governor of California. As Governor, the supreme executive power of the State of California is vested in him. Cal. Constitution, Art. V § 1. As Governor, plaintiff Gray Davis is vitally concerned with the interests of the People of the State of California and concerned that the State's coastal land and water uses and coastal resources receive the greatest protection possible. Plaintiff Gray Davis ("Governor") is aggrieved by the actions of defendants and has standing to bring this action. Plaintiff Bill Lockyer is the Attorney General for the State of California. As Attorney General, he is the chief law officer in the State of California. Cal. Constitution, Art. V § 13; Cal. Gov. Code, § 12500. Plaintiff Bill Lockyer ("Attorney General") has the responsibility and authority to take legal action on behalf of the People of California in matters involving the environment. Cal. Pub. Resources Code, §§ 12600-12612. Plaintiff Bill Lockyer is aggrieved by the actions of defendants and has standing to bring this action. Plaintiffs have exhausted all available administrative remedies prior to bringing this action.

5. Defendant Bruce Babbitt, Secretary of the Interior ("Secretary"), is named here in his official capacity as the Secretary of the Department of the Interior pursuant to 5 United States Code section 702 among others. Defendant Minerals Management Service ("MMS") is a federal agency within the Department of the Interior

("Interior"), which is a department of the United States of America, and a Federal agency within the meaning of 16 United States Code section 1456. MMS is named as a defendant herein pursuant to 5 United States Code section 702 among others. Defendant Regional Supervisor of MMS ("Regional Supervisor") is named here in his official capacity as the regional supervisor of the MMS pursuant to 5 United States Code section 702 among others. Each of the defendants named in this complaint is sued in its capacity as an agency of the United States Government bearing responsibility, in whole or in part, for the acts complained of in this complaint.

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FIRST CLAIM FOR RELIEF

FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF.

6. The CZMA, 16 United States Code section 1456, requires that after final approval of the CCMP, any applicant for a required Federal license or permit to conduct an activity, in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone of California, shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the enforceable policies of the CCMP and that such activity will be conducted in a manner consistent with the CCMP. The applicant is required to provide a copy of this certification ("consistency certification") to the Commission with all necessary information and data. No license or permit shall be granted by the Federal agency until one of the following has occurred: the Commission has concurred in the applicant's certification, the Commission has failed to act and is deemed to have concurred, or the Secretary of Commerce has found the activity to be either consistent with the objectives of the CZMA or is otherwise necessary in the interest of national security. Section 1456 further requires that federal agencies conducting federal activities must comply with a similar but slightly different process requiring submittal to the Commission of consistency determination documents.

7. “Federal license or permit” means “any authorization, certification, approval, or other form of permission which any Federal agency is empowered to issue to an applicant,” as defined in 15 Code of Federal Regulations section 930.51(a). The term “Federal license or permit” includes renewals and major amendments as defined in 15 Code of Federal Regulations section 930.51(b).

8. Pursuant to the OCSLA (43 U.S.C.A. § 1337(a)), the Secretary is authorized to grant oil and gas leases for submerged lands on the outer continental shelf. The Secretary is further authorized to prescribe such rules and regulations as may be necessary to carry out the provisions of the OCSLA, including regulations for the suspension of any operation or activity, including production, pursuant to any lease or permit. 43 U.S.C.A. § 1337 (a)(1). Such leases are conditioned upon due diligence requirements. 43 U.S.C.A. § 1337 (b) (4).

9. Pursuant to 30 Code of Federal Regulations section 250.110(a), the Regional Supervisor of MMS may, on his/her own initiative or at the request of the lessee, suspend production or any other operation or activity on all or any part of a lease. A directed suspension of a lease in its primary term extends the term of the lease for a period of time equivalent to the term of the suspension. 30 C.F.R. § 256.73(a). Where a lease has been extended beyond its primary term, the term of the lease shall not be deemed to expire so long as the suspension remains in effect. 30 C.F.R. § 256.73(b).

