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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

WHITE PINE COUNTY, NEVADA; GREAT)
BASIN WATER NETWORK; CENTRAL)
NEVADA REGIONAL WATER AUTHORITY;)
SIERRA CLUB; CONFEDERATED TRIBES OF)
THE GOSHUTE RESERVATION; ELY)
SHOSHONE TRIBE; DUCKWATER SHOSHONE)
TRIBE; BAKER, NEVADA, WATER & SEWER)
GENERAL IMPROVEMENT DISTRICT; UTAH)
PHYSICIANS FOR A HEALTHY)
ENVIRONMENT; UTAH RIVERS COUNCIL;)
UTAH AUDUBON COUNCIL; and LEAGUE OF)
WOMEN VOTERS OF SALT LAKE, UTAH,)

Plaintiffs,)

vs.)

UNITED STATES BUREAU OF LAND)
MANAGEMENT; and UNITED STATES)
DEPARTMENT OF INTERIOR,)

Defendants.)

Case No.

COMPLAINT FOR
DECLARATORY
AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. White Pine County, Nevada, Great Basin Water Network, Central Nevada

Regional Water Authority, Sierra Club, the Confederated Tribes of the Goshute Reservation, the

Ely Shoshone Tribe, the Duckwater Shoshone Tribe, the Baker, Nevada, Water and Sewer

General Improvement District, Utah Physicians for a Healthy Environment; Utah Rivers Council; Utah Audubon Council; League of Women Voters of Salt Lake, Utah (collectively “Plaintiffs”) bring this civil action for declaratory and injunctive relief against the United States Bureau of Land Management (“BLM”) and the United State Department of Interior (“DOI”) (collectively “Defendants”) in accordance with the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 *et seq.*, for violations of the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*, the Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. §§ 1701 *et seq.*, the National Historic Preservation Act (“NHPA”), 16 U.S.C. §§ 470 *et seq.*, the American Indian Religious Freedom Act (“AIRFA”), 42 U.S.C. § 1996, and implementing regulations established pursuant to NEPA, FLPMA, and NHPA.

2. Plaintiffs challenge Defendants’ December 2012 Record of Decision (“ROD”) authorizing the Southern Nevada Water Authority’s (“SNWA’s”) Clark, Lincoln, and White Pine Counties Groundwater Development Project (the “GWD Project”) and granting a right-of-way (“ROW”) to the Southern Nevada Water Authority (“SNWA”), for the construction and operation of a vast pipeline system to convey groundwater from central-eastern Nevada to southern Nevada, most particularly the Las Vegas Valley as part of the GWD Project. The proposed GWD Project would comprise the pumping of massive amounts of groundwater in perpetuity from arid rural valleys within the regional groundwater system of the carbonate rock province of eastern Nevada and western Utah and the extensive infrastructure to convey the groundwater SNWA proposes to pump from Spring, Snake, Cave, Dry Lake, and Delamar valleys in White Pine and Lincoln Counties for use in the Las Vegas Valley in southern Clark County.

3. The GWD Project centers on the pumping and export of groundwater from fragile, groundwater-dependent ecosystems and agricultural communities in rural Nevada on a scale that is greatly in excess of any previous undertaking, and would be the biggest groundwater pumping project ever built in the United States. The groundwater model developed by SNWA itself and relied on by the Defendants in the FEIS and ROD demonstrates that the proposed GWD Project would have devastating hydrological, biological, and socioeconomic impacts across vast areas of eastern Nevada and western Utah. The potential economic, social, and environmental effects of this massive and unprecedented groundwater mining and export project are therefore of great local, state, regional, and national significance, and have been the subject of widespread and intense controversy since the Project first was proposed in 1989.

4. As set forth in greater detail below, Defendants failed to take a hard look at the Proposed Action, failed to consider reasonable alternatives, failed to provide for adequate public involvement, failed to adequately consider existing and new information about the project, failed to prepare a supplemental EIS for notice and comment, failed to prevent unnecessary or undue environmental degradation, failed to properly consult with affected Native American Tribes, and failed to fulfill their trust duties to those tribes. To remedy these violations of law, Plaintiffs respectfully request declaratory and injunctive relief, as described in greater detail below, pending Defendants' compliance with NEPA, FLPMA, and NHPA and Defendants' fulfillment of their trust obligations to the affected Native American tribes.

5. Plaintiffs further seek an award of costs and attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

II. JURISDICTION & VENUE

6. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1346(a)(2), because the United States is a Defendant and this action arises under the laws of the United States, including the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701 et seq., the National Environmental Policy Act ("NEPA"), 41 U.S.C. §§ 4311 et seq., the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. §§ 1701 et seq., and the National Historic Preservation Act ("NHPA"), 16 U.S.C. § 470 et seq.

7. An actual, justiciable controversy exists between Plaintiffs and Defendants. Plaintiffs' interests will be adversely affected and irreparably injured if Defendants continue to violate NEPA and FLPMA as alleged herein, and if Defendants affirmatively implement the decision that Plaintiffs challenge herein.

8. The requested relief is authorized by 28 U.S.C. §§ 2201, 2202 and 5 U.S.C. §§ 705, 706.

9. The requested relief would redress the actual, concrete injuries to Plaintiffs caused by Defendants' failure to comply with duties mandated by NEPA and FLPMA, and the regulations promulgated pursuant to these federal statutes.

10. The challenged agency action is final and subject to judicial review pursuant to 5 U.S.C. §§ 702, 704, & 706.

11. Plaintiffs have exhausted any and all available and required administrative remedies.

12. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(e). A substantial part of the events and omissions giving rise to this case occurred in BLM offices located in Nevada,

and this case involves public lands and environmental, economic, and social interests located in Nevada.

13. Venue is proper in the Southern Division of this District, because the BLM's State Office is located in Las Vegas and many of the lands and resources that will be harmfully affected by the BLM's decision to authorize the GWD Project are located in Clark, Lincoln, and White Pine Counties, which are closer to the Southern Division of this District than to any other Division or District.

III. PARTIES

14. Plaintiff WHITE PINE COUNTY is a political subdivision of the State of Nevada, located in eastern Nevada, with the County seat in Ely, Nevada, and was a cooperating agency in the Defendants' environmental review process. White Pine County would be significantly impacted by the proposed groundwater export project, as much of the project area and adjacent areas that will be affected by the project lie within White Pine County, and much of the local environment in White Pine County and the County's economy, including mining, ranching, and recreational tourism, are dependent on the affected groundwater resources and groundwater fed springs. White Pine County submitted comments on the environmental impact statement during the NEPA review process.

15. Plaintiff GREAT BASIN WATER NETWORK ("GBWN") was formed to protect the water resources of the Great Basin for current and future residents – human, animal and plant. Organizations, businesses and individuals have banded together to form the Network so that decisions on water development proposals in the Great Basin are made in the open with caution, coherence, and based on the best scientific information. The Great Basin Water Network also works to ensure that decisions are made without undue political and developer

special interest pressure. GBWN, its volunteer leadership, and the diverse constituents it serves regularly use the lands, waters, and associated natural resources that would be affected by the GWD Project for economic, educational, recreational, and spiritual purposes. GBWN, its volunteer leadership, and the people who participate in and are served by GBWN intend to continue using and enjoying these lands, water resources, and related natural resources for the foreseeable future. GBWN submitted comments on the environmental impact statement during the NEPA review process.

16. Plaintiff CENTRAL NEVADA REGIONAL WATER AUTHORITY

(“CNRWA”) is an eight (8) county unit of local government in the State of Nevada that collaboratively and proactively addresses water resource issues common to its eight (8) member counties, Churchill, Elko, Esmeralda, Eureka, Lander, Nye, Pershing, and White Pine. These counties cover approximately 65 percent of Nevada's land area. The Central Nevada Regional Water Authority's mission is to protect the water resources in member counties so these counties will not only have an economic future, but their valued quality of life and natural environment is maintained. The CNRWA was a cooperating agency in the BLM's environmental review process. The present and future economic stability of CNRWA members and their communities would be significantly impacted by SNWA's proposed GWD Project, as much of the Project area and adjacent areas that will be affected by the Project lie within the CNRWA member County of White Pine, and much of the local environment in White Pine County and the County's economy, including mining, ranching, and recreational tourism, are dependent on the affected groundwater resources and groundwater fed springs. The proposed Project would diminish water resources that might otherwise be used for local and regional economic activity, and impact the natural and human environment of CNRWA members and their communities by

diminishing water resources that support springs, seeps, rangelands, and other natural resources that define the region. CNRWA submitted comments on the environmental impact statement during the NEPA review process.

17. Plaintiff SIERRA CLUB is America's oldest and largest grassroots environmental organization. Sierra Club has 1.4 million members and supporters, with 4,188 members in the state of Nevada. Founded in 1892, the Sierra Club has been working for well more than a century to protect communities, wild places, and the planet itself. The Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the Earth; to practicing and promoting the responsible use of the Earth's resources and ecosystems; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Sierra Club's concerns encompass the exploration, enjoyment and protection of the lands and waters of Nevada. Members of the Sierra Club from Nevada and elsewhere regularly use and enjoy the lands, water resources, water dependent wildlife habitat and other resources that would be affected by the GWD Project for educational and recreational purposes, including but not limited to hiking, bird watching, and scenic viewing. Sierra Club submitted comments on the environmental impact statement during the NEPA review process.

18. Plaintiff CONFEDERATED TRIBES OF THE GOSHUTE RESERVATION ("Goshute Tribe") have inhabited the region of the Great Basin that will be affected by the GWD Project since time immemorial. The GWD Project unquestionably encompasses the Tribe's aboriginal territory. Since the beginning of time, Tribal members have hunted, fished, and gathered native plants for food and medicine in the areas of the Great Basin that will be impacted by the GWD Project. Goshute people have also conducted their ceremonies at springs, wetlands

and other sacred sites within the Project's footprint. The Goshutes depended on the cultural and environmental resources in the Great Basin for both subsistence and ceremonial purposes before the city of Las Vegas or State of Nevada existed. The plants, animals, and Indian people that depend on the water resources in the Great Basin are inextricably connected to the Goshute cultural landscape. The Goshutes continue to hunt, fish, gather, and participate in cultural and religious ceremonies within the GWD's Project footprint today. The GWD Project threatens the ability of the Tribe and its members to continue to engage in these traditional, cultural and subsistence practices on their aboriginal lands – thereby threatening the very survival of the Tribe itself. The Goshute Tribe submitted comments on the environmental impact statement during the NEPA review process.

19. Plaintiff ELY SHOSHONE TRIBE have inhabited the region of the Great Basin that will be affected by the GWD Project since time immemorial. The GWD Project unquestionably encompasses the Tribe's aboriginal territory. Since the beginning of time, Tribal members have hunted, fished, and gathered native plants for food and medicine in the areas of the Great Basin that will be impacted by the GWD Project. Shoshone people have also conducted their ceremonies at springs, wetlands and other sacred sites within the Project's footprint. The Ely Shoshone depended on the cultural and environmental resources in the Great Basin for both subsistence and ceremonial purposes before the city of Las Vegas or State of Nevada existed. The plants, animals, and Indian people that depend on the water resources in the Great Basin are inextricably connected to the Goshute cultural landscape. The Shoshone continue to hunt, fish, gather, and participate in cultural and religious ceremonies within the GWD's Project footprint today. The GWD Project threatens the ability of the Tribe and its members to continue to engage in these traditional, cultural and subsistence practices on their

aboriginal lands – thereby threatening the very survival of the Tribe itself. The Ely Shoshone Tribe submitted comments on the environmental impact statement during the NEPA review process.

20. Plaintiff DUCKWATER SHOSHONE TRIBE have inhabited the region of the Great Basin that will be affected by the GWD Project since time immemorial. The GWD Project unquestionably encompasses the Tribe’s aboriginal territory. Since the beginning of time, Tribal members have hunted, fished, and gathered native plants for food and medicine in the areas of the Great Basin that will be impacted by the GWD Project. Shoshone people have also conducted their ceremonies at springs, wetlands and other sacred sites within the Project’s footprint. The Duckwater Shoshone depended on the cultural and environmental resources in the Great Basin for both subsistence and ceremonial purposes before the city of Las Vegas or State of Nevada existed. The plants, animals, and Indian people that depend on the water resources in the Great Basin are inextricably connected to the Goshute cultural landscape. The Shoshone continue to hunt, fish, gather, and participate in cultural and religious ceremonies within the GWD’s Project footprint today. The GWD Project threatens the ability of the Tribe and its members to continue to engage in these traditional, cultural and subsistence practices on their aboriginal lands – thereby threatening the very survival of the Tribe itself. The Duckwater Shoshone Tribe submitted comments on the environmental impact statement during the NEPA review process.

