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11 **COMMUNITY ADVOCATES FOR RENEWABLE ENERGY STEWARDSHIP,**
12 an unincorporated association

13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 **COMMUNITY ADVOCATES FOR**
16 **RENEWABLE ENERGY**
17 **STEWARDSHIP,**

18 Plaintiff,

19 v.

20 **UNITED STATES DEPARTMENT OF**
21 **THE INTERIOR; UNITED STATES**
22 **BUREAU OF LAND MANAGEMENT;**
23 **KEN SALAZAR, SECRETARY OF THE**
24 **INTERIOR; ROBERT ABBEY,**
25 **DIRECTOR, BUREAU OF LAND**
26 **MANAGEMENT; TERI RAML,**
27 **DISTRICT MANAGER, BLM**
28 **CALIFORNIA DESERT DISTRICT;**
MARGARET GOODRO, FIELD
MANAGER, BLM EL CENTRO FIELD
OFFICE; PATTERN ENERGY L.P.;
PATTERN ENERGY GROUP; PATTERN
RENEWABLES; and OCOTILLO
EXPRESS LLC,

Defendants.

Civil Action No.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

I.

INTRODUCTION

1. This matter arises out of a proposed utility-scale wind energy development by a private company in a “Limited Use” – California Desert Conservation Area in Imperial County,

1 California. Central legal questions in this case are: (1) whether the specific land use plan was
2 legally amended to allow wind energy development in this area; and, (2) whether the private
3 developer, Pattern Energy, complied with the legal requirements to obtain a Right of Way Grant
4 for wind energy development? An answer of “No” to either question means the Record of
5 Decision (“ROD”) issued by the United States Department of Interior (“DOI”), Bureau of Land
6 Management (“BLM”) must be permanently enjoined.

7 2. For utility-scale wind energy development, the BLM in Washington D.C. has
8 established a Wind Energy Development Program with a policy goal of “Smart from the Start.”
9 To that end, in accordance with the National Environmental Policy Act (“NEPA”) and the
10 Federal Lands Policy and Management Act (“FLPMA”), the BLM has established regulations,
11 policies, and guidelines that govern the proposed development of wind energy on BLM land, to
12 wit: a Wind Energy Programmatic Environmental Impact Statement; Wind Energy Plan of
13 Development; BLM NEPA Guidelines; BLM Land Use Handbook; and, Instruction Memoranda
14 issued by the Director of the BLM. (Collectively at times the BLM Wind Energy Development
15 Program, or BLM Wind Program.)

16 3. Wind projects are required to be designed, engineered and scaled to topographic
17 maps at a specific “project-level” before the NEPA environmental review and analysis.
18 Topographic maps and project specific designs allow proper scrutiny of a Plan of Development.
19 Topographic maps and scaled drawings allow reviewing parties to verify the amount of land
20 disturbance based on the exact locations and dimensions of turbines, access roads, electrical
21 lines, and other facilities. Topographic maps are also required to consider whether project
22 footprints encroach into sensitive habitat, waterways, cultural resources, historic routes and
23 protected aquifers. Without knowing precisely what is going to be built where, a proper NEPA
24 analysis cannot be performed. This legal process is of critical importance.

25 4. This project did not follow the above wind development mandates. Project
26 specific topographic maps, designs and engineering packages were not submitted during the
27 NEPA environmental review process. Without this information, NEPA, the APA, and FLPMA
28 were violated, which means the BLM could not legally approve the Project for construction.

1 and named herein only in his official capacity.

2 11. Defendant Robert Abbey is Director of the United States Bureau of Land
3 Management and named herein only in his official capacity.

4 12. Defendant Teri Raml is District Manager of the United States Bureau of Land
5 Management California Desert District Office and named herein only in her official capacity.

6 13. Defendant Margaret Goodro is Field Manager of the United States Bureau of Land
7 Management El Centro Field Office and named herein only in her official capacity.

8 14. Defendants Pattern Energy L.P., Pattern Energy Group, Pattern Renewables,
9 Pattern Energy LLC, and Ocotillo Express LLC are all affiliated corporate entities with principal
10 places of business in California and authorized to do business in California.

11 **IV.**

12 **GENERAL ALLEGATIONS**

13 **A. BLM Has Not Met Its Legal Obligations To The Surrounding Communities**

14 15. A common ground among reputable wind energy experts is: "Wind turbines do not
15 work where people live comfortably."

16 16. Pattern and the BLM have falsely claimed the proposed Project is located five
17 miles to the West of Ocotillo. This is not true. The project boundaries surround Ocotillo, and
18 extend 1.7 miles East of the town. The project boundary is one-half mile to less than three-tenths
19 of a mile away. Turbines are proposed less than one-half mile from residences.