10. A decision of the Regional Supervisor to approve a request for a suspension of a lease or any part of a lease is a “Federal license or permit” within the definition of the CZMA and applicable regulations. An application for a request for suspension is a listed activity which requires consistency review and concurrence by the Commission before the request for suspension may be approved by the Secretary, MMS or the Regional Supervisor. Further, a decision of the Regional Supervisor to direct a suspension is a federal activity that requires consistency review and concurrence by the Commission through the consistency determination process.

11. The Secretary previously granted forty (40) oil and gas leases off the coast of California which leases remain undeveloped. The Regional Supervisor's directed suspension of those leases was scheduled to expire on June 20, 1999; the expiration was extended to August 16, 1999. MMS directed the forty lessees to submit requests for suspensions but did not require that the lessees submit consistency certifications to the Commission as required under the CZMA. On several occasions including in writing on July 27, 1999, the Commission notified the Secretary and MMS that the Commission asserted the authority to review the requests for suspensions under 16 U.S.C. section 1456(c)(3). Interested parties, including the lessees, were on notice that the Commission asserted the authority to review the suspensions. On August 13, 1999, MMS directed further suspensions of thirty-six of the forty leases through November 15, 1999, pursuant to 30 Code of Federal Regulations section 250.110(b)(4); four of the leases expired on August 16, 1999. MMS required the lessees of the remaining thirty-six leases to

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provide specified information regarding compliance with the CZMA. MMS did not require the lessees to submit consistency certifications to the Commission for the requests for suspensions.

12. On November 12, 1999, the Commission received a letter from the Director of the National Oceanic and Atmospheric Administration confirming that the Commission has federal consistency jurisdiction over requests for suspensions pursuant to 16 U.S.C. section 1456(c)(3). Also on November 12, 1999, the Commission received a letter from the Secretary stating that the 36 requests for suspension had been approved for periods ranging from 19 months to 45 months. The requests for suspensions were approved despite a lack of due diligence on the part of the lessees and despite the fact that due diligence is required by the terms of their leases and by applicable law in order for requests for suspensions to be granted or approved.

13. No consistency certifications were submitted to the Commission prior to the grant of the requests for suspensions. The requests for suspensions will have reasonably foreseeable impacts on coastal uses and resources. The actions of the Secretary, MMS and the Regional Supervisor will lead to serious impacts on California's coastal resources. Unless the Secretary, MMS and the Regional Supervisor direct the lessees to submit consistency certifications to the Commission, the Commission will be unable to perform its duties and obligations under the Coastal Act, the CCMP and the CZMA and will be unable to determine whether the requests for suspensions are consistent with the Coastal Act and the CCMP as required under the CZMA.

14. Unless the Secretary, MMS and the Regional Supervisor are enjoined from approving the requests for suspensions until the Commission has reviewed the requests, determined that they are consistent with the Coastal Act and CCMP and has concurred in the lessees' consistency certifications, the Commission will be unable to perform its duties and obligations under the Coastal Act, the CCMP and the CZMA and the Commission will be unable to determine whether the requests for suspensions are consistent with the Coastal Act and the CCMP as required under the CZMA.

15. Unless the Secretary is commanded to exercise his supervisory authority over MMS and the Regional Supervisor and to direct MMS and the Regional Supervisor to withhold approval of the requests for suspensions unless and until the Commission has reviewed the requests, determined that they are consistent with the Coastal Act and CCMP and has concurred in the lessees' consistency certifications, the Commission will be unable to perform its duties and obligations under the Coastal Act, the CCMP and the CZMA and will be unable to determine whether the requests for suspensions are consistent with the Coastal Act and the CCMP as required under the CZMA.

16. Unless this court commands defendants to comply with the requirements of the Coastal Act, the CCMP and the CZMA, plaintiff Commission will be

irreparably harmed in that the police power jurisdiction granted to plaintiff Commission by the State Legislature will be directly undermined, and plaintiff Commission's ability to carry out the goals and objectives of the Coastal Act and the CCMP will be seriously impaired. Unless defendants are commanded to comply with the Coastal Act, the CCMP and the CZMA, plaintiff Commission will be unable to review the suspensions of the thirty-six leases for consistency with the Coastal Act and CCMP. Plaintiff Commission's authority under the Coastal Act, CCMP and CZMA will be rendered ineffective. As the agency responsible for protection of the public's rights in precious coastal resources including but not limited to the coastal waters, public access, and public recreation, plaintiff will suffer further irreparable harm in that defendants' activities will permanently and irrevocably harm the public's right to have the Commission review the lease suspensions. Moreover, the lease suspensions can be reasonably expected to affect California's coastal land and water uses and its coastal resources. Unless defendants are commanded to comply with the CZMA, the Commission will be prevented from determining whether activities occurring during the requests for suspensions may have coastal effects not previously considered or contemplated.