21. Plaintiff BAKER, NEVADA, WATER AND SEWER GENERAL IMPROVEMENT DISTRICT (“Baker GID”) provides water services to the unincorporated town of Baker, Nevada. Baker GID would be significantly impacted by the proposed groundwater export project, because both the agricultural and recreational tourism bases of the local economy

of Baker depends on a healthy ecosystem in Spring Valley, as well as Snake Valley. Baker GID is concerned that the pipeline will hurt the local economy due to declining water tables in Spring Valley and portions of Snake Valley threatening the operations of local ranchers and farmers and leading to decreased visitation because of the harm that the GWD Project will cause to the water resources and groundwater dependent resources of Spring and Snake Valleys, which would make this spectacularly beautiful area a less desirable place to visit. A healthy economy in Baker is critical to Baker GID's ability to maintain its water system. Moreover, if the GWD Project is allowed to be implemented, SNWA's plan is to extend it into Snake Valley, which will cause even more extreme drawdown in Snake Valley and directly imperil Baker GID's wells. Baker GID submitted comments on the environmental impact statement during the NEPA review process.

22. Plaintiff UTAH PHYSICIANS FOR A HEALTHY ENVIRONMENT ("UPHE") is the largest civic organization of health care professionals in Utah, with over 230 members, primarily physicians, but also other health care professionals, biologists, toxicologists, engineers, air quality specialists and the general public. UPHE is concerned about the health risks present in our environment, based on the overwhelming, convincing evidence in the medical literature demonstrating a wide array of chronic diseases are more common among people who are exposed to more air pollution, particulates especially. UPHE is dedicated to protecting the health and well-being of the citizens of Utah by promoting science-based education and approaches to the management and use of our natural resources. Members of UPHE live in, use and enjoy areas that will be impacted by the GWD Project. UPHE submitted comments on the environmental impact statement during the NEPA review process.

23. Plaintiff UTAH RIVERS COUNCIL is a grassroots organization dedicated to the conservation and stewardship of Utah's rivers and sustainable clean water sources for Utah's people and wildlife. Founded in 1995, Utah Rivers Council works to protect Utah's rivers and clean water sources for today's citizens, future generations and healthy, sustainable natural ecosystems. Members of the Utah Rivers Council live in, use and enjoy areas that will be impacted by the GWD Project. Utah Rivers Council submitted comments on the environmental impact statement during the NEPA review process.

24. Plaintiff UTAH AUDUBON COUNCIL was established by and represents the four Utah Audubon societies and their approximately two thousand members on matters of state and federal policies, and is dedicated to preserving, protecting and enhancing bird and wildlife habitats, ecosystems and the environment. Areas potentially negatively impacted by the proposed groundwater development include premier habitat for threatened sage grouse populations and other important and protected species such as raptors, and critical wetlands used as stopovers for migratory birds along the Pacific Flyway, and thus, Utah Audubon Council's interests are directly impacted by the proposed GWD Project. Members of Utah Audubon Council also live in, use and enjoy areas that will be impacted by the GWD Project. Utah Audubon Council submitted comments on the environmental impact statement during the NEPA review process.

25. Plaintiff LEAGUE OF WOMEN VOTERS OF SALT LAKE, UTAH is a grassroots broad-based nonpartisan citizens organization, which encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy. The League of Women Voters of Salt Lake focuses its work in part on furthering effective government structure and operation,

equitable social policy, protection of public health, and sound, sustainable management of natural resources. Members of the League of Women Voters of Salt Lake live in, use and enjoy areas that will be impacted by the GWD Project. League of Women Voters of Salt Lake submitted comments on the environmental impact statement during the NEPA review process.

26. Plaintiffs, their members, their constituents, and the people Plaintiffs serve or represent use and enjoy the wildlands, wildlife habitat, rivers, streams, and healthy environment on BLM and other lands in and around the proposed project area, including but not limited to Great Basin National Park, Moapa Valley National Wildlife Refuge, Kirch Wildlife Management Area, Pahrangat Valley National Wildlife Refuge, and Key Pittman Wildlife Management Area—for hiking, fishing, hunting, camping, photographing scenery and wildlife, wildlife viewing, aesthetic enjoyment, spiritual contemplation, and engaging in other vocational, scientific, and recreational activities. Plaintiffs’ members derive recreational, inspirational, religious, cultural, subsistence, scientific, educational, and aesthetic benefit from their activities. Plaintiffs’ members intend to continue to use and enjoy BLM, and other Nevada public lands, wildlands, wildlife habitat, rivers, streams, and healthy environments frequently and on an ongoing basis in the future.

27. Because Plaintiffs use, enjoy, and derive material and aesthetic, cultural and spiritual benefit from the lands and resources managed by the Defendants that will be affected by the GWD Project, Plaintiffs also have procedural interests in the integrity of the decisions and decisionmaking process of Defendants concerning the GWD Project and the lands and resources that will be affected by the GWD Project.

28. Plaintiffs have concrete interests in the outcome of Defendants’ decision authorizing the GWD Project and granting the ROW for that Project. The aesthetic, recreational,

scientific, educational, religious, cultural, subsistence and procedural interests of Plaintiffs and their members have been adversely affected and irreparably injured by Defendants' decision and by the process by which Defendants arrived at this decision, as embodied in the Final Environmental Impact Statement ("FEIS") and Record of Decision ("ROD"). Plaintiffs' injuries would be redressed by the relief sought.

29. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR ("DOI") is an Executive Department of the United States government. Among the agencies within the DOI and under the Secretary of the Interior's authority are: the Bureau of Land Management, which has jurisdiction over and responsibility for the management of most of the lands and natural resources that will be impacted by the GWD Project; the Fish and Wildlife Service, which has jurisdiction over federally protected species and National Wildlife Refuges that will be affected by the GWD Project; the National Park Service, which has authority over and responsibility for Great Basin National Park, which will be affected by the GWD Project; and the Bureau of Indian Affairs which has chief responsibility for fulfilling the Federal government's duties, including its trust obligations, to the Native American tribes that will be most affected by the GWD Project.

30. Defendant UNITED STATES BUREAU OF LAND MANAGEMENT ("BLM") is an agency within the United States Department of the Interior and is responsible for managing most of the public lands and resources in Nevada and Utah that would be directly and indirectly affected by the GWD Project and thus by the grant of the requested ROW for the GWD Project. In that capacity, the BLM is responsible for implementing and complying with federal law, including the federal laws implicated by this action.

IV. STATUTORY BACKGROUND

National Environmental Policy Act:

31. NEPA is our “basic national charter for the protection of the environment.” 40 C.F.R. § 1500.1. It was enacted—recognizing that “each person should enjoy a healthful environment”—to ensure that the federal government uses all practicable means to “assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings,” and to “attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences,” among other policies. 42 U.S.C. § 4331(b). NEPA’s primary purposes are to insure fully informed decision-making and to provide for public participation in environmental analyses and decision-making. *See id.* § 1500.1(b), (c). The Council on Environmental Quality (“CEQ”) promulgated uniform regulations implementing NEPA that are binding on all federal agencies. 40 C.F.R. §§ 1500 *et seq.*

32. NEPA regulations explain, in 40 C.F.R. §1500.1(c), that:

Ultimately, of course, it is not better documents but better decisions that count. NEPA’s purpose is not to generate paperwork – even excellent paperwork – but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.

33. “Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts.” 40 C.F.R. § 1501.2.

34. To accomplish this purpose, NEPA requires that all federal agencies prepare a “detailed statement” regarding all “major federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(C). This statement, known as an environmental impact

statement (“EIS”), must, among other things, describe the “environmental impact of the proposed action,” and evaluate alternatives to the proposal. *Id.*

35. NEPA also requires that every agency must “study, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources” 42 U.S.C. § 4332(E). CEQ regulations provide that the alternatives evaluation “is the heart of the environmental impact statement.” 40 C.F.R. § 1502.14. It should “sharply defin[e] the issues and provid[e] a clear basis for choice among options by the decisionmaker and the public” based on a consideration of the direct, indirect, and cumulative environmental consequences of a proposed action. 40 C.F.R. §§ 1502.14, 1502.16.

36. NEPA requires that an agency’s record of decision “[s]tate whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not.” 40 C.F.R. § 1505.2(c). Further, “[a] monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.” *Id.*

37. NEPA requires federal agencies to prepare supplemental environmental documents if substantial changes are made to an action that are relevant to environmental concerns or if there are significant new circumstances or information relevant to environmental concerns. 40 C.F.R. § 1502.9(c).

38. NEPA regulations direct that Defendants should “encourage and facilitate public involvement.” 40 C.F.R. § 1500.2(d).

Federal Land Policy and Management Act:

39. The Federal Land Policy Management Act requires that:

[T]he public lands be managed in a manner that will protect the quality of the scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use.

43 U.S.C. § 1701(a)(8).

40. FLPMA requires that “management [of the public lands] be on the basis of multiple use and sustained yield unless otherwise specified by law.” 43 U.S.C. § 1701(a)(7).

41. FLPMA obliges Defendants to “[m]anage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed . . . [under section 1712 of this title] when they are available” 43 U.S.C. § 1732(a).

42. FLPMA obligates Defendants to “take any action necessary to prevent unnecessary or undue degradation of the lands.” 43 U.S.C. § 1732(b).

43. FLPMA obligates Defendants to manage the public lands likely to be affected by the GWD Project and the ROW requested for that Project “under principles of multiple use and sustained yield, in accordance with the land use plans” developed for/applicable to those lands [and resources]. 43 U.S.C. § 1732(a).

44. FLPMA requires Defendants to limit any ROW granted for the GWD Project with terms and conditions that will, among other things: “minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment”; . . . “require compliance with applicable air and water quality standards established pursuant to applicable Federal or State law”; . . . “protect the other lawful users of the lands adjacent to or traversed by such right-of-way”; . . . “protect lives and property”; . . . “protect the interests of individuals

living in the general area traversed by the right-of-way who rely on the fish, wildlife, and other biotic resources of the area for subsistence purposes”; require location of the right-of-way along a route that will cause least damage to the environment, taking into consideration feasibility and other relevant factors”; and “otherwise protect the public interest in the lands traversed by the right-of-way or adjacent thereto.” 43 U.S.C. § 1765.

45. FLPMA requires that a ROW granted by Defendants “be limited to a reasonable term in light of all the circumstances concerning the project,” and “shall specify whether it is or is not renewable and the terms and conditions applicable to the renewal. 43 U.S.C. § 1764(B).

46. FLPMA permits the Defendants to grant a ROW “only when . . . satisfied that the applicant has the technical and financial capability to construct the project for which the right-of-way is requested” 43 U.S.C. § 1764(j).

Lincoln County Conservation, Recreation, and Development Act:

47. Section 301(b)(1) of the Lincoln County Conservation, Recreation, and Development Act of 2004, Pub. L. 108-424, (the “Lincoln County Public Lands Act” or “LCCRDA”) directed the Secretary to grant to SNWA and the Lincoln County Water District “nonexclusive rights of way to Federal land in Lincoln County and Clark County, Nevada, . . . for the construction and operation of a water conveyance system” LCCRDA provides that a ROW granted under that paragraph “shall be granted in perpetuity and shall not require the payment of rental.” LCCRDA did not make any similar provision with regard to any ROW granted in White Pine County.

48. While providing for the grant of a ROW for water conveyance facilities in Clark and Lincoln counties, the Lincoln County Public Lands Act also explicitly requires that before Defendants may grant such a right of way they “shall comply with [NEPA], including the

identification and consideration of potential impacts to fish and wildlife resources and habitat.”

Pub. L. 108-424 § 301(b)(3).

49. Title II of LCCRDA, which relates to wilderness areas, provides that “Nothing in this title shall affect any water rights in the State existing on the date of the enactment of this Act [, including any water rights held by the United States].” Pub. L. 108-424 § 204(d)(2)(B).

50. “Congress finds that – (1) public land in [Lincoln] County contains unique and spectacular natural resources, including – (A) priceless habitat for numerous species of plants and wildlife; and (B) thousands of acres of land that remain in a natural state; and (2) continued preservation of those areas would benefit the County and all of the United States by – (A) ensuring the conservation of ecologically diverse habitat; (B) protecting prehistoric cultural resources; (C) conserving primitive recreational resources; and (D) protecting air and water quality.” Pub. L. 108-424, § 201 (Findings).

51. Title II of LCCRDA, which relates to Wilderness Areas, expressly provides that “[n]othing in this title shall be construed to diminish the rights of any Indian tribe. Nothing in this title shall be construed to diminish tribal rights regarding access to Federal land for tribal activities, including spiritual, cultural, and traditional food-gathering activities.” *Id.*, at § 207.

52. Section 301(b)(1) of LCCRDA provides relief from the requirements of sections 202 and 503 of FLPMA with regard to a ROW in Lincoln County. But LCCRDA otherwise leaves the granting of a ROW to SNWA and the Lincoln County Water District for water conveyance facilities subject to the requirements of FLPMA.

53. Title III of LCCRDA, which relates to Utility Corridors, provides that: “Nothing in this title shall . . . preempt Nevada or Utah State water law; or . . . “limit or supersede existing water rights or interest in water rights under Nevada or Utah State law.” *Id.* at § 301(d)(2)-(3).

By this provision LCCRDA requires that action taken pursuant to the Act be in accord with the requirements of Nevada and Utah state law, and that [the ROW components of] LCCRDA be applied in a manner that does not negatively affect existing water rights or any interest in water rights under both Nevada and Utah State law.

