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10 DEC 27 AM 11:10

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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Protection Circle Advisory Committee, Californians for
Renewable Energy, Alfredo Acosta Figueroa, Phillip Smith,
Patricia Figueroa, Ronald Van Fleet, and Catherine Ohrin-Greipp

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CASE NO. **10 CV 2664 WQH** **WVG**

LA CUNA DE AZTLAN SACRED SITES
PROTECTION CIRCLE ADVISORY
COMMITTEE; CALIFORNIANS FOR
RENEWABLE ENERGY; ALFREDO
ACOSTA FIGUEROA; PHILLIP SMITH;
PATRICIA FIGUEROA; RONALD VAN
FLEET; and CATHERINE OHRIN-GREIPP,

Plaintiffs,

vs.

UNITED STATES DEPARTMENT OF THE
INTERIOR; KEN SALAZAR, in the official
capacity of Secretary of the United States
Department of the Interior; UNITED STATES
BUREAU OF LAND MANAGEMENT;
ROBERT ABBEY, in the official capacity of
Director of the United States Bureau of Land
Management; TERI RAML, in the official
capacity of District Manager of the California
Desert District of the United States Bureau of
Land Management; MARGARET GOODRO, in
the official capacity of Field Manager of the El
Centro Field Office of the United States Bureau
of Land Management; JOHN KALISH, in the
official capacity of Field Manager of the Palm
Spring South Coast Field Office of the United
States Bureau of Land Management; RUSTY
LEE, in the official capacity of Field Manager
of the Needles Field Office of the United States
Bureau of Land Management; and ROXIE
TROST, in the official capacity of Field
Manager of the Barstow Field Office of the
United States Bureau of Land Management,

Defendants.

COMPLAINT FOR DECLARATORY,
INJUNCTIVE, AND MANDAMUS
RELIEF UNDER THE
ADMINISTRATIVE PROCEDURES
ACT, THE NATIONAL HISTORIC
PRESERVATION ACT, THE
NATIONAL ENVIRONMENTAL
POLICY ACT, THE FEDERAL LAND
POLICY AND MANAGEMENT ACT,
AND THE NATIVE AMERICAN
GRAVES PROTECTION AND
REPATRIATION ACT

1 Plaintiffs LA CUNA DE AZTLAN SACRED SITES PROTECTION CIRCLE
2 ADVISORY COMMITTEE, CALIFORNIANS FOR RENEWABLE ENERGY, ALFREDO
3 ACOSTA FIGUEROA, PHILLIP SMITH, PATRICIA FIGUEROA, RONALD VAN FLEET,
4 and CATHERINE OHRIN-GREIPP allege as follows:

5 **Parties**

6 1. Plaintiff La Cuna de Aztlan Sacred Sites Protection Circle Advisory Committee
7 ("LA CUNA") is a non-profit, 501(c)(3) organization and a party to that certain *Amendment No.*
8 *1 to Memorandum of Understanding Between United States Department of the Interior Bureau*
9 *of Land Management and the Southern Low Desert Resource Conservation and Development*
10 *Council*. LA CUNA is comprised of 15 indigenous and culturally aware individuals who are
11 dedicated to physically protecting the Blythe Giant Intaglios, other geoglyphs, and several
12 hundred sacred sites that are located along the Colorado River from Needles, California, to
13 Yuma, Arizona. (A true and correct copy of *Amendment No. 1* is attached to this pleading as
14 Exhibit "A.")

15 2. Plaintiff CALifornians for Renewable Energy is a non-profit organization formed
16 to promote public education concerning the responsible development of renewable energy and
17 in the preservation of and respect for Native American culture.

18 3. Plaintiffs Alfredo Acosta Figueroa, Phillip Smith, Patricia Figueroa, Ronald Van
19 Fleet. and Catherine Ohrin-Greipp are individuals who reside in the areas affecting by the
20 actions challenged in this lawsuit and have an interest in the responsible development of
21 renewable energy and in the preservation of and respect for Native American culture.

22 4. The United States Department of the Interior and the United States Bureau of
23 Land Management are agencies or instrumentalities of the United States.

24 5. The following Defendants are being sued in their official capacities: Ken Salazar,
25 in the official capacity of Secretary of the United States Department of the Interior; Robert
26 Abbey, in the official capacity of Director of the United States Bureau of Land Management;
27 Teri Raml, in the official capacity of District Manager of the California Desert District of the
28 United States Bureau of Land Management; Margaret Goodro, in the official capacity of Field

1 Manager of the El Centro Field Office of the United States Bureau of Land Management; John
2 Kalish, in the official capacity of Field Manager of the Palm Spring South Coast Field Office
3 of the United States Bureau of Land Management; Rusty Lee, in the official capacity of Field
4 Manager of the Needles Field Office of the United States Bureau of Land Management; and
5 Roxie Trost, in the official capacity of Field Manager of the Barstow Field Office of the United
6 States Bureau of Land Management.

7 **Background Information**

8 6. Generally speaking, this lawsuit challenges Defendants' actions in connection
9 with six solar-electricity generation projects taking place on federal (public) land: namely,
10 *Ivanpah Solar Electric Generating System Project and Associated Amendment to the California*
11 *Desert Conservation Area Plan* ("Ivanpah Project"), approximately 3,472 acres in size; *Genesis*
12 *Solar Energy Project and Amendment to the California Desert Conservation Area Plan*
13 ("Genesis Project"), approximately 1,950 acres in size; *Imperial Valley Solar Project and*
14 *Amendment to the California Desert Conservation Area Land Use Management Plan* ("Imperial
15 Project"), approximately 6,360 acres in size; *Chevron Energy Solutions Lucerne Valley Solar*
16 *Project and Amendment to the California Desert Conservation Area Plan* ("Chevron Project"),
17 approximately 422 acres in size; *Calico Solar Project and Amendment to the California Desert*
18 *Conservation Area Land Use Management Plan* ("Calico Project"), approximately 4,613 acres
19 in size; and *Blythe Solar Power Project and Amendment to the California Desert Conservation*
20 *Area Plan* ("Blythe Project"), approximately 7,025 acres in size. The records of decision
21 adopted by and the approvals given by Defendants for each of the challenged projects
22 (collectively, "Projects") are as follows:

23 A. For the Ivanpah Project, Defendants have (among other things) approved
24 an amendment to the California Desert Conservation Area Plan ("CDCA Plan") to include the
25 Ivanpah Project as an approved power generation location under the Energy Production and
26 Utility Corridors Element of the CDCA Plan; and granted four right-of-way authorizations.¹

28 ¹ The right-of-way authorizations are for the Construction Logistics site (CACA-49502) to Solar Partners I, II, and VIII, LLC; for the Ivanpah 1 site (CACA-49504) to Solar Partners II, LLC; for Ivanpah 2 site (CACA-48668) to Solar Partners I, LLC; and for Ivanpah 3 site (CACA-49503) to Solar

1 B. For the Genesis Project, Defendants have (among other things) approved
2 an amendment to the CDCA Plan to include the Genesis Project as an approved power
3 generation location under the Energy Production and Utility Corridors Element of the CDCA
4 Plan; and granted a right-of-way authorization.

5 C. For the Imperial Project, Defendants have (among other things) approved
6 an amendment to the CDCA Plan to include the Imperial Project as an approved power
7 generation location under the Energy Production and Utility Corridors Element of the CDCA
8 Plan; and granted a right-of-way authorization.

9 D. For the Chevron Project, Defendants have (among other things) approved
10 an amendment to the CDCA Plan to include the Chevron Project as an approved power
11 generation location under the Energy Production and Utility Corridors Element of the CDCA
12 Plan; and granted a right-of-way authorization.

13 E. For the Calico Project, Defendants have (among other things) approved an
14 amendment to the CDCA Plan to include the Calico Project as an approved power generation
15 location under the Energy Production and Utility Corridors Element of the CDCA Plan; and
16 granted a right-of-way authorization.

17 F. For the Blythe Project, Defendants have (among other things) approved an
18 amendment to the CDCA Plan to include the Blythe Project as an approved power generation
19 location under the Energy Production and Utility Corridors Element of the CDCA Plan; and
20 granted a right-of-way authorization.

21 7. Plaintiffs challenge the Projects on a variety of grounds. By way of example and
22 not limitation:

23 A. For each of the Projects, Defendants failed to properly engage in the
24 consultations required for the Project under the National Historic Preservation Act ("NHPA"),
25 16 U.S.C. § 470 *et seq.*

26 B. For each of the Projects, Defendants failed to conduct an adequate analysis
27 of the cumulative impacts, failed to prepare a programmatic environmental impact statement,
28

Partners VIII, LLC,

1 failed to adequately identify and evaluate the significance of the affected cultural environment,
2 and failed to conduct an adequate analysis of alternatives to the Projects under the National
3 Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq.*

4 C. For the Projects collectively, Defendants failed to prepare a programmatic
5 environmental impact statement for the broad major federal action contemplated by the Projects,
6 in violation of NEPA. In a presentation delivered at Defendants' National Land Use Planning
7 Conference in 2009, Defendants announced publicly that they were in the process of preparing
8 a programmatic statement covering the Projects (and other solar-electricity generation projects).
9 It turns out, however, that Defendants failed to complete the programmatic statement before
10 approving the Projects. (A true and correct copy of the presentation is attached to this pleading
11 as Exhibit "B.")

12 D. For each of the Projects, Defendants violated the Federal Land Policy and
13 Management Act of 1976 ("FLPMA"), 43 U.S.C. § 1701 *et seq.*, by authorizing solar-electricity
14 generation activities on lands designated in the CDCA Plan as Class L (Limited Use) lands even
15 though such activities are permitted under the CDCA Plan only on Class M (Moderate Use) or
16 Class I (Intensive Use) lands, and by allowing the permanent impairment of the lands affected
17 by the Projects and allow unnecessary or undue degradation on these lands.

18 E. Defendants' approval of the Projects will result in the intentional
19 excavation, disposal, or other removal of Native American cultural items (including human
20 remains) known to be or strongly suspected of being on the Projects' sites, in violation of the
21 Native American Graves Protection and Repatriation Act ("NAGPRA"), 25 U.S.C. § 3001 *et*
22 *seq.*

23 **Jurisdiction, Venue, and Exhaustion of Remedies**

24 8. This Court has jurisdiction over this proceeding pursuant to Sections 1331 and
25 1361 of Title 28 of the U.S. Code because this pleading alleges violations of federal law and
26 seeks to compel Defendants to perform duties owed to Plaintiff, its members, and other
27 members of the public. The Court also has jurisdiction over this proceeding pursuant to Section
28 551 *et seq.* of Title 5 of the U.S. Code, commonly known as the Administrative Procedure Act

1 (“APA”), because the pleading seeks judicial review of actions taken by one or more agencies
2 or officers of the United States.

3 9. Venue is proper in this Court under Section 1391(e) of Title 28 of the U.S. Code,
4 because (i) Defendants are either officers, employees, or agencies of the United States and/or
5 (ii) both a substantial part of the events or omissions giving rise to this proceeding were
6 committed in this judicial district and a substantial part of the property at issue in this
7 proceeding is located in this judicial district.

8 10. Plaintiffs have satisfied each and every exhaustion-of-remedies requirement that
9 must be satisfied in order to maintain this proceeding. Alternatively, no exhaustion-of-remedies
10 requirement may be applied to Plaintiffs.

11 11. Plaintiffs have no plain, speedy, adequate remedy in the ordinary course of law
12 since Plaintiffs, their respective members, and other members of the public will suffer
13 irreparable harm as a result of Defendants’ violations of federal law as alleged in this pleading.
14 Defendants’ violations rest on the failure to satisfy a clear, present, ministerial duty to act in
15 accordance with federal law.

16 12. Plaintiffs have a beneficial right and interest in Defendants’ fulfillment of all their
17 legal duties, as alleged in this pleading.

18 **FIRST CLAIM:**
19 **Violation of National Historic Preservation Act--Ivanpah Project**
20 **(Against All Defendants except Kalish, Goodro, and Trost)**

21 13. Paragraphs 1 through 12 are fully incorporated into this paragraph.

22 14. NHPA Section 101(d)(6)(B) provides as follows: “(A) Properties of traditional
23 religious and cultural importance to an Indian tribe or Native Hawaiian organization may be
24 determined to be eligible for inclusion on the National Register. (B) In carrying out its
25 responsibilities under section 106 of this Act, a Federal agency shall consult with any Indian
26 tribe or Native Hawaiian organization that attaches religious and cultural significance to
27 properties described in subparagraph (A).” NHPA Section 106 provides as follows: “The head
28 of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally
assisted undertaking in any State and the head of any Federal department or independent agency

1 having authority to license any undertaking shall, prior to the approval of the expenditure of any
2 Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take
3 into account the effect of the undertaking on any district, site, building, structure, or object that
4 is included in or eligible for inclusion in the National Register. The head of any such Federal
5 agency shall afford the Advisory Council on Historic Preservation established under Title II of
6 this Act a reasonable opportunity to comment with regard to such undertaking.”