20 17. People have lived quite comfortably in Ocotillo for over 90 years. Ocotillo was
21 established in the 1920's when Old Highway 80 and the San Diego Arizona Eastern Railway,
22 and the redwood trestles through Carrizo Gorge, were completed. Over 400 part and full-time
23 residents enjoy sweeping desert views of five (5) mountain ranges, and star studded nights in a
24 quiet, peaceful setting, far away from industry, and noise.

25 18. Ocotillo was master planned and subdivided, with over eighteen asphalt roads.
26 Residents benefit from three mutual water companies, a gas and service station, a staffed U.S.
27 Post Office, a fully staffed County Fire Station, two community centers, a recreational park with
28 an adjacent airstrip, the Ocotillo Market & Grill, a hardware store/trading post, a Church, several

1 RV parks, including Jacksons Hideaway, a Motel, ATV rentals, the Old Highway Café, Desert
2 Museum, and the Lazy Lizard Bar.

3 19. The area demographics show the area is poor and primarily an elderly retirement
4 community.

5 20. The area peaks during “desert season,” the off-summer months when snowbirds
6 and desert enthusiasts come to town to camp or recreate and "get away from it all."

7 **B. The Area Is Designated “Limited Use” Because It Is The “Gateway” To State**
8 **Park and Wilderness Areas**

9 21. The Project is proposed to illegally abut the Anza Borrego State Park along five
10 miles of its border. Anza Borrego was designated a National Natural Landmark in 1975 and a
11 Biosphere Reserve by the United Nations in 1985. The Park receives 500,000 to over a million
12 visitors a year, and is a major contributor to the economic well-being of the Imperial Valley.
13 According to Pattern Energy’s dimensions, which cannot be verified due to the absence of
14 required topographic maps, Anza Borrego will be only 1,760 feet (0.33 miles) proposed turbines.
15 The Jacumba Wilderness area will be just 2,400 feet away. Noise, flickering shadows, and
16 obstructed views will be new unwanted and illegal impacts.

17 22. The BLM Wind Program does not allow wind energy developments to adjoin
18 protected Wilderness and State Parks. Adequate buffers are required. Users who come to these
19 areas, including the project area, for peace and solitude will be subjected to unacceptable
20 extreme decibels of noise, and the prominent view sheds down the sloping valley will be nothing
21 more than an industrial setting. This will greatly impact the number of Park visitors and the
22 local and State economy.

23 **C. Wind Turbines Are Proposed To Devour A Desert Basin That Is Backed**
24 **Against The Mountains And Not Exposed To Required Wind Resources**

25 23. The proposed Project area spans an undisturbed area about the size of Mission
26 Valley in San Diego, almost 8 miles in length and 19 square miles in area.

27 24. The project has been proposed to sit in a low lying desert basin, backed against the
28 bases of the Jacumba Mountains and the Coyote Mountains. The area is not flat, and consists
of an uneven alluvial fan that gradually slopes West to East from about 1,200 feet to only 300

1 feet above mean sea level.

2 25. Over 112 turbines are proposed to be randomly dispersed to consume the entire
3 19 square mile gateway in a series of about 39 uneven rows. Each proposed wind turbine stands
4 439 feet high, about the size of a forty-two story building, 239 feet taller than the Coronado-Bay
5 Bridge, and 134 feet higher than the Statue of Liberty. Each turbine holds about 400 liters of oil
6 in addition to other hazardous materials. The rotor and fan blade assembly on each turbine
7 extends 354 feet in diameter, about the length of a football field. The blades and rotor weigh 62
8 tons and are attached to the “nacelle” housing at the top of the tower, which weighs 80 tons. The
9 total turbine weight exceeds 305 tons each.

10 26. According to Pattern’s figures in its Plan of Development, Pattern claims the wind
11 farm will disturb about 1,232 linear acres, including over 40.5 miles of new access roads, and
12 81.8 miles of underground electrical lines. Two permanent concrete foundations for each turbine
13 site will consume over 203 acres. One foundation for the turbine and another pad for a track
14 mounted crane to extend over 450 feet in the air. The turbine foundation is proposed to be left
15 in the ground after decommissioning.

16 27. Other facilities consist of: a substation/switchyard (25.2 acres); operations and
17 maintenance (3.4 acres); railroad unloading station (10 acres); concrete batch-plant, laydown,
18 parking and offices (12 acres), and up to three (3) permanent meteorological towers (1 acre).

19 28. All totaled, the Pattern claims the project will consume at least 1,569.6 acres of
20 previously undisturbed public land.

21 29. None of these dimensions and quantities, however, can be verified because scaled
22 maps and project specific engineered drawings were not included in the NEPA documents or
23 initial Plan of Development in violation of NEPA and BLM policy as a condition of project
24 approval.

25 **D. The Project Cannot Generate The Promised Electricity And The Area Does**
26 **Not Have The Required Wind Resources**

27 30. The project cannot meet the needs of 125,000 households as Pattern claimed
28 throughout the approval process. Interestingly, Pattern’s 125,000 household figure was just
changed to 94,500 in a Notice of Errata published by the BLM following its ROD.