54. LCCRDA does not permit any interbasin transfer of water from “ground-water basins located within both the State of Nevada and the State of Utah” until those two states have reached “an agreement regarding the division of water resources of those interstate ground-water flow system(s) from which water will be diverted and used by the project.” *Id.* at § 301(e)(3). In this connection, LCCRDA limits the development of groundwater from such shared basins to the maximum amount that is sustainable and that would protect existing water rights. *Id.*

National Historic Preservation Act:

55. The National Historic Preservation Act (“NHPA”) established as a national policy of great importance the identification and protection of historic properties. *See* 16 U.S.C. § 470. The Act’s purpose is to manage federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations. 16 U.S.C. § 470-1(3). In furtherance of this goal, the Act provides an extensive system of protection for cultural and historic properties and resources.

56. Section 106 of the NHPA and its implementing regulations require that any federal agency with “direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking” or any federal agency with the “authority to license any undertaking” must, prior to expenditure of the funds or issuance of the license, “take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register [and] afford the Advisory Council on Historic Preservation . . .

a reasonable opportunity to comment with regard to such undertaking.” 16 U.S.C. § 470f. The Act defines “historic property” or “historic resource” as any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register, including artifacts, records, and material remains related to such a property or resource. 16 U.S.C. § 470w.

57. Section 106 requires Federal Agencies to consult with State Historic Preservation Offices and Native American Tribes to identify and evaluate historic properties within the area of potential effect to determine whether they will be impacted by a particular project. 16 U.S.C. § 470f; 36 C.F.R. § 800.4. This tribal consultation requirement is triggered regardless of the location of the historic site. Within a reservation, the Tribe is authorized to perform the function of the State Historic Preservation Office. 16 U.S.C. § 470a(d)(2). Outside a reservation, where a proposed project may affect an historic property to which an Indian Tribe attaches religious and cultural significance, Section 106 consultation requirements are triggered. 16 U.S.C. § 470a(d)(6).

58. NHPA regulations place significant emphasis on consultation with Indian tribes under Section 106. Section 106 consultation with Indian tribes must respect tribal sovereignty and “must recognize the government-to-government relationship between the Federal Government and Indian tribes.” 36 C.F.R. § 800.2(c)(2)(ii)(C).

59. Where consultation reveals that historic properties or properties eligible for listing are likely to be impacted by a particular project, the agency must mitigate or resolve any adverse effects. 36 C.F.R. § 800.4. In many cases, consultation results in a Memorandum of Agreement, or Programmatic Agreement, which outlines agreed-upon measures that the agency will take to avoid, minimize, or mitigate adverse effects to historic properties or properties eligible for

listing. *See* 36 C.F.R. § 800.6, 800.14.

Federal Trust Obligation to Native American Tribes:

60. In addition to duties to Tribes pursuant to the NHPA, the Federal Government's fiduciary duties toward Indian tribes consist of “moral obligations of the highest responsibility and trust,” to be fulfilled through conduct “judged by the most exacting fiduciary standards.” *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942).

61. Pursuant to their trust obligation, Defendants as federal agencies have a heightened duty to consult with federally recognized Indian tribes and an enhanced statutory duty to protect Tribal resources, including aboriginal lands, water resources, cultural resources, and cultural, subsistence, religious and ceremonial practices. *See id.*

62. As recognized by the Federal Government, “the boundaries of the country claimed and occupied by the Goship [Goshute] tribe, as defined and described by said bands, are as follows: On the north by the middle of the Great Desert; on the west by Steptoe Valley; on the south by Toedoe or [] Green Mountains; and on the east by Great Salt Lake, Tuilla, and Rush Valleys.” Treaty with the Shoshoni-Goship, 1863 art. 5.

63. As acknowledged by the Federal Government at the time of the Treaty of 1863 the Goshute Tribe continued to possess the same title and interest in the lands described in the treaty as “existed in them upon acquisition of said territories from Mexico by the laws thereof.” Treaty of 1863 art. 8.

American Indian Religious Freedom Act

64. The American Indian Religious Freedom Act (AIRFA) declares that it is the “policy of the United States to protect and preserve” the inherent rights of Indians “to believe, express, and exercise” their traditional religions. *See* 42 U.S.C. § 1996.

V. FACTUAL BACKGROUND

A. Proposed Action

65. The Southern Nevada Water Authority is a political subdivision of the State of Nevada formed by cooperative agreement among the Big Bend Water District, City of Boulder City, City of Henderson, City of Las Vegas, City of North Las Vegas, Clark County Water Reclamation District, and Las Vegas Valley Water District. SNWA allocates and delivers available water supplies to meet the demands of its member agencies. SNWA's function is to manage existing water resources and develop or obtain additional water sources so as to provide for the current and anticipated future demands of the region SNWA serves.

66. On August 19, 2004, SNWA requested a right-of-way grant from the BLM to construct and operate a system of groundwater conveyance facilities including main and lateral pipelines, power lines, pumping stations, regulating tanks, substations, pressure reduction stations, an underground water reservoir, a water treatment plant, electrical power lines, electrical substations, electronic system operations facilities, access roads, and associated ancillary facilities on public land for the purpose of delivering immense volumes of groundwater from rural eastern Nevada to the Las Vegas Valley ("Groundwater Development Project" or "GWD Project").

67. In its present incarnation the GWD Project would convey water produced from existing and new water rights for which the SNWA has applied to the Nevada Division of Water Resources. The vast majority of the water conveyed through the GWD Project would be newly appropriated groundwater from the targeted high desert valleys in White Pine and Lincoln Counties. As it was originally proposed, SNWA's GWD Project ultimately would extend from the currently proposed base configuration into additional adjacent valleys and counties in other

parts of rural Nevada. And, while SNWA has traded or retired some of the many groundwater rights applications it filed in 1989 for the purpose of developing the GWD Project, SNWA continues to hold open many other groundwater rights applications in those other valleys and counties for the purpose of eventually expanding the GWD Project beyond the limited configuration addressed in the Defendants' EIS and ROD.

68. The GWD Project would develop and convey groundwater resources that the Nevada State Engineer permitted in early 2012 to SNWA in Spring, Delamar, Dry Lake, and Cave valleys and may permit in Snake Valley for use in Clark County. The new groundwater rights recently permitted by the Nevada State Engineer have been subject to a still-pending legal challenge in Nevada State Court since the spring of 2013.

69. In December of 2013, the Nevada State District Court invalidated the permits for the GWD project, based on a finding that the State Engineer's decision to grant SNWA more water than was available from the subject valleys and failure to require a monitoring and mitigation plan that included adequate standards, thresholds, and triggers was arbitrary and capricious, was not in the public interest, and was unfair to generations of future Nevadans. SNWA has appealed this decision to the Nevada Supreme Court where the appeal is pending. The district court's decision represents the second invalidation of SNWA's GWD permits in Cave, Dry Lake, and Delamar Valleys based on a finding that the water simply isn't available for appropriation.

70. If permitted, the GWD Project would enable SNWA to withdraw massive quantities of groundwater from poorly understood regional groundwater flow systems in rural eastern Nevada and western Utah and transport that water to the area of southern Nevada served by SNWA. The purpose for the GWD Project currently asserted by SNWA, the project

proponent, is to provide additional protection for southern Nevada from potential Colorado River shortages and to help supply increased future projected water demands in the long term. In the past, SNWA has asserted shifting justifications, or purposes, for the GWD Project such as to provide for the perpetuation of the explosive rate of growth that prevailed in the late 1990s and first few years after 2000 or more generically “to expand its water portfolio” in order to give SNWA greater flexibility in terms of how to meet the water demands of its service area.

71. In performing their review of the GWD Project, the Defendants took the position that LCCRDA required them to grant the ROW requested by SNWA, and approve the GWD Project, in essentially the form they were proposed by SNWA without imposing any meaningful limitation on the Project’s proposed pumping and export of groundwater from the affected region.

72. Defendants’ predetermination to approve SNWA’s GWD Project without serious application of federal legal requirements also is illustrated by the fact that the BLM chose not to require any bond whatsoever under Section 504 of FLPMA from SNWA in connection with the GWD Project despite the potentially enormous costs associated with the GWD Project and its likely harmful impacts.

73. Defendants completed a Final EIS for this proposed ROW in August 2012, and subsequently issued a ROD granting the ROW in December of 2012.

74. Throughout their review process, and particularly in the Final EIS and ROD, the Defendants improperly relied on a tiered approach to their NEPA and FLPMA analysis of the GWD Project, which has obscured the fact that the GWD Project is one unified project about which the Defendants have not received sufficient information to support a rational, well grounded decision to approve. In what Defendants have described as Tier 1, the EIS analyzes

site-specific impacts only of ROW construction and pipeline operation and engages in only a more generalized, unspecific analysis of the potential impacts of future lateral lines, groundwater production facilities, including wells and collector lines, and drawdown from pumping groundwater on environmental resources. Defendants assert that site specific analyses of impacts analyzed at the programmatic level will be performed at later stages in subsequent tiered NEPA documents corresponding, for example, to the specific siting of groundwater production wells. However, at this initial programmatic level of review Defendants already effectively have approved the entire GWD Project, at least with regard to the proposed groundwater pumping from Spring, Cave, Dry Lake, and Delamar Valleys. In the face of clear data indicating that the proposed groundwater pumping will have significant impacts throughout the affected area, Defendants have relied on their tiered approach to avoid meaningful analysis of those impacts while approving the Project as a whole.

75. The project would be located in northern Clark County, Lincoln County, and southeastern White Pine County, primarily within the 2,640-foot wide corridor established by the Lincoln County Conservation, Recreation, and Development Act under public law 108-424. (ROD at 1.)

76. The ROW requested by SNWA extends beyond the northern boundary of the designated corridor into White Pine County in Spring and Snake valleys and deviates from the corridor in a few locations in Clark and Lincoln Counties.

77. The Proposed Action, which is SNWA's proposed GWD Project including the Snake Valley portion which has not yet been considered by the Nevada State Engineer, would provide the infrastructure necessary to pump and convey up to 176,655 acre-feet of groundwater per year through a roughly 306-mile long system of pipelines from Spring, Snake, Cave, Dry

Lake, and Delamar Valleys in central-eastern rural Nevada south to the Las Vegas Valley. (ROD at 17; Final EIS at ES-8.) The Alternative selected by Defendants in the FEIS and ROD approves the GWD Project without the Snake Valley portion of the Project, which is left to be addressed at a future time. Thus, Defendants approved the lion's share of the proposed action, including the pumping and transport of 114,129 acre-feet of groundwater per year from Spring Cave, Dry Lake and Delamar Valleys. (ROD at 20.)

78. According to the EIS, the timeframe for full build out of the Proposed Action is 38 years from BLM issuance of a Notice to Proceed.

79. SNWA initially asserted that the Proposed Action would cost an estimated \$3.22 billion to build, for a total of \$15.46 billion with financing costs (in 2007 dollars). (Final EIS at ES-24, 2-97 to 2-98.) This estimate did not include any provision for contingencies, for ordinary operating and maintenance costs, or for any of the potentially enormous monitoring, management, and mitigation costs associated with the GWD Project. A more recent estimate prepared by SNWA for the EIS that still excluded all of the above-listed neglected costs, put the base cost of the Proposed Action at \$3.87 billion – a 20% increase. According to SNWA, in order to finance construction alone, the commodity charge for water in its service area would more than double. Evidence presented at the Nevada State Engineer's 2011 hearing on SNWA's GWD Project water rights applications and introduced into the administrative record below showed that SNWA's ability to finance construction of the project alone, much less operate and provide for monitoring and mitigation, is highly doubtful. Additional testimony in the State Engineer's hearing that was introduced to the administrative record below also indicates that the unconsidered costs of monitoring and mitigation are likely to be astronomically high.

80. In addition to the Proposed Action, the Defendants considered six groundwater

pumping and conveyance alternatives, as well as a No Action Alternative.

81. Defendants rejected the alternatives of transporting the groundwater via truck, rail or aqueduct, phased development of the project, and returning treated wastewater back to the valleys of origin, for feasibility reasons, and refused to consider water conservation, water efficiency, water supply management, and desalination alternatives for meeting the current and future needs of SNWA's service area, which were suggested during scoping, because according to the Defendants they would not fulfill the project purpose, which the Defendants artificially and improperly defined as nothing more than "to provide the SNWA with legal access for a water conveyance system across federal land managed by the BLM".

82. Comments on the DEIS from Plaintiffs and other commenters urged the Defendants to consider alternatives of desalination, increased water conservation, and pursuing more equitable modified Colorado River management in the course of the ongoing Colorado River negotiations in which SNWA is a major player. As the commenters pointed out, all of these alternatives have been demonstrated to be feasible alternative means of meeting SNWA's present and reasonably foreseeable water demand.

83. For example, citing a report prepared by Peter Gleick and Heather Cooley of the Pacific Institute for the Nevada State Engineer's hearing on SNWA's GWD Project water rights applications, Center for Biological Diversity DEIS comments argue that if Las Vegas were to achieve the per capita use of Los Angeles, its water consumption using projected 2035 population numbers would be similar to what it is today, and thus, conservation savings alone could provide sufficient water to meet the projected need.

