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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

PIT RIVER TRIBE; NATIVE COALITION FOR MEDICINE LAKE HIGHLANDS DEFENSE; MOUNT SHASTA BIOREGIONAL ECOLOGY CENTER; and MEDICINE LAKE CITIZENS FOR QUALITY ENVIRONMENT,

Plaintiffs,

v.

BUREAU OF LAND MANAGEMENT; UNITED STATES DEPARTMENT OF THE INTERIOR; CALPINE CORPORATION; and CPN TELEPHONE FLAT, INC.,

Defendants.

Case No. 2:19-cv-02483-JAM-AC

FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

INTRODUCTION

1. This is an action for declaratory judgment and injunctive relief in connection with the continuing existence of federal Geothermal Resources Lease identified as No. CA12372 ("Lease"), issued by the Bureau of Land Management ("BLM"), and the BLM-managed Glass Mountain Unit, created by the Unit Agreement for the Development and Operation of the Glass Mountain Area ("Unit Agreement"), on public land in northeastern California. The Lease is currently held by Calpine Corporation or its wholly owned subsidiary CPN Telephone Flat, Inc. (collectively "Calpine"). Pursuant to the Unit Agreement, as amended over time, Calpine is also the operator of the Glass Mountain Unit and the sole owner of all federal geothermal leases remaining in the Unit.

2. Plaintiffs challenge the current and ongoing validity of the Lease on the grounds that BLM and the United States Department of the Interior (collectively "Federal Defendants") are engaged in an ongoing failure to comply with their mandatory duty to terminate the Lease, as required by the Geothermal Steam Act, 30 U.S.C. § 1001 et seq., its implementing regulations at 43 C.F.R. Part 3200 et seq., and the Lease itself, in response to Calpine's continuing refusal to make diligent efforts toward the utilization of geothermal resources. Plaintiffs do not, by way of this case, challenge or intend to challenge BLM's issuance of the Lease in 1982, BLM's conclusion in 1989 that the Lease at that time contained a well capable of producing geothermal steam in commercial quantities, or BLM's decision in 1991 to continue the Lease for so long thereafter as Calpine undertakes diligent efforts to produce and utilize geothermal in commercial quantities.

3. Plaintiffs also challenge Federal Defendants' ongoing failure to comply with their mandatory duty to terminate the Unit Agreement, as required by the Geothermal Steam Act, its implementing regulations, and the Unit Agreement itself, in response to Calpine's ongoing default under the Agreement, including its failure to pursue a continuous program of exploratory drilling or to commence actual production of geothermal resources on any lease in the Unit. BLM's long-standing violation of its clear statutory and regulatory mandates has allowed Calpine to continue holding more than two dozen federal leases for many years without conducting any meaningful

exploration or taking any meaningful steps toward development and utilization, at the expense of other multiple use values on the leased public lands and to the detriment of Plaintiffs.

4. Plaintiffs seek an order: (1) declaring that because Calpine is not in compliance with the requirements of the Geothermal Steam Act, its implementing rgulations, the Lease, and the Unit Agreement, Federal Defendants are in ongoing violation of the requirements of the Geothermal Steam Act and its implementing regulations to terminate the Lease and the Unit Agreement; (2) directing Federal Defendants to terminate the Lease and Unit Agreement; and (3) enjoining any further activity in reliance on the Lease or Unit Agreement.

JURISDICTION AND VENUE

5. The Court's jurisdiction over this action is conferred by 28 U.S.C. §§ 1331 (federal question), 1346 (United States as defendant), 1362 (suits brought by Indian Tribes) and/or 2201-2202 (declaratory and injunctive relief).

6. Venue is properly vested in this Court under 28 U.S.C. §§ 1391(b)(1), 1391(b)(2) and/or 1391(e)(1) because all Defendants reside in California, Defendant BLM has an office in the Eastern District of California, and some of the events or omissions giving rise to the claims occurred in the Eastern District of California.

