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Via Electronic Transmission

Ms. Kelly Hammerle
Chief, National OCS Oil and Gas Leasing Program
Development and Coordination Branch
Leasing Division, Office of Strategic Resources
Bureau of Ocean Energy Management (VAM-LD)
45600 Woodland Road
Sterling, VA 20166-9216

Re: 2019-2024 Draft Proposed Outer Continental Shelf Oil and Gas Leasing Program and Notice of Intent to Prepare a Programmatic Environmental Impact Statement (BOEM-2017-0074)

Dear Ms. Hammerle:

On behalf of California Attorney General Xavier Becerra, we submit the comments below on the Department of Interior's Bureau of Ocean Energy Management's ("BOEM") Draft Proposed 2019-2024 Outer Continental Shelf Leasing Program ("2019-2024 draft leasing program"), and BOEM's Notice of Intent to publish a Draft Environmental Impact Statement for the 2019-2024 Program. We also incorporate by reference and call to your attention the comments submitted by the Governor of California, the California Natural Resources Agency, California Ocean Protection Council, California Coastal Commission, California State Lands Commission, California State Coastal Conservancy, California Department of Conservation, Division of Oil, Gas, and Geothermal Resources, California Air Resources Board, California Fish and Game Commission, and the California Department of Parks and Recreation.

We strongly oppose scheduling lease sales for any of California's Outer Continental Shelf ("OCS") planning areas. Including California's planning areas in the 2019-2024 leasing program would be inconsistent with the Outer Continental Shelf Lands Act ("OCS Act"). And if BOEM incorrectly persists in scheduling leases for California's planning areas in its forthcoming Proposed Program or Final Program, it must thoroughly analyze the impacts of doing so as required by National Environmental Policy Act.

I. Introduction and Background

The OCS Act governs oil and gas leasing and development on the OCS. Section 18 of the Act requires the Department of Interior ("Interior") to prepare and periodically revise and maintain a five-year schedule of lease sales that implements the policies of the Act.[1] Section 18 sets forth specific procedures Interior and BOEM must follow to develop a five-year leasing program, and also sets out substantive requirements for five-year programs.

The substantive principles that Interior is required to follow when developing a five-year program for the OCS include an obligation to: (1) manage the OCS in a manner which considers the "economic, social, and environmental values of the renewable and nonrenewable resources" contained in the OCS; (2) use "existing" and "predictive" information to account for the interests of all relevant regions and stake-holders; (3) strike a "proper balance" between resource potential and environmental impact; (4) consider other uses of the "sea and seabed, including fisheries, navigation," and renewable resources; and (4) assure that the Federal Government receives "fair market value for the lands leased and the rights conveyed."[2] Section 18 includes state laws, goals and policies as relevant matters for the Secretary of the Interior's consideration.[3] Other substantive principles include the equitable sharing of developmental benefits and environmental risks among the various regions; the relative environmental sensitivity and marine productivity of the different areas of the OCS; and the interest of the oil industries in different OCS areas.[4]

California has long vigorously opposed oil and gas leasing off its shore. The people of California are all too familiar with the negative impacts from oil and gas development on the OCS, most particularly the 1969 Santa Barbara oil spill from Union Oil's Platform A. That spill, the third largest in American history, caused great harm to California's economy and environment. Indeed, that disaster led to a ban on offshore leasing in state waters, and California has consistently opposed federal oil and gas leasing off its shores for many decades.

Interior last included California's OCS planning areas in the 1987-1992 leasing program. But, as a result of Congressional and Presidential moratoria, and the consistent and united opposition of the West Coast states, no leases have been issued off California's shores since 1984. The moratoria against such leasing expired in 2008. Nonetheless, Interior has declined to include California's planning areas in any leasing programs adopted in the nearly 10 years since those moratoria ended, including in the current 2017-2022 leasing program. In deciding to

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1 *See* 43 U.S.C. § 1344.
2 43 U.S.C. §§ 1344(a); (a)(1); (a)(2).
3 43 U.S.C. § 1344(a)(2)(F).
4 43 U.S.C. § 1344(a)(2).

exclude California from leasing in the 2012-2017 and 2017-2022 programs, Interior specifically cited California's opposition to leasing as a key factor for its decision.[5]

In the 2019-2024 draft leasing program, BOEM presents the Secretary of the Interior ("Secretary") with only one option for lease sales in the Pacific Region. It consists of one lease sale in the Washington and Oregon Planning Area, and two lease sales each for California's Northern, Central, and Southern Planning Areas.[6] Given the West Coast states' continuous and consistent opposition to leasing in these planning areas, we are disappointed this was the only option presented for the Secretary's consideration for the Pacific Region.

BOEM does not present a reasoned basis for this leasing option or for changing the federal government's long-standing policy against scheduling lease sales for California's OCS. To the contrary, as discussed below, none of the factors in section 18 of the OCS Act support scheduling leases in California's OCS planning areas. In recognition of the State of California's opposition to lease sales off its coast, Interior should continue its long-standing practice of excluding California from OCS oil and gas leasing.

II. BOEM's Procedure for Adopting the 2019-2024 Draft Leasing Program

We object to the process by which BOEM adopted the draft leasing program. BOEM held only one public meeting in California, even though all 1,100 miles of our coastline are potentially impacted by OCS leasing. The single meeting in California was held in Sacramento, hundreds of miles from coastal communities that could be most directly affected by the program. Several state agencies and members of California's Congressional delegation requested additional meetings, but BOEM held none. At the very least, BOEM should schedule additional public meetings in coastal communities in California before issuing its Proposed Program. Meetings in directly affected communities would be consistent with BOEM's practice in adopting its prior programs. California should be afforded the same consideration BOEM gave to other parts of the nation in developing these previous programs.