7 15. Plaintiffs, both separately and collectively, attach religious and cultural
8 significance to the federal (public) land that will be affected by the Ivanpah Project. This land
9 has traditional religious and cultural importance to Indian tribes and to Plaintiffs. Consequently,
10 Plaintiffs will be seriously harmed by Defendants’ failure to comply with NHPA.

11 16. Under *Amendment No. 1* (Exhibit “A”), Defendants were required to perform the
12 NHPA-prescribed consultations with Plaintiff LA CUNA. Even in the absence of *Amendment*
13 *No. 1*, Defendants were required to perform the NHPA-prescribed consultations for the benefit
14 of Plaintiffs (among others).

15 17. Defendants failed to perform the NHPA-prescribed consultations for the Ivanpah
16 Project. Their failure in this regard was contrary to NHPA and arbitrary, capricious, an abuse
17 of discretion, or otherwise not in accordance with law as required by the APA.

18 18. Plaintiffs, their respective members, and other members of the public have been
19 harmed as a result of Defendants’ violations of NHPA and the APA because they have been
20 denied the benefits and protections provided by compliance with those laws. By way of
21 example and without limitation, Plaintiff, its members, the public, and the decision-makers who
22 approved and are carrying out the Ivanpah Project were not fully informed about the traditional
23 religious and cultural importance attached by Plaintiffs and Indian tribes to the federal (public)
24 land that will be affected by the Ivanpah Project.

25 **SECOND CLAIM:**
26 **Violation of National Environmental Policy Act--Ivanpah Project**
27 **(Against All Defendants except Kalish, Goodro, and Trost)**

28 19. Paragraphs 1 through 18 are fully incorporated into this paragraph.

20. NEPA requires every federal agency to prepare an environmental impact statement ("EIS") for every major action significantly affecting the quality of the human environment that the agency proposes to approve or carry out. In general, the EIS must adequately address (i) the proposed action's environmental impact, (ii) any adverse environmental effects that cannot be avoided if the proposed action is implemented, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, (v) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if implemented, (vi) mitigation measures for the proposed action, and (vii) cumulative impacts for the proposed action.

21. Defendants have not prepared an adequate EIS for the Ivanpah Project even though it is a major action proposed to be approved and carried out by at least one federal agency and has the potential to affect the quality of the human environment, including but not limited to the environment in the California Desert Conservation Area.

22. Defendants' failure to prepare an adequate EIS for the Ivanpah Project was contrary to NEPA and arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law as required by the APA.

23. Plaintiffs, their respective members, and other members of the public have been harmed as a result of Defendants' violations of NEPA and the APA because they have been denied the benefits and protections provided by compliance with those laws. By way of example and without limitation, Plaintiff, its members, the public, and the decision-makers who approved and are carrying out the Project were not fully informed about the impacts of, mitigation measures for, and alternatives to the Project prior to the decision to approve and carry out the Project.

THIRD CLAIM:
Violation of National Environmental Policy Act--Ivanpah Project
(Against All Defendants except Kalish, Goodro, and Trost)

24. Paragraphs 1 through 23 are fully incorporated into this paragraph.

25. NEPA (under *Kleppe v. Sierra Club*, 427 U.S. 390 (1976)) requires the environmental consequences of several proposals that will have cumulative or synergistic environmental impacts upon a region to be considered together in a programmatic EIS. Section 1502.4(b) of Title 40 of the Code of Federal Regulations provides that federal agencies “shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking.”

26. Each of the Projects is a major federal action, and together they constitute broad action by Defendants.

27. Defendants did not prepare a programmatic EIS for the Projects.

28. With regard to the Ivanpah Project, Defendants' failure to prepare a programmatic EIS for the Projects was contrary to NEPA and arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law as required by the APA.

29. Plaintiffs, their respective members, and other members of the public have been harmed as a result of Defendants' violations of NEPA and the APA because they have been denied the benefits and protections provided by compliance with those laws. By way of example and without limitation, Plaintiff, its members, the public, and the decision-makers who approved and are carrying out the Project were not fully informed about the programmatic impacts of, mitigation measures for, and alternatives to the Projects prior to the decision to approve and carry out the Ivanpah Project.

FOURTH CLAIM:
Violation of Federal Land Policy and Management Act--Ivanpah Project
(Against All Defendants except Kalish, Goodro, and Trost)

30. Paragraphs 1 through 29 are fully incorporated into this paragraph.

31. FLPMA Section 302(b) provides as follows: “In managing the public lands, the Secretary shall, subject to this Act and other applicable law and under such terms and conditions as are consistent with such law, regulate, through easements, permits, leases, licenses, published rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and development of the public lands, including, but not limited to, long-term leases to permit individuals to utilize public lands for habitation, cultivation, and the development of small trade

1 or manufacturing concerns: *Provided*, That unless otherwise provided for by law, the Secretary
2 may permit Federal departments and agencies to use, occupy, and develop public lands only
3 through rights-of-way under section 507 of this Act, withdrawals under section 204 of this Act,
4 and, where the proposed use and development are similar or closely related to the programs of
5 the Secretary for the public lands involved, cooperative agreements under subsection (b) of
6 section 307 of this Act: *Provided further*, That nothing in this Act shall be construed as
7 authorizing the Secretary concerned to require Federal permits to hunt and fish on public lands
8 or on lands in the National Forest System and adjacent waters or as enlarging or diminishing
9 the responsibility and authority of the States for management of fish and resident wildlife.
10 However, the Secretary concerned may designate areas of public land and of lands in the
11 National Forest System where, and establish periods when, no hunting or fishing will be
12 permitted for reasons of public safety, administration, or compliance with provisions of
13 applicable law. Except in emergencies, any regulations of the Secretary concerned relating to
14 hunting and fishing pursuant to this section shall be put into effect only after consultation with
15 the appropriate State fish and game department. Nothing in this Act shall modify or change any
16 provision of Federal law relating to migratory birds or to endangered or threatened species.
17 Except as provided in section 314, section 603, and subsection (f) of section 601 of this Act and
18 in the last sentence of this paragraph, no provision of this section or any other section of this Act
19 shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims
20 under that Act, including, but not limited to, rights of ingress and egress. In managing the
21 public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent
22 unnecessary or undue degradation of the lands.”

23 32. FLPMA Section 601(d) provides as follows: “The Secretary [of the Interior], in
24 accordance with section 202 of this Act, shall prepare and implement a comprehensive, long-
25 range plan for the management, use, development, and protection of the public lands within the
26 California Desert Conservation Area. Such plan shall take into account the principles of
27 multiple use and sustained yield in providing for resource use and development, including, but
28 not limited to, maintenance of environmental quality, rights-of-way, and mineral development.

1 Such plan shall be completed and implementation there-of initiated on or before September 30,
2 1980.”

3 33. FLPMA Section 601(f) provides as follows: “Subject to valid existing rights,
4 nothing in this Act shall affect the applicability of the United States mining laws on the public
5 lands within the California Desert Conservation Area, except that all mining claims located on
6 public lands within the California Desert Conservation Area shall be subject to such reasonable
7 regulations as the Secretary may prescribe to effectuate the purposes of this section. Any patent
8 issued on any such mining claim shall recite this limitation and continue to be subject to such
9 regulations. Such regulations shall provide for such measures as may be reason-able to protect
10 the scenic, scientific, and environmental values of the public lands of the California Desert
11 Conservation Area against undue impairment, and to assure against pollution of the streams and
12 waters within the California Desert Conservation Area.”

13 34. Defendants have not complied with FLPMA as it relates to the Ivanpah Project
14 even though it is located on federal (public) land and is within the California Desert
15 Conservation Area and subject to the CDCA Plan.

16 35. Defendants’ failure to comply with the CDCA Plan and take all action necessary
17 to prevent unnecessary or undue degradation of the federal (public) land affected when they
18 approved the Ivanpah Project was contrary to FLPMA and arbitrary, capricious, an abuse of
19 discretion, or otherwise not in accordance with law as required by the APA.

20 36. Plaintiffs, their respective members, and other members of the public have been
21 harmed as a result of Defendants’ violations of FLPMA and the APA because they have been
22 denied the benefits and protections provided by compliance with those laws. By way of
23 example and without limitation, Plaintiff, its members, and the public will have to endure
24 unnecessary or undue degradation of the federal (public) land affected by the Ivanpah Project
25 and will lose the protections provided for this land by the CDCA Plan.

26 **FIFTH CLAIM:**
27 **Violation of Native American Graves Protection & Repatriation Act--Ivanpah Project**
28 **(Against All Defendants except Kalish, Goodro, and Trost)**

37. Paragraphs 1 through 36 are fully incorporated into this paragraph.

1 38. Section 3(b) of the NAGPRA provides as follows: "Native American cultural
2 items not claimed under subsection (a) of this section shall be disposed of in accordance with
3 regulations promulgated by the Secretary [of the Interior] in consultation with the review
4 committee established under section [8] of this [Act], Native American groups, representatives
5 of museums and the scientific community."

6 39. Section 3(c) of the NAGPRA provides as follows: "The intentional removal from
7 or excavation of Native American cultural items from Federal or tribal lands for purposes of
8 discovery, study, or removal of such items is permitted only if--

9 "(1) such items are excavated or removed pursuant to a permit issued
10 under section 470cc of Title 16 [of the U.S. Code] which shall be consistent with
11 this [Act];

12 "(2) such items are excavated or removed after consultation with or, in the
13 case of tribal lands, consent of the appropriate (if any) Indian tribe or Native
14 Hawaiian organization;

15 "(3) the ownership and right of control of the disposition of such items
16 shall be as provided in subsections (a) and (b) of this section; and

17 "(4) proof of consultation or consent under paragraph (2) is
18 shown."

19 40. Defendants' approval of the Ivanpah Project will result in the intentional
20 excavation, disposal, or other removal of Native American cultural items (including human
21 remains) known to be or strongly suspected of being on the site of the Project without
22 compliance with the conditions necessary for excavation, disposal, or other removal. By way
23 of example and not limitation, Defendants have not consulted with or obtained the consent of
24 the Indian tribe whose cultural remains or located on the site of the Project.

25 41. Defendants' failure to consult with and obtain the consent of the appropriate
26 Indian tribe prior to excavating, disposing of, or otherwise removing Native American cultural
27 items (including human remains) known to be or strongly suspected of being on the site of the
28

1 Ivanpah Project was contrary to the NAGPRA and arbitrary, capricious, an abuse of discretion,
2 or otherwise not in accordance with law as required by the APA.

3 42. Plaintiffs, their respective members, and other members of the public have been
4 harmed as a result of Defendants' violations of the NAGPRA and the APA because they have
5 been denied the benefits and protections provided by compliance with those laws. By way of
6 example and without limitation, Plaintiff, its members, and the public (including the appropriate
7 Indian tribe) will have to endure the excavation, disposal, or other removal of Native American
8 cultural items (including human remains) located on the site of the Ivanpah Project without the
9 necessary consultation and consent prior to Defendants' approval of the Project.

10 **SIXTH CLAIM:**
11 **Violation of National Historic Preservation Act--Genesis Project**
12 **(Against All Defendants except Lee, Goodro, and Trost)**

13 43. Paragraphs 1 through 42 are fully incorporated into this paragraph.

14 44. NHPA Section 101(d)(6)(B) provides as follows: "(A) Properties of traditional
15 religious and cultural importance to an Indian tribe or Native Hawaiian organization may be
16 determined to be eligible for inclusion on the National Register. (B) In carrying out its
17 responsibilities under section 106 of this Act, a Federal agency shall consult with any Indian
18 tribe or Native Hawaiian organization that attaches religious and cultural significance to
19 properties described in subparagraph (A)." NHPA Section 106 provides as follows: "The head
20 of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally
21 assisted undertaking in any State and the head of any Federal department or independent agency
22 having authority to license any undertaking shall, prior to the approval of the expenditure of any
23 Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take
24 into account the effect of the undertaking on any district, site, building, structure, or object that
25 is included in or eligible for inclusion in the National Register. The head of any such Federal
26 agency shall afford the Advisory Council on Historic Preservation established under Title II of
27 this Act a reasonable opportunity to comment with regard to such undertaking."

28 45. Plaintiffs, both separately and collectively, attach religious and cultural
significance to the federal (public) land that will be affected by the Genesis Project. This land

1 has traditional religious and cultural importance to Indian tribes and to Plaintiffs. Consequently,
2 Plaintiffs will be seriously harmed by Defendants' failure to comply with NHPA.

3 46. Under *Amendment No. 1* (Exhibit "A"), Defendants were required to perform the
4 NHPA-prescribed consultations with Plaintiff LA CUNA. Even in the absence of *Amendment*
5 *No. 1*, Defendants were required to perform the NHPA-prescribed consultations for the benefit
6 of Plaintiffs (among others).