PARTIES

7. Plaintiff PIT RIVER TRIBE (Ahjumawi-Atsuge Nation or "Tribe") is a federally recognized sovereign Indian Tribe consisting of eleven autonomous bands. The Tribe is located in parts of Shasta, Siskiyou, Modoc and Lassen Counties, and its ancestral territory includes Medicine Lake and the surrounding Highlands. In 1987, the United States Department of the Interior, acting through its Assistant Secretary, formally approved the Constitution adopted by the Pit River Tribe, acknowledging the Tribe's ancestral lands, including Medicine Lake and the surrounding Highlands, and the Tribe's relationship with these lands. The Tribe and its individual members have a long history of using Medicine Lake and the Highlands for religious and cultural purposes. For at least 10,000 years, members of the Pit River Tribe have used Medicine Lake and the Highlands for religious activities such as vision quests, religious prayers and teaching, traditional shaman/doctoring practices, life cycle ceremonies, collection of traditional foods,

medicines, and materials, spiritual renewal, and quiet contemplation. The Ahjumawi and Atwamsini Bands of the Tribe continue to use the Medicine Lake Highlands area for these cultural and religious purposes, and the area in its entirety is extremely significant to the cultural continuity of these bands and to the Tribe as a whole. The Tribe and its individual members derive spiritual, cultural, religious, health, environmental and aesthetic benefits from Medicine Lake and the Highlands. These benefits depend on the physical, environmental, and visual integrity of these areas, and their quietude. The exploration and development of geothermal leases will interfere with these positive qualities of Medicine Lake and the Highlands. Thus, the interests of the Pit River Tribe and its members have been, are being, and, unless the relief requested herein is granted, will continue to be, injured by Defendants' failure to comply with applicable law in connection with the Lease and Unit Agreement.

8. Plaintiff NATIVE COALITION FOR MEDICINE LAKE HIGHLANDS DEFENSE ("Native Coalition") is a non-profit organization dedicated to the preservation of cultural and environmental values in the Medicine Lake Highlands, which are sacred not only to the Pit River Tribe but also to other Tribes of northeastern California and southeastern Oregon. The Native Coalition includes among its members the California Council of Tribal Governments, the Intertribal Council of California, and representatives from the Pit River, Modoc, Karuk, Shasta and Wintu Tribes. Members of the Native Coalition use Medicine Lake and the Highlands for a variety of spiritual and traditional cultural purposes, such as religious prayers, spiritual quests and teaching, traditional shaman/doctoring practices, life cycle ceremonies, collection of traditional foods, medicines, and material, quiet contemplation and general spiritual renewal. These purposes depend on the physical, environmental, and visual integrity of these areas, and their quietude. The exploration and development of geothermal leases will interfere with these positive qualities of Medicine Lake and the Highlands. Thus, the interests of the Native Coalition and its members have been, are being, and, unless the relief requested herein is granted, will continue to be injured by Defendants' failure to comply with applicable law in connection with the Lease and Unit Agreement.

9. Plaintiff MOUNT SHASTA BIOREGIONAL ECOLOGY CENTER ("Ecology Center") is a non-profit public benefit corporation formed in 1988 and incorporated in 1991 for the purpose of advancing public understanding of, and respect for, the environmental and cultural resources of Mount Shasta and the surrounding area, including the Medicine Lake Highlands. The Ecology Center works closely with Native American tribal representatives and advocates for protection of the Native American traditional cultural values and resources that exist within the Medicine Lake Highlands. The Ecology Center's members use and enjoy Medicine Lake and the Medicine Lake Highlands for recreational activities, scientific research and spiritual fulfilment, and derive spiritual, recreational, health, conservation, scientific and aesthetic benefits from the preservation of the area in its natural state. These benefits depend on the physical, environmental, and visual integrity of these areas, and their quietude. The exploration and development of geothermal leases will interfere with these positive qualities of Medicine Lake and the Highlands. Thus, the interests of the Ecology Center and its members have been, are being, and, unless the relief requested herein is granted, will continue to be injured by Defendants' failure to comply with applicable law in connection with the Lease and Unit Agreement.

10. Plaintiff MEDICINE LAKE CITIZENS FOR QUALITY ENVIRONMENT ("Medicine Lake Citizens") is a nonprofit public benefit corporation formed in 1998 for the purpose of educating the public about the unique environmental and spiritual resources of Medicine Lake and its surrounding forests, mountain peaks, scenic vistas, unusual volcanic structures and plentiful wildlife. The members of Medicine Lake Citizens use and enjoy Medicine Lake and the Highlands for hiking, photography, bird observation, fishing, hunting, nature study, aesthetic enjoyment and the collection of forest products for arts and crafts. These benefits depend on the physical, environmental, and visual integrity of these areas, and their quietude. The exploration and development of geothermal leases will interfere with these positive qualities of Medicine Lake and the Highlands. Thus, the interests of Medicine Lake Citizens and its members have been, are being, and, unless the relief requested herein is granted, will continue to be injured by Defendants' failure to comply with applicable law in connection with the Lease and Unit Agreement.