1 own self-regulatory NEPA guidelines, policies, and procedures its field offices must follow.

2 36. In 2005, the BLM approved a *Final Programmatic Environmental Impact*
3 *Statement on Wind Energy Development on BLM-Administered Land in the Western United*
4 *States*. The Programmatic EIS established policies, best management practices, and standards
5 for wind energy development on public lands, referred to in the EIS as the BLM Wind Energy
6 Development Program.

7 37. To the extent that this Program addresses issues associated with a proposed wind
8 energy project, the BLM will, by policy, "tier" off the analysis in the Programmatic EIS. (BLM
9 IM-2009-43; 40 CFR 1508.20)

10 38. The Director of the BLM has also issued a series of Instruction Memorandum on
11 Wind Energy Development Policy. Instruction Memorandum provide guidance and clarify
12 policies and BMP's established in the Programmatic EIS. For wind energy development, the
13 Director has issued several Instruction Memorandum on Due Diligence, NEPA Compliance and
14 Application Processes. (IM 2006-216, 2009-43, 2011-59, 2011-60, 2011-61)

15 39. The BLM has also published a "Wind Energy Plan of Development," which has
16 been incorporated by reference into Instruction Memoranda as both an attachment and as a link
17 on the BLM solar and wind energy websites. (IM 2009-43, IM 2011-60,
18 http://www.blm.gov/wo/st/en/prog/energy/wind_energy.html). The Wind Energy Plan of
19 Development identifies initial information that an applicant such as Pattern Energy must include
20 in its Plan of Development to begin NEPA, and supplemental information to complete NEPA.

21 40. The BLM Wind Energy Plan of Development states project maps must be
22 submitted for the specific Plan of Development for the lands and project area in question. Maps
23 must be 7.5 minute topographic maps or equivalent with references to the Public Land Survey
24 system. 7.5 minute topographic maps are 1:24,000 scale where one-inch on the map equals
25 2,000 feet in distance.

26 41. Several pages of maps are required to cover this 19 square mile project. The maps
27 are required to detail the footprint of the entire wind facility, each turbine location, roads,
28 substation and other improvements.

1 42. Topographic maps of 7.5 minutes, 1:24,000 scale were not provided as part of the
2 NEPA process. Pattern has not provided topographical maps or similar information. Pattern has
3 illegally submitted an aerial satellite photo of the entire project area overlain with a sketch of the
4 layout of the proposed project. Pattern has not provided mapped and scaled gridlines,
5 quadrangles, latitude or longitude lines, elevations or survey points that would allow the BLM
6 or the public to determine the precise locations of the turbines, roads and ancillary facilities
7 shown on Pattern’s satellite image. A satellite image does not meet the requirements under
8 NEPA or the BLM Wind Energy Program.

9 43. Topo maps are a critical component of the NEPA process to determine and analyze
10 critical issues such as precisely where project components, appurtenances, features, and 100-plus
11 wind turbines will be located across a vast 19 square mile area. For example, a condition of
12 FLPMA development grants is turbines cannot be positioned closer than 1.5 times the total
13 height of the wind turbine to the right-of-way boundary. (IM 2009-43) Turbulence issues also
14 mandate turbine spacing.

15 44. Topo maps are also critically important to the “scientific integrity” required under
16 NEPA to verify the applicants claimed disturbances, road dimensions and lengths, verify
17 quantities, and establish precisely where the project travels in relation to waterways, habitat, and
18 cultural resources. For example, Pattern claims 40.5 miles of new roads and 81 miles of
19 underground wiring. There was no way to verify this claim without scaled maps and drawings.

20 45. Without the required, 1:24,000 series USGS topo maps, with 7.5' quadrangles, it
21 is impossible to properly analyze this project area boundaries relative to wind resource maps,
22 State Park, wilderness, areas of critical environmental concern, and private lands. Under NEPA,
23 the project must be stopped to afford this legal requirement.

24 46. The BLM's Wind Energy Plan of Development also required engineering designs
25 and drawings that were not submitted during the NEPA process. Pattern's initial Plan of
26 Development was required to, but did not include a required 30% Engineering and Civil Design
27 package to adequately describe the proposed project and evaluate the design considerations for
28 soils, drainage, and watershed.

1 47. Pattern submitted a few "canned" sketches captioned as what is "typical" for this
2 type of a project. Nothing, however, was submitted for NEPA review that was project specific
3 engineered construction drawings to be able to evaluate what the applicant has proposed to build,
4 how, and where. For example, Pattern's Plan of Development stated and depicted eight foot
5 foundation depths, but no where did Pattern submit any engineered plans for foundation depths
6 specific to this project.

7 48. Foundation depths must be project specific for comparison location by location
8 so inverse elevations may be analyzed in relation to the federally protected sole-source aquifer
9 directly below the entire project area.

10 49. None of this could be evaluated because the information BLM required as part of
11 a Plan of Development was not provided during the NEPA process.