7 47. Defendants failed to perform the NHPA-prescribed consultations for the Genesis
8 Project. Their failure in this regard was contrary to NHPA and arbitrary, capricious, an abuse
9 of discretion, or otherwise not in accordance with law as required by the APA.

10 48. Plaintiffs, their respective members, and other members of the public have been
11 harmed as a result of Defendants' violations of NHPA and the APA because they have been
12 denied the benefits and protections provided by compliance with those laws. By way of
13 example and without limitation, Plaintiff, its members, the public, and the decision-makers who
14 approved and are carrying out the Genesis Project were not fully informed about the traditional
15 religious and cultural importance attached by Plaintiffs and Indian tribes to the federal (public)
16 land that will be affected by the Genesis Project.

17 **SEVENTH CLAIM:**
18 **Violation of National Environmental Policy Act--Genesis Project**
19 **(Against All Defendants except Lee, Goodro, and Trost)**

20 49. Paragraphs 1 through 48 are fully incorporated into this paragraph.

21 50. NEPA requires every federal agency to prepare an environmental impact
22 statement ("EIS") for every major action significantly affecting the quality of the human
23 environment that the agency proposes to approve or carry out. In general, the EIS must
24 adequately address (i) the proposed action's environmental impact, (ii) any adverse
25 environmental effects that cannot be avoided if the proposed action is implemented, (iii)
26 alternatives to the proposed action, (iv) the relationship between local short-term uses of the
27 environment and the maintenance and enhancement of long-term productivity, (v) any
28 irreversible and irretrievable commitments of resources that would be involved in the proposed

1 action if implemented, (vi) mitigation measures for the proposed action, and (vii) cumulative
2 impacts for the proposed action.

3 51. Defendants have not prepared an adequate EIS for the Genesis Project even
4 though it is a major action proposed to be approved and carried out by at least one federal
5 agency and has the potential to affect the quality of the human environment, including but not
6 limited to the environment in the California Desert Conservation Area.

7 52. Defendants' failure to prepare an adequate EIS for the Genesis Project was
8 contrary to NEPA and arbitrary, capricious, an abuse of discretion, or otherwise not in
9 accordance with law as required by the APA.

10 53. Plaintiffs, their respective members, and other members of the public have been
11 harmed as a result of Defendants' violations of NEPA and the APA because they have been
12 denied the benefits and protections provided by compliance with those laws. By way of
13 example and without limitation, Plaintiff, its members, the public, and the decision-makers who
14 approved and are carrying out the Project were not fully informed about the impacts of,
15 mitigation measures for, and alternatives to the Project prior to the decision to approve and carry
16 out the Project.

17 **EIGHTH CLAIM:**
18 **Violation of National Environmental Policy Act--Genesis Project**
19 **(Against All Defendants except Lee, Goodro, and Trost)**

20 54. Paragraphs 1 through 53 are fully incorporated into this paragraph.

21 55. NEPA (under *Kleppe v. Sierra Club*, 427 U.S. 390 (1976)) requires the
22 environmental consequences of several proposals that will have cumulative or synergistic
23 environmental impacts upon a region to be considered together in a programmatic EIS. Section
24 1502.4(b) of Title 40 of the Code of Federal Regulations provides that federal agencies "shall
25 prepare statements on broad actions so that they are relevant to policy and are timed to coincide
26 with meaningful points in agency planning and decisionmaking."

27 56. Each of the Projects is a major federal action, and together they constitute broad
28 action by Defendants.

57. Defendants did not prepare a programmatic EIS for the Projects.

58. With regard to the Genesis Project, Defendants' failure to prepare a programmatic EIS for the Projects was contrary to NEPA and arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law as required by the APA.

59. Plaintiffs, their respective members, and other members of the public have been harmed as a result of Defendants' violations of NEPA and the APA because they have been denied the benefits and protections provided by compliance with those laws. By way of example and without limitation, Plaintiff, its members, the public, and the decision-makers who approved and are carrying out the Project were not fully informed about the programmatic impacts of, mitigation measures for, and alternatives to the Projects prior to the decision to approve and carry out the Genesis Project.

NINTH CLAIM:
Violation of Federal Land Policy and Management Act--Genesis Project
(Against All Defendants except Lee, Goodro, and Trost)

60. Paragraphs 1 through 59 are fully incorporated into this paragraph.

61. FLPMA Section 302(b) provides as follows: "In managing the public lands, the Secretary shall, subject to this Act and other applicable law and under such terms and conditions as are consistent with such law, regulate, through easements, permits, leases, licenses, published rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and development of the public lands, including, but not limited to, long-term leases to permit individuals to utilize public lands for habitation, cultivation, and the development of small trade or manufacturing concerns: *Provided*, That unless otherwise provided for by law, the Secretary may permit Federal departments and agencies to use, occupy, and develop public lands only through rights-of-way under section 507 of this Act, withdrawals under section 204 of this Act, and, where the proposed use and development are similar or closely related to the programs of the Secretary for the public lands involved, cooperative agreements under subsection (b) of section 307 of this Act: *Provided further*, That nothing in this Act shall be construed as authorizing the Secretary concerned to require Federal permits to hunt and fish on public lands or on lands in the National Forest System and adjacent waters or as enlarging or diminishing the responsibility and authority of the States for management of fish and resident wildlife.

1 However, the Secretary concerned may designate areas of public land and of lands in the
2 National Forest System where, and establish periods when, no hunting or fishing will be
3 permitted for reasons of public safety, administration, or compliance with provisions of
4 applicable law. Except in emergencies, any regulations of the Secretary concerned relating to
5 hunting and fishing pursuant to this section shall be put into effect only after consultation with
6 the appropriate State fish and game department. Nothing in this Act shall modify or change any
7 provision of Federal law relating to migratory birds or to endangered or threatened species.
8 Except as provided in section 314, section 603, and subsection (f) of section 601 of this Act and
9 in the last sentence of this paragraph, no provision of this section or any other section of this Act
10 shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims
11 under that Act, including, but not limited to, rights of ingress and egress. In managing the
12 public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent
13 unnecessary or undue degradation of the lands."

14 62. FLPMA Section 601(d) provides as follows: "The Secretary [of the Interior], in
15 accordance with section 202 of this Act, shall prepare and implement a comprehensive, long-
16 range plan for the management, use, development, and protection of the public lands within the
17 California Desert Conservation Area. Such plan shall take into account the principles of
18 multiple use and sustained yield in providing for resource use and development, including, but
19 not limited to, maintenance of environmental quality, rights-of-way, and mineral development.
20 Such plan shall be completed and implementation there-of initiated on or before September 30,
21 1980."

22 63. FLPMA Section 601(f) provides as follows: "Subject to valid existing rights,
23 nothing in this Act shall affect the applicability of the United States mining laws on the public
24 lands within the California Desert Conservation Area, except that all mining claims located on
25 public lands within the California Desert Conservation Area shall be subject to such reasonable
26 regulations as the Secretary may prescribe to effectuate the purposes of this section. Any patent
27 issued on any such mining claim shall recite this limitation and continue to be subject to such
28 regulations. Such regulations shall provide for such measures as may be reason-able to protect

1 the scenic, scientific, and environmental values of the public lands of the California Desert
2 Conservation Area against undue impairment, and to assure against pollution of the streams and
3 waters within the California Desert Conservation Area.”

4 64 Defendants have not complied with FLPMA as it relates to the Genesis Project
5 even though it is located on federal (public) land and is within the California Desert
6 Conservation Area and subject to the CDCA Plan.

7 65. Defendants’ failure to comply with the CDCA Plan and take all action necessary
8 to prevent unnecessary or undue degradation of the federal (public) land affected when they
9 approved the Genesis Project was contrary to FLPMA and arbitrary, capricious, an abuse of
10 discretion, or otherwise not in accordance with law as required by the APA.

11 66. Plaintiffs, their respective members, and other members of the public have been
12 harmed as a result of Defendants’ violations of FLPMA and the APA because they have been
13 denied the benefits and protections provided by compliance with those laws. By way of
14 example and without limitation, Plaintiff, its members, and the public will have to endure
15 unnecessary or undue degradation of the federal (public) land affected by the Genesis Project
16 and will lose the protections provided for this land by the CDCA Plan.

17 **TENTH CLAIM:**
18 **Violation of Native American Graves Protection & Repatriation Act--Genesis Project**
19 **(Against All Defendants except Lee, Goodro, and Trost)**

20 67. Paragraphs 1 through 66 are fully incorporated into this paragraph.

21 68. Section 3(b) of the NAGPRA provides as follows: “Native American cultural
22 items not claimed under subsection (a) of this section shall be disposed of in accordance with
23 regulations promulgated by the Secretary [of the Interior] in consultation with the review
24 committee established under section [8] of this [Act], Native American groups, representatives
25 of museums and the scientific community.”

26 69. Section 3(c) of the NAGPRA provides as follows: “The intentional removal from
27 or excavation of Native American cultural items from Federal or tribal lands for purposes of
28 discovery, study, or removal of such items is permitted only if--

1 “(1) such items are excavated or removed pursuant to a permit issued
2 under section 470cc of Title 16 [of the U.S. Code] which shall be consistent with
3 this [Act];

4 “(2) such items are excavated or removed after consultation with or, in the
5 case of tribal lands, consent of the appropriate (if any) Indian tribe or Native
6 Hawaiian organization;

7 “(3) the ownership and right of control of the disposition of such items
8 shall be as provided in subsections (a) and (b) of this section; and

9 “(4) proof of consultation or consent under paragraph (2) is
10 shown.”

11 70. Defendants’ approval of the Genesis Project will result in the intentional
12 excavation, disposal, or other removal of Native American cultural items (including human
13 remains) known to be or strongly suspected of being on the site of the Project without
14 compliance with the conditions necessary for excavation, disposal, or other removal. By way
15 of example and not limitation, Defendants have not consulted with or obtained the consent of
16 the Indian tribe whose cultural remains or located on the site of the Project.

17 71. Defendants’ failure to consult with and obtain the consent of the appropriate
18 Indian tribe prior to excavating, disposing of, or otherwise removing Native American cultural
19 items (including human remains) known to be or strongly suspected of being on the site of the
20 Genesis Project was contrary to the NAGPRA and arbitrary, capricious, an abuse of discretion,
21 or otherwise not in accordance with law as required by the APA.

22 72. Plaintiffs, their respective members, and other members of the public have been
23 harmed as a result of Defendants’ violations of the NAGPRA and the APA because they have
24 been denied the benefits and protections provided by compliance with those laws. By way of
25 example and without limitation, Plaintiff, its members, and the public (including the appropriate
26 Indian tribe) will have to endure the excavation, disposal, or other removal of Native American
27 cultural items (including human remains) located on the site of the Genesis Project without the
28 necessary consultation and consent prior to Defendants’ approval of the Project.

ELEVENTH CLAIM:
Violation of National Historic Preservation Act--Imperial Project
(Against All Defendants except Lee, Kalish, and Trost)

73. Paragraphs 1 through 72 are fully incorporated into this paragraph.

74. NHPA Section 101(d)(6)(B) provides as follows: "(A) Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register. (B) In carrying out its responsibilities under section 106 of this Act, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described in subparagraph (A)." NHPA Section 106 provides as follows: "The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking."

75. Plaintiffs, both separately and collectively, attach religious and cultural significance to the federal (public) land that will be affected by the Imperial Project. This land has traditional religious and cultural importance to Indian tribes and to Plaintiffs. Consequently, Plaintiffs will be seriously harmed by Defendants' failure to comply with NHPA.

76. Under *Amendment No. 1* (Exhibit "A"), Defendants were required to perform the NHPA-prescribed consultations with Plaintiff LA CUNA. Even in the absence of *Amendment No. 1*, Defendants were required to perform the NHPA-prescribed consultations for the benefit of Plaintiffs (among others).

77. Defendants failed to perform the NHPA-prescribed consultations for the Imperial Project. Their failure in this regard was contrary to NHPA and arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law as required by the APA.

78. Plaintiffs, their respective members, and other members of the public have been harmed as a result of Defendants' violations of NHPA and the APA because they have been denied the benefits and protections provided by compliance with those laws. By way of example and without limitation, Plaintiff, its members, the public, and the decision-makers who approved and are carrying out the Imperial Project were not fully informed about the traditional religious and cultural importance attached by Plaintiffs and Indian tribes to the federal (public) land that will be affected by the Imperial Project.