11. Plaintiffs collectively have an interest in the orderly and lawful administration of geothermal resources in the Medicine Lake Highlands area, including the timely review and termination of leases and other agreements relating to lands that cannot be or are not being used to produce geothermal steam. The unlawful continuing existence of such leases and other agreements with private parties prevents Plaintiffs from fully accessing the public lands at issue in this case and from pursuing their interest in long-term protection and sustainable management of these lands and their natural resources. For instance, Plaintiffs have petitioned the U.S. Forest Service, pursuant to the Administrative Procedure Act, to amend relevant existing land and resource management plans in a way that is consistent with the Forest Service's Historic Properties Management Plan for these lands, which was developed with Plaintiffs assistance over many years, but has never been fully implemented. The Forest Service is unlikely to implement this plan while geothermal leases continue to exist, to the detriment of Plaintffs.

12. Defendant BUREAU OF LAND MANAGEMENT ("BLM") is an agency within the United States Department of the Interior charged with managing certain lands and natural resources owned by the federal government, including subsurface geothermal resources within the Glass Mountain Unit. BLM issued the Lease and Unit Agreement at issue in this case. BLM's decisions and communications regarding the Lease, Glass Mountain Unit, and Unit Agreement originated from BLM's California State Office.

13. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR is ultimately responsible for ensuring that the federal geothermal resources at issue in this lawsuit are managed in accordance with applicable law and for ensuring that BLM complies with its duties under law. The Office of Environmental Policy and Compliance within the Department of the Interior, by its own description, "provides for a coordinated and unified approach and response to environmental issues that affect multiple bureaus" and "provides guidance for the Department's compliance with the full range of existing environmental statutes, executive orders, regulations and other requirements." The Department's regional Office of Environmental Policy and Compliance for the region covering California, Nevada, and Arizona is located in San Francisco, California.

14. Defendant CALPINE CORPORATION is a for-profit corporation with regional headquarters in Dublin, California that oversees the corporation's renewable energy development in California. According to Calpine Corporation's website, Calpine owns and operates twenty-four power plants and maintains five corporate offices in California, including in Dublin, Alameda County, California. Calpine Corporation's founding office in San Jose, California served as its corporate headquarters until 2009 during much of the period covered by Plaintiffs' claims in this case. All recent communications from Federal Defendants in regard to the Lease and Unit Agreement have been directed to Calpine Corporation in Middletown, California.

15. Defendant CPN TELEPHONE FLAT, INC. is a wholly owned subsidiary of Calpine Corporation currently operating from Middletown, California, and is an entity with whom BLM also regularly corresponds regarding compliance with the Lease and Unit Agreement.

16. Calpine Corporation or CPN Telephone Flat, Inc. (collectively hereinafter "Calpine") holds the geothermal Lease at issue in this case, as well as the other leases comprising the Glass Mountain Unit, and serves as the operator of that Unit. To the best of Plaintiffs' knowledge, no other individual or company holds federal geothermal leases within the Glass Mountain Unit. Despite Calpine's total control of the Unit, Calpine has failed to conduct diligent efforts toward the utilization of geothermal steam on the Lease and in the Glass Mountain Unit as required under the Geothermal Steam Act, the Lease, and the Unit Agreement. Calpine is properly named as a defendant in this action because, in its absence, complete relief cannot be afforded to Plaintiffs. National Wildlife Federation v. Espy, 45 F.3d 1337, 1344 (9th Cir. 1995).

BACKGROUND

A. The Medicine Lake Highlands

17. Medicine Lake and its surrounding Highlands provide a diversity of landscapes, including freshwater springs, lava flows, volcanic peaks, fertile marshes and grasslands, and dense forests across three contiguous National Forests – the Modoc, Klamath, and Shasta-Trinity. The area's mixed conifer forests – interspersed with lava fields, cinder cones, and obsidian rock – support some 400 species of wildlife, including bald eagles and northern spotted owls. The

Highlands also support a designated old-growth reserve and the 10,800-acre Mount Hoffman Roadless Area on the Modoc National Forest.

18. These unique features have made the Highlands a place of sacred power and cultural significance to Native Americans for over 10,000 years. The sacredness and significance of the area is tied not only to specific geologic features or particular environmental resources, but also to the physical, environmental, and spiritual integrity of the landscape as a whole.