17. Plaintiff Commission has demanded, orally and in writing, that defendants withhold approval of the requests for suspensions of the leases, and that they comply with the requirements of the Coastal Act, the CCMP and the CZMA. Defendants refused and continue to refuse to withhold the approvals and to comply with the Coastal Act, the CCMP and the CZMA. Defendants have approved the requests for suspension without complying with the Coastal Act, the CCMP and the CZMA. Plaintiff has no adequate remedy at law for the harm being done by defendants in that only the exercise of the court's equitable powers can command defendants to set aside its approval of the requests for suspensions of the thirty-six leases and restrain defendants from approving the requests for suspensions until the Commission has reviewed and approved consistency certifications for the suspensions. Plaintiff has no adequate remedy at law

for the harm being done by defendants in that only the exercise of the court's equitable powers can command defendants to comply with the Coastal Act, the CCMP and the CZMA. 5 U.S.C. § 702.

**SECOND CLAIM FOR RELIEF
FOR DECLARATORY RELIEF**

18. Plaintiffs incorporate the allegations of paragraphs 1 through 17 above by reference, as if set forth in full at this point.

19. An actual controversy exists between plaintiff Commission and defendants in that plaintiff Commission contends that the requests for suspensions for oil and gas leases on the Outer Continental Shelf cannot be approved unless and until the Commission has reviewed and approved consistency certifications for each of the thirty-six lease suspensions. Defendants disagree, and contend that the requests for suspensions of the leases do not require Commission review and approval of consistency certifications.

20. A declaration of the rights of the parties and of the proper interpretation of the relationship between the Coastal Act, the CZMA and the OCSLA is appropriate for the determination of this case pursuant to 28 United States Code Section 2201.

21. Plaintiff Commission is entitled to a declaration that the requests for suspensions for the thirty-six leases cannot be approved by defendants unless and until the Commission has reviewed and approved consistency certifications for each of the suspensions.

**THIRD CLAIM FOR RELIEF
FOR WRIT OF MANDAMUS**

22. Plaintiffs incorporate the allegations of paragraphs 1 through 17 above by reference, as if set forth in full at this point.

23. Defendants and each of them have a duty under the CZMA (16 U.S.C.

§ 1456) to require that the thirty-six lessees submit consistency certifications to the Commission prior to approving the requests for suspensions of the leases.

24. In refusing to require the lessees to submit consistency certifications to the Commission prior to approval of the requests for suspensions of the leases, defendants and each of them have breached their duty under the CZMA (16 U.S.C. § 1456).

25. Pursuant to 28 United States Code section 1361, plaintiff Commission is entitled to a writ of mandamus from this Court to compel defendants and each of them to perform their duties under the CZMA (16 U.S.C. § 1456).

FOURTH CLAIM FOR RELIEF
FOR WRIT OF MANDAMUS

26. Plaintiffs incorporate the allegations of paragraphs 1 through 17 above by reference, as if set forth in full at this point.

27. Under NEPA, federal agencies are required to conduct environmental review of all major federal actions. 42 U.S.C. §4332. Major federal actions include actions with effects that may be major and which are potentially subject to federal control and responsibility; actions include new and continuing activities, including projects and programs regulated or approved by federal agencies. 40 C.F.R. § 1508.18. Federal agencies are required to prepare environmental assessments unless the agencies have decided to prepare an environmental impact statement. 40 C.F.R. § 1501.3. Federal agencies are required to commence preparation of environmental impact statements or environmental assessments no later than immediately after the application for approval is received. 40 C.F.R. § 1502.5. Environmental documents are to be used in the decision-making process, and not to rationalize or justify decisions already made. 40 C.F.R. 1502.5.