12 50. The Wind Energy Plan of Development also includes "supplementary information"
13 for the NEPA analysis to complete the review process. In fact, "[t]he BLM requires the
14 submittal of a complete POD for wind development projects prior to the end of the initial 3-year
15 term of a wind energy site testing authorization." (IM 2011-60 citing IM 2009-43)

16 51. The supplementary information includes "final engineering and design packages,"
17 facility survey and design drawing standards, watershed protection and erosion control design
18 drawings and final site grading plans. This information may not always be required under
19 NEPA, but it is required under the BLM's NEPA program to obtain a ROW Grant for
20 development of a wind energy farm.

21 52. The BLM also requires project specific designs for review under NEPA so matters
22 such as foundation depths, roads, flood zones, and turbine locations can be pin-pointed and
23 properly analyzed by all involved.

24 53. The national level process mandated by NEPA and the BLM Director in
25 Washington D.C. has not been followed by the El Centro Field Office. The process to develop
26 a wind farm is an initial Plan to 30% engineering and civil design, with scaled USGS survey
27 maps, followed by supplemental information, all during the NEPA process. Here, this
28 information was not provided, and the professional services, and geotechnical work for the

1 undisclosed turbine locations are being done in the field simultaneously with construction.

2 54. This is illegal and the project must be stopped to afford legal NEPA review and
3 analysis based on the required information in compliance with the BLM's NEPA program and
4 the BLM's Wind Energy Plan of Development.

5 **CLAIM TWO: The BLM Right of Way Grant And Plan Amendment Violated**
6 **The FLPMA, The CDCA Area Plan, and NEPA**

7 55. The California Desert Conservation Area Plan ("CDCA") is a statewide
8 classification of desert lands promulgated by the federal government under the Federal Land
9 Policy and Management Act of 1976. (43 U.S.C. § 1781.)

10 56. The entire 12,436 acre Project area is located on Class L – Limited Use – lands.

11 57. Class L – Limited Use – "protects sensitive, natural, scenic, ecological, and
12 cultural resource values. Public lands designated as Class L are managed to provide for
13 generally lower-intensity, carefully controlled multiple use of resources, while ensuring that
14 sensitive values are not significantly diminished." (CDCA, at p. 13.)

15 58. The proposed Project cannot comply with the FLPMA because the Project site is
16 designated Limited Use. Limited Use in a conservation area only allows for low intensity
17 activities. Utility scale power generation is not a "lower intensity use." The Project cannot meet
18 the definition of Limited Use under the CDCA because the Project will degrade and diminish
19 the sensitive, scenic and natural, and cultural values, which is prohibited under the CDCA. A
20 plan amendment does not abrogate the Limited Use standards, especially in regards to the nature
21 and scope of a specific project in a Limited Use area.

22 59. Visual Resource Management ("VRM") standards are also incorporated into the
23 CDCA, FLMPA, and NEPA.

24 60. This Project was determined by the BLM rating system to be located in an area
25 with VRM Class II and VRM Class III visual resources. This means the visual changes must
26 be moderate or lower, and may not dominate the viewshed, and must maintain predominantly
27 natural features.

28 ///

1 61. It was expressly admitted in the Final and Draft EIS that the proposed turbines
2 cannot satisfy the standards for VRM Class II or III visual resources, and therefore cannot be
3 sited in the this location as a matter of law.

4 **CLAIM THREE: The Land Use Plan Amendment And Right
5 Of Way Grant Violated FLPMA and NEPA Because
6 The BLM Did Not Make Required Independent
7 Wind Resource Findings Or Adhere to BLM
8 Programmatic Standards And National Wind
9 Resource Policies**

10 62. In February 2011, the BLM Director announced a new heightened level of due
11 diligence review, and a “Smart from the Start” approach to uphold uniform decision making
12 under programmatic policies and ensure environmentally responsible wind energy projects are
13 only approved in areas with acceptable wind resources. (IM 2011-61.)

14 63. To this end, when a BLM wind energy development proposal does not conform
15 with the existing land use plan, the BLM “will address wind resource potential” as part of its
16 decision on a plan revision, ROW, and NEPA analysis. (43 CFR 1610.5-5 quoting IM
17 2009-043.) This means “Field offices will incorporate wind energy resource development
18 potential in these planning efforts to facilitate processing of future wind energy applications.”
19 (IM 2009-043)

20 64. The BLM did not follow this policy when it issued a Plan Amendment for the
21 Project. The ROD for the Project, as prepared and recommended by the El Centro Field Office,
22 did not contain required findings or any substantive discussion about the wind resources in this
23 specific project area to allow a Plan Amendment for wind energy development.