19. As the ancestral home and spiritual heart of the Pit River people, Medicine Lake is where tribal members return for reconnection and renewal. Many of the tribe's traditions are interwoven with the land. New fathers run to the mountains to dance and swim following the birth of a child. Young girls join ceremonies held in sacred mountain sites to mark their transition into adolescence, while boys journey through the mountains in search of guardian spirits who will bestow them with good fortune in adulthood. Shamans embark on dream quests in the mountains in search of *tamakumi* – a powerful spirit who will enable them to heal illnesses. Rooted in the earth and waters of the Highlands, these cultural practices tie generations of tribal members together.

20. Recognizing the natural and spiritual significance of the Highlands, the Keeper of the National Register of Historic Places has determined that the Medicine Lake Caldera is eligible for listing on the Register as a Traditional Cultural Places District. This determination provides the Medicine Lake Caldera with the same level of protection as an actual listing.

21. The lands within the Lease lie within the designated Traditional Cultural Places District, and the lands within the Unit lie within or adjacent to the District.

22. As part of a legal commitment made by BLM and the Forest Service in the May 31, 2000 Record of Decision to approve the Fourmile Hill Geothermal Development Project and a subsequent Memorandum of Agreement, Plaintiff Pit River Tribe worked extensively for approximately five years with the federal agencies to develop a Medicine Lake Highlands Historic Property Management Plan, the purpose of which was to facilitate comprehensive management of the historic properties, sacred sites, and traditional cultural values within this designated Traditional Cultural Places District. The recommendations and guidelines of this Historic

Properties Management Plan have never been fully implemented due, at least in part, to the ongoing existence of the private lease rights and the Glass Mountain Unit within the Traditional Cultural Places District.

23. Plaintiffs are informed and believe, and on that basis allege, that full implementation of the Historic Properties Management Plan will not occur while inactive leases or unit agreements remain in place.

B. Applicable Leasing Provisions of the Geothermal Steam Act, Its Implementing Regulations, and the Lease

24. The Geothermal Steam Act (or "Act"), originally enacted in 1970, authorized the Secretary of the Interior to issue ten-year leases for the exploration, development, and production of geothermal steam from federal lands.

25. A geothermal lease issued under the Act expires and terminates automatically at the end of its ten-year primary term unless it is lawfully extended or continued consistent with the Act.

26. When the Lease was issued in 1982, the Act provided that "[i]f geothermal steam is produced or utilized in commercial quantities within this term, such lease shall continue for so long thereafter as geothermal steam is produced or utilized in commercial quantities, but such continuation shall not exceed an additional forty years."

27. The Geothermal Steam Act defines the phrase "produced or utilized in commercial quantities" to include not only actual production or utilization, but also "the completion of a well capable of producing geothermal steam in commercial quantities so long as the Secretary determines that diligent efforts are being made toward the utilization of the geothermal steam."

28. Thus, the Act provides that where a lessee has completed a well deemed by BLM to be capable of producing geothermal steam in commercial quantities, that lease may continue beyond its primary term, but only for so long as diligent efforts are being made toward the commercial utilization of the geothermal resource.

29. The Geothermal Steam Act implementing regulations elaborate on these statutory lease continuation provisions. While prior versions of the regulations described a lease

continuation as an "additional term," the current regulations refer to such a lease continuation as a "production extension." 43 C.F.R. § 3207.15 (hereinafter "production extension regulations").

30. The production extension regulations provide that, in order to grant a production extension for a geothermal lease, BLM must first determine that the lease either (1) has a well that is actually producing geothermal resources in commercial quantities or (2) has completed a well that is capable of producing geothermal resources in commercial quantities and the lessee is "making diligent efforts toward utilization of the resource." 43 C.F.R. § 3207.15(b).

31. To qualify for, and satisfy the ongoing diligent efforts requirements associated with, a production extension where there is no actual production but only a capable well, the lessee must "demonstrate on an annual basis" that the lessee is "making diligent efforts toward utilization of the resource." 43 C.F.R. § 3207.15(c).

32. For BLM to make an annual determination that a lessee is making diligent efforts toward utilization of the resource sufficient to qualify for an ongoing production extension, the lessee must provide, and BLM must consider, information showing the lessee's diligent actions and other relevant conditions, such as actions the lessee has taken to identify and define the geothermal resource on the leasehold or to negotiate marketing arrangements, sales contracts, and drilling agreements. 43 C.F.R. § 3207.15(e).

