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10 *Attorneys for Plaintiffs*
 11 *Center for Biological Diversity and Sierra Club*

12 **IN THE UNITED STATES DISTRICT COURT**
 13 **FOR THE DISTRICT OF NEVADA**

14
 15 CENTER FOR BIOLOGICAL
 DIVERSITY, and SIERRA CLUB

16 Plaintiffs,

17 v.

18 U.S. BUREAU OF LAND
 19 MANAGEMENT; RYAN ZINKE, in his
 capacity as Secretary of the Department of
 20 the Interior; and BRIAN STEED, in his
 capacity as Acting Director of the Bureau of
 21 Land Management,

22 Defendants.

Case No. 3:17-cv-00553-LRH-WGC

**PLAINTIFFS' NOTICE OF MOTION AND
 MOTION TO EXTEND THE TIME FOR
 PLAINTIFFS TO CHALLENGE THE
 CONTENT AND SCOPE OF THE
 ADMINISTRATIVE RECORD;
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT THEREOF**

1 **NOTICE OF MOTION**

2 Plaintiffs Center for Biological Diversity, et al. will and hereby do move for an order extending the
3 deadline for Plaintiffs to file a motion challenging the content and scope of the administrative record.
4 This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities,
5 the declaration of Clare Lakewood, all pleadings and papers filed in this action, and such oral and
6 documentary evidence as may be presented at the hearing on this matter. For the foregoing reasons,
7 Plaintiffs respectfully request that the Court order that their deadline to file a motion challenging the
8 content and scope of the administrative record be extended to May 24, 2018.

9 DATED: April 27, 2018

10 /s/ Clare Lakewood

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21 *Attorneys for Plaintiffs*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Plaintiffs Center for Biological Diversity and Sierra Club (“Plaintiffs”) respectfully request
4 that this Court extend by two weeks the deadline for challenging the content and scope of the
5 administrative record, set out in paragraph 2 of the Revised Joint Case Management Statement filed
6 March 30, 2018 (ECF No. 23, p. 3). Plaintiffs’ current deadline for challenging the record is April
7 27, 2018 and they request an extension until May 24, 2018.

8 Under the Administrative Procedure Act, “the court shall review the whole record or those
9 parts of it cited by a party.” 5 U.S.C. § 706. “[T]he whole record is not necessarily those documents
10 that the agency has compiled and submitted as ‘the’ administrative record, [but, rather,] the court
11 must look to all the evidence that was before the decisionmaking body.” *Public Power Council v.*
12 *Johnson*, 674 F.2d 791, 794 (9th Cir. 1982) *See also Env’tl. Defense Fund v. Blum*, 458 F. Supp. 650,
13 661 (D.D.C. 1978) (improper “to exclude from consideration pertinent material submitted as an
14 integral part of the rulemaking process or otherwise located in EPA’s own files” even if agency did
15 not rely on it).

16 Defendants lodged an administrative record with the Court on April 13, 2018. A large
17 number of documents forming part of the record in this case were not included in that administrative
18 record. The omitted documents were various scientific studies, reports, white papers, newspaper
19 articles and other documents cited in comment letters and protests Plaintiffs provided to Defendants.
20 Ex. A, Declr. of C. Lakewood (Apr. 27, 2018). Defendants have agreed that any documents provided
21 by Plaintiffs to Defendants before the decisions challenged in this case properly form part of the
22 record, and have agreed to lodge a supplement with the Court.

23 Unfortunately, despite extensive conferral by telephone and by e-mail, parties have been
24 unable to agree on a further revision to the Revised Joint Case Management Statement to preserve
25 Plaintiffs’ right to challenge the content and scope of the administrative record after the supplement
26 is lodged. The current Revised Joint Case Management Statement provides Plaintiffs with two weeks
27 from the lodgment of the administrative record to review and prepare any challenge to the
28 administrative record.

1 On the understanding that Defendants intend to lodge the supplement by May 9, Plaintiffs
2 seek an extension of the deadline for challenging the content and scope of the administrative record
3 or notice that Plaintiffs do not challenge the content and scope of the administrative record, of two
4 weeks from May 9, 2018, being May 23, 2018.

5 The two-week extension mirrors the two-week period parties agreed for Plaintiff to challenge
6 the record under the current Revised Case Management Statement. It will ensure that Plaintiffs have
7 sufficient time to review the record in its entirety, and preserves their right to complete or
8 supplement the record. This in turn ensures that this Court has before it all materials that were before
9 the decisionmaker when it made its decisions, and that Plaintiff can fully argue its case by reference
10 to those materials; while aiding the parties to resolve outstanding issues with the administrative
11 record without further orders from the court. The two-week extension requested will not delay
12 resolution of the matter, as the briefing schedules set out in the Revised Case Management Statement
13 otherwise remains unaltered.

14 Counsel for Defendants has indicated that Defendants does not oppose Plaintiffs' motion to
15 extend the time for Plaintiffs to challenge the record only if:

- 16 i) Plaintiffs extension of time is only until May 16, 2018; and
- 17 ii) The subject matter of any challenge is limited only to a failure by BLM to include in
18 the supplement the documents provided by Plaintiffs to BLM and identified by
19 Plaintiffs in the spreadsheet it provided on May 26, 2018.

20
21 DATED: April 27, 2018

Respectfully submitted,

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24 **IT IS SO ORDERED**

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26 Dated: April 30, 2018

_____ /s/ Clare Lakewood

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28 _____
UNITED STATES MAGISTRATE JUDGE

CLARE LAKEWOOD (CA Bar No. 298479),
pro hac vice

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Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 I certify that on April 27, 2018, I filed the foregoing Motion for an Extension of Time to
3 Challenge the Administrative Record and Memorandum of Points and Authorities Thereof on behalf
4 of Plaintiffs Center for Biological Diversity and Sierra Club via the CM/ECF system which will
5 provide electronic service to all counsel of record.
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8 DATED: April 27, 2018

9 /s/ Clare Lakewood

10 CLARE LAKEWOOD
11 *Attorney for Plaintiffs*
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