24 65. The importance of such a finding was recognized in the CDCA Plan Record of
25 Decision, which stated: “These facilities are different from conventional power plants and must
26 be located where the energy resource conditions are available.” (OWEF ROD p. 8.)
27 “[I]ndividual project proposals . . . clearly must be situated where the particular energy resources
28 are favorable.” (OWEF ROD p. 8)

 66. As a result, this project must be enjoined upon a declaration the BLM violated the
FLPMA and its regulations because the BLM made no project specific findings about wind
resources specific to this project area.

1 67. The BLM cannot meet program-level policies or NEPA requirements for a ROW
2 grant and a Plan Amendment in this area.

3 68. When considering wind energy applications, BLM field offices “tier to” the
4 BLM’s Wind Energy Development Programmatic EIS. The Programmatic EIS, approved in
5 2005, provided a standardized assessment of wind energy resources on public lands in the
6 Western United States and established BLM policy regarding future development. “Policies
7 included in the [PEIS] identify specific lands on which wind energy development **would not be**
8 **allowed.**” (IM 2006-216 [emphasis added].)

9 69. The BLM added: “To the extent that the Programmatic EIS addresses anticipated
10 issues and concerns associated with an individual project, including potential cumulative
11 impacts, the BLM will, by policy, tier off of the analysis in the Programmatic EIS . . .” (IM
12 2009-43.) The BLM re-emphasized: “Tiering to the Programmatic EIS is the preferred approach
13 when appropriate.” (IM 2009-43.)

14 70. With assistance from the Department of Energy’s National Renewable Energy
15 Laboratory, the BLM determined that wind resources of Class 3 had “medium” wind energy
16 potential, and areas with resources in Classes 4 and higher are characterized as having “high”
17 wind energy potential. (PEIS at p. 2-3.)

18 71. As a result, the BLM excluded areas with less than Class 3 wind resources from
19 eligibility for a land use plan amendment. (PEIS p. 2-3, p. 2-25.)

20 72. Following the BLM’s study of the eleven Western states in the Programmatic
21 Wind EIS, plan amendments for wind energy development were approved for only 9 of the 11
22 states in 52 distinct locations. No plan amendments were issued for any area in California or
23 Arizona. (IM 2006-216.)

24 73. The BLM did not foreclose the possibility of non-approved areas subsequently
25 obtaining a plan amendment, but only if sufficient wind resources were established, meaning
26 Class 3 and above per the Programmatic EIS. Subsequent amendments are only available after
27 a wind study of the potential area. (PEIS 2.2.4 at p. 2-25)

28 74. As a result, Pattern Energy was required to collect up to three years of resource

1 data and provide general wind resource information to the BLM to support the proposed
2 development. (IM 2009-43; *see also* IM 2006-216.) Any wind data and resource information
3 submitted to the BLM becomes public record to the extent it supports the BLM’s analysis and
4 decision making. (IM 2009-43.)

5 75. Project-specific information provided by Pattern in the record, (in the EIS and
6 Pattern’s loan application) state that the Project area has average annual wind speeds of 10.7
7 mph and 13.89 miles per hour between 10 and 80 meters of height. The project area, based on
8 the administrative record, has Class 2 and lower wind speeds, which are classified as “Marginal”
9 to “Poor” in the Programmatic EIS. (PEIS Appendix B, Table B-1, Wind Power Classification.)

10 76. As a result, under self-regulatory standards from the Programmatic EIS, the
11 D.O.E., and NREL, the Project area is not eligible for wind energy development or a plan
12 amendment to the CDCA Plan for the proposed action.

13 77. Class 2 and lower wind speeds also mean the BLM cannot satisfy the purpose and
14 need of this project under the BLM NEPA Handbook, Section 6.2. When based on an objective
15 standard, there is no legitimate purpose or need for a wind project in a low lying, sensitive,
16 limited-use area with Class 2 wind speeds.

17 78. This project was illegally approved based on Pattern’s interests and objectives in
18 violation of NEPA. It was unlawful for the BLM to approve the Project and issue a land use
19 Plan Amendment in contravention of wind resource policies and standards set by the Department
20 of Energy and the Department of the Interior, and adopted into the BLM’s Programmatic EIS.

21 **CLAIM FOUR: Pattern Has Illegally Commenced Construction Without**
22 **Required Permits**

23 79. As set forth in the Mitigation Measures, and EIS, Pattern was required to
24 demonstrate compliance with all applicable permitting requirements prior to commencing
25 construction.

26 80. In direct contradiction to this federal directive, Pattern has, at its own risk, started
27 rough grading on the Project and has destroyed virgin desert and federal waterways without the
28 required permits from the Army Corps of Engineers or the Federal Aviation Administration
 (“FAA”).

1 81. Pattern does not have several final permits, including: Clean Water Act section 404
2 permit from the United States Army Corps of Engineers (“Corps”); Clean Water Act section 401
3 certification from the Colorado River Basin Regional Water Quality Control Board
4 (“RWQCB”); and a FAA Determination of No Hazard on at least 11 of the proposed 112
5 turbines.