33. Under the production extensions regulations, production extensions may continue for up to 35 years "as long as the geothermal resource is being produced or utilized in commercial quantities." 43 C.F.R. § 3207.15(g). The term "commercial quantities" is defined by the regulations to mean (i) for an individual lease, a sufficient volume (in terms of flow and temperature) of the resource to provide a reasonable return after the lessee meets all costs of production or (ii) for a unit, a sufficient volume (in terms of flow and temperature) of the resource to provide a reasonable return after the operator meets all costs of drilling and production. 43 C.F.R. § 3200.1.

34. Thus, the production extension regulations provide that, in order to maintain a lease that has been continued under a production extension where no actual production or utilization has occurred, BLM must determine on an annual basis that the lessee is engaged in diligent efforts

toward utilization of the resource at a volume of flow and temperature that provides a reasonable return after all costs of production.

35. If the lessee fails to satisfy the diligent efforts requirements, the production extension regulations mandate that BLM terminate the lease.

36. Lease CA12372, issued by BLM on June 1, 1982, to provide the exclusive right to the geothermal resources on 2,560 acres of federal land within the National Forest in Siskiyou County, California, requires the diligent drilling and production of wells "so that the leased lands may be properly and timely developed for the production of geothermal steam."

C. Applicable Unit Agreement Provisions of the Geothermal Steam Act, Its Implementing Regulations, and the Unit Agreement

37. Section 1017 of the Geothermal Steam Act authorizes the Secretary of the Interior to approve a "unit agreement" for the purpose of conserving natural resources in a single geothermal reservoir or field if the Secretary determines and certifies that such unit agreement is necessary or advisable to protect the public interest.

38. A "unit agreement" is defined as a "cooperative plan of development or operation" that allows multiple leaseholders to unite in exploring and developing a single geothermal reservoir or field. 30 U.S.C § 1017(a).

39. The Geothermal Steam Act implementing regulations elaborate on the formation, operation, and termination of unit agreements. 43 C.F.R. Part 3280 (hereinafter "unit agreement regulations").

40. A "unit agreement" is defined under the regulations as an agreement for the exploration, development, production, and utilization of "separately owned interests" in a geothermal reservoir, field, or like area which provides for the allocation of costs and benefits on a basis defined in the agreement or plan. 43 C.F.R. § 3280.2. Thus, a unit agreement is intended to efficiently allocate risk and reward to separately-owned leases that are exploring and developing a common pool geothermal resource.

41. The unit agreement regulations mandate that, in reviewing, approving, and administering a unit agreement, BLM must ensure that the "public interest" is protected and that

the agreement conforms with applicable laws and regulations. The "public interest" is defined as operation of a unit in a way that results in diligent development; efficient exploration, production and utilization of the resource; conservation of natural resources; and prevention of waste. 43 C.F.R. § 3280.2.

42. BLM manages and oversees operations within a unit through the regulatory concept of "participating area." The regulations define "participating area" as that combined part of a unit area which is reasonably proven to produce from a horizon or deposit or that supports production in commercial quantities, such as pressure support from injection wells. 43 C.F.R. § 3282.1. Unitized leases that are not within a participating area must be eliminated from the unit. See 43 C.F.R. § 3286.1. Resource production may not commence until the unit operator submits an acceptable participating area and BLM approves it. 43 C.F.R. § 3282.2.

43. The unit operator must submit an application for a proposed participating area designation no later than 60 days after BLM determines that a unit well is capable of producing or utilizing geothermal resources in commercial quantities or 30 days before production commences, whichever is earlier. 43 C.F.R. § 3282.3.

44. To support its application for a proposed participating area, the unit operator must submit documentation required by 43 C.F.R. § 3282.5, including but not limited to documentation concerning production and injection wells necessary for unit operations, the area each drains, data from well testing, and interpretations of well performance and reservoir geology and structure to document what lands are reasonably proven to produce geothermal resources in commercial quantities.

45. Based upon these submissions, BLM is required to eliminate leases from the unit to retain only the area reasonably proven to produce commercial quantities of geothermal resources and establish the effective date for the participating area. To ensure timely compliance with the diligence requirements of the Geothermal Steam Act, the effective date of a participating area must be established as either the first day of the month in which a unit well that caused the participating area to be formed or the start of commercial operations. 43 C.F.R. § 3282.7.