TWELFTH CLAIM:
Violation of National Environmental Policy Act--Imperial Project
(Against All Defendants except Lee, Kalish, and Trost)

79. Paragraphs 1 through 78 are fully incorporated into this paragraph.

80. NEPA requires every federal agency to prepare an environmental impact statement ("EIS") for every major action significantly affecting the quality of the human environment that the agency proposes to approve or carry out. In general, the EIS must adequately address (i) the proposed action's environmental impact, (ii) any adverse environmental effects that cannot be avoided if the proposed action is implemented, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, (v) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if implemented, (vi) mitigation measures for the proposed action, and (vii) cumulative impacts for the proposed action.

81. Defendants have not prepared an adequate EIS for the Imperial Project even though it is a major action proposed to be approved and carried out by at least one federal agency and has the potential to affect the quality of the human environment, including but not limited to the environment in the California Desert Conservation Area.

82. Defendants' failure to prepare an adequate EIS for the Imperial Project was contrary to NEPA and arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law as required by the APA.

83. Plaintiffs, their respective members, and other members of the public have been harmed as a result of Defendants' violations of NEPA and the APA because they have been denied the benefits and protections provided by compliance with those laws. By way of example and without limitation, Plaintiff, its members, the public, and the decision-makers who approved and are carrying out the Project were not fully informed about the impacts of, mitigation measures for, and alternatives to the Project prior to the decision to approve and carry out the Project.

THIRTEENTH CLAIM:
Violation of National Environmental Policy Act--Imperial Project
(Against All Defendants except Lee, Kalish, and Trost)

84. Paragraphs 1 through 83 are fully incorporated into this paragraph.

85. NEPA (under *Kleppe v. Sierra Club*, 427 U.S. 390 (1976)) requires the environmental consequences of several proposals that will have cumulative or synergistic environmental impacts upon a region to be considered together in a programmatic EIS. Section 1502.4(b) of Title 40 of the Code of Federal Regulations provides that federal agencies “shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking.”

86. Each of the Projects is a major federal action, and together they constitute broad action by Defendants.

87. Defendants did not prepare a programmatic EIS for the Projects.

88. With regard to the Imperial Project, Defendants' failure to prepare a programmatic EIS for the Projects was contrary to NEPA and arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law as required by the APA.

89. Plaintiffs, their respective members, and other members of the public have been harmed as a result of Defendants' violations of NEPA and the APA because they have been denied the benefits and protections provided by compliance with those laws. By way of example and without limitation, Plaintiff, its members, the public, and the decision-makers who approved and are carrying out the Project were not fully informed about the programmatic

1 impacts of, mitigation measures for, and alternatives to the Projects prior to the decision to
2 approve and carry out the Imperial Project.

3 **FOURTEENTH CLAIM:**
4 **Violation of Federal Land Policy and Management Act--Imperial Project**
5 **(Against All Defendants except Lee, Kalish, and Trost)**

6 90. Paragraphs 1 through 89 are fully incorporated into this paragraph.

7 91. FLPMA Section 302(b) provides as follows: "In managing the public lands, the
8 Secretary shall, subject to this Act and other applicable law and under such terms and conditions
9 as are consistent with such law, regulate, through easements, permits, leases, licenses, published
10 rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and
11 development of the public lands, including, but not limited to, long-term leases to permit
12 individuals to utilize public lands for habitation, cultivation, and the development of small trade
13 or manufacturing concerns: *Provided*, That unless otherwise provided for by law, the Secretary
14 may permit Federal departments and agencies to use, occupy, and develop public lands only
15 through rights-of-way under section 507 of this Act, withdrawals under section 204 of this Act,
16 and, where the proposed use and development are similar or closely related to the programs of
17 the Secretary for the public lands involved, cooperative agreements under subsection (b) of
18 section 307 of this Act: *Provided further*, That nothing in this Act shall be construed as
19 authorizing the Secretary concerned to require Federal permits to hunt and fish on public lands
20 or on lands in the National Forest System and adjacent waters or as enlarging or diminishing
21 the responsibility and authority of the States for management of fish and resident wildlife.
22 However, the Secretary concerned may designate areas of public land and of lands in the
23 National Forest System where, and establish periods when, no hunting or fishing will be
24 permitted for reasons of public safety, administration, or compliance with provisions of
25 applicable law. Except in emergencies, any regulations of the Secretary concerned relating to
26 hunting and fishing pursuant to this section shall be put into effect only after consultation with
27 the appropriate State fish and game department. Nothing in this Act shall modify or change any
28 provision of Federal law relating to migratory birds or to endangered or threatened species.
Except as provided in section 314, section 603, and subsection (f) of section 601 of this Act and

1 in the last sentence of this paragraph, no provision of this section or any other section of this Act
2 shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims
3 under that Act, including, but not limited to, rights of ingress and egress. In managing the
4 public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent
5 unnecessary or undue degradation of the lands.”

6 92. FLPMA Section 601(d) provides as follows: “The Secretary [of the Interior], in
7 accordance with section 202 of this Act, shall prepare and implement a comprehensive, long-
8 range plan for the management, use, development, and protection of the public lands within the
9 California Desert Conservation Area. Such plan shall take into account the principles of
10 multiple use and sustained yield in providing for resource use and development, including, but
11 not limited to, maintenance of environmental quality, rights-of-way, and mineral development.
12 Such plan shall be completed and implementation there-of initiated on or before September 30,
13 1980.”

14 93. FLPMA Section 601(f) provides as follows: “Subject to valid existing rights,
15 nothing in this Act shall affect the applicability of the United States mining laws on the public
16 lands within the California Desert Conservation Area, except that all mining claims located on
17 public lands within the California Desert Conservation Area shall be subject to such reasonable
18 regulations as the Secretary may prescribe to effectuate the purposes of this section. Any patent
19 issued on any such mining claim shall recite this limitation and continue to be subject to such
20 regulations. Such regulations shall provide for such measures as may be reason-able to protect
21 the scenic, scientific, and environmental values of the public lands of the California Desert
22 Conservation Area against undue impairment, and to assure against pollution of the streams and
23 waters within the California Desert Conservation Area.”

24 94. Defendants have not complied with FLPMA as it relates to the Imperial Project
25 even though it is located on federal (public) land and is within the California Desert
26 Conservation Area and subject to the CDCA Plan.

27 95. Defendants’ failure to comply with the CDCA Plan and take all action necessary
28 to prevent unnecessary or undue degradation of the federal (public) land affected when they

1 approved the Imperial Project was contrary to FLPMA and arbitrary, capricious, an abuse of
2 discretion, or otherwise not in accordance with law as required by the APA.

3 96. Plaintiffs, their respective members, and other members of the public have been
4 harmed as a result of Defendants' violations of FLPMA and the APA because they have been
5 denied the benefits and protections provided by compliance with those laws. By way of
6 example and without limitation, Plaintiff, its members, and the public will have to endure
7 unnecessary or undue degradation of the federal (public) land affected by the Imperial Project
8 and will lose the protections provided for this land by the CDCA Plan.

9 **FIFTEEN CLAIM:**
10 **Violation of Native American Graves Protection & Repatriation Act--Imperial Project**
(Against All Defendants except Lee, Kalish, and Trost)

11 97. Paragraphs 1 through 96 are fully incorporated into this paragraph.

12 98. Section 3(b) of the NAGPRA provides as follows: "Native American cultural
13 items not claimed under subsection (a) of this section shall be disposed of in accordance with
14 regulations promulgated by the Secretary [of the Interior] in consultation with the review
15 committee established under section [8] of this [Act], Native American groups, representatives
16 of museums and the scientific community."

17 99. Section 3(c) of the NAGPRA provides as follows: "The intentional removal from
18 or excavation of Native American cultural items from Federal or tribal lands for purposes of
19 discovery, study, or removal of such items is permitted only if--

20 "(1) such items are excavated or removed pursuant to a permit issued
21 under section 470cc of Title 16 [of the U.S. Code] which shall be consistent with
22 this [Act];

23 "(2) such items are excavated or removed after consultation with or, in the
24 case of tribal lands, consent of the appropriate (if any) Indian tribe or Native
25 Hawaiian organization;

26 "(3) the ownership and right of control of the disposition of such items
27 shall be as provided in subsections (a) and (b) of this section; and
28

1 “(4) proof of consultation or consent under paragraph (2) is
2 shown.”

3 100. Defendants’ approval of the Imperial Project will result in the intentional
4 excavation, disposal, or other removal of Native American cultural items (including human
5 remains) known to be or strongly suspected of being on the site of the Project without
6 compliance with the conditions necessary for excavation, disposal, or other removal. By way
7 of example and not limitation, Defendants have not consulted with or obtained the consent of
8 the Indian tribe whose cultural remains or located on the site of the Project.

9 101. Defendants’ failure to consult with and obtain the consent of the appropriate
10 Indian tribe prior to excavating, disposing of, or otherwise removing Native American cultural
11 items (including human remains) known to be or strongly suspected of being on the site of the
12 Imperial Project was contrary to the NAGPRA and arbitrary, capricious, an abuse of discretion,
13 or otherwise not in accordance with law as required by the APA.

14 102. Plaintiffs, their respective members, and other members of the public have been
15 harmed as a result of Defendants’ violations of the NAGPRA and the APA because they have
16 been denied the benefits and protections provided by compliance with those laws. By way of
17 example and without limitation, Plaintiff, its members, and the public (including the appropriate
18 Indian tribe) will have to endure the excavation, disposal, or other removal of Native American
19 cultural items (including human remains) located on the site of the Imperial Project without the
20 necessary consultation and consent prior to Defendants’ approval of the Project.

21 **SIXTEENTH CLAIM:**
22 **Violation of National Historic Preservation Act--Chevron Project**
(Against All Defendants except Lee, Kalish, and Goodro)

23 103. Paragraphs 1 through 102 are fully incorporated into this paragraph.

24 104. NHPA Section 101(d)(6)(B) provides as follows: “(A) Properties of traditional
25 religious and cultural importance to an Indian tribe or Native Hawaiian organization may be
26 determined to be eligible for inclusion on the National Register. (B) In carrying out its
27 responsibilities under section 106 of this Act, a Federal agency shall consult with any Indian
28 tribe or Native Hawaiian organization that attaches religious and cultural significance to

1 properties described in subparagraph (A).” NHPA Section 106 provides as follows: “The head
2 of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally
3 assisted undertaking in any State and the head of any Federal department or independent agency
4 having authority to license any undertaking shall, prior to the approval of the expenditure of any
5 Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take
6 into account the effect of the undertaking on any district, site, building, structure, or object that
7 is included in or eligible for inclusion in the National Register. The head of any such Federal
8 agency shall afford the Advisory Council on Historic Preservation established under Title II of
9 this Act a reasonable opportunity to comment with regard to such undertaking.”

10 105. Plaintiffs, both separately and collectively, attach religious and cultural
11 significance to the federal (public) land that will be affected by the Chevron Project. This land
12 has traditional religious and cultural importance to Indian tribes and to Plaintiffs. Consequently,
13 Plaintiffs will be seriously harmed by Defendants’ failure to comply with NHPA.

14 106. Under *Amendment No. 1* (Exhibit “A”), Defendants were required to perform the
15 NHPA-prescribed consultations with Plaintiff LA CUNA. Even in the absence of *Amendment*
16 *No. 1*, Defendants were required to perform the NHPA-prescribed consultations for the benefit
17 of Plaintiffs (among others).

18 107. Defendants failed to perform the NHPA-prescribed consultations for the Chevron
19 Project. Their failure in this regard was contrary to NHPA and arbitrary, capricious, an abuse
20 of discretion, or otherwise not in accordance with law as required by the APA.

21 108. Plaintiffs, their respective members, and other members of the public have been
22 harmed as a result of Defendants’ violations of NHPA and the APA because they have been
23 denied the benefits and protections provided by compliance with those laws. By way of
24 example and without limitation, Plaintiff, its members, the public, and the decision-makers who
25 approved and are carrying out the Chevron Project were not fully informed about the traditional
26 religious and cultural importance attached by Plaintiffs and Indian tribes to the federal (public)
27 land that will be affected by the Chevron Project.
28

SEVENTEENTH CLAIM:
Violation of National Environmental Policy Act--Chevron Project
(Against All Defendants except Lee, Kalish, and Goodro)

109. Paragraphs 1 through 108 are fully incorporated into this paragraph.

110. NEPA requires every federal agency to prepare an environmental impact statement ("EIS") for every major action significantly affecting the quality of the human environment that the agency proposes to approve or carry out. In general, the EIS must adequately address (i) the proposed action's environmental impact, (ii) any adverse environmental effects that cannot be avoided if the proposed action is implemented, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, (v) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if implemented, (vi) mitigation measures for the proposed action, and (vii) cumulative impacts for the proposed action.

111. Defendants have not prepared an adequate EIS for the Chevron Project even though it is a major action proposed to be approved and carried out by at least one federal agency and has the potential to affect the quality of the human environment, including but not limited to the environment in the California Desert Conservation Area.

112. Defendants' failure to prepare an adequate EIS for the Chevron Project was contrary to NEPA and arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law as required by the APA.