84. Center for Biological Diversity comments also urged the BLM to consider desalination as an alternative to the GWD Project. "Desalinization is operational around the

globe, and most recently is being tied to renewable energy sources to reduce costs and its carbon footprint. Plans for a desal plant at Dana Point in Orange County, California estimate the total annualized cost of capital and operations to be approximately \$20 million, producing an acre foot of water for around \$1287, while stating that such cost is conservative and is decreasing as new and better technologies become available; it also does not have an associated renewable power source which would further decrease costs.”

85. The ROD adopted Alternative F, which authorizes distributed pumping of 114,129 acre feet of groundwater per year in Spring, Cave, Dry Lake, and Delamar Valleys. Final EIS at ES-8. The ROD grants a ROW for the main conveyance pipeline and related facilities related to Alternative F. No ROW decisions on groundwater development facilities were made as part of the Defendants’ Tier 1 analysis.

86. Alternative F effectively deferred any decision regarding a large component of the project (Snake Valley), while increasing the amount of water to be withdrawn from some of the other valleys serving the Project. Thus, if and when it is expanded to include Snake Valley, the alternative adopted by the Defendants could result in the GWD Project pumping and exporting even more groundwater from the five proposed valleys that was provided for under the Proposed Action. Alternative F, therefore, does not fall within the scope of the alternatives analyzed in the Draft EIS.

87. Alternative F was added to the Final EIS after the close of the notice and comment period on the Draft EIS.

B. Groundwater Model

88. A regional groundwater flow model was prepared for the EIS to reveal potential hydrologic impacts on the area that will be most directly and predictably impacted by the GWD

Project. This area, the “hydrologic study area” includes the ROW applied for by SNWA, and also encompasses 35 hydrographic basins, as defined by the Nevada Division of Water Resources. Final EIS at 3.3-1.

89. Results of that model only were evaluated at full build out, full build out plus 75 years, and full build out plus 200 years, despite the fact that impacts will continue to worsen beyond 200 years post-build out and despite the fact that BLM in Nevada commonly analyzes the effects of open-pit mines that will take more than 200 years to fill with groundwater. *See* White Pine County DEIS Comments at 13, 15. The EIS does not disclose when equilibrium would be reached, or even if it ever would be reached, with various pumping amounts in the Proposed Action and the alternatives that were considered. Nor does the EIS acknowledge the relevance or consider the significance of this missing information.

90. Results of the groundwater development model were evaluated based on a 10 foot drawdown threshold, and a 5% decrease in spring flow threshold. Impacts that would occur at less than a 10 foot drawdown or less than a 5% decrease in spring flow were not evaluated, despite the fact that areas affected by less than a 10 foot drawdown may cover hundreds of square miles, including springs, wetlands, sub-irrigated meadows, wells, and vegetation, and despite the fact that a drawdown of less than 10 feet or a decrease in spring flow of less than 5% could lead to disastrous environmental impacts, including a loss of critical habitat for threatened and endangered species.

91. According to the Defendants, the regional nature of the groundwater model makes it inherently uncertain. Defendants have not completed sufficient pump tests (with monitoring) to detail the variability in hydraulic conductivity across the impacted groundwater basins. Nor have Defendants prepared a detailed groundwater model that includes all of the basins in the

carbonate province and the overlying valley fill aquifers or that contains sufficient precision to model effects to specific sites and resources within those basins. SNWA has not provided the Defendants with well location and pumping information sufficient to prepare such a model. Thus, in many instances, the Defendants have undertaken an improper, unspecific programmatic evaluation of generally possible pumping impacts instead of an evaluation of site-specific impacts that actually already are demonstrably certain or highly likely to occur.

C. Construction, Operation, Monitoring, Maintenance, Management, and Mitigation Plan

92. As a substitute for a proper site specific evaluation of the GWD Project's likely environmental impact, the Defendants have required SNWA to comply with a Construction, Operation, Monitoring, Maintenance, Management, and Mitigation Plan ("COM Plan"). In relying on the proposed COM Plan, however, the Defendants failed either to develop or require SNWA to develop an adequately detailed and comprehensive monitoring and mitigation plan that includes concrete, quantified triggers or thresholds and action forcing mechanisms. Nor did Defendants carefully review or consult all other available studies on the aquifer system and the impacts of groundwater pumping on the area's natural resources in order to properly account for the uncertainty in modeling. Further, the Defendants did not identify acceptable levels of impacts under the COM Plan. Consequently, there are no quantified targets or goals by which to judge either the environmental soundness of the GWD Project or the adequacy of the COM Plan as a safeguard against unreasonable impacts.

93. Moreover, comments on the DEIS submitted by multiple parties, including Great Basin Water Network and White Pine County made clear that the proposed monitoring and mitigation will be ineffective for a project of this scale. Specifically, Dr. John Bredehoeft, a retired long-term senior hydrogeologist with the United States Geologic Survey who is widely

viewed as one of the deans of groundwater science, concluded that once the groundwater system is perturbed to the extent that the GWD Project would perturb it, the effects of the perturbation from pumping will ripple outward through the system slowly with great persistence. The drawdown from pumping will migrate slowly outward from the area of the pumping wells and the water table will continue to decline at some distance from the wells for many years, even after pumping has stopped. Consequently, even subtle indications of adverse impacts might not be observed for several decades. As a result, once an adverse impact to the system is observed by the proposed monitoring system, it will be too late to reverse the impact by stopping the pumping.

94. The EIS sets up a system where mitigation decisions are made by two committees. Before any action could be taken to remedy or mitigate an unacceptable environmental impact, a decision to do so would have to be based on a consensus that such an impact had occurred or was beginning to occur. This procedure alone would guarantee delay and potential failure to recognize and respond to any environmental harm caused by the GWD Project's depletion of the aquifer.

95. The make-up of the committees virtually guarantees that no meaningful remedial action would ever be taken. Both committees are to have representatives from SNWA. Thus, given that the committees operate on a consensus framework, the committees that control the entire process of acknowledging environmental impacts and deciding how to respond to such impacts have been structured so as to favor continued extraction of groundwater. The COM Plan makes scant provision for third party involvement in the case that consensus is not reached, and is so vague as to practically guarantee that the determination of the third party will carry little if any weight and will not be enforceable.

D. Missing Information

96. The EIS is missing critical information on springs, streams, seeps, and wetlands in the regional study area which may be directly affected by pumping drawdowns. The proposed project could have massive impacts over a huge area of eastern Nevada and western Utah. However, the size of the area does not provide an acceptable excuse for the paucity of information in the EIS on the affected environment, especially the scarce water resources of this high desert area and the impacts of the GWD Project.

97. The EIS provides no information on how missing information would be tracked or collected, who would collect it, and how the public would have access to such information. The EIS also fails to disclose the costs of collecting future information or the required timeframe for collecting such information. Nor does the EIS provide for any consequences or remedial action if the missing information is not collected within a timeframe that would allow for timely identification and prevention of potentially problematic impacts from the Project.

98. The EIS is also missing critical information on visual resource, soils, wildlife, special status species, Great Basin National Park, caves, groundwater flow modeling/water resource, and climate change, which is critical for the public and the Defendants respectively to make informed comments and decisions on this EIS.

99. In addition to inadequate information regarding affected resources, the EIS is lacking critical information about the project and its impacts to these resources. In particular, project descriptions for well sites have not been provided to the Defendants by the applicant. Using "groundwater development areas" in the EIS for impacts analysis purposes leaves out of the NEPA analysis large areas with SNWA water rights applications. If approved, these additional water resources would be transported through the SNWA pipeline on the BLM ROW.

E. Predicted Impacts

100. Even though Defendants irrationally limited the analysis of the GWD Project's impacts to only a 200 year time period despite the fact that it is intended to be operated in perpetuity, and even though they refused to consider impacts from water table drawdowns of less than 10 feet or spring flow decreases of less than 5%, the analysis in the EIS and the underlying groundwater model expose the fact that the proposed GWD Project would have profound hydrologic and biological impacts across a vast area spanning eastern Nevada and western Utah. Even within the truncated time period that Defendants examined, SNWA's proposed pumping would lower the water table by hundreds of feet over a vast and continually expanding area, causing devastating environmental, social, and economic consequences in eastern Nevada and western Utah, foreclosing the opportunity for future economic development in the target basins and communities in the surrounding region that depend on these basins. Among the impacts disclosed by even the Defendants' irrationally abbreviated examination, the GWD Project pumping would cause at least a 10 foot drawdown drying up over 191,000 acres of iconic Great Basin shrubland and over 8,000 acres of wetlands, would reduce the flow rate of over 300 springs by at least 5%, and would adversely impact over 100 miles of perennial streams. (Final EIS at 3.5-55.)

101. The model predicts that there will be serious and catastrophic impacts to the water levels in both the basins from which SNWA plans to pump, and in down-gradient hydrologically connected basins. Moreover, the water SNWA intends to pump already is allocated downgradient and is unavailable for appropriation. Cave, Dry Lake, and Delamar Valleys are part of the upgradient portion of the White River Flow System, a system of hydrologically interconnected geographic basins. Records of the State Engineer show that many of the basins in the White River Flow System that are hydrologically connected to and down-gradient from the targeted basins already are fully appropriated. SNWA's proposed points of diversion in the

targeted valleys are all up-gradient of these fully appropriated basins. These fully appropriated basins include White River Valley, the center of significant ranching activity and the location of the Kirch Wildlife Management Area, Pahranaagat Valley, home to the Pahranaagat Valley National Wildlife Refuge and Key Pittman Wildlife Management Area, Lake Valley, Muddy River Springs Valley, Lower Moapa Valley, and Coyote Spring Valley. Thus, as two separate consecutive Nevada State District Court rulings have concluded, the water on which the Cave, Dry Lake, and Delamar Valley portions of the GWD Project are premised already is subject to prior appropriations in the downgradient basins, and therefore is unavailable for what would amount to double appropriation in those upgradient valleys in the White River Flow System.

102. The groundwater model predicts that there would be a significant magnitude of drawdown which would spread throughout eastern Nevada, eventually resulting in the drying up of springs and wetlands through most if not all of Spring Valley. The proposed pumping would amount to a devastating groundwater mining project, under which the groundwater system would not even begin to approach equilibrium for thousands of years, with the potential of never reaching equilibrium. As the two Nevada State Court rulings noted above concluded, it is irrational, arbitrary, and capricious to restrict the consideration of impacts to as short a time period as 200 years when the uniform evidence confirms that the groundwater systems involved will be disturbed and subject to ever worsening drawdown for millennia.

103. The drawdown from SNWA's proposed pumping will give rise to conflicts with existing water rights in Spring Valley and in downgradient valleys. These conflicts will grow ever worse as the drawdown increases and eventually will become so severe that the prior existing rights will be destroyed for all practical purposes.

104. SNWA's proposed pumping would draw down the water table by hundreds of

feet, eventually drying out most if not all of the non-perched springs that sustain a variety of wildlife species.

105. Along with the springs, wetlands and riparian areas will be dried out, destroying additional crucial wildlife habitat. As the water table drops, the depth to water will increase to such a degree that even the hardiest of phreatophytes (groundwater dependent plants) will be killed off.

106. Special status wildlife species or groups that are known to occur along the ROWs and in the project area include desert tortoise, pygmy rabbit, greater sage-grouse, western burrowing owl, other special status raptors (golden eagle, bald eagle, ferruginous hawk,), other special status birds, ten bat species, dark kangaroo mouse, reptiles, and Mojave poppy bee. At least 25 species of native springsnails, 37 species of fish, 4 species of amphibians, the southwestern willow flycatcher, pronghorn antelope, mule deer and elk, plus many other species are threatened by the predicted impacts to habitat caused by the GWD Project. *See* Final EIS, Apps. F3.6, F3.7. Some of these species are already protected by the Endangered Species Act (“ESA”) such as the Moapa dace, White River spinedace, Pahrangat roundtail chub, White River springfish, Hiko White River springfish and Pahrump poolfish, Big Springs spinedace, and southwestern willow flycatcher; other species have been found to be warranted for protections under the ESA, including the greater sage grouse and relict leopard frog; other species such as 25 springsnails and the northern leopard frog have been found warranted for a 12-month review under the ESA. *See* Final EIS, Apps. F3.6, F3.7. Still others such as over 11 new or undescribed species of cave fauna or dozens of other aquatic or terrestrial species depend on the conditions of the Great Basin ecosystems and its ties to the groundwater systems, but have not received extensive inventory or scientific study.

107. The desert tortoise, which is listed as threatened under the Endangered Species Act, also inhabits the Project Area. There are 1,759 acres of critical habitat and 591 acres of non-critical habitat within project ROWs. Final EIS at 3.6-11.

108. In addition to losing critical and non-critical habitat, desert tortoises would be at risk from construction activity, including being run over, having burrows collapsed by vehicles or equipment, and increased predation from ravens and other scavengers that might be attracted to the work area.