46. Compliance with the requirements to timely designate a participating area and timely eliminate lands from the unit are critical to implementing the goals and mandates of the Geothermal Steam Act. BLM routinely allows individual leases within a unit to satisfy their statutory lease diligence obligations through compliance with the unit diligence requirements. See 43 C.F.R. § 3284.5. Thus, under BLM's implementation of the Geothermal Steam Act, individual leases can escape all statutory diligence obligations by being committed to a unit unless BLM ensures that the unit operator is timely complies with the unit diligence requirements.

47. The regulations provide that, if a unit operator does not meet the minimum unit obligations, BLM will deem the unit agreement void and will retroactively void any lease extensions based upon the existence of the unit. 43 C.F.R. § 3284.3.

48. In the unit agreement regulations, BLM has specified the contents of a "Model Unit Agreement" to implement the foregoing requirements. 43 C.F.R. § 3286.1.

49. Section 4.3 of the Model Unit Agreement provides that, on the fifth anniversary of the initial participating area designated shortly after a capable well determination, unitized lands shall either (1) remain in the Unit Agreement "so long as exploratory drilling operations are continued diligently," meaning no more than four months of idle time between drilling exploratory wells; or (2) be eliminated automatically from the Unit Agreement unless the lands are entitled to be part of a participating area. Thus, continued exploratory drilling is required to maintain the unit boundary. Once exploratory drilling ends, the unit must contract down to the participating area required to drain the proven geothermal resources, if any.

50. Article XI of the Model Unit Agreement requires that a unit operator continue to submit acceptable exploratory drilling and development plans and engage in a continuous drilling program until the geothermal formation has been tested and the operator has discovered substances that can be produced in commercial quantities, which under the regulations means that resources must be sufficient to repay the costs of drilling, completing, and producing operations, with a reasonable profit. The failure of the unit operator to timely drill any of the wells required in a plan of development will result in automatic termination of the unit agreement.

51. Article XII of the Model Unit Agreement provides that the abandonment of all operations on a participating area will result in automatic termination of the participating area.

52. Article XVIII of the Model Unit Agreement provides that the agreement shall terminate on the fifth anniversary of its effective date unless the date of expiration is extended by BLM or "unitized substances" are being produced or utilized in "commercial quantities," as those terms are defined by law.

53. Taken all together, the unit agreement regulations (including the Model Unit Agreement) provide a regulatory scheme whereby individual leases may satisfy their statutory diligence obligations through participation in, and timely compliance with, a BLM-approved unit agreement that requires diligent exploration of the unit lands and continuing BLM oversight to ensure protection of the public interest.

54. The Glass Mountain Unit Agreement, approved by BLM in May 1982, largely incorporates and reflects the provisions of the Model Unit Agreement.

D. Status of the Lease

55. Plaintiffs are informed and believe, and on that basis allege, that the lessee drilled a test well on the Lease, denominated as Well No. 31-17 (the "Well"), and conducted a single flow test of the Well for less than two weeks in 1988, the results of which suggested that the Well was capable of producing less than 5 megawatts of electricity from geothermal fluids. Plaintiffs are further informed and believe, and on that basis allege, that the Well was sealed or "shut in" after the 1988 flow testing and has not been operated since that time.

56. On the basis of that single flow test, BLM concluded in 1989 that the Well was capable of producing geothermal steam in commercial quantities and, in 1991, continued the Lease in an additional term of up to 40 years for so long as the lessee is making diligent efforts to develop geothermal steam. Plaintiffs do not challenge either BLM's 1989 capable well determination or its 1991 decision to continue the Lease in additional term in this case.

57. Plaintiffs are informed and believe, and on that basis allege, that BLM has made no attempt to verify the continuing commercial capability of the Well since its capable well determination in 1989.

58. Plaintiffs are informed and believe, and on that basis allege, that BLM has made no determination that the Lease can presently provide a reasonable return after the operator meets all costs of drilling and production.

59. Plaintiffs are informed and believe, and on that basis allege, that no annual report of diligent exploratory efforts for the Lease has been submitted since 1995.

60. Plaintiffs are informed and believe, and on that basis allege, that no drilling has occurred on the Lease since completion and testing of the Well in 1988.

61. Plaintiffs are informed and believe, and on that basis allege, that no other exploratory activity has occurred on the Lease since completion and testing of the Well in 1988.

62. Plaintiffs are informed and believe, and on that basis allege, that neither Calpine nor any former holder of the Lease has performed any activity to bring the Well into production.