We have similar concerns about how and why Secretary Zinke apparently excluded Florida's planning areas from the leasing program. Shortly after the 2019-2024 draft leasing program was issued, the Secretary met with Florida's governor and said that Florida would not be included in the program. The rationale the Secretary gave for this decision was that the governor was a leader who could be "trusted," and that Florida has a "unique" coastal economy and environment.[7] That determination did not appear to be based on any objective scientific or economic analysis or a fair consideration of the OCS Act section 18 factors. BOEM officials

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5 2012-2017 Proposed Final Outer Continental Shelf Oil & Gas Leasing Program 2012-2017, BOEM June 2012, at p. 14; 2017-2022 Outer Continental Shelf Oil and Gas Leasing Draft Proposed Program, BOEM January 2015 at 9.4.1.

6 2019-2024 draft leasing program at p. 10.

7 https://www.npr.org/sections/thetwo-way/2018/01/09/576938087/interior-secretary-zinke-florida-offshore-oil-drilling-is-off-the-table

later testified to Congress that Florida, in fact, remained in the program. We are concerned that Florida either has been excluded from the program based on political considerations, to the detriment of other States, or will later be excluded it from the Proposed Program based on a predetermination. Regardless, we request that BOEM clarify Florida's status, how leasing decisions were specifically reached as to Florida, and why BOEM views Florida's status differently from California's.

III. BOEM Must Consider Renewable OCS Resources and the Potential Impact of Oil and Gas Exploration on those Resources

BOEM's analysis in the 2019-2024 draft leasing program does not reflect the OCS Act's requirement that it manage the OCS in a manner which considers renewable resources.[8] BOEM acknowledges that it "has initiated the competitive planning and leasing process with the State of California for possible future leasing for offshore wind development," and also notes that a large portion of the Southern California planning area has been designated as a "California Special Emphasis Area" for renewable energy development.[9] Yet, the 2019-2024 draft leasing program does not include any quantification of the potential economic benefit of renewable energy development on the OCS, or the relative environmental risk of renewable development compared to oil and gas development. BOEM is working with state agencies and tribal and local governments as part of an offshore renewable energy task force. Consistent with the OCS Act, BOEM should use the information developed by this task force to fully analyze California's significant potential for offshore renewable energy before approving any program to lease for oil and gas off our coast.[10]

Nor does BOEM analyze how leasing for oil and gas development on California's OCS would impact potential offshore renewable energy development, either by physically displacing OCS areas where renewable energy could be developed, or by potentially damaging renewable energy infrastructure due to oil spills or similar accidents.[11] BOEM must consider these issues and manage the OCS consistent with the principle that renewable resources are to be valued.

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8 43 U.S.C. § 1344(a)(1).

9 2019-2024 draft leasing program 6.5.2.3; Figure 6-10.

10 *See* 2016 "Offshore Wind Energy Resource Assessment for the United States," *National Renewable Energy Laboratory*, available at https://www.nrel.gov/docs/fy16osti/66599.pdf.

11 *See* 43 U.S.C. § 1344(a)(2)(D).

IV. The Environmental Risks of OCS Oil and Gas Development Far Outweigh Any Developmental Benefit

A. California Is Familiar with the Environmental and Economic Consequences of Oil Spills from the OCS

California has a long and unfortunate history of environmental and economic damage from OCS oil production. The 1969 blowout of Union's Oil's Platform A in the Santa Barbara Channel—which BOEM inexplicably omits from its analysis in the 2019-2024 draft leasing program—resulted in an 11-day spill with as much as 4.2 million gallons of crude oil gushing from the well and the resulting faults.[12] Oil from the spill was found as far north as Pismo Beach and as far south as Mexico.[13] More than 800 square miles of ocean were covered with tar-black pitch.[14] Thousands of birds were killed along with seals and other marine mammals.[15] All commercial fishing was suspended and tourism suffered. Property damage along the shoreline was extensive.[16] BOEM should consider the 1969 spill, along with the *Exxon Valdez* and *Deepwater Horizon* spills, as relevant catastrophic spills for purposes of its oil spill analysis.[17]

Even relatively smaller spills from offshore oil installations can cause significant environmental and economic harm. In 1997, an undersea pipeline from Platform Irene to shore ruptured and released hundreds of barrels of oil in Northern Santa Barbara County. This spill killed more than 700 birds, damaged sandy and rocky shoreline habitat, and impacted recreational beach use. More than 20 years later, restoration projects are still ongoing.[18]

In 2015, between 100,000 and 140,000 gallons of crude oil spilled from a PXP pipeline near Refugio State Beach in Santa Barbara County, with 21,000 gallons flowing into the Pacific Ocean. Thousands of birds and marine mammals were killed and 138 square miles of fisheries were closed for six weeks.[19] The pipeline was used to transport oil and gas developed from California's OCS.[20] This incident and its aftermath—which BOEM ignores in the 2019-2024 draft leasing program —shows that the environmental risk from development of the OCS extends to the pipelines and other onshore facilities used to transport crude to market.

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12 https://response.restoration.noaa.gov/about/media/45-years-after-santa-barbara-oil-spill-looking-historic-disaster-through-technology.html

13 *Id.*

14 *California v. Norton*, 311 F.3d 1162, 1166 (9th Cir. 2002).

15 *Id.*

16 http://www.sbcountyplanning.org/energy/information/1969blowout.asp

17 *See* 2019-2024 draft leasing program 7.2.1.2.

18 https://www.wildlife.ca.gov/OSPR/NRDA/Torch-Platform-Irene

19 https://www.wildlife.ca.gov/OSPR/Science/Laboratories/Chemistry/Special-Projects/Fishery-Closure

20 http://www.sbcountyplanning.org/energy/projects/exxon.asp

B. California's Coastal Economy Should Not Be Put at Risk by Increased Oil and Gas Development on the OCS

California's thriving coastal economy—which represents over 10 percent of the national economy—should not be put at risk by increased development on the OCS. The coastal counties of California generate $1.7 trillion of GDP, a figure greater than all but 11 nations.[21]

In addition to its coastal economy, California's direct ocean-based economy is nationally significant. Our ocean-based tourism drives the American economy by creating demand for inland manufacturers and generates foreign visitors.[22] California's marine transportation economy is likewise nationally significant, with $331 billion in goods imported to the United States through California ports, and $99 billion in goods exported. California's coastline is thus a gateway to the entire United States.[23] At $45 billion, California's direct ocean economy accounts for 12 percent of the national total of ocean economy employment and 489,392 jobs, 14 percent of the national total.[24] Seventy-five percent of jobs are in the tourism and recreation sector.[25] Increased OCS oil and gas development would put this ocean-based economy at risk. The livelihoods of hundreds of thousands of Californians and the national economy should not be jeopardized.