28. In approving the requests for suspensions, the Secretary, MMS and the Regional Supervisor failed to comply with NEPA. The approval of the requests for

suspensions requires the lessees to provide environmental analyses of new or revised plans of exploration or development and production. The Secretary, MMS and the Regional Supervisor did not require additional environmental review of the existing plans of exploration or development and production despite the length of time that has elapsed since their original approvals in 1984 or earlier. The Secretary, MMS and the Regional Supervisor violated NEPA and its applicable regulations in failing to require supplemental or additional environmental review of the existing plans. Further, the Secretary, MMS and the Regional Supervisor failed to require the preparation of environmental documents and approved the requests for suspensions without benefit of environmental documentation.

29. Defendants and each of them have a duty under NEPA (42 U.S.C. § 4332 et seq.) and its applicable regulations to require and/or to provide proper environmental review prior to approval of the requests for suspensions.

30. Pursuant to 28 United States Code section 1361, plaintiffs Commission, Governor and Attorney General are entitled to a writ of mandamus from this Court to compel defendants and each of them to perform their duties under NEPA.

FIFTH CLAIM FOR RELIEF

FOR PRELIMINARY AND PERMANENT INJUNCTION

31. Plaintiffs incorporate the allegations of paragraphs 1 through 17, 27 and 28 above by reference, as if set forth in full at this point.

32. Plaintiffs Commission, Governor and Attorney General are aggrieved by the actions of defendants. 5 U.S.C. § 702. Plaintiffs are entitled to preliminary and permanent injunctions ordering defendants to set aside their approval of the requests for suspensions and enjoining defendants from approving the requests for suspensions unless and until defendants have complied with NEPA.

PRAYER FOR RELIEF

Wherefore, plaintiffs the State of California ex rel. the California Coastal

Commission, Gray Davis, Governor of California, and Bill Lockyer, Attorney General for the State of California, pray for relief and judgment against defendants as follows:

ON THE FIRST CLAIM FOR RELIEF

1. For a preliminary injunction ordering defendants, and any persons acting on their behalf, to set aside their approval of the thirty-six requests for suspensions, and enjoining defendants from approving any request for a suspension of any of the thirty-six leases unless and until the Commission has reviewed and approved a consistency certification for the request for suspension pursuant to 16 United States Code section 1456(c)(3) and applicable regulations;

2. For a permanent injunction ordering defendants, and any persons acting on their behalf, to set aside their approval of the thirty-six requests for suspensions, and enjoining defendants from approving any request for a suspension of any of the thirty-six leases unless and until the Commission has reviewed and approved of a consistency certification for the request for suspension pursuant to 16 United States Code section 1456(c)(3) and applicable regulations;

ON THE SECOND CLAIM FOR RELIEF

3. For a declaration that a request for suspension of an oil and gas lease on the Outer Continental Shelf cannot be approved by defendants unless and until the Commission has reviewed and approved a consistency certification for the request for suspension pursuant to 16 United States Code section 1456(c)(3) and applicable regulations;

ON THE THIRD CLAIM FOR RELIEF

4. For a writ of mandamus ordering defendants to perform their duties under the Coastal Zone Management Act;

ON THE FOURTH CLAIM FOR RELIEF

5. For a writ of mandamus ordering defendants to perform their duties under the National Environmental Policy Act;

ON THE FIFTH CLAIM FOR RELIEF

6. For a preliminary injunction ordering defendants, and any persons acting on their behalf, to set aside their approval of the thirty-six requests for suspensions, and enjoining defendants from approving any request for a suspension of any of the thirty-six leases unless and until defendants have complied with the National Environmental Policy Act and applicable regulations;

7. For a permanent injunction ordering defendants, and any persons acting on their behalf, to set aside their approval of the thirty-six requests for suspensions, and enjoining defendants from approving any request for a suspension of any of the thirty-six leases unless and

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until defendants have complied with the National Environmental Policy Act and applicable regulations;

ON ALL CLAIMS FOR RELIEF

- 8. For costs of suit incurred, including reasonable attorney's fees; and
- 9. For such other relief as the Court deems just and proper.

Dated: November 15, 1999
Respectfully submitted,

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