109. The EIS also does not analyze impacts to predatory mammals such as coyotes, cougar, bobcats, and badgers, which are critical to the continued health of the affected ecosystem.

110. The predicted drawdown caused by SNWA's pumping would also have a devastating impact on grazing activities, which have long been critical to the economy and culture of rural Nevada and Utah. Such harmful effects on longstanding livestock grazing activities in the areas that would be affected by the GWD Project conflict with the BLM's Ely District Resource Management Plan ("RMP"), which provides for maintaining rangeland health and for livestock grazing to continue on those affected lands. BLM, Ely District Approved Resource Management Plan at 85-88 (2008).

111. The drawdown caused by SNWA's proposed pumping would create an increased risk of dust emissions from both the presently moist playa areas in the valley and other areas where current vegetation is killed off. Some of this dust and particulate matter will carry radioactive materials deposited downwind from historic atomic weapons tests on the former Nevada Test Site. The Final EIS discloses that for the whole GWD Project, which Defendants still ultimately may approve, at least 21,518 tons of new, cumulative increased PM10 emissions will be generated per year as a result of 10-foot or greater drawdown due to the GWD Project's groundwater pumping.

(Final EIS at 3.1-70.) The Final EIS also discloses that for just Alternative F, which Defendants have approved, at least 15,434 tons of new, cumulative increased PM10 emissions will be generated per year as a result of 10-foot or greater drawdown due to the GWD Project's groundwater pumping.

(Final EIS at 3.1-79.) This generation of substantial additional quantities of hazardous particulate matter poses a significant risk of serious health impacts on downwind communities, including Salt Lake City, which could lead to increased rates of disease and death. The dust will also impair the scenic and visual quality of the impacted basins and surrounding areas, including the Great Basin National Park and Congressionally-designated Wilderness Areas and potential Wilderness found in Wilderness Study Areas.

112. Although Defendants decline to meaningfully consider these impacts on the ground that the COM Plan will prevent or address them later, the Final EIS discloses that in practical reality these impacts will not be avoidable if the GWD Project is implemented and will be too widespread and severe to be effectively managed or mitigated under the COM Plan.

v. Indirect Impacts

113. Defendants have failed to evaluate indirect effects of the Project, which include, but are not limited to, the future growth and development of the Las Vegas Valley and the indirect effects on the region's human and wildlife communities that will result from the proposed pumping of the aquifer.

vi. Cumulative Impacts

114. The EIS and ROD do not adequately (1) identify the significant cumulative effects issues associated with the proposed action; (2) establish the proper geographic scope for the analysis; (3) establish an appropriate time frame or quantitative thresholds for the identification or analysis of such effects; or (4) identify other actions affecting the resources, ecosystems, and/or human communities of concern.

115. Because the Project will directly impact a vast aquifer system (valley fill and carbonate), the scope of the cumulative impacts analysis in the EIS must encompass the entire aquifer system. Some of Nevada's and Utah's aquifers are connected among basins. As such, the development of water resources in one basin may affect water levels in or discharges to other basins. It therefore is imperative that the scope of the Defendants' cumulative impacts analysis extend far beyond Spring, Snake, Cave, Dry Lake, and Delamar Valleys, transcend State boundaries, and include the entire set of affected interbasin flow systems within the carbonate rock aquifer system, which extends throughout much of Nevada and into western Utah. The EIS fails utterly to engage in this broad analysis.

116. Without an adequate scientific basis, Defendants limited their consideration of impacts from the GWD Project, and specifically its proposed groundwater pumping, to an arbitrarily truncated 200-year time frame. Defendants cut off any consideration of future impacts from the GWD development project despite the fact that the GWD Project is proposed to operate and continue pumping and exporting groundwater from the targeted groundwater system on an unprecedented level in perpetuity. Defendants' refusal to consider the potential impacts of the GWD Project's continuous massive groundwater pumping beyond 200 years also was arbitrary because the Project Proponent's and Defendants' own model, as well as the uniform available scientific information that was submitted as part of the comments during the NEPA review process, clearly indicate that the impacts of the GWD Project will continue to grow in severity and geographic scope as the Project's pumping continues well beyond 200 years. Defendants' decision to truncate analysis of groundwater pumping impacts at the 200-year point also is arbitrary and capricious because Defendants have commonly analyzed the effects of groundwater development associated with mining projects beyond a 200-year time period.

F. Impacts to Native American Cultural, Ceremonial, Religious and Subsistence Practices; Sacred Sites; Water Resources; and Cultural Resources

117. SNWA's proposed groundwater development project (GWD Project) will cause significant, adverse impacts to Native American cultural and water resources, including: a) human remains; b) associated and unassociated funerary objects; c) sacred sites; and, d) the water resources necessary for Indian peoples to continue to participate in Tribal cultural, subsistence, ceremonial, and religious practices.*

118. Defendants have failed to acknowledge the scale, duration and severity of the GWD Project's harm to protected Tribal cultural and water resources. The GWD Project would forever alter aboriginal lands, Tribal water resources, cultural, historic, and sacred sites, and ceremonial, subsistence and religious practices. Defendants' failure to protect Tribal rights and resources violates their legal duties to the Tribes.

119. Defendants have further failed to adequately identify, consider, or mitigate impacts to Native American historic, cultural, and water resources in the vast GWD Project area. As a result, Defendants have failed to consider and implement adequate mitigation and monitoring measures. This failure violates Defendants' heightened trust duties to protect these resources for future generations of Indian people.

120. Early in the environmental review process, the BLM and a number of other federal agencies signed stipulated agreements that abandoned their protests to SNWA's Nevada state water rights applications. (Those water rights applications would provide the water necessary for the proposed GWD Project). The stipulated agreements are ostensibly designed to protect federal resources, including Tribal resources in the Project area. Yet, the decision to

* For the purposes of this Complaint, the term "cultural resources" includes without limitation: any place, object, burial, plant, animal, fish, water source, natural resource, or landscape determined by the Tribe to be culturally, traditionally, historically or religiously significant in accordance with federal or Tribal law and Tribal custom and tradition.

enter into these stipulations was made without any formal Tribal consultation. The agreements are wholly inadequate to protect Tribal resources.

121. These inadequate stipulated agreements formed the basis for the monitoring and mitigation summary included in the Final EIS. According to the Final EIS, “[t]he stipulated agreement process would contribute to the COM Plan by providing direction on a variety of monitoring, management, and mitigation processes. The BLM does not have authority to enforce the stipulated agreement process; however, the BLM can influence the monitoring, management, and mitigation measures implemented pursuant to the stipulations.” Because those water rights applications have been remanded – in large part because of inadequate monitoring and mitigation measures – BLM may no longer rely on those stipulated agreements. *See White Pine County v. Jason King*, No. CV1204049, 2013 WL 6911829 (Nev. Dist. Ct.)(Trial Order)(hereinafter “*White Pine County*”).

122. Pursuant to Section 106 of the NHPA, BLM, in consultation with the Advisory Council on Historic Preservation, the Nevada State Historic Preservation Officer, and SNWA negotiated and executed a Programmatic Agreement (“PA”) designed to mitigate anticipated project impacts, included as Attachment G to the ROD.

123. Defendants state that they initiated “government-to-government” consultation in 2007, and that its Tribal consultation efforts are “ongoing.” *See Final EIS, “Comments and Responses to Tribal Governments”* at 23. In fact, the Defendants have failed to engage in meaningful Tribal consultation with individual Tribal governments on a “government-to-government” basis. Merely including the term “government-to-government” consultation in the Final EIS does not transform an informal, public meeting into an official government consultation with a Tribal government’s duly elected leaders.

124. Only a small fraction of the vast Project area has been previously surveyed for culturally or historically significant resources. Large numbers of cultural resources have been previously identified in the Project area. Additional cultural resources are present. Despite this fact, Defendants have postponed the required identification of cultural resources to an unspecified date. Without timely identification of cultural resources, however, it is impossible to evaluate or mitigate significant, adverse impacts.

125. Defendants have refused to ensure that Tribal monitors participate in Class III cultural resources inventories. It is critical that an Indian person with traditional knowledge of the Project area be onsite to appropriately identify cultural resources. Otherwise, it is not possible to appropriately identify, monitor, or mitigate adverse impacts to Tribal cultural resources. Class III inventories with Tribal-member monitors must occur before the locations of wells, pumping stations, the pipeline, and other associated infrastructure are irreversibly determined.

126. The PA sets forth conditions and requirements that each agency must meet for the proposed project to satisfy the Defendants' Section 106 responsibilities, including continued consultation with potentially affected Tribes.

127. Because of grave concerns regarding the defendants' failure to evaluate, mitigate or monitor adverse impacts to Tribal resources, not one Tribe signed the PA.

128. The Defendants have refused to provide Indian tribes with any decision-making authority on mitigation and monitoring measures. Tribes, as the aboriginal inhabitants of these lands, are in the best position to identify cultural resources and appropriate mitigation measures.

129. Indian religions differ from many mainstream religions because they are closely tied to the land and water. Many natural areas and geographical formations, including springs

and traditional hunting, gathering, and ceremonial areas, are considered to be sacred by Tribes in the Great Basin region. Environmental and cultural resources are an integral part of Indian religious and ceremonial activities for the Great Basin Tribes.

130. In summary, Defendants have failed to prevent unnecessary or undue degradation to public lands; to adequately identify, evaluate or mitigate significant adverse impacts to Tribal cultural resources; water resources; reserved water rights; culturally significant plants and animals; traditional, cultural, ceremonial, and subsistence practices; and religion; or, to adequately consult with Tribal governments.

G. Inconsistency With Ely District Resource Management Plan:

131. The Final EIS and ROD fail to ensure the consistency of Defendants' decision to approve SNWA's GWD Project and grant the ROW with various objectives and management directives contained in the BLM's Ely District Resource Management Plan ("RMP"), which constrain management decisions concerning land and resource use on public lands managed by the BLM that comprise much of the area in which the GWD Project is to be built and that will be affected by the Project's proposed groundwater pumping. These include objectives and management directives from the Ely District RMP concerning management of vegetation and cultural resources, and continued livestock grazing, in the areas that would be impacted by the GWD Project. The inconsistency of Defendants' decisions in the Final EIS and ROD with their own policies, priorities, and/or directives in the Ely District RMP are reflective of the arbitrary and capricious manner in which Defendants decided to approve the GWD Project and grant the requested ROW before engaging in a sound, well-grounded review process under NEPA and FLPMA.

H. New Information and Circumstances

132. On September 27, 2012, after Defendants issued the FEIS, Plaintiff White Pine County sent a letter to the BLM, alerting the agency to the following new circumstances and information that require the preparation of a Supplemental EIS for notice and comment.

133. The U.S. Geologic Service (USGS) currently is finalizing a geo-hydrological report of the potential impacts of the Project on the resources in and around Great Basin National Park, including Spring and Snake Valleys. This study will contain information critical to the assessment of potential impacts to Great Basin National Park. It also is likely to provide more precise and reliable information regarding the potential impacts of the proposed pumping in Spring and Snake Valleys. Accordingly, it was premature for the Defendants to issue a Final EIS let alone a ROD for the proposed Project before the study was available and reviewed by the Defendants. Defendants should issue a Supplemental EIS for notice and public comment which incorporates this additional new information.

134. In June of 2012, the Natural Resources Defense Council (NRDC) published a report titled *Pipe Dreams: Water Supply Pipeline Projects in the West* (Report), which analyzes large water pipeline projects from a policy perspective. The Clark, Lincoln, and White Pine Counties Groundwater Development Project is addressed a number of times in the Report. The Report contains significant new information that must be considered by the Defendants in a supplemental EIS. Specifically, the Report recommends that all costs, including financing, planning, operating, energy costs, and mitigation costs, be included in project cost estimates in order to create a complete picture of project costs. Defendants have failed to include such costs in the project cost estimates that are addressed in the FEIS. Finally, the NRDC Report includes a discussion of pipeline alternatives, including voluntary water transfers, water recycling,

improved water efficiency, and improved groundwater management, all of which are less environmentally disruptive, more reliable, and more cost effective than the proposed pipeline. As noted in White Pine County's comments on the Draft EIS, the Defendants have failed to engage in a meaningful evaluation of these reasonable, viable, more cost-effective, and more environmentally benign alternatives.

135. The FEIS is based on outdated 2008 population data, and does not reflect the recent economic downturn in the SNWA service area, which is in a population decline. The FEIS states that based on 2008 data, the population of Clark County is expected to increase to approximately 3.65 million people by 2035. (Final EIS at 1-14.) However, a June 2012 population forecast from the UNLV Center for Business and Economic Research (CBER) estimates Clark County 2035 population at approximately 2.8 million people, which is close to 25% lower than the 2008 number. The current CBER population estimate is significant new information released since the notice and comment period for the Draft EIS, and the Defendants must issue a Supplemental EIS that incorporates this information for notice and comment.