Compounding our concerns, the impacts from a potential oil spill will not be limited to California's direct ocean-based economy.[26] Many visitors to California's interior also visit its coast. Thus, one of the reasons why California's tourism sector is so successful is because visitors to Sonoma County wineries or Disney World in Anaheim also enjoy visiting California's beaches. BOEM's consideration of equitable sharing, and its consideration of other uses of the sea and seabed must include an evaluation of all economic drivers located within California's coastal counties, not merely those that are directly linked to ocean activities.

BOEM states that California has a commercial fishing industry that adds $5 billion to the state's GDP.[27] This data is four years old, and does not accurately reflect the current vibrant state of California's fishing industry, particularly in Northern and Central California. Nor does it fully evaluate the importance of commercial fishing at smaller landings such as Morro Bay,

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21 *See* "The National Significance of California's Ocean Economy" National Oceanic and Atmospheric Administration, 2016 at p. 7. Available at: https://coast.noaa.gov/data/digitalcoast/pdf/california-ocean-economy.pdf

22 *Id.* at p. 1.

23 *Id.*

24 *Id.* at 10.

25 *Id.* at 11.

26 *See* "Economic Inventory of Environmental and Social Resources Potentially Impacted by a Catastrophic Discharge Event within OCS Regions" BOEM 2014 at 90.

27 2019-2024 draft leasing program 6.5.2.1.

Monterey, Crescent City, and elsewhere.[28] We urge BOEM to consider timely and accurate information about California's fishing industry in developing its OCS program.

C. Any Benefit of Increased OCS production to California Is Insignificant

These economic and environmental threats to California far exceed any economic benefit from increased oil and gas development on the OCS. In fiscal year 2016, California received only $1,648,042 in revenue sharing from OCS production, constituting a mere 0.0000096 percent of the state's $170.8 billion budget.[29] And current OCS operations off California's shores generate only about $250 million per year, a similarly small fraction of California's $2.5 trillion economy.[30]

The 2019-2024 draft leasing program states that "for OCS production to be able to support nearby communities, refineries would have to have enough excess capacity to refine or process the resources."[31] Yet, the 2019-2024 draft leasing program also acknowledges that California has little additional refinery capacity.[32] Thus, California's energy markets would not benefit from the proximity of any energy on its OCS.

BOEM states that Southern California communities would benefit from the extended life of onshore infrastructure previously developed to serve the OCS.[33] But, California's coastal communities and environment have in fact benefited from the *removal* of onshore infrastructure that previously supported offshore oil and gas development. For example, following the removal of the ARCO Dos Pueblos Pipeline in Santa Barbara County, the onshore area that formerly housed that oil and gas infrastructure was remediated and permitted for residential redevelopment and as open space, with the undeveloped land highly valued.[34] And, the decommissioning of Line 96 in Goleta resulted in the preservation of environmentally sensitive habitat used by protected monarch butterflies.[35] Because California's coastal lands are some of

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28 *See* https://caseagrant.ucsd.edu/project/discover-california-commercial-fisheries/statewide-commercial-fishery-activity

29 2019-2024 draft leasing program Table 8-2; https://www.documents.dgs.ca.gov/osp/governorsbudget/pdf/138610_2016_17_FinalBudSum_TEXT_r1_web.pdf

30 http://www.slc.ca.gov/Info/Reports/CalifOffshoreOil/Summary.pdf

31 2019-2024 draft leasing program 8.2.1.4.

32 2019-2024 draft leasing program 6.2.5.

33 2019-2024 draft leasing program 8.2.1.2.

34 http://www.sbcountyplanning.org/energy/projects/Arco-DP.asp; http://sbcountyplanning.org/projects/06CDH-00038/index.cfm

35 http://www.cityofgoleta.org/city-hall/planning-and-environmental-review/advance-planning-division/oil-and-gas/oil-and-gas-projects/line-96-decomissioning-project. Monarch

the most valuable and ecologically magnificent places in the world, the removal of onshore oil and gas infrastructure presents a far greater benefit to California's economy and environment than its extended use.

In addition, any job creation from OCS development would accrue primarily to the Gulf of Mexico states.[36] Thus, contrary to the OCS Act, California would shoulder a disproportionate impact created by increased OCS production off its shores, while any economic benefit would go to other regions of the country.[37]

V. The Needs of Regional and National Energy Markets Do Not Support Leasing of California's OCS

Congress enacted the OCS Act in the context of OPEC oil embargoes that greatly reduced the supply of oil and greatly increased its price. But the energy market is vastly different now from what it was in the 1970's and 1980's. Currently, there is a surplus of oil, and prices are low. Much of the surplus is due to onshore oil and gas development. The surplus of oil is projected to continue, and the Energy Information Agency expects the United States will become a net energy exporter by 2022, or even 2020, well within the span of the proposed five-year program.[38]

BOEM purports to justify additional OCS leasing by claiming there is an export market for heavy sulfurous crude such as that produced from the OCS, and the OCS Act's purpose supports the development of resources for export.[39] We dispute that legal premise. BOEM must analyze whether the proposed program helps to satisfy *domestic* needs for fuel security and net supply. BOEM cannot point to the fact that oil is bought and sold on international markets to justify increased production from the OCS. Contrary to Secretary Zinke's statements, a broad, generic desire to attain global "energy dominance" is simply not a sufficient basis to lease the OCS.[40]

And, even if increasing export capacity were a legitimate justification for OCS leasing, it appears that very little oil is exported from the West Coast Petroleum Administration for Defense

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butterflies are candidate species for an endangerment listing by the federal government. https://www.fws.gov/savethemonarch/SSA.html

[36] 2019-2024 draft leasing program 8.2.1.1.