63. Plaintiffs are informed and believe, and on that basis allege, that the Well, which was sealed in 1988, is no longer capable of producing geothermal resources in commercial quantities and that the Lease, therefore, no longer contains a well capable of supporting continuation of the Lease.

64. Plaintiffs are informed and believe, and on that basis allege, that there has been no effort to develop geothermal resources on the Lease during at least the last 15 years. On November 26, 2002, Federal Defendants took final action approving a geothermal power plant project on the Lease, but Calpine did not pursue development of that project and Calpine subsequently abandoned plans to develop that project. Plaintiffs are informed and believe, and on that basis allege, that neither Calpine nor BLM have taken any other action with respect to the Well, the Lease, or the proposed project since that abandonment.

E. Status of Unit and Unit Agreement

65. Plaintiffs are informed and believe, and on that basis allege, that since 2001, Calpine has been the sole owner of all remaining federal geothermal leases in the Glass Mountain Unit and is the sole operator of the Unit. The fact that all leases within the Unit are owned and operated by the same entity means that there is no longer a public interest in having "separately

owned leases" combined into a unit, as the unit agreement regulations envision and require. BLM has not, however, evaluated this fact in managing the Unit.

66. The Unit Agreement mandates that the unit operator "continue diligent exploration" in the Glass Mountain Unit until discovery of a commercially viable geothermal pool and, thereafter, that the unit operator either continue to "timely drill" wells as provided in the plan of operation or submit an acceptable subsequent plan of operations "[u]ntil there is actual production" of geothermal steam.

67. The Unit Agreement provides that a failure to remedy a default in these requirements within a reasonable time "shall . . . result in automatic termination" of the Unit Agreement.

68. Plaintiffs are informed and believe, and on that basis allege, that no annual report of diligent exploratory efforts for the Unit has been submitted since 1995.

69. By letter dated July 24, 1995, BLM informed the unit operator that it was in default of satisfying the unit diligence requirements under the Unit Agreement because the unit operator had not drilled even a single well promised over a series of prior plans of operation. BLM explained that ensuring reasonable unit diligence fell within BLM's public interest mandate and that the Glass Mountain Unit was not in the public interest.

70. Plaintiffs are informed and believe, and on that basis allege, that the unit operator did not drill any new wells in response to BLM's July 24, 1995 letter and has not drilled any well or undertaken any other exploratory activity in the Glass Mountain Unit since that time.

71. Plaintiffs are informed and believe, and on that basis allege, that there is no currently approved and valid plan of operation or plan of development in place that requires drilling or other exploratory activity on the Glass Mountain Unit.

72. Plaintiffs are informed and believe, and on that basis allege, that there has never been actual production or commercial utilization of geothermal resources within the Glass Mountain Unit.

73. Based on the foregoing circumstances, the Unit Agreement should have automatically terminated.

74. As a result of Calpine's failure to comply with the diligence requirements of the Lease, the Unit, and the Geothermal Steam Act, and Federal Defendants' failure to ensure compliance with these diligence requirements or terminate the Lease and Unit, the leasehold and Unit have unlawfully been allowed to remain dormant, with no exploratory activity, for more than two decades.

75. In 2017, BLM finally completed a first-ever review of the Unit adopted unit boundaries, which resulted in a reduction of the original area covered by the Unit Agreement, from approximately 30,000 acres to approximately 20,000 acres. Although BLM initially proposed a much greater reduction in the Unit area, BLM ultimately adopted the adjusted unit boundaries proposed by Calpine. The review document provided to Plaintiffs by BLM does not demonstrate or indicate that BLM considered the full documentation required by 43 C.F.R. § 3282.5. Nor does it explain why the failure to undertake any exploratory activity or other diligence in the Unit over at least the last 15 years did not require termination of the Unit.

76. Plaintiffs believe that all federal geothermal leases in the Unit other than the Lease at issue here were declared invalid in either Pit River Tribe v. Bureau of Land Management, 939 F.3d 962 (9th Cir. 2019), or Pit River Tribe v. U.S. Forest Service, 469 F.3d 768 (9th Cir. 2006). These judicial decisions held that BLM unlawfully extended or continued 28 non-producing leases, none of which contains a well determined capable of producing geothermal resources in commercial quantities.