136. The FEIS did not consider critical evidence that several of the Plaintiffs herein and their co-protestants had introduced into the public record of the Nevada State Engineer's administrative review process for the GWD Project during the State Engineer's fall 2011 hearing on the Southern Nevada Water Authority's water rights applications in Spring, Cave, Dry Lake, and Delamar Valleys. This information also was introduced and/or referenced in Plaintiffs' comments on the Draft EIS during the NEPA review process that is the subject of this Complaint. In particular, air quality evidence submitted by the Long Now Foundation contains information about the potential air quality impacts that have not yet been reviewed by the Defendants and must be taken into consideration before a decision is made on the proposed

project. Mitigation cost information also was submitted by the Long Now Foundation, which must be considered by the Defendants, and is of significance because the information submitted goes to mitigation costs, which the Defendants must consider in order to gain a complete picture of project operation costs.

137. As noted above, Defendants' evaluation of the GWD Project was based on the premise that the amounts of groundwater that SNWA proposed to pump and export from the target valleys were validly permitted, as sustainable and not in conflict with existing water rights, by the Nevada State Engineer. However, as Defendants knew at the time they issued the Final EIS and ROD, those recently permitted groundwater rights were subject to a pending legal challenge in Nevada State Court.

138. On December 13, 2013, the Nevada State District Court issued a decision in the appeal which invalidated SNWA's water rights in Spring, Cave, Dry Lake, and Delamar Valleys. The court found that the State Engineer's decision was arbitrary and capricious, was not in the public interest, and was unfair to generations of future Nevadans, because he granted more water than was available from each of the four valleys. In particular, the Court found that it was irrational, arbitrary, and capricious for the State Engineer to have limited his consideration of the GWD Project's impacts to only the same 200 year period used by Defendants when the modeling evidence all made it clear that the Project would cause growing impacts far into the future and the affected groundwater systems would not reach equilibrium for millennia, if ever. The court also found SNWA's monitoring and mitigation plan to be inadequate and ordered the State Engineer to require a monitoring and mitigation plan that includes standards, thresholds, and triggers in order to avoid unreasonable adverse effects. The court then remanded the case to the State Engineer for a recalculation of the water available for appropriation in each valley and for

development of an adequate monitoring and mitigation plan that contains concrete, quantified thresholds for what is an unreasonable adverse effect and triggers for specific, concrete actions to avoid or mitigate unreasonable effects.

139. SNWA has appealed this ruling to the Supreme Court of Nevada. However, this most recent Nevada State Court ruling represents an independent confirmation of a consistent analysis and ruling reached by another State District Court judge several years ago, which similarly invalidated the State Engineer's prior grant of water rights to SNWA in Cave, Dry Lake, and Delamar Valleys. Thus, there appears to be very serious doubt that the water rights on which the GWD Project is premised ever could be found to be valid.

140. Given that SNWA currently has no permitted water rights to service the GWD project, and given that there is serious doubt as to whether such water rights ever could be validly granted to SNWA, Defendants' reliance in the Final EIS and ROD on the invalid issuance of such water rights to SNWA – and the State Engineer's subsequently invalidated finding that the proposed groundwater development could be properly, sustainably pursued – must be reexamined in light of the invalidation of SNWA's supposed water rights and the eventual determination of what amount of groundwater if any can properly be developed and exported from these valleys. Accordingly, Defendants clearly should, and have been asked explicitly to, withdraw the Final EIS and ROD and prepare a Supplemental EIS that takes into account the analytical deficiencies found by the State Courts with regard to both the amount of water that is sustainably available and the inadequacies of the existing COM Plan, whatever further guidance emerges from the Nevada Supreme Court's decision on SNWA's GWD Project water rights applications, and any recalculation of what if any groundwater rights can be properly permitted by the State Engineer on remand.

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of NEPA

(Defendants Failed to Adequately Evaluate the Purpose and Need for the Clark, Lincoln, and White Pine Counties Groundwater Development Project)

141. Plaintiffs hereby incorporate by reference all preceding paragraphs.

142. Defendants violated NEPA and NEPA's implementing regulations because Defendants failed to adequately evaluate the purpose and need for the Clark, Lincoln, and White Pine Counties Groundwater Development Project.

143. An EIS must properly define the "purpose and need" of the action. *See* 40 C.F.R. § 1502.13. If the purpose and need of the action is too narrowly defined, then the range of alternatives considered will likewise be too narrow in scope. *National Parks Conservation Assn v. BLM*, 586 F.3d 735, 746-48 (9th Cir. 2009). As described below, the Assessment of purpose and need that underlies the EIS is woefully inadequate and is riddled with omissions and inconsistencies.

144. Defendants' failure to properly identify and consider the true purpose and need for the GWD Project, failure to independently evaluate SNWA's stated population projections, failure to properly evaluate or discuss current conservation measures or the potential for more aggressive additional conservation measures, failure to consider desalination as an alternative, and failure to consider opportunities for negotiations on the Colorado River render the EIS's discussion of purpose and need for the project inadequate under NEPA. *See* 40 C.F.R. § 1502.13.

145. Defendants' actions are arbitrary, capricious, an abuse of discretion, and not in accordance with the law and procedures required by law, because Defendants failed to adequately evaluate the purpose of and need for the project. 5 U.S.C. §§ 706(2)(A), (D).

SECOND CLAIM FOR RELIEF

Violation of NEPA

(Defendants Failed to Consider a Reasonable Range of Alternatives to the Clark, Lincoln, and White Pine Counties Groundwater Development Project)

146. Plaintiffs hereby incorporate by reference all preceding paragraphs.

147. Defendants violated NEPA and NEPA's implementing regulations because Defendants failed to consider reasonable alternatives to address the impacts of the proposed action, including alternatives to mitigate those impacts.

148. Defendants, pursuant to NEPA, were obliged to consider "alternatives to the proposed action" and "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. §§ 4332(2)(C)(iii), 4332(2)(E).

149. The discussion of reasonable alternatives section is the "heart" of any environmental analysis under NEPA. 40 C.F.R. § 1502.14.

150. In considering alternatives, Defendants were required to "[r]igorously explore and objectively evaluate all reasonable alternatives" to a proposed action including a "no action" alternative. 40 C.F.R. § 1502.14(a), (d).

151. Alternatives must be presented in a "comparative form ... thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public." 40 C.F.R. § 1502.14.

152. In crafting the proposal and range of reasonable alternatives, Defendants must properly define the scope of the NEPA analysis. 40 C.F.R. § 1502.4; 40 C.F.R. § 1502.14. In some instances, "[p]roposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement." *Id.* Scope is determined by considering "[c]onnected actions," "[c]umulative actions," and "[s]imilar

actions”; “[a]lternatives,” including [o]ther reasonable courses of actions” and “[m]itigation measures (not in the proposed action)”; and direct, indirect, and cumulative impacts. 40 C.F.R. § 1508.25.

153. Defendants “shall not commit resources prejudicing selection of alternatives before making a final decision (Sec. 1506.1)” and must prepare NEPA analyses such that they “serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.” 40 C.F.R. §§ 1502.2(f), (g); 40 C.F.R. § 1506.1.

154. Defendants must consider reasonable alternatives, even if they are not within BLM’s jurisdiction. 40 C.F.R. § 1502.14(c).

155. As described above, in the Final EIS and ROD Defendants impermissibly defined the purpose and need of the Proposed Action so as to limit the consideration of a reasonable range of alternatives.

156. Despite the fact that comments on the DEIS presented multiple reasonable, feasible alternatives for BLM consideration, Defendants failed to consider reasonable alternatives, such as different levels of pumping, alternative sources of water, piping from different sources, different combinations of pumping among valley fill and carbonate wells, various mitigation measures, desalination, Colorado River negotiations opportunities, and a water conservation alternative. 40 C.F.R. § 1502.14.

157. Defendants’ actions are arbitrary, capricious, an abuse of discretion, and not in accordance with the law and procedures required by law, because Defendants failed to consider a reasonable range of alternatives. 5 U.S.C. §§ 706(2)(A), (D).

THIRD CLAIM FOR RELIEF

Violation of NEPA

(Defendants' Decision to Tier Site Specific Impacts Analyses Violates NEPA)

158. Plaintiffs hereby incorporate by reference all preceding paragraphs.

159. Defendants' decision to tier site specific impacts analyses violates NEPA and its implementing regulations.

160. NEPA's implementing regulations explain that agencies should consider connected, cumulative, and similar actions in the same impacts statement. "Connected actions" must "be considered together in a single EIS." *Thomas v. Peterson*, 753 F.2d 754, 758 (9th Cir. 1985); 40 C.F.R. § 1508.25(a)(1). Connected actions are those actions that:

- i. Automatically trigger other actions which may require environmental impact statements.
- ii. Cannot or will not proceed unless other actions are taken previously or simultaneously.
- iii. Are interdependent parts of a larger action and depend on the larger action for their justification.

40 C.F.R. § 1508.25(a)(1).

161. Where two actions are "inextricably intertwined" they are connected actions that must be considered together. *Thomas*, 753 F.2d at 759; *Save the Yaak Committee v. Block*, 840 F.2d 714, 720 (9th Cir. 1988). Likewise, cumulative actions "which when viewed with other proposed actions have cumulatively significant impacts [] should [] be discussed in the same impact statement." 40 C.F.R. § 1508.25(a)(2). Similar, reasonably foreseeable actions also should be considered together in the same environmental review document when the actions "have similarities that provide a basis for evaluating their environmental consequences together,

such as common timing or geography,” and the “best way to assess adequately [their] combined impacts [. . .] or reasonable alternatives” is to consider them together. 40 C.F.R. § 1508.25(a)(3).

162. The requirements that connected actions, cumulative, and/or similar actions be evaluated together prevents an agency from dividing a single project into segments that individually seem to have limited environmental impact, but as a whole have considerable impact. *See Thomas*, 753 F.2d at 758. It is important for federal agencies to consider connected actions together in a single NEPA process as opposed to segmenting review. *Daly v. Volpe*, 514 F.2d 1106, 1110 (9th Cir. 1975) (Where actions are interconnected in terms of fulfilling a joint purpose it may be necessary to conduct a single NEPA review); *Sierra Club v. U.S. Dept. of Energy*, 255 F.2d 1177, 1184 (D. Colo. 2002).

163. Defendants’ refusal to prepare a single EIS for the Pipeline Project construction and operation which analyzes site specific impacts violates NEPA, constitutes arbitrary and capricious agency action, is an abuse of discretion, and is contrary to law and to procedures required by law. 5 U.S.C. § 706(1)(A), (D).

FOURTH CLAIM FOR RELIEF
Violation of NEPA

(Defendants Failed To Take A Hard Look At Impacts To The Environment)

164. Plaintiffs hereby incorporate by this reference all preceding paragraphs.

165. Defendants failed to take a hard look at the direct, indirect, and cumulative impacts of the right-of-way issued to SNWA for the construction of its proposed Clark, Lincoln, and White Pine Counties Groundwater Development Project on BLM land.

166. Pursuant to NEPA and NEPA’s implementing regulations, Defendants must take a hard look at the direct, indirect, and cumulative environmental consequences of a proposed action and its alternatives to the human environment; disclose unavoidable adverse impacts; address the relationship between local short-term uses of man’s environment and the

maintenance and enhancement of long-term productivity; and identify irreversible and irretrievable commitments of resources. *See* 42 U.S.C. §§ 4332(2)(C)(i)-(v); 40 C.F.R. §§ 1502.14, 1502.16, 1508.7, 1508.8, and 1508.14.

167. Defendants' NEPA hard look must be premised upon a sound understanding of baseline conditions to ensure that Defendants and the public can compare, contrast, and ultimately choose amongst alternatives. 40 C.F.R. §§ 1502.14, 1502.15.

168. The EIS fails to provide sufficient baseline data and information on water rights and claims, historic and current water uses, the locations of all springs and seeps, locations of all wet meadows and wetlands, locations of water-dependant flora and fauna, aquifer recharge rates, and information on the connectivity between the alluvial groundwater and carbonate system throughout the project area. 40 C.F.R. § 1502.15.

169. All agencies, including the BLM and DOI "shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements." 40 C.F.R. §1502.24. Pursuant to NEPA, information included in an EIS "must be of high quality." 40 C.F.R. § 1500.1(b). Accurate "scientific analysis [is] essential to implementing NEPA." *Id.* While an EIS may not be expected to reference or rely on every study or opinion, the state of scientific knowledge on a particular subject must be fairly represented in a balanced manner. Moreover, an EIS must contain a reasoned analysis in response to conflicting data or opinions on environmental issues.

170. Under NEPA, an agency must honestly address the various uncertainties surrounding the scientific evidence upon which it relies in its environmental evaluations. The agency has a duty to respond to credible opposing points of view, and it may not ignore reputable scientific opinion. *See, e.g., Seattle Audubon Soc'y v. Espy*, 998 F.2d 699, 704 (9th Cir. 1993);

Public Service Co. v. Andrus, 825 F. Supp. 1483, 1496-99 (D. Idaho 1993); *see also Sierra Club v. Watkins*, 808 F. Supp. 852, 864-69 (D. D.C. 1991). An agency's NEPA analysis must expose scientific uncertainty regarding the risk of a proposed action and inform decisionmakers of the full range of responsible scientific opinion on the environmental effects of the proposed action. *Friends of the Earth v. Hall*, 693 F. Supp. 904, 926, 934 (W.D. Wash. 1988). Also, federal agencies are responsible for overseeing and ensuring the accuracy of environmental impact statements produced by contractors. 40 C.F.R. § 1506.5(c).