[37] *See* 43 U.S.C. § 1344(a)(2)(B) (requiring an "equitable sharing of developmental benefits and environmental risks among the various regions").

[38] "Annual Energy Outlook," United States Energy Information Agency 2018, available at: https://www.eia.gov/outlooks/aeo/pdf/AEO2018_FINAL_PDF.pdf

[39] 2019-2024 draft leasing program 6.1.6.2.

[40] https://www.doi.gov/pressreleases/secretary-zinke-announces-plan-unleashing-americas-offshore-oil-and-gas-potential

District ("West Coast District"),[41] despite California being the third largest oil-producing state in the nation.[42] We therefore question whether increased OCS production off California would support any export market.

In addition, given the lack of onshore infrastructure, it is unlikely OCS production offshore would benefit regional energy markets in California. As already noted, the 2019-2024 draft leasing program finds that the West Coast District would need additional refinery capacity to allow the region to use resources from the Pacific OCS.[43] But given OCS production's potential significant adverse impacts, California's state and local governments might not find that additional onshore infrastructure associated with oil and gas is consistent with California and local law. Thus, the lack of refinery capacity weighs against scheduling leasing for the West Coast region.[44]

Unlike earlier draft proposed programs, the 2019-2024 draft leasing program defers its market simulation modeling of what sources of energy will take the place of OCS production in the absence of leasing to later phases of program development.[45] Interior should have analyzed at the draft program phase how local, state, regional, national, and international policies on climate change and renewable energy will impact regional and national energy markets. Regardless, whenever such analysis is performed, the model should fully and accurately take into account the effect of local, state, federal and international climate policies, such as California's SB 32 (Cal. Health & Saf. Code, § 38566), the federal Clean Power Plan, and the Paris Agreement.[46] These policies call for sharp reductions in greenhouse gas emissions and a

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41 One of five such districts, the West Coast Petroleum Administration for Defense District is made up of the States of California, Washington, Oregon, Alaska, Nevada and Arizona. (https://www.eia.gov/todayinenergy/detail.php?id=4890.) For purposes of its 2019-2024 draft leasing program, BOEM separated Alaska from the other states within the West Coast District. (2019-2024 draft leasing program Figures 6.4-6.7.)

42 2019-2024 draft leasing program Figure 6.9; https://www.eia.gov/state/analysis.php?sid=CA

43 2019-2024 draft leasing program 6.2.5.

44 As discussed *infra*, the current and foreseeable lack of onshore infrastructure in California to support OCS development should also be quantified as part of BOEM's Net Social Value and hurdle price analyses.

45 *Compare* Draft Proposed Outer Continental Shelf (OCS) Oil and Gas Leasing Program 2010–2015, Minerals Management Service 2009 at p. 78. *with* 2019-2024 draft leasing program 6.3.

46 Although the EPA is considering repeal of the Clean Power Plan (see https://www.epa.gov/stationary-sources-air-pollution/electric-utility-generating-units-repealing-clean-power-plan-0), BOEM should nevertheless analyze its effects as the Plan is the current law. And, although President Trump purported to withdraw the United States from the Paris International Climate Accord, 174 parties have ratified that accord and numerous state

transition away from fossil fuels over the coming decades, and are inconsistent with increased development of OCS resources.

Even though the market simulation model is not presented, the 2019-2024 draft leasing program says that because 92 percent of petroleum is used for transportation, the demand for oil and gas from the OCS will continue regardless of policies encouraging renewable energy.[47] We disagree. BOEM must consider California law and policy supporting increased use of alternative fuel vehicles. California intends to expand its Advanced Clean Cars Program, which increases the stringency of greenhouse gas (GHG) emissions for all light-duty vehicles, and will add at millions of zero-emission or hybrid plug-in vehicles by 2030.[48] California will use additional policy measures and invest billions of dollars to encourage the use of zero-emission vehicles across all vehicle classes to implement Governor Brown's recently announced target of 5 million zero electric vehicles in California by 2030.[49] China, India, the United Kingdom, the Netherlands, and other major economies are going to phase out the use of gas and diesel engines starting in 2025.[50] These policies will certainly reduce demand for petroleum. BOEM must consider the effect of these policies on the energy markets and weigh decreasing demand against environmental risk in its leasing decisions.

In addition to being considered as part of its energy market evaluation, BOEM should factor decreasing demand for petroleum into its quantification of net economic value and net social value, which are the metrics it uses to forecast the economic and social value of OCS oil and gas activity and production.[51] It should likewise be part of BOEM's hurdle price analysis, which is the metric BOEM uses to formally assess and compare planning areas to determine whether the economic and social value from leasing in the current leasing program is expected to be greater than waiting to lease an area. [52]

We also note that BOEM should analyze the market for finished petroleum products in the United States, not just the market for heavy crude from the OCS. The OCS Act requires this analysis. The 2019-2024 draft leasing program contains none.

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governments in the United States are adhering to its greenhouse gas emission reduction targets. *See* https://www.usclimatealliance.org/.

47 2019-2024 draft leasing program 6.3.

48 California Air Resource Board 2017 Scoping Plan at p. ES4, p. 137-138, available at: https://www.arb.ca.gov/cc/scopingplan/2030sp_pp_final.pdf

49 Executive Order B-48-18, available at https://www.gov.ca.gov/2018/01/26/governor-brown-takes-action-to-increase-zero-emission-vehicles-fund-new-climate-investments/.

50 http://www.businessinsider.com/countries-banning-gas-cars-2017-10.

51 2019-2024 draft leasing program 2.6.1, 2.6.2.

52 2019-2024 draft leasing program 10.1.2.

VI. The Lack of Industry Interest in Developing California's OCS Weighs Heavily Against Scheduling Lease Sales

The oil and gas industry has expressed very little interest in exploring California's OCS, indicating that BOEM should not move forward with lease sales here. Only one producer, Chevron, specifically expressed interest in a California planning area, and that was for Southern California, and as its least-preferred option.[53] A single joint comment from industry associations expressed interest in leasing in all regions.[54] And Statoil expressed interest in the Pacific region generally.[55] Aera, DCOR, Exxon, and Freeport-McMoRan, the companies that currently operate in California's OCS and are most familiar with it, did not submit any comments expressing interest in leasing off of California. This lack of industry interest should weigh heavily against scheduling lease sales in California's planning areas.