113. Plaintiffs, their respective members, and other members of the public have been harmed as a result of Defendants' violations of NEPA and the APA because they have been denied the benefits and protections provided by compliance with those laws. By way of example and without limitation, Plaintiff, its members, the public, and the decision-makers who approved and are carrying out the Project were not fully informed about the impacts of, mitigation measures for, and alternatives to the Project prior to the decision to approve and carry out the Project.

1 **EIGHTEENTH CLAIM:**
2 **Violation of National Environmental Policy Act--Chevron Project**
3 **(Against All Defendants except Lee, Kalish, and Goodro)**

4 114. Paragraphs 1 through 113 are fully incorporated into this paragraph.

5 115. NEPA (under *Kleppe v. Sierra Club*, 427 U.S. 390 (1976)) requires the
6 environmental consequences of several proposals that will have cumulative or synergistic
7 environmental impacts upon a region to be considered together in a programmatic EIS. Section
8 1502.4(b) of Title 40 of the Code of Federal Regulations provides that federal agencies "shall
9 prepare statements on broad actions so that they are relevant to policy and are timed to coincide
10 with meaningful points in agency planning and decisionmaking."

11 116. Each of the Projects is a major federal action, and together they constitute broad
12 action by Defendants.

13 117. Defendants did not prepare a programmatic EIS for the Projects.

14 118. With regard to the Chevron Project, Defendants' failure to prepare a
15 programmatic EIS for the Projects was contrary to NEPA and arbitrary, capricious, an abuse of
16 discretion, or otherwise not in accordance with law as required by the APA.

17 119. Plaintiffs, their respective members, and other members of the public have been
18 harmed as a result of Defendants' violations of NEPA and the APA because they have been
19 denied the benefits and protections provided by compliance with those laws. By way of
20 example and without limitation, Plaintiff, its members, the public, and the decision-makers who
21 approved and are carrying out the Project were not fully informed about the programmatic
22 impacts of, mitigation measures for, and alternatives to the Projects prior to the decision to
23 approve and carry out the Chevron Project.

24 **NINETEENTH CLAIM:**
25 **Violation of Federal Land Policy and Management Act--Chevron Project**
26 **(Against All Defendants except Lee, Kalish, and Goodro)**

27 120. Paragraphs 1 through 119 are fully incorporated into this paragraph.

28 121. FLPMA Section 302(b) provides as follows: "In managing the public lands, the
Secretary shall, subject to this Act and other applicable law and under such terms and conditions
as are consistent with such law, regulate, through easements, permits, leases, licenses, published

1 rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and
2 development of the public lands, including, but not limited to, long-term leases to permit
3 individuals to utilize public lands for habitation, cultivation, and the development of small trade
4 or manufacturing concerns: *Provided*, That unless otherwise provided for by law, the Secretary
5 may permit Federal departments and agencies to use, occupy, and develop public lands only
6 through rights-of-way under section 507 of this Act, withdrawals under section 204 of this Act,
7 and, where the proposed use and development are similar or closely related to the programs of
8 the Secretary for the public lands involved, cooperative agreements under subsection (b) of
9 section 307 of this Act: *Provided further*, That nothing in this Act shall be construed as
10 authorizing the Secretary concerned to require Federal permits to hunt and fish on public lands
11 or on lands in the National Forest System and adjacent waters or as enlarging or diminishing
12 the responsibility and authority of the States for management of fish and resident wildlife.
13 However, the Secretary concerned may designate areas of public land and of lands in the
14 National Forest System where, and establish periods when, no hunting or fishing will be
15 permitted for reasons of public safety, administration, or compliance with provisions of
16 applicable law. Except in emergencies, any regulations of the Secretary concerned relating to
17 hunting and fishing pursuant to this section shall be put into effect only after consultation with
18 the appropriate State fish and game department. Nothing in this Act shall modify or change any
19 provision of Federal law relating to migratory birds or to endangered or threatened species.
20 Except as provided in section 314, section 603, and subsection (f) of section 601 of this Act and
21 in the last sentence of this paragraph, no provision of this section or any other section of this Act
22 shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims
23 under that Act, including, but not limited to, rights of ingress and egress. In managing the
24 public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent
25 unnecessary or undue degradation of the lands.”

26 122. FLPMA Section 601(d) provides as follows: “The Secretary [of the Interior], in
27 accordance with section 202 of this Act, shall prepare and implement a comprehensive, long-
28 range plan for the management, use, development, and protection of the public lands within the

1 California Desert Conservation Area. Such plan shall take into account the principles of
2 multiple use and sustained yield in providing for resource use and development, including, but
3 not limited to, maintenance of environmental quality, rights-of-way, and mineral development.
4 Such plan shall be completed and implementation there-of initiated on or before September 30,
5 1980.”

6 123. FLPMA Section 601(f) provides as follows: “Subject to valid existing rights,
7 nothing in this Act shall affect the applicability of the United States mining laws on the public
8 lands within the California Desert Conservation Area, except that all mining claims located on
9 public lands within the California Desert Conservation Area shall be subject to such reasonable
10 regulations as the Secretary may prescribe to effectuate the purposes of this section. Any patent
11 issued on any such mining claim shall recite this limitation and continue to be subject to such
12 regulations. Such regulations shall provide for such measures as may be reason-able to protect
13 the scenic, scientific, and environmental values of the public lands of the California Desert
14 Conservation Area against undue impairment, and to assure against pollution of the streams and
15 waters within the California Desert Conservation Area.”

16 124. Defendants have not complied with FLPMA as it relates to the Chevron Project
17 even though it is located on federal (public) land and is within the California Desert
18 Conservation Area and subject to the CDCA Plan.

19 125. Defendants’ failure to comply with the CDCA Plan and take all action necessary
20 to prevent unnecessary or undue degradation of the federal (public) land affected when they
21 approved the Chevron Project was contrary to FLPMA and arbitrary, capricious, an abuse of
22 discretion, or otherwise not in accordance with law as required by the APA.

23 126. Plaintiffs, their respective members, and other members of the public have been
24 harmed as a result of Defendants’ violations of FLPMA and the APA because they have been
25 denied the benefits and protections provided by compliance with those laws. By way of
26 example and without limitation, Plaintiff, its members, and the public will have to endure
27 unnecessary or undue degradation of the federal (public) land affected by the Chevron Project
28 and will lose the protections provided for this land by the CDCA Plan.

1 **TWENTIETH CLAIM:**
2 **Violation of Native American Graves Protection & Repatriation Act--Chevron Project**
3 **(Against All Defendants except Lee, Kalish, and Goodro)**

4 127. Paragraphs 1 through 126 are fully incorporated into this paragraph.

5 128. Section 3(b) of the NAGPRA provides as follows: "Native American cultural
6 items not claimed under subsection (a) of this section shall be disposed of in accordance with
7 regulations promulgated by the Secretary [of the Interior] in consultation with the review
8 committee established under section [8] of this [Act], Native American groups, representatives
9 of museums and the scientific community."

10 129. Section 3(c) of the NAGPRA provides as follows: "The intentional removal from
11 or excavation of Native American cultural items from Federal or tribal lands for purposes of
12 discovery, study, or removal of such items is permitted only if--

13 "(1) such items are excavated or removed pursuant to a permit issued
14 under section 470cc of Title 16 [of the U.S. Code] which shall be consistent with
15 this [Act];

16 "(2) such items are excavated or removed after consultation with or, in the
17 case of tribal lands, consent of the appropriate (if any) Indian tribe or Native
18 Hawaiian organization;

19 "(3) the ownership and right of control of the disposition of such items
20 shall be as provided in subsections (a) and (b) of this section; and

21 "(4) proof of consultation or consent under paragraph (2) is
22 shown."

23 130. Defendants' approval of the Chevron Project will result in the intentional
24 excavation, disposal, or other removal of Native American cultural items (including human
25 remains) known to be or strongly suspected of being on the site of the Project without
26 compliance with the conditions necessary for excavation, disposal, or other removal. By way
27 of example and not limitation, Defendants have not consulted with or obtained the consent of
28 the Indian tribe whose cultural remains or located on the site of the Project.

1 131. Defendants' failure to consult with and obtain the consent of the appropriate
2 Indian tribe prior to excavating, disposing of, or otherwise removing Native American cultural
3 items (including human remains) known to be or strongly suspected of being on the site of the
4 Chevron Project was contrary to the NAGPRA and arbitrary, capricious, an abuse of discretion,
5 or otherwise not in accordance with law as required by the APA.

6 132. Plaintiffs, their respective members, and other members of the public have been
7 harmed as a result of Defendants' violations of the NAGPRA and the APA because they have
8 been denied the benefits and protections provided by compliance with those laws. By way of
9 example and without limitation, Plaintiff, its members, and the public (including the appropriate
10 Indian tribe) will have to endure the excavation, disposal, or other removal of Native American
11 cultural items (including human remains) located on the site of the Chevron Project without the
12 necessary consultation and consent prior to Defendants' approval of the Project.

13 **TWENTY-FIRST CLAIM:**
14 **Violation of National Historic Preservation Act--Calico Project**
(Against All Defendants except Lee, Kalish, and Goodro)

15 133. Paragraphs 1 through 132 are fully incorporated into this paragraph.

16 134. NHPA Section 101(d)(6)(B) provides as follows: "(A) Properties of traditional
17 religious and cultural importance to an Indian tribe or Native Hawaiian organization may be
18 determined to be eligible for inclusion on the National Register. (B) In carrying out its
19 responsibilities under section 106 of this Act, a Federal agency shall consult with any Indian
20 tribe or Native Hawaiian organization that attaches religious and cultural significance to
21 properties described in subparagraph (A)." NHPA Section 106 provides as follows: "The head
22 of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally
23 assisted undertaking in any State and the head of any Federal department or independent agency
24 having authority to license any undertaking shall, prior to the approval of the expenditure of any
25 Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take
26 into account the effect of the undertaking on any district, site, building, structure, or object that
27 is included in or eligible for inclusion in the National Register. The head of any such Federal
28

1 agency shall afford the Advisory Council on Historic Preservation established under Title II of
2 this Act a reasonable opportunity to comment with regard to such undertaking.”

3 135. Plaintiffs, both separately and collectively, attach religious and cultural
4 significance to the federal (public) land that will be affected by the Calico Project. This land
5 has traditional religious and cultural importance to Indian tribes and to Plaintiffs. Consequently,
6 Plaintiffs will be seriously harmed by Defendants’ failure to comply with NHPA.

7 136. Under *Amendment No. 1* (Exhibit “A”), Defendants were required to perform the
8 NHPA-prescribed consultations with Plaintiff LA CUNA. Even in the absence of *Amendment*
9 *No. 1*, Defendants were required to perform the NHPA-prescribed consultations for the benefit
10 of Plaintiffs (among others).

11 137. Defendants failed to perform the NHPA-prescribed consultations for the Calico
12 Project. Their failure in this regard was contrary to NHPA and arbitrary, capricious, an abuse
13 of discretion, or otherwise not in accordance with law as required by the APA.

14 138. Plaintiffs, their respective members, and other members of the public have been
15 harmed as a result of Defendants’ violations of NHPA and the APA because they have been
16 denied the benefits and protections provided by compliance with those laws. By way of
17 example and without limitation, Plaintiff, its members, the public, and the decision-makers who
18 approved and are carrying out the Calico Project were not fully informed about the traditional
19 religious and cultural importance attached by Plaintiffs and Indian tribes to the federal (public)
20 land that will be affected by the Calico Project.

21 **TWENTY-SECOND CLAIM:**
22 **Violation of National Environmental Policy Act--Calico Project**
23 **(Against All Defendants except Lee, Kalish, and Goodro)**

24 139. Paragraphs 1 through 138 are fully incorporated into this paragraph.

25 140. NEPA requires every federal agency to prepare an environmental impact
26 statement (“EIS”) for every major action significantly affecting the quality of the human
27 environment that the agency proposes to approve or carry out. In general, the EIS must
28 adequately address (i) the proposed action’s environmental impact, (ii) any adverse
environmental effects that cannot be avoided if the proposed action is implemented, (iii)

1 alternatives to the proposed action, (iv) the relationship between local short-term uses of the
2 environment and the maintenance and enhancement of long-term productivity, (v) any
3 irreversible and irretrievable commitments of resources that would be involved in the proposed
4 action if implemented, (vi) mitigation measures for the proposed action, and (vii) cumulative
5 impacts for the proposed action.

6 141. Defendants have not prepared an adequate EIS for the Calico Project even though
7 it is a major action proposed to be approved and carried out by at least one federal agency and
8 has the potential to affect the quality of the human environment, including but not limited to the
9 environment in the California Desert Conservation Area.

10 142. Defendants' failure to prepare an adequate EIS for the Calico Project was contrary
11 to NEPA and arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with
12 law as required by the APA.