6 82. Pattern has impacted jurisdictional areas and will place permanent project features
7 (e.g., turbine footings, crane pads, the substation/switchyard, and O&M area) in drainages that
8 were mapped as U.S. waterways, all without a permit. Pattern has similarly not followed the
9 required design for access roads in which the Army Corps’ mandates that original ground lines
10 must be maintained. Examples of direct impacts to jurisdictional resources include large berms
11 and banks graded along roads and through wash crossings, and fill to construct building pads
12 without prior approvals.

13 83. Over one year ago, on May 23, 2011, Pattern applied to the US Army Corps for
14 a permit pursuant to Section 404 of the Clean Water Act (“Act”). The Army Corps issued a
15 section 404 report acknowledging its jurisdiction within the entire 12,436 acre project boundary
16 due to the number of U.S. waterways in this alluvial drainage fan where the project is sited.

17 84. In its section 404 analysis, which did not result in the issuance of a permit, the
18 Army Corps found alternatives such as a reduction in project size to only 112 turbines would
19 substantially increase the cost of construction per MW-hour of power generation so as to not
20 meet the cost criteria to meet the Army Corps standards under its “Least Environmentally
21 Damaging Practicable Alternative” (“LEDPA”) analysis.

22 85. Pattern has essentially ignored the Corps’ analysis in regards to LEDPA and
23 Section 404 Clean Water Act standards, and the presence of an Army Corps permit as a
24 condition precedent to legally start construction.

25 86. The same holds true with respect to final approvals from the Federal Aviation
26 Administration. The Department of the Navy has a Special Use Airspace (“SUA”) consisting
27 of over 241 square nautical miles of restricted airspace to the northeast boundary of the Project
28 site.

1 87. The proposed Project is located approximately five miles southwest of Naval
2 Reservation Target 103, a live target practice bombing range.

3 88. Wind turbines located on the northern portion would underlie low-level military
4 training routes with a set altitude “floor” of 200 feet above ground.

5 89. The Department of Defense found that the Project will interfere with training
6 flights along the north edge of the Project site, and interposed a condition that all wind turbines
7 constructed within the area 1.5 nautical miles south of the centerline of the SUA Airspace shall
8 be less than 400-feet tall at the maximum blade tip height.

9 90. Pattern admits that the FAA has not approved at least 11 turbines.

10 91. The turbines’ unlit blade height exceed the 400 foot ceiling. Pattern cannot
11 comply with the airspace contingencies without resorting to smaller turbines that will lower the
12 Project’s overall electrical generation and dramatically alter the cost-benefit ratio of the entire
13 Project, and essentially change the entire scope of project performance in violation of NEPA.

14 92. As stipulated in the EIR/EIS, and prior to issuance of building permits, Pattern was
15 required to, but does not have full approval demonstrating a Determination of No Hazard to Air
16 Navigation from the FAA (Form 7460-1).

17 93. Despite lacking the permits listed above, Pattern continues construction activities
18 on the Project and must be enjoined by this Court.

19 **CLAIM FIVE: The Project Violates the Safe Drinking Water Act Protections**
20 **Afforded the Federally Designated Sole Source Aquifer That**
21 **Encompasses the Entire Project Site**

22 94. The Federal Sole Source Aquifer Program was established under the Safe Drinking
23 Water Act of 1974. Ground waters designated as a Sole Source Aquifer (“SSA”) by the
24 Environmental Protection Agency are protected from contamination by federally-funded
25 projects.

26 95. In 1996, the Ocotillo-Coyote Wells SSA was designated as a federally-protected
27 water supply under the authority of section 1424(s) of the Safe Drinking Water Act. (61
28 Fed.Reg. 47752.) The Ocotillo-Coyote Wells SSA covers more than 87 square miles, and it is
relatively shallow, with water levels ranging from less than 30 feet to about 300 feet below

1 ground. For at least 15,000 years, dating back to ancient Indian wells, this has been the sole
2 source of potable drinking water in this area for humans and animals, and literally acts as a
3 kidney to recharge stormwater that flushes through the basin from the mountain ranges on all
4 sides.

5 96. The entire Project area is directly above the Ocotillo-Coyote Wells SSA and its
6 surface recharge area. Professional engineering standards, as stated in the BLM's Programmatic
7 EIS establish the 400-foot-tall turbines will require foundations that are at least 40 feet deep.
8 These 40-foot excavation depths can conflict with the aquifer.

9 97. Confirming the exact locations of potential hydrostatic conflicts is impossible at
10 this time because, as mentioned above, Pattern has failed to provide detailed maps, and
11 geotechnical feasibility studies are being performed simultaneously with construction.

12 98. Pattern has also constructed a 700,000-gallon water storage pond. This pond was
13 not analyzed in the EIS for the potential for direct and indirect water quality impacts to the
14 aquifer and other non-wetland U.S. waterways.