Industry has had a very difficult experience developing California's OCS, and BOEM should take that historic difficulty into account when determining whether to hold further lease sales for California's planning areas. As recounted in *Amber Resources Co. v. United States*, 538 F.3d 1358 (Fed. Cl. 2008), Interior issued 35 leases off California's shores from 1978 to 1984, and one in 1968. Interior granted a series of extensions and suspensions of these 36 leases. Following a suit by the State of California, the United States Court of Appeals for the Ninth Circuit found the lease suspensions were subject to consistency determinations under the Coastal Zone Management Act.[56] The California Coastal Commission objected to Interior's consistency determinations, and suspensions were never granted. The lessees sued Interior and were awarded $1.1 billion in restitution.[57] The owners of the 36 leases thus forced the federal government to buy their leases back rather than develop the leases themselves, indicating that it is unlikely that BOEM would receive fair market value for any leases it issues in California as part of the proposed program.

In addition, the composition of California's offshore oil and gas industry has greatly changed since Interior last issued leases here. In the 1980's, the major oil companies—including Chevron, Mobil, Conoco, and Exxon—leased tracts off California and sought to develop them. With the exception of Exxon, all the major companies have sold their operations off California, and smaller companies such as Aera, Venoco, DCOR, and Freeport-McMoRan, purchased the leases. Venoco recently declared bankruptcy, and Freeport-McMoRan sold many of its assets.[58] The absence of major companies in California reflects the maturity of the oil and gas fields here, and the lack of significant undiscovered assets.

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53 2019-2024 draft leasing program 9.1.

54 2019-2024 draft leasing program Appendix A-46.

55 *Id.*

56 *See California v. Norton*, 311 F.3d 1162 (9th Cir. 2002).

57 *Amber Resources*, 538 F.3d at 1367.

58 https://www.boem.gov/Venoco-LLC-Lease-Relinquishments/; http://www.keyt.com/news/santa-barbara-s-county/local-oil-and-gas-workers-losing-jobs/65599248

VII. California's Laws, Goals, and Policies Are Contrary to Increased Development from the OCS

The Secretary should consider California's laws, goals, and policies affected by his leasing decision for California's planning areas. These include:

- **The California Coastal Act** (Cal. Pub. Resources Code § 30000 et. seq.): The California Coastal Act is the federally-approved coastal management program for California under the Coastal Zone Management Act. The Act provides that California's marine environment and coastal resources are to be protected, and requires that any new development, including oil and gas facilities, maintain the biological productivity and quality of coastal waters. The Act demonstrates that California values public access, recreation, and environmental protection of its coast.

- **Public Trust Doctrine**: California holds and manages its sovereign tidelands and submerged lands pursuant to the common law and statutory public trust doctrine and for the benefit of the People of California. The public trust doctrine recognizes recreational uses and the preservation of public trust lands in their natural state for scenic, scientific study, and habitat values as public trust uses. Increased oil and gas development from the OCS increases the probability of oil spills as well as their potential magnitude, which in turn threatens the State's interest in these lands and the ability of its people to access and enjoy them.

- **California Coastal Sanctuary Act of 1994** (Cal. Pub. Resources Code, § 6240 et seq.): The State created a coastal sanctuary, in which, subject to narrow exceptions, all oil and gas development in state waters subject to tidal influence is banned because of the unacceptably high risk of damage and disruption to the marine environment of the State. The State's laws and policies mitigating the risk from an oil spill from state waters would be frustrated by increased development on the OCS.

- **California's Marine Protected Areas** (Cal. Pub. Resources Code, § 36710; Cal. Code Regs., title 14, § 632): California created a network of 147 marine protected areas and marine reserves where fishing and other commercial activity is restricted or prohibited in recognition of the unique ecological and recreational interests of these areas. These areas and California's management of them would be threatened by oil and gas leasing on the OCS.

- **California's Preparation for Sea Level Rise** (Cal. Pub. Resources Code § 6311.5): California has laws and policies encouraging local governments to prepare for sea level rise caused by climate change. This policy would be frustrated by increased hydrocarbon development from the OCS, the attendant increase in greenhouse gas emissions, and the resulting incremental increase in sea level rise caused by climate change.

- **California's Greenhouse Gas Emissions Reduction Target** (Cal. Health & Saf. Code § 38566): California provides that the State will reduce its greenhouse gas emissions 40 percent below 1990 levels by 2030. The California Air Resources Board is empowered to broadly regulate emissions from stationary and mobile sources to meet this directive. Increased OCS development could increase greenhouse gas emissions due to in-state transportation and refining. This would frustrate California's ability to meet its greenhouse gas reduction goals, and would harm the people and environment of California by increasing the negative effects associated with climate change.

VIII. BOEM's Analysis of Net Social Value and Hurdle Price Must Quantify the Current and Foreseeable Lack of Onshore Infrastructure, and the Offshore Environmental Cost Model Should Monetize Damages from Greenhouse Gas Emissions

BOEM states that it considers "basic constraints" of particular regions on oil and gas production when quantifying the net economic value of the 2019-2024 draft program, which is a key component of the net social value analysis.[59] But, BOEM's analysis never quantifies or considers the current and foreseeable lack of onshore infrastructure in California to support oil and gas development. Given the opposition to additional pipelines to support OCS development from the State Lands Commission, the requirements for development under the California Coastal Act, and local government policies restricting new or expanded oil and gas facilities on the coast, BOEM must factor the lack of onshore infrastructure into its calculation of the net economic value and net social value for California's planning regions.