13 143. Plaintiffs, their respective members, and other members of the public have been
14 harmed as a result of Defendants' violations of NEPA and the APA because they have been
15 denied the benefits and protections provided by compliance with those laws. By way of
16 example and without limitation, Plaintiff, its members, the public, and the decision-makers who
17 approved and are carrying out the Project were not fully informed about the impacts of,
18 mitigation measures for, and alternatives to the Project prior to the decision to approve and carry
19 out the Project.

20 **TWENTY-THIRD CLAIM:**
21 **Violation of National Environmental Policy Act--Calico Project**
22 **(Against All Defendants except Lee, Kalish, and Goodro)**

23 144. Paragraphs 1 through 143 are fully incorporated into this paragraph.

24 145. NEPA (under *Kleppe v. Sierra Club*, 427 U.S. 390 (1976)) requires the
25 environmental consequences of several proposals that will have cumulative or synergistic
26 environmental impacts upon a region to be considered together in a programmatic EIS. Section
27 1502.4(b) of Title 40 of the Code of Federal Regulations provides that federal agencies "shall
28 prepare statements on broad actions so that they are relevant to policy and are timed to coincide
with meaningful points in agency planning and decisionmaking."

1 146. Each of the Projects is a major federal action, and together they constitute broad
2 action by Defendants.

3 147. Defendants did not prepare a programmatic EIS for the Projects.

4 148. With regard to the Calico Project, Defendants' failure to prepare a programmatic
5 EIS for the Projects was contrary to NEPA and arbitrary, capricious, an abuse of discretion, or
6 otherwise not in accordance with law as required by the APA.

7 149. Plaintiffs, their respective members, and other members of the public have been
8 harmed as a result of Defendants' violations of NEPA and the APA because they have been
9 denied the benefits and protections provided by compliance with those laws. By way of
10 example and without limitation, Plaintiff, its members, the public, and the decision-makers who
11 approved and are carrying out the Project were not fully informed about the programmatic
12 impacts of, mitigation measures for, and alternatives to the Projects prior to the decision to
13 approve and carry out the Calico Project.

14 **TWENTY-FOURTH CLAIM:**
15 **Violation of Federal Land Policy and Management Act--Calico Project**
 (Against All Defendants except Lee, Kalish, and Goodro)

16 150. Paragraphs 1 through 149 are fully incorporated into this paragraph.

17 151. FLPMA Section 302(b) provides as follows: "In managing the public lands, the
18 Secretary shall, subject to this Act and other applicable law and under such terms and conditions
19 as are consistent with such law, regulate, through easements, permits, leases, licenses, published
20 rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and
21 development of the public lands, including, but not limited to, long-term leases to permit
22 individuals to utilize public lands for habitation, cultivation, and the development of small trade
23 or manufacturing concerns: *Provided*, That unless otherwise provided for by law, the Secretary
24 may permit Federal departments and agencies to use, occupy, and develop public lands only
25 through rights-of-way under section 507 of this Act, withdrawals under section 204 of this Act,
26 and, where the proposed use and development are similar or closely related to the programs of
27 the Secretary for the public lands involved, cooperative agreements under subsection (b) of
28 section 307 of this Act: *Provided further*, That nothing in this Act shall be construed as

1 authorizing the Secretary concerned to require Federal permits to hunt and fish on public lands
2 or on lands in the National Forest System and adjacent waters or as enlarging or diminishing
3 the responsibility and authority of the States for management of fish and resident wildlife.
4 However, the Secretary concerned may designate areas of public land and of lands in the
5 National Forest System where, and establish periods when, no hunting or fishing will be
6 permitted for reasons of public safety, administration, or compliance with provisions of
7 applicable law. Except in emergencies, any regulations of the Secretary concerned relating to
8 hunting and fishing pursuant to this section shall be put into effect only after consultation with
9 the appropriate State fish and game department. Nothing in this Act shall modify or change any
10 provision of Federal law relating to migratory birds or to endangered or threatened species.
11 Except as provided in section 314, section 603, and subsection (f) of section 601 of this Act and
12 in the last sentence of this paragraph, no provision of this section or any other section of this Act
13 shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims
14 under that Act, including, but not limited to, rights of ingress and egress. In managing the
15 public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent
16 unnecessary or undue degradation of the lands.”

17 152. FLPMA Section 601(d) provides as follows: “The Secretary [of the Interior], in
18 accordance with section 202 of this Act, shall prepare and implement a comprehensive, long-
19 range plan for the management, use, development, and protection of the public lands within the
20 California Desert Conservation Area. Such plan shall take into account the principles of
21 multiple use and sustained yield in providing for resource use and development, including, but
22 not limited to, maintenance of environmental quality, rights-of-way, and mineral development.
23 Such plan shall be completed and implementation there-of initiated on or before September 30,
24 1980.”

25 153. FLPMA Section 601(f) provides as follows: “Subject to valid existing rights,
26 nothing in this Act shall affect the applicability of the United States mining laws on the public
27 lands within the California Desert Conservation Area, except that all mining claims located on
28 public lands within the California Desert Conservation Area shall be subject to such reasonable

1 regulations as the Secretary may prescribe to effectuate the purposes of this section. Any patent
2 issued on any such mining claim shall recite this limitation and continue to be subject to such
3 regulations. Such regulations shall provide for such measures as may be reason-able to protect
4 the scenic, scientific, and environmental values of the public lands of the California Desert
5 Conservation Area against undue impairment, and to assure against pollution of the streams and
6 waters within the California Desert Conservation Area.”

7 154. Defendants have not complied with FLPMA as it relates to the Calico Project
8 even though it is located on federal (public) land and is within the California Desert
9 Conservation Area and subject to the CDCA Plan.

10 155. Defendants’ failure to comply with the CDCA Plan and take all action necessary
11 to prevent unnecessary or undue degradation of the federal (public) land affected when they
12 approved the Calico Project was contrary to FLPMA and arbitrary, capricious, an abuse of
13 discretion, or otherwise not in accordance with law as required by the APA.

14 156. Plaintiffs, their respective members, and other members of the public have been
15 harmed as a result of Defendants’ violations of FLPMA and the APA because they have been
16 denied the benefits and protections provided by compliance with those laws. By way of
17 example and without limitation, Plaintiff, its members, and the public will have to endure
18 unnecessary or undue degradation of the federal (public) land affected by the Calico Project and
19 will lose the protections provided for this land by the CDCA Plan.

20 **TWENTY-FIFTH CLAIM:**

21 **Violation of Native American Graves Protection & Repatriation Act--Calico Project
(Against All Defendants except Lee, Kalish, and Goodro)**

22 157. Paragraphs 1 through 156 are fully incorporated into this paragraph.

23 158. Section 3(b) of the NAGPRA provides as follows: “Native American cultural
24 items not claimed under subsection (a) of this section shall be disposed of in accordance with
25 regulations promulgated by the Secretary [of the Interior] in consultation with the review
26 committee established under section [8] of this [Act], Native American groups, representatives
27 of museums and the scientific community.”
28

1 159. Section 3(c) of the NAGPRA provides as follows: "The intentional removal from
2 or excavation of Native American cultural items from Federal or tribal lands for purposes of
3 discovery, study, or removal of such items is permitted only if--

4 "(1) such items are excavated or removed pursuant to a permit issued
5 under section 470cc of Title 16 [of the U.S. Code] which shall be consistent with
6 this [Act];

7 "(2) such items are excavated or removed after consultation with or, in the
8 case of tribal lands, consent of the appropriate (if any) Indian tribe or Native
9 Hawaiian organization;

10 "(3) the ownership and right of control of the disposition of such items
11 shall be as provided in subsections (a) and (b) of this section; and

12 "(4) proof of consultation or consent under paragraph (2) is
13 shown."

14 160. Defendants' approval of the Calico Project will result in the intentional
15 excavation, disposal, or other removal of Native American cultural items (including human
16 remains) known to be or strongly suspected of being on the site of the Project without
17 compliance with the conditions necessary for excavation, disposal, or other removal. By way
18 of example and not limitation, Defendants have not consulted with or obtained the consent of
19 the Indian tribe whose cultural remains or located on the site of the Project.

20 161. Defendants' failure to consult with and obtain the consent of the appropriate
21 Indian tribe prior to excavating, disposing of, or otherwise removing Native American cultural
22 items (including human remains) known to be or strongly suspected of being on the site of the
23 Calico Project was contrary to the NAGPRA and arbitrary, capricious, an abuse of discretion,
24 or otherwise not in accordance with law as required by the APA.

25 162. Plaintiffs, their respective members, and other members of the public have been
26 harmed as a result of Defendants' violations of the NAGPRA and the APA because they have
27 been denied the benefits and protections provided by compliance with those laws. By way of
28 example and without limitation, Plaintiff, its members, and the public (including the appropriate

1 Indian tribe) will have to endure the excavation, disposal, or other removal of Native American
2 cultural items (including human remains) located on the site of the Calico Project without the
3 necessary consultation and consent prior to Defendants' approval of the Project.

4 **TWENTY-SIXTH CLAIM:**
5 **Violation of National Historic Preservation Act--Blythe Project**
6 **(Against All Defendants except Lee, Trost, and Goodro)**

6 163. Paragraphs 1 through 162 are fully incorporated into this paragraph.

7 164. NHPA Section 101(d)(6)(B) provides as follows: "(A) Properties of traditional
8 religious and cultural importance to an Indian tribe or Native Hawaiian organization may be
9 determined to be eligible for inclusion on the National Register. (B) In carrying out its
10 responsibilities under section 106 of this Act, a Federal agency shall consult with any Indian
11 tribe or Native Hawaiian organization that attaches religious and cultural significance to
12 properties described in subparagraph (A)." NHPA Section 106 provides as follows: "The head
13 of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally
14 assisted undertaking in any State and the head of any Federal department or independent agency
15 having authority to license any undertaking shall, prior to the approval of the expenditure of any
16 Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take
17 into account the effect of the undertaking on any district, site, building, structure, or object that
18 is included in or eligible for inclusion in the National Register. The head of any such Federal
19 agency shall afford the Advisory Council on Historic Preservation established under Title II of
20 this Act a reasonable opportunity to comment with regard to such undertaking."

21 165. Plaintiffs, both separately and collectively, attach religious and cultural
22 significance to the federal (public) land that will be affected by the Blythe Project. This land
23 has traditional religious and cultural importance to Indian tribes and to Plaintiffs. Consequently,
24 Plaintiffs will be seriously harmed by Defendants' failure to comply with NHPA.

25 166. Under *Amendment No. 1* (Exhibit "A"), Defendants were required to perform the
26 NHPA-prescribed consultations with Plaintiff LA CUNA. Even in the absence of *Amendment*
27 *No. 1*, Defendants were required to perform the NHPA-prescribed consultations for the benefit
28 of Plaintiffs (among others).

1 167. Defendants failed to perform the NHPA-prescribed consultations for the Blythe
2 Project. Their failure in this regard was contrary to NHPA and arbitrary, capricious, an abuse
3 of discretion, or otherwise not in accordance with law as required by the APA.

4 168. Plaintiffs, their respective members, and other members of the public have been
5 harmed as a result of Defendants' violations of NHPA and the APA because they have been
6 denied the benefits and protections provided by compliance with those laws. By way of
7 example and without limitation, Plaintiff, its members, the public, and the decision-makers who
8 approved and are carrying out the Blythe Project were not fully informed about the traditional
9 religious and cultural importance attached by Plaintiffs and Indian tribes to the federal (public)
10 land that will be affected by the Blythe Project.

11 **TWENTY-SEVENTH CLAIM:**
12 **Violation of National Environmental Policy Act--Blythe Project**
 (Against All Defendants except Lee, Trost, and Goodro)

13 169. Paragraphs 1 through 168 are fully incorporated into this paragraph.

14 170. NEPA requires every federal agency to prepare an environmental impact
15 statement ("EIS") for every major action significantly affecting the quality of the human
16 environment that the agency proposes to approve or carry out. In general, the EIS must
17 adequately address (i) the proposed action's environmental impact, (ii) any adverse
18 environmental effects that cannot be avoided if the proposed action is implemented, (iii)
19 alternatives to the proposed action, (iv) the relationship between local short-term uses of the
20 environment and the maintenance and enhancement of long-term productivity, (v) any
21 irreversible and irretrievable commitments of resources that would be involved in the proposed
22 action if implemented, (vi) mitigation measures for the proposed action, and (vii) cumulative
23 impacts for the proposed action.

24 171. Defendants have not prepared an adequate EIS for the Blythe Project even though
25 it is a major action proposed to be approved and carried out by at least one federal agency and
26 has the potential to affect the quality of the human environment, including but not limited to the
27 environment in the California Desert Conservation Area.
28

1 172. Defendants' failure to prepare an adequate EIS for the Blythe Project was contrary
2 to NEPA and arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with
3 law as required by the APA.