15 99. Further, water has been illegally pumped from the Ocotillo-Coyote Wells SSA and
16 stored for project needs in an unapproved pond near the Jiminez mine that is infested with
17 Tamarisk (Salt Cedar), a non-native plant species known to invasively overdraft groundwater
18 in this and other desert regions.

19 100. During the NEPA process, the Army Corps, EPA, and Colorado RWQCB was
20 never afforded the opportunity to consider the impacts of imported water stored above the
21 permeable desert surface, possibly less than 40 feet above the SSA, in a highly seismic prone
22 area, which could drastically effect infiltration and pollute this natural and protected aquifer.

23 101. The Water Supply Assessment done for this Project, Appendix P to the FEIR, was
24 analyzed under the false pretense – promulgated by Pattern – that the Project will not receive
25 water from a public water source. The Corps performed its analysis in reliance on information
26 in the Water Supply Assessment that project water would be obtained from a well outside of
27 Pine Valley, California, over 40 miles away.

28 102. According to the Corps' analysis, a separate "Hydrological and Environmental

1 Hazard Assessment” was to be performed to address construction and operational conditions that
2 might impact Ocotillo-Coyote Wells SSA. However, no such studies for hydrological increases
3 or water sources— other than the well in Pine Valley— were included in the vast appendices to
4 the EIR/EIS.

5 103. This information was required pursuant to the BLM Wind Energy Development
6 Program, and the project must be restrained and enjoined for violations of NEPA.

7 **CLAIM SIX: The Project Discriminates Against Low-income Populations in**
8 **Violation of Executive Order 12898**

9 104. Executive Order 12898, issued in 1994, prevents discrimination against low
10 income areas on federally funded projects, which substantially affected human health and the
11 environment.

12 105. The Project will disproportionately affect the low-income populations in
13 Nomirage, Coyote Wells, and Ocotillo. In the EIS, Pattern illegally limited its analysis of
14 demographic information to locations within less than one-half mile of the Project area, knowing
15 full well the residential communities would be placed just outside the reach of this analysis.

16 106. In the EIS, Pattern claimed that: “The ‘affected area’ for determining
17 environmental justice impacts for the proposed [Project] includes all jurisdictions within one-half
18 mile (0.5 mile) of the proposed [Project] site. While some types of impacts, such as visual
19 impacts or certain air and water quality impacts, would affect a greater area, using an affected
20 area of one-half mile for environmental justice impacts, rather than 1 or 2 miles, identifies
21 localized impacts of the project.” (FEIS at p. 3.5-1.)

22 107. Plaintiff asserts that Patten willfully limited its analysis of financial and
23 environmental impacts to shield NEPA review on the Project’s disproportionate impact upon
24 low-income communities, in violation of Executive Order 12898.

25 **CLAIM SEVEN: Material Changes Have Been Made To The Project In**
26 **Violation of NEPA**

27 108. The BLM Wind Program requires the minimum disturbances possible. This is why
28 wind projects must be designed to a specific “project level” before the issuance of environmental
and final approvals.

1 109. Such is not the case here, as vast amounts of the conservation area has been
2 destroyed at the expense of material changes, perhaps due to elementary engineering and design
3 busts that should have been corrected before construction commenced. For example, after
4 grading in one location, the switchyard/substation, a major 23 acre project component, has now
5 been moved and sited to a different location to the North. The damage, however, has already
6 been done.

7 110. This is a violation of NEPA. Irreparable harm could have been avoided if the
8 project were properly designed and planned prior to mobilization of the heavy equipment as
9 required by law.

10 111. Legally a “project-level” design and topographic maps were required, but not
11 submitted for NEPA review. Per the BLM’s regional Programmatic EIS, to start the NEPA
12 review process, Pattern was required to submit a Plan of Development (“POD”) with at least
13 30% level engineered drawings, which were required to be updated to final design drawings as
14 part of the environmental review for incorporation into a final plan.

15 112. Due to the lack of proper surveys, hydrologic and geotechnical engineering, the
16 previously undisclosed use of “rip-rap” boulders have been proposed as new project features and
17 appurtenances. Again, a major project change in violation of NEPA.

18 113. Additional project features include a 700,000 gallon “pond” constructed above the
19 water aquifer that was not properly disclosed to or analyzed by the Army Corps of Engineers
20 who have yet to permit this Project. Water has also been illegally pumped from the sole source
21 aquifer, and stored for “project needs” in an unapproved and undisclosed pond– (at the Jiminez
22 mine)– that is illegally infested with Tamarisk (Salt Cedar).

23 114. Changes were also made for the first time in the Record of Decision to substitute
24 turbine locations and alter project boundaries. This project is not proceeding based on due
25 process, public disclosure and involvement, government-to-government consultations, and
26 comprehensive analyses regarding the potential effects of this ever changing Project that was not
27 properly designed and mapped to begin with. Project features and components have been added
28 that were not part of the Plan of Development (POD), that were not submitted for the draft or

1 final EIS, or the Biological Opinion (“BO”), or other Project assessments, all in violation of
2 NEPA and FLPMA, and BLM policies and regulations.