The importance of the availability of onshore infrastructure to the production of oil and gas resources was recently illustrated in California by the closure of PXP Pipelines 901 and 903 in Santa Barbara County. Those pipelines were used to transport oil from the OCS, platforms in state waters, and onshore production facilities. After Pipeline 901 ruptured in 2015 and more than 100,000 gallons of crude oil spilled through a culvert under Highway 101 and across a state beach into the ocean, state and federal regulators shut the pipeline down.[60] Oil producers operating in California's OCS experienced significant economic losses as a result. Venoco LLC went bankrupt and quitclaimed its leases in state and federal waters.[61] Exxon's Platforms Harmony, Heritage, and Hondo were shut in.[62] Exxon's Las Flores Canyon processing facility

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59 2019-2024 draft leasing program Appendix B-7.

60 https://www.wildlife.ca.gov/OSPR/Science/Laboratories/Chemistry/Special-Projects/Fishery-Closure; http://www.sbcountyplanning.org/energy/projects/exxon.asp

61 https://www.boem.gov/Pacific-Lease-Management/.

62 In the petroleum industry, shutting in is the implementation of a production cap set lower than the available output of a specific site.

was closed, 425,000 barrels of crude oil were removed, and the facility is now being maintained in a preservation state.[63] Freeport-McMoRan's Platforms Harvest, Hermosa, and Hidalgo were also shut in.[64] Permitting for a replacement pipeline has not been completed.

BOEM must consider the serious impacts of the closure of this one pipeline on OCS production. And BOEM should quantify the added cost of exploring, producing, and transporting oil and gas from California's OCS in light of State and local opposition. Without this analysis, the 2019-2024 draft leasing program's net economic value and net social value, and choice of timing and location of lease sales based on hurdle price, are flawed.[65]

In addition, the net social value analysis should fully consider the impact of GHG emissions from increased OCS development. BOEM's Offshore Environmental Cost Model calculates the quantity of GHG emissions, yet does not monetize the damages from those emissions and include them in the costs associated with OCS development.[66] Instead, BOEM should calculate the social cost of GHG emissions using a methodology such as that adopted by the federal Interagency Working Group under Executive Order 12866, which has been widely used by federal and state agencies when considering climate change impacts.[67]

IX. BOEM's Consideration of Environmental Factors and Concerns Does Not Accurately Account for the Sensitivity of California's Marine Environment or Oil Spill Impacts, or for Potential Regulatory Changes

BOEM's Environmental Sensitivity Index, which purports to comparatively evaluate the OCS planning areas' sensitivity to oil spills and other impacts from OCS oil and gas development appears to be based on inaccurate or incomplete science. We seriously question the low rating assigned to the California Current, given that it is one of the greatest up-wellings of cold water in the world, and is highly sensitive to climate change impacts. As noted in more detail in comments by the California Natural Resources Agency and California Coastal

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63 http://www.sbcountyplanning.org/energy/projects/exxon.asp

64 http://www.keyt.com/news/santa-barbara-s-county/local-oil-and-gas-workers-losing-jobs/65599248

65 We note that, despite the apparent flaws in the hurdle price analysis, the 2019-2024 draft leasing program nevertheless indicates that the Central California planning area should be excluded from leasing based on that metric. (2019-2024 draft leasing program 10.4.) And, as the 2019-2024 draft leasing program notes, much of that planning area is comprised of National Marine Sanctuaries, where oil and gas development would be prohibited by law. (2019-2024 draft leasing program 4.2.3.)

66 2019-2024 draft leasing program Appendix B-11.

67 The social cost of GHGs methodology and values is discussed in more detail in comments on the 2019-2024 draft leasing program submitted by the California Air Resources Board.

Commission, BOEM must consider the best science when quantifying impacts to California's unique and productive marine environment.

In addition, we are concerned that BOEM did not properly consider potential impacts to the environment from oil spills. BOEM considers certain spills as "relevant" in its analysis, but not others. As we already noted, BOEM did not even consider the 1969 Santa Barbara Oil Spill, the third largest in American history. That historic spill should be deemed "relevant" for BOEM's consideration along with the four analyzed spills.[68] In addition, BOEM should consider spills from pipelines and other infrastructure associated with OCS development, not just well control events, which the 2019-2024 draft leasing program discusses in section 7.2.1.2. As illustrated by the Refugio Beach spill in 2015, "large" spills can and do occur from onshore infrastructure associated with OCS development. It is unclear whether BOEM considers such spills in the quantification presented in 2019-2024 draft leasing program's Table 7-4. If not, the quantitative approach taken in the 2019-2024 draft leasing program as to the likelihood of a spill from increased OCS development is fundamentally inaccurate.

We also note that while BOEM states that safeguards for drilling, development and production increased in the post *Deepwater-Horizon* era, it does not consider the effect of any proposed changes to safety regulations.[69] BOEM should consider any changes to the Bureau of Safety and Environmental Enforcement's Safety Systems Rule or Well Control Rule, or to Information Collections related to environmental data from the OCS as part of its analysis of environmental factors and concerns.

X. California's Planning Areas Should Be Excluded from Leasing

Fairly balancing the OCS Act section 18 factors would exclude California's planning areas from leasing. California and the nation have economically benefited from California's highly productive ocean and coastal economies, and would continue to do so in the absence of any leasing. The risk from an oil spill to California's coastal zone and the attendant air and water pollution from offshore leasing in our state far outweigh any benefit. The regional and national energy markets are going to be increasingly based on renewable sources, and BOEM should continue to work with California to plan and develop offshore renewable energy rather than proceed with oil and gas leasing in the face of widespread and deeply-held opposition. For the reasons discussed in this letter, and those presented by California's state and local coastal governments, we respectfully request that you exclude California's planning areas from leasing in the forthcoming Proposed Program.

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68 *See* 2019-2024 draft leasing program 7.2.1.2.

69 *Id.*

SCOPING COMMENTS ON DRAFT ENVIRONMENTAL IMPACT STATEMENT

I. Introduction

At the outset, we remind BOEM that it must scrupulously follow the National Environmental Policy Act ("NEPA")'s requirements in preparing its leasing program. We strongly disagree with BOEM's assertion that its decision to prepare a Programmatic Environmental Impact Statement (PEIS) is discretionary, and it is not obligated by law to follow NEPA.