4 173. Plaintiffs, their respective members, and other members of the public have been
5 harmed as a result of Defendants' violations of NEPA and the APA because they have been
6 denied the benefits and protections provided by compliance with those laws. By way of
7 example and without limitation, Plaintiff, its members, the public, and the decision-makers who
8 approved and are carrying out the Project were not fully informed about the impacts of,
9 mitigation measures for, and alternatives to the Project prior to the decision to approve and carry
10 out the Project.

11 **TWENTY-EIGHTH CLAIM:**
12 **Violation of National Environmental Policy Act--Blythe Project**
13 **(Against All Defendants except Lee, Trost, and Goodro)**

14 174. Paragraphs 1 through 173 are fully incorporated into this paragraph.

15 175. NEPA (under *Kleppe v. Sierra Club*, 427 U.S. 390 (1976)) requires the
16 environmental consequences of several proposals that will have cumulative or synergistic
17 environmental impacts upon a region to be considered together in a programmatic EIS. Section
18 1502.4(b) of Title 40 of the Code of Federal Regulations provides that federal agencies "shall
19 prepare statements on broad actions so that they are relevant to policy and are timed to coincide
20 with meaningful points in agency planning and decisionmaking."

21 176. Each of the Projects is a major federal action, and together they constitute broad
22 action by Defendants.

23 177. Defendants did not prepare a programmatic EIS for the Projects.

24 178. With regard to the Blythe Project, Defendants' failure to prepare a programmatic
25 EIS for the Projects was contrary to NEPA and arbitrary, capricious, an abuse of discretion, or
26 otherwise not in accordance with law as required by the APA.

27 179. Plaintiffs, their respective members, and other members of the public have been
28 harmed as a result of Defendants' violations of NEPA and the APA because they have been
denied the benefits and protections provided by compliance with those laws. By way of

1 example and without limitation, Plaintiff, its members, the public, and the decision-makers who
2 approved and are carrying out the Project were not fully informed about the programmatic
3 impacts of, mitigation measures for, and alternatives to the Projects prior to the decision to
4 approve and carry out the Blythe Project.

5 **TWENTY-NINTH CLAIM:**
6 **Violation of Federal Land Policy and Management Act--Blythe Project**
7 **(Against All Defendants except Lee, Trost, and Goodro)**

8 180. Paragraphs 1 through 179 are fully incorporated into this paragraph.

9 181. FLPMA Section 302(b) provides as follows: "In managing the public lands, the
10 Secretary shall, subject to this Act and other applicable law and under such terms and conditions
11 as are consistent with such law, regulate, through easements, permits, leases, licenses, published
12 rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and
13 development of the public lands, including, but not limited to, long-term leases to permit
14 individuals to utilize public lands for habitation, cultivation, and the development of small trade
15 or manufacturing concerns: *Provided*, That unless otherwise provided for by law, the Secretary
16 may permit Federal departments and agencies to use, occupy, and develop public lands only
17 through rights-of-way under section 507 of this Act, withdrawals under section 204 of this Act,
18 and, where the proposed use and development are similar or closely related to the programs of
19 the Secretary for the public lands involved, cooperative agreements under subsection (b) of
20 section 307 of this Act: *Provided further*, That nothing in this Act shall be construed as
21 authorizing the Secretary concerned to require Federal permits to hunt and fish on public lands
22 or on lands in the National Forest System and adjacent waters or as enlarging or diminishing
23 the responsibility and authority of the States for management of fish and resident wildlife.
24 However, the Secretary concerned may designate areas of public land and of lands in the
25 National Forest System where, and establish periods when, no hunting or fishing will be
26 permitted for reasons of public safety, administration, or compliance with provisions of
27 applicable law. Except in emergencies, any regulations of the Secretary concerned relating to
28 hunting and fishing pursuant to this section shall be put into effect only after consultation with
the appropriate State fish and game department. Nothing in this Act shall modify or change any

1 provision of Federal law relating to migratory birds or to endangered or threatened species.
2 Except as provided in section 314, section 603, and subsection (f) of section 601 of this Act and
3 in the last sentence of this paragraph, no provision of this section or any other section of this Act
4 shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims
5 under that Act, including, but not limited to, rights of ingress and egress. In managing the
6 public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent
7 unnecessary or undue degradation of the lands.”

8 182. FLPMA Section 601(d) provides as follows: “The Secretary [of the Interior], in
9 accordance with section 202 of this Act, shall prepare and implement a comprehensive, long-
10 range plan for the management, use, development, and protection of the public lands within the
11 California Desert Conservation Area. Such plan shall take into account the principles of
12 multiple use and sustained yield in providing for resource use and development, including, but
13 not limited to, maintenance of environmental quality, rights-of-way, and mineral development.
14 Such plan shall be completed and implementation there-of initiated on or before September 30,
15 1980.”

16 183. FLPMA Section 601(f) provides as follows: “Subject to valid existing rights,
17 nothing in this Act shall affect the applicability of the United States mining laws on the public
18 lands within the California Desert Conservation Area, except that all mining claims located on
19 public lands within the California Desert Conservation Area shall be subject to such reasonable
20 regulations as the Secretary may prescribe to effectuate the purposes of this section. Any patent
21 issued on any such mining claim shall recite this limitation and continue to be subject to such
22 regulations. Such regulations shall provide for such measures as may be reason-able to protect
23 the scenic, scientific, and environmental values of the public lands of the California Desert
24 Conservation Area against undue impairment, and to assure against pollution of the streams and
25 waters within the California Desert Conservation Area.”

26 184. Defendants have not complied with FLPMA as it relates to the Blythe Project
27 even though it is located on federal (public) land and is within the California Desert
28 Conservation Area and subject to the CDCA Plan.

1 185. Defendants' failure to comply with the CDCA Plan and take all action necessary
2 to prevent unnecessary or undue degradation of the federal (public) land affected when they
3 approved the Blythe Project was contrary to FLPMA and arbitrary, capricious, an abuse of
4 discretion, or otherwise not in accordance with law as required by the APA.

5 186. Plaintiffs, their respective members, and other members of the public have been
6 harmed as a result of Defendants' violations of FLPMA and the APA because they have been
7 denied the benefits and protections provided by compliance with those laws. By way of
8 example and without limitation, Plaintiff, its members, and the public will have to endure
9 unnecessary or undue degradation of the federal (public) land affected by the Blythe Project and
10 will lose the protections provided for this land by the CDCA Plan.

11 **THIRTIETH CLAIM:**
12 **Violation of Native American Graves Protection & Repatriation Act--Blythe Project**
13 **(Against All Defendants except Lee, Trost, and Goodro)**

14 187. Paragraphs 1 through 186 are fully incorporated into this paragraph.

15 188. Section 3(b) of the NAGPRA provides as follows: "Native American cultural
16 items not claimed under subsection (a) of this section shall be disposed of in accordance with
17 regulations promulgated by the Secretary [of the Interior] in consultation with the review
18 committee established under section [8] of this [Act], Native American groups, representatives
19 of museums and the scientific community."

20 189. Section 3(c) of the NAGPRA provides as follows: "The intentional removal from
21 or excavation of Native American cultural items from Federal or tribal lands for purposes of
22 discovery, study, or removal of such items is permitted only if--

23 "(1) such items are excavated or removed pursuant to a permit issued
24 under section 470cc of Title 16 [of the U.S. Code] which shall be consistent with
25 this [Act];

26 "(2) such items are excavated or removed after consultation with or, in the
27 case of tribal lands, consent of the appropriate (if any) Indian tribe or Native
28 Hawaiian organization;

1 “(3) the ownership and right of control of the disposition of such items
2 shall be as provided in subsections (a) and (b) of this section; and

3 “(4) proof of consultation or consent under paragraph (2) is
4 shown.”

5 190. Defendants’ approval of the Blythe Project will result in the intentional
6 excavation, disposal, or other removal of Native American cultural items (including human
7 remains) known to be or strongly suspected of being on the site of the Project without
8 compliance with the conditions necessary for excavation, disposal, or other removal. By way
9 of example and not limitation, Defendants have not consulted with or obtained the consent of
10 the Indian tribe whose cultural remains or located on the site of the Project.

11 191. Defendants’ failure to consult with and obtain the consent of the appropriate
12 Indian tribe prior to excavating, disposing of, or otherwise removing Native American cultural
13 items (including human remains) known to be or strongly suspected of being on the site of the
14 Blythe Project was contrary to the NAGPRA and arbitrary, capricious, an abuse of discretion,
15 or otherwise not in accordance with law as required by the APA.

16 192. Plaintiffs, their respective members, and other members of the public have been
17 harmed as a result of Defendants’ violations of the NAGPRA and the APA because they have
18 been denied the benefits and protections provided by compliance with those laws. By way of
19 example and without limitation, Plaintiff, its members, and the public (including the appropriate
20 Indian tribe) will have to endure the excavation, disposal, or other removal of Native American
21 cultural items (including human remains) located on the site of the Blythe Project without the
22 necessary consultation and consent prior to Defendants’ approval of the Project.

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A. On the First, Sixth, Eleventh, Sixteenth, Twenty-First, and Twenty-Sixth Claims:

1. For each of the Projects, a judgment or other final order determining or declaring that Defendants failed to comply fully with the NHPA and the APA as they relate to the Project (including all associated entitlements and leases) and that the Project's approval was illegal in at least one respect, rendering the approval null and void;

3. For each of the Projects, injunctive relief prohibiting Defendants (and any and all persons acting at the request of, in concert with, for the benefit of, in privity with, or under one or more of them) from taking any action on any aspect of, in furtherance of, or otherwise based on the Project unless and until Defendants fully comply with all applicable provisions of the NHPA and the APA, as determined by the Court.

1. For each of the Projects, a judgment or other final order determining or declaring that Defendants failed to comply fully with NEPA and the APA as they relate to the Project (including all associated entitlements and leases) and that the Project's approval was illegal in at least one respect, rendering the approval null and void;

3. For each of the Projects, injunctive relief prohibiting Defendants (and any and all persons acting at the request of, in concert with, for the benefit of, in privity with, or

1 under one or more of them) from taking any action on any aspect of, in furtherance of, or
2 otherwise based on the Project unless and until Defendants fully comply with all applicable
3 provisions of NEPA and the APA, as determined by the Court.

4 C. On the Fourth, Ninth, Fourteenth, Nineteenth, Twenty-Fourth, and Twenty-Ninth
5 Claims:

6 1. For each of the Projects, a judgment or other final order determining or
7 declaring that Defendants failed to comply fully with FLPMA and the APA as they relate to the
8 Project (including all associated entitlements and leases) and that the Project's approval was
9 illegal in at least one respect, rendering the approval null and void;

10 2. For each of the Projects, a judgment or other final order determining or
11 declaring that Defendants must fully comply with FLPMA and the APA before final approval
12 of the Project may be granted; and

13 3. For each of the Projects, injunctive relief prohibiting Defendants (and any
14 and all persons acting at the request of, in concert with, for the benefit of, in privity with, or
15 under one or more of them) from taking any action on any aspect of, in furtherance of, or
16 otherwise based on the Project unless and until Defendants fully comply with all applicable
17 provisions of FLPMA and the APA, as determined by the Court.

18 D. On the Fifth, Tenth, Fifteenth, Twentieth, Twenty-Fifth, and Thirtieth Claims:

19 1. For each of the Projects, a judgment or other final order determining or
20 declaring that Defendants failed to comply fully with the NAGPRA and the APA as they relate
21 to the Project (including all associated entitlements and leases) and that the Project's approval
22 was illegal in at least one respect, rendering the approval null and void;

23 2. For each of the Projects, a judgment or other final order determining or
24 declaring that Defendants must fully comply with the NAGPRA and the APA before final
25 approval of the Project may be granted; and

26 3. For each of the Projects, injunctive relief prohibiting Defendants (and any
27 and all persons acting at the request of, in concert with, for the benefit of, in privity with, or
28 under one or more of them) from taking any action on any aspect of, in furtherance of, or

1 otherwise based on the Project unless and until Defendants fully comply with all applicable
2 provisions of the NAGPRA and the APA, as determined by the Court.