171. The EIS is not based on the best scientific information available. The Defendants failed to complete sufficient pump tests (with monitoring) to detail the variability in hydraulic conductivity across the basins. In addition, the Defendants failed to prepare a detailed groundwater model that includes all of the basins in the carbonate province and the overlying valley fill aquifers and contains sufficient precision to model effects to specific sites and resources within these basins. Defendants also failed to prepare a detailed and comprehensive monitoring and mitigation plan that includes triggers and action forcing mechanisms, and failed to carefully review and consult all other available (or soon be available) studies on the aquifer system and the impacts of groundwater pumping on the area's natural resources.

172. 40 C.F.R. § 1502.22 provides that an EIS must disclose any incomplete and unavailable information. Under NEPA, an agency must honestly address the various uncertainties surrounding the scientific evidence upon which it relies in its environmental evaluations.

173. The EIS is missing critical information on springs, streams, seeps, and wetlands in the "large" regional study area which may be directly affected by pumping drawdowns. It also is

missing visual resource information, soils information, wildlife information, special status species, and climate change information.

174. In addition to inadequate information regarding affected resources, the EIS and ROD lack critical information about the Project. In particular, project descriptions for proposed well sites have not been provided to the Defendants by SNWA. Consequently, Defendants' decision to approve the GWD Project and grant the requested ROW was made in the absence of sufficient information to support an informed, reasoned decision.

175. The EIS also lacks critical information regarding impacts, by failing to disclose: impacts that would result from a less than 10 foot drawdown of the water table in affected areas; impacts that would result from a less than 5% decrease in flow of affected springs; impacts that would occur after more than 200 years of groundwater pumping from the date of the GWD Project's initial build out; if or when equilibrium ever will be reached in the affected basins; or the relevance of that missing information.

176. The EIS fails to sufficiently analyze and disclose the direct and indirect impacts to the affected aquifers, water dependent flora and fauna, including numerous state and federal protected species discussed above, and air quality. 40 C.F.R. § 1502.16.

177. The EIS fails to sufficiently analyze and disclose the cumulative impacts to affected aquifers, water dependent flora and fauna, and air quality. 40 C.F.R. §§ 1508.7, 1508.25.

178. Defendants failed to adequately consider the ROW and GWD Project's potential effects on air quality due to increased dust emissions from relicted lands where decreased spring and stream flows caused by the GWD Project's proposed groundwater pumping.

179. Defendants failed to adequately consider the ROW and GWD Project's potential effects on air quality due to increased dust emissions from riparian lands that will become dessicated by the GWD Project's proposed groundwater pumping.

180. Defendants failed to adequately consider the ROW and GWD Project's potential effects on air quality due to increased dust emissions from changes to soil and vegetation conditions in areas that will be affected by a decline in the water table of less than 10 feet as a result of the GWD Project's proposed groundwater pumping.

181. Defendants failed to adequately consider the ROW and GWD Project's potential effects on air quality due to increased dust emissions resulting from the GWD Project's proposed groundwater pumping beyond 200 years.

182. Defendants failed to adequately consider potential air quality effects of increased mobilization of radioactive particulate matter/fallout from historic nuclear testing that is present in the soils of the area which will be affected by the GWD Project's proposed groundwater pumping.

183. The Final EIS and ROD fail to identify a level of impact, or levels of various types of impact, that would be acceptable.

184. The Final EIS and ROD fail to adequately disclose adverse environmental impacts and irretrievable commitments of resources that cannot be avoided. 41 U.S.C. § 433,(1)(C)(ii),(v) and 40 C.F.R. § 1501.16.

185. The Final EIS and ROD fail to adequately analyze the efficacy of proposed mitigation measures and relies on an inadequate COM Plan, which fails to identify either what level of impact would be acceptable or what mitigation measures would be implemented if unacceptable impacts occur. 40 C.F.R. §§ 1502.14(f), 1502.16(h), 1508.20.

186. Defendants' reliance on inadequate baseline data, inadequate scientific information, and incomplete information, failure to identify acceptable levels of impacts, deficient discussion of the affected environment, and reliance on an inadequate monitoring and mitigation plan violates NEPA, and constitutes arbitrary and capricious agency action, is an abuse of discretion, and is contrary to law and to procedures required by law, because Defendants failed to take a hard look at direct, indirect, and cumulative impacts to the environment as required by NEPA. 5 U.S.C. § 706(1)(A), (D).

FIFTH CLAIM FOR RELIEF

Violation of NEPA

(The Public Participation Process for Comment Was Inadequate)

187. Plaintiffs hereby incorporate by reference all preceding paragraphs.

188. The public participation process for comment was inadequate to provide for meaningful public participation.

189. NEPA's implementing regulations require that "NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken." 40 C.F.R. §§ 1500.1(b). This information must be of "high quality;" accurate scientific analysis, expert agency comments, and public scrutiny are essential to NEPA's implementation. 40 C.F.R. §§ 1500.1(b), 1502.24.

190. NEPA's implementing regulations required Defendants to "involve ... the public, to the extent practicable," in the preparation of an EA, 40 C.F.R. § 1501.4(b), and to "(a) [m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures," to (b) [p]rovide public notice of ... the availability of environmental documents so as to inform those persons and agencies who may be interested or affected," and to "(d) solicit appropriate information from the public." 40 C.F.R. §§ 1506.6(a), (b), (d).

191. Given that the Pipeline Project presents complex and highly controversial issues of great public import, the public comment period for the DEIS should have been at least 180 days.

192. The inclusion of the new Alternative F after the close of the notice and comment period on the DEIS should have triggered a supplemental EIS for notice and comment pursuant to 40 C.F.R. § 1502.9(c)(1)(i).

193. As described supra, Defendants violated NEPA and NEPA's implementing regulations because Defendants failed to provide the public with sufficient environmental information to permit members of the public to weigh in with their views and thus inform Defendants' decision as to whether to grant a ROW over BLM land for the GWD Project.

194. Defendants' actions are arbitrary, capricious, an abuse of discretion, and not in accordance with the law and procedures required by law, because Defendants failed to provide the public with sufficient environmental information and time to permit members of the public to weigh in with their views and thus inform ' decision regarding the issuance of the right-of-way. 5 U.S.C. §§ 706(2)(A), (D).

SIXTH CLAIM FOR RELIEF
Violation of NEPA

(Defendants Failed To Prepare Supplemental NEPA Analyses)

195. Plaintiffs hereby incorporate by reference all preceding paragraphs.

196. An agency must supplement its NEPA analysis when there "are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. § 1502.9(c)(1)(ii).

197. Defendants "[m]ay also prepare supplements when the agency determines that the purposes of [NEPA] will be furthered by doing so." 40 C.F.R. § 1502.9(c)(2).

198. Defendants violated NEPA and NEPA's implementing regulations because they failed to supplement the EIS despite the presence of significant new circumstances and information.

199. There are significant new circumstances and information bearing on Defendants' decision to issue a right-of-way for the pipeline project, including the development of Alternative F after the close of the notice and comment period for the Draft EIS.

200. The inclusion of the new Alternative F after the close of the notice and comment period on the Draft EIS, and which effectively defers any decision regarding a large component of the project (Snake Valley), while raising the quantities of water to be withdrawn from some of the other valleys serving the Project, requires a Supplemental EIS for notice and public comment pursuant to 40 C.F.R. § 1502.9(c)(1)(i). In the context of the continuing potential for future withdrawals of water from Snake Valley, where the ultimate Project, including Snake Valley, could exceed the amounts of water withdrawn under the proposed action, Alternative F does not fall within the scope of the alternatives considered in the Draft EIS, and therefore a supplemental EIS should have been issued for notice and comment pursuant to 40 C.F.R. § 1502.9(c)(1)(i).

201. Additionally, new information should have triggered the preparation of a Supplemental EIS for notice and comment. This new information includes, but is not limited to: The USGS Geo-Hydrological Report on Potential Impacts to Great Basin National Park, the 2012 Natural Resources Defense Council Pipe Dreams Report, the 2012 UNLV Center for Business and Economic Research Population Estimates, and evidence introduced during the fall 2011 Nevada State Engineer Hearing on SNWA's water rights applications, including air quality impacts evidence and mitigation cost evidence.

202. Finally, the Nevada State District Court’s December 13, 2014, decision invalidating SNWA’s GWD Project water rights permits and remanding the case to the State Engineer for a recalculation of available water requires the preparation of a Supplemental EIS for notice and comment. As a result of the State Court’s decision, the amount of pumped water analyzed by the FEIS bears little relationship to any project that might actually be permitted and constructed. This critical new information must be taken into account by the BLM. BLM must analyze the impacts of the State Court’s findings concerning availability of water, the period within which a groundwater system must come into equilibrium and therefore throughout the duration of which the effects of the proposed groundwater pumping must be analyzed, the deficiencies of SNWA’s proposed monitoring and mitigation plans, and the State Engineer’s anticipated newly calculated amount of available water from each of the subject valleys.

203. Defendants’ failure to prepare a Supplemental EIS constitutes an agency action unlawfully withheld or unreasonably delayed and are arbitrary, capricious, an abuse of discretion, and not in accordance with the law and procedures required by law. 5 U.S.C. §§ 706(1), (2)(A), (D).

SEVENTH CLAIM FOR RELIEF
Violation of FLPMA

(Defendants Failed To Prevent Unnecessary and Undue Degradation and Damage to the Environment)

204. Plaintiffs hereby incorporate by reference all preceding paragraphs.

205. FLPMA obligates Defendants to “take any action necessary to prevent unnecessary or undue degradation of the lands.” 43 U.S.C. § 1732(b).

206. Defendants were obliged to include terms and conditions in its rights-of-way that will, among other requirements, “minimize damage to scenic and aesthetic values and fish and wildlife habitat and otherwise protect the environment,” “require compliance with applicable air

and water quality standards,” and “require compliance with State standards for public health and safety, environmental protection.” 43 U.S.C. § 1765(a); 43 C.F.R. § 2801.2(b) (BLM’s objective is to grant rights-of-way in a manner that will prevent unnecessary or undue degradation).

207. Defendants also must include terms and conditions necessary to “protect lives and property,” “protect the interests of individuals living in the general area traversed by the right-of-way who rely on the fish, wildlife, and other biotic resources of the area for subsistence purposes,” and otherwise protect the public interest in the lands traversed by the right-of-way or adjacent thereto.” 43 U.S.C. § 1765(b).

208. Defendants failed to take action “to prevent unnecessary or undue degradation” in issuing the right-of-way.

209. Defendants failed to include terms and conditions that protect the environment and the public interest in the lands subject to the right-of-way and adjacent thereto.

210. Defendants failed to set criteria by which to gauge the terms and conditions of the ROW permit to determine if the requirements of FLPMA are being met.

211. Defendants’ actions are arbitrary, capricious, an abuse of discretion, and not in accordance with the law and procedures required by law, because Defendants failed to comply with FLPMA. 5 U.S.C. §§ 706(2)(A), (D).

EIGHTH CLAIM FOR RELIEF

Violation of FLPMA

(Failure to Ensure Consistency of GWD Project, as Approved Under the ROD and Final EIS, with Ely District RMP)

212. Plaintiffs hereby incorporate by reference all preceding paragraphs.

213. FLPMA and its implementing regulations require that management decisions authorizing use or occupancy of the public lands be in accordance with the applicable land use, or resource management, plan. *See* 43 CFR pts. 2091, 2801, 2920.

214. The ROW and GWD Project approved by the FEIS and ROD represent occupations and uses of the lands and resources covered by the Resource Management Plan for the BLM's Ely District. The Ely District RMP mandates a number of management approaches and/or objectives with regard to protection of certain vegetation communities and conditions and also with regard to livestock grazing and protection of certain cultural resources, including Native American cultural resources on public lands managed by the BLM that are within the area in which the GWD Project would be built or the area that would be affected by the Project's groundwater pumping.

215. The GWD Project as approved by Defendants would conflict with these management goals, directives, policies, and/or priorities in the Ely District RMP.

216. Defendants failed to consider whether the ROW and GWD Project, as approved under Alternative F in the FEIS and ROD, are consistent with the Ely District RMP's provisions concerning wildlife habitat, natural water sources for wildlife, livestock grazing, cultural resources, and vegetation management on the public lands within the Ely District on which the ROW and GWD Project will be constructed and/or have effects.

217. The ROW and GWD Project, as approved under Alternative F in the FEIS and ROD, are not in accordance with the Ely District RMP's provisions concerning wildlife habitat, natural water sources for wildlife, livestock grazing, cultural resources, and vegetation management on the public lands on which the ROW and GWD Project will be constructed and/or have effects.

