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

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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

**10 CV 2664 WQH**

**WVG**

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

CASE NO. \_\_\_\_\_

**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**

Plaintiffs,

vs.

21 UNITED STATES DEPARTMENT OF THE )  
22 INTERIOR; KEN SALAZAR, in the official )  
23 capacity of Secretary of the United States )  
24 Department of the Interior; UNITED STATES )  
25 BUREAU OF LAND MANAGEMENT; )  
26 ROBERT ABBEY, in the official capacity of )  
27 Director of the United States Bureau of Land )  
28 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.

*CR*

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.<sup>1</sup>

27 \_\_\_\_\_  
28 <sup>1</sup> 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

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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**  
**(Against All Defendants except Kalish, Goodro, and Trost)**

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







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 83. Plaintiffs, their respective members, and other members of the public have been  
2 harmed as a result of Defendants' violations of NEPA 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 Project were not fully informed about the impacts of,  
6 mitigation measures for, and alternatives to the Project prior to the decision to approve and carry  
7 out the Project.

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

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

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

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

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

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

24 89. Plaintiffs, their respective members, and other members of the public have been  
25 harmed as a result of Defendants' violations of NEPA and the APA because they have been  
26 denied the benefits and protections provided by compliance with those laws. By way of  
27 example and without limitation, Plaintiff, its members, the public, and the decision-makers who  
28 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**  
11 **(Against All Defendants except Lee, Kalish, and Trost)**

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

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

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

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

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

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

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.



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**  
15 **(Against All Defendants except Lee, Kalish, and Goodro)**

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

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

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 ir retrievable 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**  
16 **(Against All Defendants except Lee, Kalish, and Goodro)**

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

18 151. FLPMA Section 302(b) provides as follows: "In managing the public lands, the  
19 Secretary shall, subject to this Act and other applicable law and under such terms and conditions  
20 as are consistent with such law, regulate, through easements, permits, leases, licenses, published  
21 rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and  
22 development of the public lands, including, but not limited to, long-term leases to permit  
23 individuals to utilize public lands for habitation, cultivation, and the development of small trade  
24 or manufacturing concerns: *Provided*, That unless otherwise provided for by law, the Secretary  
25 may permit Federal departments and agencies to use, occupy, and develop public lands only  
26 through rights-of-way under section 507 of this Act, withdrawals under section 204 of this Act,  
27 and, where the proposed use and development are similar or closely related to the programs of  
28 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

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**  
22 **(Against All Defendants except Lee, Kalish, and Goodro)**

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

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

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**  
13 **(Against All Defendants except Lee, Trost, and Goodro)**

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

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

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

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.

23  
24  
25  
26           [This space is intentionally blank.]  
27  
28

1 **PRAYER FOR RELIEF**

2 FOR ALL THESE REASONS, Plaintiffs respectfully pray for the following relief,  
3 conjunctively or disjunctively as the Court determines to be appropriate, against Defendants  
4 (and any and all other parties who may oppose Plaintiff in this proceeding):

5 A. On the First, Sixth, Eleventh, Sixteenth, Twenty-First, and Twenty-Sixth 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 the NHPA and the APA as they relate to  
8 the 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 the NHPA 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 the NHPA and the APA, as determined by the Court.

18 B. On the Second, Third, Seventh, Eighth, Twelfth, Thirteenth, Seventeenth,  
19 Eighteenth, Twenty-Second, Twenty-Third, Twenty-Seventh, and Twenty-Eighth Claims:

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

24 2. For each of the Projects, a judgment or other final order determining or  
25 declaring that Defendants must prepare an EIS for the Project fully in accordance with NEPA  
26 and the APA before final approval of the Project may be granted; and

27 3. For each of the Projects, injunctive relief prohibiting Defendants (and any  
28 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

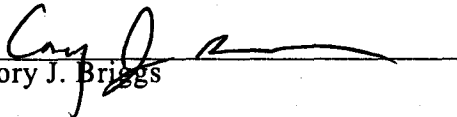
5 F. Any and all further relief that this Court may deem appropriate.

6 Date: December 27, 2010.

Respectfully submitted,

7 BRIGGS LAW CORPORATION

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By:   
Cory J. Briggs

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