The California Attorney General urges BOEM to fully analyze all direct, indirect, and cumulative impacts and a range of alternatives for its proposed leasing program, and to integrate that effort into the Secretary of Interior's decision on whether to schedule lease sales for California's three OCS planning areas.

California's beautiful coastline is home to a rich marine environment and coastal economy that would be potentially impacted by OCS leasing. There are multiple national marine sanctuaries off California's shores, as well as national parks and recreation areas, and state parks and recreation areas, on its coast. California's population and economy rely heavily on its coast. Economic impacts, air quality impacts, and impacts related to climate change on California's coast are all foreseeable from leasing. The United States Military also operates multiple facilities in or adjacent to all of California's planning areas that could be impacted by leasing.

BOEM must consider all foreseeable impacts. For instance, the lack of onshore infrastructure, and the opposition of California's state and local governments to additional pipelines and onshore infrastructure to support OCS leasing should be part of BOEM's analysis.

The draft proposed program calls for leasing almost all of the American OCS, and the simultaneous leasing in multiple areas would have a dramatic cumulative environmental, social, and economic impact. We urge BOEM to fully analyze and consider all cumulative impacts in its decision-making.

We further request that BOEM consider a range of reasonable alternatives as part of its NEPA process, including a renewable energy alternative.

II. Specific Comments

A. Adequacy of Scoping

The scoping under NEPA for this EIS has been inadequate, as only one public meeting has been held in California, although more than 1,100 miles of California coastline are potentially subject to OCS leasing. In addition, the single meeting held in California was in Sacramento, a non-coastal location that is miles from most affected areas. BOEM's scoping for

this program's EIS stands in contrast to its scoping for prior programs, where BOEM held multiple scoping meetings in coastal communities that would be impacted by leasing.[70] BOEM relies on scoping to identify environmentally important areas that are used in its consideration of mitigation measures and alternatives analysis.[71] We therefore urge BOEM to hold public meetings in coastal communities in California to better understand foreseeable environmental impacts from its OCS program.

B. Activities to Be Considered

The draft PEIS for the 2019-2024 plan should consider impacts from at least those activities analyzed in the PEIS for the 2017-2022 plan. Specifically, it should consider impacts from at least the following:

Exploration: The draft PEIS should consider impacts resulting from exploration of potential hydrocarbon resources on the OCS. This includes analyzing the impacts of conducting seismic and other geophysical surveys, as well as drilling of exploratory wells to determine the presence and extent of hydrocarbon resources in a particular location.

Development: The draft PEIS should consider impacts resulting from the drilling of development wells, as well as construction of the infrastructure necessary to support commercial drilling. Such infrastructure includes production platforms and seafloor pipelines. It also includes facilities for the processing, refining, or storage of oil or natural gas.

Production: The draft PEIS should consider impacts resulting from the production of oil and gas, including the extraction of oil or gas through hydraulic fracturing or other means; transportation of oil or gas to processing facilities; processing, storage, or refining of crude oil or natural gas; and maintenance of production wells, platforms, and other infrastructure.

Decommissioning: The draft PEIS should consider impacts resulting from the decommissioning of production infrastructure. Decommissioning would include plugging wells, removing platforms and other facilities, and removing or treating pipelines.

Spills and related events: In connection with all stages listed above, the PEIS should consider impacts potentially resulting from those spills and related events that are expected to occur over the life of the leases proposed. The PEIS should also consider impacts potentially resulting from low-probability catastrophic discharge events, such as the 1969 Oil Spill from Platform A in the Santa Barbara Channel, and the *Deepwater Horizon* and *Exxon Valdez* disasters.

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70 See DEIS 2017-2022 Program at 1.4.1.

71 *Id.* at 1.4.5.

C. Impact-Producing Factors

The draft PEIS for the 2019-2024 plan should consider at least the impact-producing factors analyzed in the PEIS for the 2017-2022 plan. Specifically, it should consider impacts from at least the following:

Noise: The draft PEIS should consider noise impacts from OCS development, including undersea impacts. Specifically, it should consider the impact of noise associated with geophysical surveys, ships, aircraft, drilling operations, production and extraction of oil, trenching pipelines, offshore and onshore construction, explosives and other means of removing production platforms, and military training and similar exercises.

Traffic: The draft PEIS should consider traffic impacts, including impacts from aircraft and marine vessels.

Routine discharges: The draft PEIS should consider impacts from routine discharges. Specifically, it should consider impacts from sanitary waste, gray water (domestic waste) and other miscellaneous discharges, produced water, fluids associated with well completion activities and enhanced recovery operations, drilling muds and associated cuttings, and loss of debris, including on the sea floor.

Bottom and Land Disturbance: The draft PEIS should consider impacts from disturbance of the sea floor and of land onshore. Specifically, it should consider sea floor impacts from drilling, structure emplacement, anchoring, pipeline trenching, and removal of pipelines and other structures. It should also consider impacts from the construction of onshore infrastructure such as ports and support facilities, transportation facilities, processing and storage facilities, and construction facilities.

Air emissions: The draft PEIS should consider air emission impacts, including emissions from offshore activities (such as vessel operations, drilling activities, and evaporation of volatile organic compounds), as well as emissions from onshore infrastructure.

Lighting and physical presence: The draft PEIS should consider physical presence and lighting impacts, both offshore and onshore. Offshore, the draft PEIS should consider such impacts from platforms, vessels, mobile offshore drilling units, and other structures. Onshore, the draft PEIS should consider such impacts from onshore infrastructure such as ports and support facilities, transportation facilities, processing and storage facilities, and construction facilities.

Visible infrastructure and activities: The draft PEIS should consider visual and aesthetic impacts from onshore and offshore infrastructure and activities associated with oil and gas exploration and drilling.

Space-Use Conflicts: The draft PEIS should consider space-use conflicts resulting from offshore and onshore infrastructure and operations. Offshore, the draft PEIS should consider conflicts with uses such as fishing, renewable energy, and military activities. Onshore, it should consider conflicts resulting from the planning and siting of infrastructure such as ports and support facilities, transportation facilities, processing and storage facilities, and construction facilities.