3 115. The new “Refined Project,” cannot be determined for the first time in the BLM
4 ROD, and wind turbines still appear sited too close to the project boundary in violation of BLM
5 wind development regulations. Of course nobody in the public knows exactly where the wind
6 turbines plan to be located because required topographic scaled maps were illegally not part of
7 the NEPA review.

8 116. Public projects cannot, as a matter of law, be a moving target with material
9 changes made after final approval.

10 **V.**

11 **PRAYER FOR RELIEF**

12 WHEREFORE, incorporating, restating, and re-alleging all preceding paragraphs herein,
13 Plaintiff prays for judgment as follows:

14 1. For a judgment that the BLM violated the FLPMA, the Administrative Procedures
15 Act, NEPA, the NHPA, and the CDCA Plan by approving the Amendment to the California
16 Desert Conservation Area Plan and a Right of Way Grant to Pattern Energy for wind energy
17 development;

18 2. For a judgment declaring that the BLM violated the FLPMA, the APA, NEPA, the
19 NHPA, and the CDCA by executing the Ocotillo ROD and authorizing a utility-scale
20 development on Class L lands;

21 3. For a judgment declaring that the BLM violated the FLPMA and the APA by
22 authorizing conduct that constitutes an undue impact on and impairment of CDCA lands and an
23 unnecessary and undue degradation of public lands.

24 4. For a judgment declaring that the BLM violated the FLPMA, NEPA, and the APA
25 by authorizing development of the Project in a Class III Visual Resource Management Area;

26 5. For a judgment declaring that the BLM violated NEPA and the APA by failing to
27 prepare an adequate analysis of cumulative and indirect effects in the FEIS prior to execution
28 of the ROD, by failing to consider whether the Project and the CDCA Plan Amendment are

1 consistent with the federally-directed requirements of the CDCA Plan, by failing to mandate
2 Pattern provide the required 7.5 minute topographic maps, by failing to mandate Pattern provide
3 project-level supplemental information for NEPA review and analysis, and by failing to tier to
4 and follow the BLM's Programmatic EIS and BLM Wind Energy Development Program
5 relating to renewable energy development within the CDCA;

6 6. For a judgment that the BLM in approving this project did not comply with the
7 Clean Drinking Water Act, NEPA and FLPMA by approving an industrial scale wind energy
8 utility project above a protected and federally designated sole source aquifer that provides the
9 sole source of drinking water to this area;

10 8. For a judgment that the BLM violated Executive Order 12898 by approving a
11 project that did not properly analyze discrimination against low-income populations;

12 9. For a judgment declaring that the BLM violated the APA by engaging in conduct
13 that is arbitrary, capricious, unlawful, and constitutes an abuse of discretion;

14 11. For a judgment that Pattern violated NEPA by deviating from the federally-
15 mandated process to obtain a federal right-of-way and by failing to submit the required
16 documents and maps;

17 12. For a judgment that Pattern illegally commenced construction on the Project
18 despite lacking certain required permits;

19 13. For a judgment that Pattern violated the Clean Drinking Water Act by commencing
20 construction on a project that will contaminate a federally-designated sole source aquifer that
21 provides drinking water with out a proper assessment of study;

22 14. For a judgment that Patten violated Executive Order 12898 by commencing
23 construction on a project that without properly analyzing discrimination against low-income
24 populations;

25 15. For an order vacating the Ocotillo ROD and the Amendment to the California
26 Desert Conservation Area Plan and any related authorizations;

27 16. For a temporary, preliminary, and permanent injunction immediately halting
28 construction on the Project and any corresponding development on Class L lands as designated

1 by the CDCA Plan;

2 17. For a temporary, preliminary, and permanent injunction immediately halting
3 construction on the Project and any corresponding development on lands subject to federal
4 Visual Resources Management Designation Class II and III;

5 18. Alternatively, for a temporary, preliminary, and permanent injunction halting all
6 construction and Project-related activities, including but not limited to any ground disturbing
7 activities or issuances of Notices to Proceed, until the BLM completes a valid and more thorough
8 analysis of direct, indirect, and cumulative impacts pursuant to NEPA;

9 19. Alternatively, for a temporary, preliminary, and permanent injunction halting all
10 construction and Project-related activities, including but not limited to any ground disturbing
11 activities or issuances of Notices to Proceed, until the BLM considers a supplemental EIS on the
12 Project's overall impacts on federally-protected lands under NEPA, and the FLPMA;

13 20. For costs of the suit, including reasonable attorneys' fees, including pursuant to
14 the Equal Access to Justice Act, 28 U.S.C. § 2412; and

15 21. For any other such injunctive or equitable relief as the Court may deem just and
16 proper.

17 DATED: June 19, 2012

STUTZ ARTIANO SHINOFF & HOLTZ
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19
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