77. Plaintiffs are informed and believe, and on that basis allege, that Defendants intend to rely on the existence of the Lease and/or the Unit as the basis for attempting to continue, extend, or otherwise renew the non-producing leases covered by the Unit Agreement that were the subject of prior judicial invalidation. Plaintiffs are injured and harmed by Defendants' unlawful actions because the continuing existence of the Lease and the Unit prevents the Forest Service's full implementation of the Medicine Lake Highlands Historic Properties Management Plan developed in 2007 and impedes Plaintiffs' ability to use and enjoy the unitized lands as otherwise permitted under the multiple and open use statutory mandates for the public lands within the Unit.

CLAIMS FOR RELIEF

First Cause of Action

(Ongoing Violation of the Geothermal Steam Act for Failure to Terminate the Lease)

78. Plaintiffs hereby reallege and incorporate by reference the allegations of paragraphs 1 through 77 herein as if set forth in full.

79. Federal Defendants have violated, and continue to violate, their mandatory legal duty under the Geothermal Steam Act, 30 U.S.C. § 1005, its implementing regulations, and the Lease by unlawfully failing to terminate the Lease for noncompliance with the "diligent efforts" requirements of the Geothermal Steam Act for at least the last 15 years and by failing to verify the continuing commercial viability of Well No. 31-17. This violation is ongoing and continues, from day to day, to the present time.

80. Federal Defendants' failure to comply with their mandatory duty under the Geothermal Steam Act and its implementing regulations constitutes an agency action unlawfully withheld or unreasonably delayed under the Administrative Procedure Act, 5 U.S.C. § 706(1). That failure to act is arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence, or otherwise not in accordance with law and is subject to judicial review under the Administrative Procedure Act and the Geothermal Steam Act.

Second Cause of Action

(Ongoing Violation of the Geothermal Steam Act for Failure to Terminate the Glass Mountain Unit)

81. Plaintiffs hereby reallege and incorporate by reference the allegations of paragraphs 1 through 77 herein as if set forth in full.

82. Federal Defendants have violated, and continue to violate, their mandatory statutory duty under section 1017 of the Geothermal Steam Act and its implementing regulations to terminate the Unit for no longer being in the public interest and for lack of diligent efforts by the Unit operator. In particular, Federal Defendants should have terminated the Glass Mountain Unit because (a) the Unit now consists of a single valid lease, Lease CA12372, and a single lessee, eliminating any public interest in a unit agreement; (b) no exploratory activities have been undertaken within the Unit since at least 1995 and no other diligent efforts have occurred on the

Unit for at least 15 years; (c) there is not at this time an approved plan of operation or development designed to achieve actual production and no such plan has been in place for at least 25 years; and (d) there currently is no evidence or showing that Well 31-17, or any other well within the Unit, is capable of producing a sufficient volume of geothermal steam to provide a reasonable rate of return after drilling and production costs and thus no evidence that the Unit currently contains a well capable of producing geothermal resources in commercial quantities. This violation is ongoing and continues, from day to day, to the present time.

83. Federal Defendants' failure to comply with their mandatory duty under the Geothermal Steam Act and its implementing regulations constitutes an agency action unlawfully withheld or unreasonably delayed under the Administrative Procedure Act, 5 U.S.C. § 706(1). That failure to act is arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence, or otherwise not in accordance with law and is subject to judicial review under the Administrative Procedure Act and the Geothermal Steam Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Declare that Calpine is not in compliance with the requirements of the Geothermal Steam Act, its implementing regulations, the Lease, and the Unit Agreement and that such violations continue to this day;

2. Declare that Federal Defendants BLM and Department of the Interior have violated the Geothermal Steam Act, its implementing regulations, and the Lease's diligence requirements by failing to terminate the Lease and that such violation continues to this day;

3. Declare that Federal Defendants BLM and Department of the Interior have violated the Geothermal Steam Act and its implementing regulations by failing to terminate the Unit on the grounds that the Unit is no longer in the public interest and/or for lack of diligent efforts and that such violation is ongoing;

4. Compel, direct, and order Federal Defendants to terminate the Lease and Unit;

5. Enjoin any further activity in reliance on the Lease or Unit Agreement;

6. Award Plaintiffs their reasonable attorneys' fees, costs, expenses, and disbursements associated with this action; and

7. Grant Plaintiffs such additional relief as the Court may deem just and proper.

Date: March 23, 2020

ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School

By: /s/
Deborah A. Sivas

Attorneys for Plaintiffs Pit River Tribe, Native Coalition for Medicine Lake Highlands Defense, Mount Shasta Bioregional Ecology Center, and Medicine Lake Citizens for Quality Environment