D. Potentially Affected Resources

The draft PEIS for the 2019-2024 plan should consider potential impacts from the foregoing factors on at least the resources analyzed in the PEIS for the 2017-2022 plan. Specifically, it should consider impacts on at least the following:

Air Quality: The draft PEIS should consider air quality impacts from emissions of criteria pollutants and other pollutants, such as greenhouse gases.

Water Quality: The draft PEIS should consider water quality impacts, including changes in temperature, salinity, dissolved oxygen, chlorophyll levels, nutrient levels, pH, Eh, pathogen levels, transparency, and contaminant levels.

Coastal and Estuarine Habitats: The draft PEIS should consider impacts to coastal and estuarine habitats, which vary regionally and can include wetlands, bays, barrier islands, submerged aquatic vegetation, and beaches.

Marine Benthic Communities: The draft PEIS should consider impacts to marine benthic communities in areas potentially affected by oil and gas exploration, including impacts to invertebrate populations and sea floor habitats.

Pelagic Communities: The draft PEIS should consider impacts to pelagic communities in areas potentially affected by oil and gas exploration, including impacts to pelagic organisms and habitats.

Marine Mammals: The draft PEIS should consider impacts on marine mammals, including whales, dolphins, seals, and manatees.

Sea Turtles: The draft PEIS should consider impacts on sea turtles, various species of which are distributed across planning areas.

Birds: The draft PEIS should consider impacts on birds, including those resident in particular planning areas as well as those present seasonally, such as during migration along one of the United States' four major flyways.

Fishes and Essential Fish Habitat: The draft PEIS should consider impacts on fish resources (including shellfish and other invertebrates) and areas designated as essential fish habitat, including those areas designated as habitat areas of particular concern.

Archaeological and Historical Resources: The draft PEIS should consider impacts on archaeological and historical resources, including shipwrecks, archaeological sites that pre-date or post-date first contact between indigenous and non-indigenous peoples, and historical structures such as lighthouses. The draft PEIS should consider impacts to traditional cultural and religious practices.

Population, Employment, and Income: The draft PEIS should consider impacts on population, employment, and income levels and distribution in the various planning areas, including changes in the nature of employment.

Land Use and Infrastructure: The draft PEIS should consider impacts on land use and infrastructure, including impacts on existing recreational and commercial use as well as the introduction of new oil and gas infrastructure.

Commercial and Recreational Fisheries: The draft PEIS should consider impacts on fisheries and fishing, whether for commercial or for recreational purposes, including in those areas outside federal waters that could be affected by offshore oil and gas activities.

Tourism and Recreation: The draft PEIS should consider impacts on tourism and recreation, including fishing, kayaking, hiking, boating, sightseeing, beach-going, swimming, surfing, diving and wildlife viewing.

Sociocultural Systems: The draft PEIS should consider impacts on sociocultural systems, including impacts on port and maritime communities and economies, indigenous peoples, and communities that rely on subsistence fishing and hunting.

Cultural Impacts and Tribal Consultation: Under NEPA, BOEM is required to evaluate impacts on cultural resources. BOEM must consult with Native American tribes whose cultural resources would be impacted by leasing in California's OCS. Tribal consultation should take place early in the process, and should include both federally-recognized tribes and tribes listed by the State of California.[72]

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[72] BOEM cannot defer its tribal consultation obligations under NEPA to the exploration and development phases of its leasing program, nor can it substitute its obligations under NEPA to section 106 consultation under the National Historic Preservation Act. Federal agencies are encouraged to promptly consult with tribes on impacts to tribal cultural resources, and other federal agencies have engaged in section 106 consultation in connection with programmatic environmental impact statements. (*See, e.g.*, http://solareis.anl.gov/eis/106/index.cfm.)

Environmental Justice: The draft PEIS should consider the extent to which environmental or health impacts would disproportionately impact low-income or minority populations.

E. Cumulative Impacts

At the programmatic stage, BOEM is required to consider cumulative impacts from its 2019-2024 leasing program. That means that it must consider the impacts of this program when combined with impacts from simultaneous leasing of all planning areas throughout the nation. These should include cumulative climate impacts; cumulative noise impacts; and cumulative vessel traffic impacts, including ship strike impacts that injure or kill marine mammals.

F. Alternatives

We are opposed to the scheduling of any lease sales for California's planning areas for the reasons set forth in our comments on the draft proposed program. Nevertheless NEPA requires that BOEM consider a wide range of reasonable alternatives. Some alternatives that should be considered include, but are not limited to, the following:

- *No action:* The draft PEIS should consider a no-action alternative that does not propose any new leasing program at this time.

- *No Lease Alternative for California's Planning Areas*: BOEM should consider excluding California's planning areas from its leasing program.

- *No Lease Alternative for the Pacific Region*: BOEM should consider excluding the four planning areas in the Pacific Region from leasing.

- *No Lease Alternative for the Pacific and Atlantic Regions:* BOEM should consider excluding the four planning areas in the Pacific Region and the four planning areas in the Atlantic region from leasing.

- *Renewable Energy Alternative*: BOEM should consider using the OCS for renewable energy development rather than oil and gas development. BOEM manages both oil and gas development from the OCS and renewable energy development from the OCS. Therefore, BOEM has the jurisdiction to consider this alternative. A renewable energy alternative is reasonable because increasing onshore oil and gas production adequately meets the nation's needs for petroleum products, and the Outer Continental Shelf Lands Act does not require BOEM to recommend leasing to the Secretary. There is an increasing demand for renewable energy, and state policies, such as California's SB 32, federal policies such as the Clean Power Plan, and international agreements such as the Paris

Agreement require the implementation of renewable energy as a measure to reduce greenhouse gas emissions.

If a new leasing program is ultimately submitted to the Secretary for approval, we reserve our right to submit additional comments on a draft or final Environmental Impact Statement.

We thank Interior for the opportunity to submit these comments, and reiterate our strong opposition to new oil and gas leasing off of California's coast.

Sincerely,

BAINE P. KERR
Deputy Attorney General
JAMEE JORDAN PATTERSON
Supervising Deputy Attorney General

For XAVIER BECERRA
Attorney General