3 E. All legal fees and other expenses incurred in connection with this proceeding,
4 including but not limited to reasonable attorney fees as authorized by law; and

5 F. Any and all further relief that this Court may deem appropriate.

6 Date: December 27, 2010.

Respectfully submitted,

7 BRIGGS LAW CORPORATION

8 *Original Signed*

9 By:

10 Cory J. Briggs

11 Attorneys for Plaintiffs La Cuna de Aztlan Sacred
12 Sites Protection Circle Advisory Committee,
13 Californians for Renewable Energy, Alfredo Acosta
14 Figueroa, Phillip Smith, Patricia Figueroa, Ronald
15 Van Fleet, and Catherine Ohrin-Greipp

**COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND MANDAMUS
RELIEF UNDER THE ADMINISTRATIVE PROCEDURES ACT, THE
NATIONAL HISTORIC PRESERVATION ACT, THE NATIONAL
ENVIRONMENTAL POLICY ACT, THE FEDERAL LAND POLICY AND
MANAGEMENT ACT, AND THE NATIVE AMERICAN GRAVES
PROTECTION AND REPATRIATION ACT**

Exhibit "A"

**Amendment No. 1 to Memorandum of Understanding
Between
United States Department of the Interior
Bureau of Land Management
and the
Southern Low Desert Resource Conservation and Development Council**

This Amendment No. 1 modifies the current Memorandum of Understanding (MOU) that was signed by the Bureau of Land Management (BLM) and the Southern Low Desert Resource Conservation and Development Council (Council) in July 2006 to include the La Cuna de Aztlan Sacred Sites Protection Circle Advisory Committee (LCASSPC) and the Blythe Area Chamber of Commerce and Tourist Information Center (Chamber) in the partnership for protection of cultural resources in the BLM Yuma Field Office planning area.

Section "II. Definitions" is amended as follows:

- A. BLM: The Bureau of Land Management's Yuma Field Office, which has management responsibility for the public land area covered under this MOU.
- B. Council: The Southern Low Desert Resource Conservation and Development Council (a 501(c)(3) non-profit / non-governmental conservation and community development organization).
- C. LCASSPC: La Cuna de Aztlan Sacred Sites Protection Circle Advisory Committee. A 501(c)(3) nonprofit organization that is comprised of 15 indigenous and culturally aware individuals who are dedicated to physically protecting the Blythe Giant Intaglios, other geoglyphs, and several hundred sacred sites that are located along the Colorado River from Needles, California, to Yuma, Arizona.
- D. Chamber: The Blythe Area Chamber of Commerce and Tourist Information Center. Provides information to visitors and the community about the Blythe Intaglios and other important cultural resources in the vicinity of Blythe, California.
- E. MOU signatories: Refers to all agencies and organizations that have a formalized partnership through the July 2006 MOU and associated amendments.

Section "III. Statement of MOU Purpose" is amended as follows:

This Memorandum of Understanding (MOU) will provide a means for the BLM the Council MOU signatories to work in partnership to enhance cultural resources protection, conservation, and interpretation efforts on BLM lands within the Yuma Field Office's jurisdiction and the Southern Low Desert RC&D area. The purpose of this MOU is to assist the BLM with its responsibilities under Section 110 of the National Historic Preservation Act of 1966, as amended.

The BLM, and the Council MOU signatories agree that all projects conducted under this MOU will be carried out by qualified specialists. Contractors hired for projects must meet

BLM standards. Projects that may be conducted under this MOU include but are not limited to cultural resources survey, archaeological site recordation, National Register of Historic Places nominations, ethnographic studies with interested Native American tribes, design and installation of site protection and interpretation measures, and the production of interpretive materials for the public. All projects will be coordinated with and approved by the BLM.

The ~~BLM and the Council~~ MOU signatories have a common objective of helping to bring about the conservation, development, and wise use of archaeological and historical resources in the southeastern California desert area. Therefore, ~~both the BLM and the Council~~ the MOU signatories deem this effort of mutual benefit to both all parties. We hereby agree as follows:

A. The Council agrees to:

1. Work cooperatively with BLM to coordinate and facilitate the development of plans for the conservation, protection, and interpretation of desert resources. Specifically, the Council agrees to diligently work towards the immediate and future protection of cultural resources, including the Blythe Intaglios, for the public good.
2. Assist with any environmental documents deemed necessary for the completion of joint projects within the mutual boundary of the Council and BLM.
3. Provide a public outreach program to encourage and promote active public participation in the protection of desert resources.
4. Assist in the solicitation of funds from outside organizations and agencies to complete agreed upon projects or work items within the mutual boundaries of the BLM and the Council.

B. LCASSPC agrees to:

1. Work cooperatively with BLM to coordinate and facilitate the development of plans for the conservation, protection, and interpretation of desert resources and sacred sites. Specifically LCASSPC agrees to diligently work toward the immediate and future protection of cultural resources, including the Blythe Intaglios, for the good of the future generations and the public good.
2. Assist with any environmental documents deemed necessary for the completion of joint projects.
3. Provide a public outreach program to encourage and promote active public participation in the protection of desert resources.
4. Assist in the solicitation of funds from outside organizations and agencies to complete agree upon projects or work items.

C. The Chamber agrees to:

1. Work cooperatively with BLM to coordinate and facilitate the development of plans for the conservation, protection, and interpretation of desert resources. Specifically, the Chamber agrees to diligently work toward the immediate and future protection of cultural resources, including the Blythe Intaglios, for the public good.
2. Provide a public outreach program to encourage and promote active public participation in the protection of desert resources.
3. Assist in the solicitation of funds from outside organizations and agencies to complete agreed upon projects or work items.

D. BLM agrees to:

1. Work cooperatively with the Council on projects of mutual benefit to BLM and the Council the MOU signatories.
2. Provide technical and planning assistance for projects of mutual benefit to the BLM and the Council MOU signatories.
3. Initiate any environmental assessment documents deemed necessary for the completion of any agreed upon joint projects within the mutual boundaries of the BLM and the Council.
4. Assist with the preparation of statements of work and hiring of contractors to complete the agreed upon projects.
5. Cooperate and assist (when appropriate) with seeking funds to complete agreed upon joint projects.

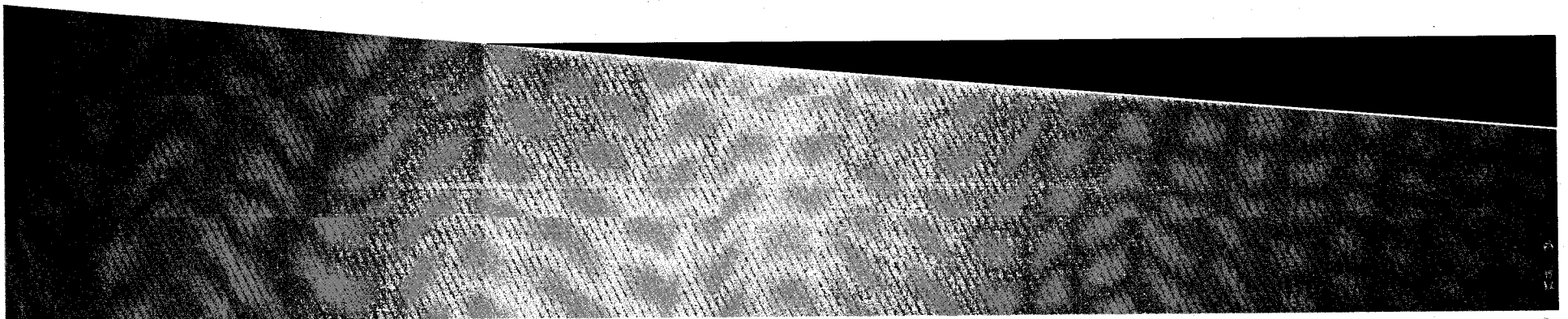
Section "IV. Terms of the MOU" is amended as follows:

A. The following individuals are designated as the liaison between the BLM and the Council MOU signatories.

1. Bureau of Land Management
Yuma Field Office
~~Rebecca Heick~~ James T. Shoaff, Field Manager
2555 E Gila Ridge Road
Yuma, AZ 85365
PH: (928) 317-3200
FX: 928-317-3250
2. Southern Low Desert Resource Conservation & Development Council
Thomas Burgin, President
53990 Enterprise Way, 6B

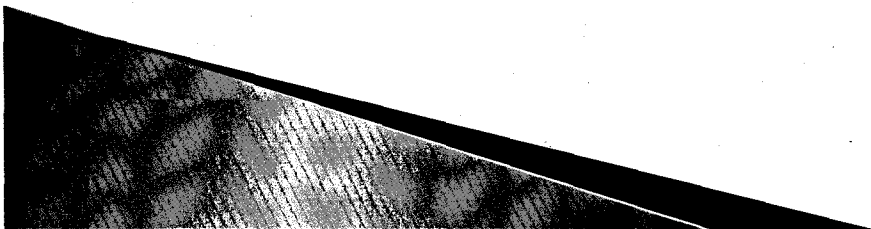
Amending Land Use Plans with Programmatic EISs

BLM 2009 National Land Use Planning Conference
“Keeping Pace with Change”



Session Overview

- Programmatic EISs and Tiering (S. Stewart)
- BLM Programmatic EISs (S. Stewart)
- Programmatic EISs Lessons Learned (K. Winthrop)
- Programmatic vs. Site-Specific EISs (I. Hlohowskyj)



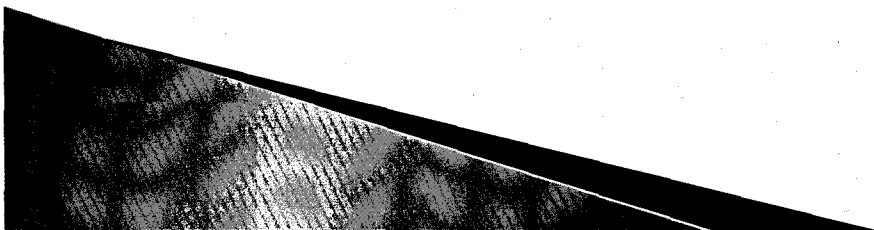
PEISs Generally...

- ▶ Used for broad geographic areas
- ▶ Assess impacts across a span of conditions (facilities, geographic regions or multi-project programs)
- ▶ Emphasize cumulative impacts
- ▶ Emphasize policy level alternatives
- ▶ Emphasize program level mitigation measures and BMPs
- ▶ Do not define facilities or specific sites
- ▶ Tend to be more generic and conceptual than project-specific EISs



Tiering

- ▶ In cases where a broad policy, plan, program or project will later be translated into site-specific projects, subsequent analyses are referred to as “tiered” analyses.
- ▶ 40 CFR 1508.28 – “Tiering” refers to the coverage of general matters in a broader EIS with subsequent narrower EISs or EAs incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared.

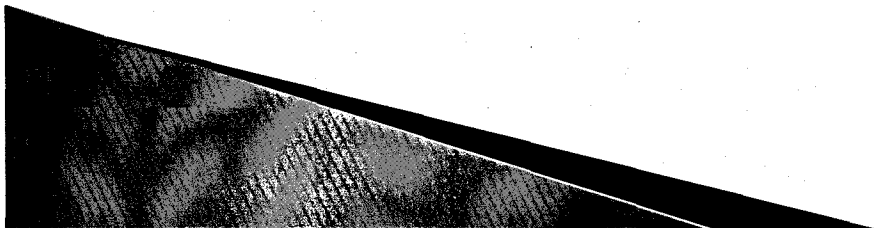


Examples of BLM PEISs

Name	Action	Agency	Status
Wind Energy AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, WY	Amend 52 land use plans to identify lands suitable for wind energy development ROW applications (no plans amended in AZ or CA).	BLM	ROD signed December, 2005
Oil Shale and Tar Sands CO, UT, WY	Amend 10 land use plans to allocate lands suitable for consideration of leasing proposals.	BLM	ROD signed November, 2008
Geothermal Leasing AK, AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, WY	Amend 114 land use plans to identify lands as open or closed to geothermal leasing and to adopt stipulations, BMPs and procedures for leasing.	BLM, FS	ROD signed December, 2008
West-Wide Energy Corridors AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, WY	Amend 130 land use plans to designate energy transport corridors on federal lands suitable for proposed pipeline and transmission line ROW applications.	BLM, FS, DOD, DOE, FWS, NPS	RODs signed January, 2009 (BLM, FS)
Solar Energy Development AZ, CA, CO, NM, NV, UT	Goal is to amend land use plans to identify lands suitable for solar energy development ROW applications.	BLM	Draft PEIS scheduled for Summer, 2009

BLM PEIS Decisions

- ▶ Allocate lands as open or closed to leasing or right-of way authorizations; designate energy transport corridors
- ▶ Develop a reasonably foreseeable development scenario
- ▶ Adopt stipulations, BMPs, mitigation measures and Interagency operating procedures applicable to future projects
- ▶ Adopt standard processes and procedures for leasing or right-of way authorizations
- ▶ Amend BLM land use plans to adopt all of the above



BLM PEIS Implementation

- ▶ PEIS's do not authorize any on-the-ground activities or waive environmental review for subsequent individual actions.
- ▶ All future development projects must be in conformance with the existing land use plan as amended.
 - Land use plan amendments via a PEIS adopt the resource allocations, reasonably foreseeable development scenario, stipulations, BMPs and procedures.
- ▶ Site-specific concerns and the development of additional mitigation measures will be addressed in project-level reviews tiered to the analysis in the PEIS.

