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SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

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

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

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

15 LA CUNA DE AZTLAN SACRED SITES)
16 PROTECTION CIRCLE ADVISORY)
17 COMMITTEE; CALIFORNIANS FOR)
18 RENEWABLE ENERGY; ALFREDO)
19 ACOSTA FIGUEROA; PHILLIP SMITH;)
20 PATRICIA FIGUEROA; RONALD VAN)
21 FLEET; and CATHERINE OHRIN-GREIPP,)

22 Plaintiffs,

23 vs.

24 UNITED STATES DEPARTMENT OF THE)
25 INTERIOR; KEN SALAZAR, in the official)
26 capacity of Secretary of the United States)
27 Department of the Interior; UNITED STATES)
28 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

27 _____
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.

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.

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.

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

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

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

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

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

27 77. Defendants failed to perform the NHPA-prescribed consultations for the Imperial
28 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.

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

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

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

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

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

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