218. The ROW and GWD Project, as approved under Alternative F in the FEIS and ROD, are inconsistent with the Ely District RMP's goals and objectives, desired range of

conditions, and parameters for air, soil, vegetation, fish and wildlife, and water resources in a number of ways, including but not limited to the following ways. *See* Ely District RMP at 23.

219. The ROW and GWD Project, as approved under Alternative F in the FEIS and ROD, are inconsistent with the Ely District RMP's desired range of conditions for multiple species of vegetation, which will change in composition to an altered state as the result of the GWD Project. Ely District RMP at 27, 32, 33. The Ely RMP lists as a desired range of conditions for riparian areas and wetlands, achieving "proper functioning condition, composition, structure, and cover of riparian vegetation. Ground cover and species composition will be appropriate to the site. Riparian areas with free-flowing water (i.e., undeveloped springs) that are non-functional or functioning at risk will show improving trends toward proper functioning condition." Ely District RMP at 32-33. The BLM's acknowledgement in the FEIS that succession from one biome to another will happen is in direct contradiction to the Ely District RMP, which prohibits such succession and requires restoration efforts where succession has occurred. FEIS Chapter 3, Page 3.5-46, 47.

220. The ROW and GWD Project, as approved under Alternative F in the FEIS and ROD, are inconsistent with the Ely District RMP's goal of preventing the introduction and spread of noxious and invasive weeds. Ely District RMP at 109. The FEIS acknowledges that when drawdown occurs, invasive weeds will replace native plants in some locations. FEIS Chapter 3, Page 3.5-47.

221. The ROW and GWD Project, as approved under Alternative F in the FEIS and ROD, are inconsistent with the Ely District RMP's goals for special status species which require BLM to manage public lands to conserve, maintain, and restore special status species populations and their habitats. Specifically, the parameters for Great Basin riparian habitat call

for managing to increase vegetation cover, reduce runoff, and prevent siltation, to increase habitat for the Pahrump Poolfish. The parameters for special status species habitat include stopping conversion of native sagebrush vegetation communities to annual grasslands, and restoration to native rangelands. Despite these parameters in the Ely District RMP, the FEIS acknowledges that the BLM expects that the “herbaceous wetland ETs (primarily associated with larger valley floor spring systems) could slowly change toward dominance by phreatophytic shrubs and other species better adapted to lower surface soil moisture levels. Similarly, the areas dominated by greasewood, rabbitbrush, and big sagebrush may be invaded by shrubs, herbs, and grasses that are adapted to seasonal shallow soil moisture, and are capable of withstanding extended droughts, either through complete or partial dormancy, or long-lived seeds.” FEIS Chapter 3, Page 3.5-47.

222. Similarly, the ROW and GWD Project, as approved under Alternative F in the FEIS and ROD, are inconsistent with the Ely District RMP’s parameter for sagebrush habitat, which requires maintenance of intact and quality sagebrush habitat. Specifically, the parameter requires BLM to “1) maintain large areas of high quality sagebrush currently occupied by greater sage-grouse; 2) maintain habitats which connect seasonal sagebrush habitats in occupied source habitats; and 3) maintain habitats that connect seasonal sagebrush habitats in occupied isolated habitats.” Ely District RMP at 45. Sagebrush provides priority and general habitat for the imperiled sage grouse. The GWD Project would result in the loss of over 2200 acres of priority sage grouse habitat and over 1600 acres of general sage grouse habitat, and would result in displacement and fragmentation of habitat.

223. The ROW and GWD Project, as approved under Alternative F in the FEIS and ROD, are inconsistent with the Ely District RMP’s parameter for wildlife water developments,

which call for restoration of *natural* water sources (i.e., springs and seeps) to increase water availability through restoration of riparian habitats and proper livestock and wild horse management. Ely District RMP at 36. The drawdowns predicted by the groundwater model would have significant negative impact on naturally occurring springs and seeps in the project area, which are predicted to decrease in flow and/or dry completely. It will not be possible to use mitigation to protect or restore these naturally occurring water sources. In apparent acknowledgment of this fact, the BLM's monitoring and mitigation discussion in the FEIS suggests that for water dependent resources, mitigation of such losses could amount to providing a replacement water supply of equivalent yield and water quality. FEIS Chapter 3, Page 3.20-9. BLM also suggests that "[i]f groundwater pumping by the SNWA results in the loss of existing water sources used by big game, the SNWA, in coordination with the BLM or NPS and NDOW, would develop and maintain artificial water sources to maintain current distribution of big game." FEIS Chapter 3, Page 3.20-14.

224. The ROW and GWD Project, as approved under Alternative F in the FEIS and ROD, are inconsistent with the Ely District RMP's management action for mitigation of discretionary permitted activities that result in the loss of aquatic and priority wildlife habitats, which requires the BLM to improve 2 acres of comparable habitat for every 1 acre of lost habitat as determined on a project by project basis. *See* Ely District RMP at 35. While the BLM acknowledges its obligation to comply with this criterion and provides for compliance in the area of construction activities, BLM systematically failed to require such restoration for the expansive area of likely groundwater drawdown that the modeling shows will occur, relying on the statement that impacts from groundwater withdrawals are analyzed at a programmatic level. FEIS at Chapter 3, Section 3.20. The BLM's deferral of compliance with the Ely District RMP

in the area of groundwater development impacts is clearly inappropriate for criteria such as this habitat restoration provision, which will apply regardless of the results of any NEPA analysis engaged in at future tiers and for which no further NEPA analysis is required. The BLM should have included a mandate for compliance with the Ely District's RMP and required restoration of 2 acres of habitat for every destroyed acre in the area of drawdown.

225. The ROW and GWD Project, as approved under Alternative F in the FEIS and ROD, are not in accordance with the Ely District RMP's livestock grazing objective, which is to allow livestock grazing to occur in a manner and at levels consistent with multiple use, sustained yield, and the standards for rangeland health. Further, the ROW and GWD Project are inconsistent with the Ely District RMP's standards concerning livestock grazing, which call for habitats that exhibit a healthy, productive, and diverse population of native and/or desirable plant species, appropriate to the site characteristics, to provide suitable feed, water, cover and living space for animal species and maintain ecological processes.

226. Defendants' actions are arbitrary, capricious, an abuse of discretion, and not in accordance with the law and procedures required by law, because Defendants violated FLPMA and its implementing regulations. 5 U.S.C. §§ 706(2)(A), (D).

NINTH CLAIM FOR RELIEF

Violation of FLPMA

(Failure To Ensure Compliance with Applicable Air Quality Standards)

227. Plaintiffs hereby incorporate by reference all preceding paragraphs.

228. FLPMA and its implementing regulations require that each land use authorization shall require compliance with air quality standards established pursuant to applicable federal or state law. 43 C.F.R. § 2920.7(b)(3).

229. As detailed above, Defendants failed to adequately consider whether the proposed action [ROW and GWD Project] likely would cause dust emissions that would violate applicable air quality standards for the area in which the proposed action is to occur and for downwind areas likely to be affected by the proposed action.

230. Defendants failed to provide for compliance with those air quality standards prior to authorizing the proposed action.

231. Defendants' actions are arbitrary, capricious, an abuse of discretion, and not in accordance with the law and procedures required by law, because Defendants violated FLPMA and its implementing regulations. 5 U.S.C. §§ 706(2)(A), (D).

TENTH CLAIM FOR RELIEF
Violation of Binding Federal Policy

(Defendants Violated Binding Federal Policy that Requires an Applicant to Demonstrate the Financial Capability to Construct, Operate, Maintain, and Terminate Its Project)

232. Plaintiffs hereby incorporate by reference all preceding paragraphs.

233. Federal law and policy requires the applicant to demonstrate the technical and financial capability to construct, operate, maintain, and terminate its project.

234. On the one hand, Defendants suggest that SNWA has demonstrated that capacity, but on the other hand, Defendants have not required SNWA to provide a cost estimate for monitoring, management, and mitigation, which undoubtedly will be necessary for continued operation of the Project. These mitigation costs could be prohibitively expensive as argued by the Long Now Foundation in the fall 2011 Nevada State Engineer hearing on SNWA's water rights applications, which were introduced in the administrative record below. Moreover, evidence presented at the fall 2011 State Engineer hearing demonstrated that SNWA's ability to finance the GWD Project was extremely dubious. The Final EIS cost estimates are not based on the actual likely costs of the proposed Project to taxpayers and do not adequately consider

whether SNWA actually has the financial ability to construct and operate the project as required by Federal policy.

235. Defendants' actions are arbitrary, capricious, an abuse of discretion, and not in accordance with the law and procedures required by law, because Defendants violated their own policy. 5 U.S.C. §§ 706(2)(A), (D).

ELEVENTH CLAIM FOR RELIEF

Violation of BLM's Trust Responsibility to Indian Tribes in Carrying out its Statutory Duties under FLPMA, NEPA, and the NHPA.

(Defendants Failed to Carry Out their Trust Responsibilities to Indian Tribes in Fulfilling their Enhanced Statutory Duties Under Federal Law)

236. Plaintiffs hereby incorporate by reference all preceding paragraphs.

237. Defendants violated their trust duty to Indian Tribes by failing to carry out their enhanced statutory duties under the Federal Land Policy and Management Act, National Environmental Policy Act, and National Historic Preservation Act. *See* 43 U.S.C. § 1701 *et seq.* ("FLPMA"); 42 U.S.C. §§ 4321 *et seq.* ("NEPA"); 16 U.S.C. §§ 470 *et seq.* ("NHPA").

238. The Federal Government's fiduciary duties toward Indian tribes consist of "moral obligations of the highest responsibility and trust," to be fulfilled through conduct "judged by the most exacting fiduciary standards." *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942).

239. Pursuant to their trust obligation, Defendant federal agencies have a heightened duty to protect Tribal resources. *See Pit River Tribe v. U.S. Forest Service*, 469 F.3d 768, 788 (9th Cir. 2006).

240. The Treaty of Peace and Friendship entered into by the United States federal government and the Goshute Shoshone Indians in 1863 predates federal environmental protection statutes. *See Treaty with the Shoshoni-Goship*, 13 Stats. 681. The enactment of

federal environmental laws does not diminish the Defendants' original trust responsibility to Indian tribes.

241. The GWD Project footprint is vast, encompassing large areas of the Tribes' aboriginal lands. Without further information regarding wellfield development, it is impossible for the Tribes to know the location of the pipeline or its associated infrastructure. Therefore, the Tribes cannot evaluate the extent to which cultural resources and sacred sites will be significantly impacted. Because the Defendants failed to provide critical information regarding locations of wellfield development; the pipeline; associated infrastructure; or, enforceable appropriate mitigation and monitoring measures, they have violated their statutory and trust duties to Indian tribes under the FLPMA, NEPA and NHPA.

242. Defendants failed to evaluate the Project's significant adverse impacts to aboriginal lands; water resources; cultural resources; and, cultural, religious, subsistence, and ceremonial practices with reference to a final ruling regarding SNWA's water rights applications. Currently, all of SNWA's water rights applications for the GWD Project have been invalidated and remanded to the Nevada State Engineer. *See White Pine County*, No. CV1204049, 2013 WL 6911829 (Nev. Dist. Ct.)(Trial Order). Until those applications are finally adjudicated, and scientifically-based locations of wells, pipelines and associated infrastructure are available, Defendants cannot adequately evaluate harm to Tribal cultural and water resources.

243. NEPA's required "hard look" at potentially significant impacts to Tribal resources is not possible without knowing the precise location of wellfield development. A supplemental EIS should be required once SNWA's water rights applications are finally adjudicated and information regarding the locations of wells and pipeline infrastructure is available.

244. The BLM failed to adequately specify the boundaries of the SNWA right-of-way, as required by the FLPMA. 43 U.S.C. § 1764. The BLM also failed to comply with its duty under the FLPMA to “prevent unnecessary or undue degradation of the [public] lands.” 43 U.S.C. §1732(b). By authorizing the pipeline right-of-way in derogation of Tribal cultural, subsistence, and religious practices, the BLM has violated its trust-enhanced statutory duty to avoid harm to Tribal interests and act in the best interests of Tribes. Without an adequate description of the right-of-way, adverse impacts to cultural resources, water resources, and cultural, religious, ceremonial and subsistence practices cannot be appropriately evaluated and mitigated, and unnecessary degradation and harm to the environment cannot be avoided. 43 U.S.C. §§ 1764; 1732(b).

245. In the Final EIS and ROD, Defendants failed to respond to the Tribe’s comments that it would be impossible to identify, consider or mitigate impacts to Tribal cultural and water resources without adequate information regarding wellfield development and pipeline location. Defendants’ failure to respond to the Tribe’s comments, or to recognize their heightened federal trust obligation to protect Tribal resources, is unlawful.

246. Defendants failed to consider the Tribe’s reserved water rights during the environmental review process. 42 U.S.C. §§ 4321 *et seq.* Under federal law, the Tribes are entitled to the flows of quantity, force, quality, and timing necessary to satisfy the Tribe’s subsistence and ceremonial needs. *See United States v. Adair*, 723 F.2d 1394, 1411 (9th Cir. 1983). Reserved water rights are vested, presently existing rights, regardless of whether they have been adjudicated. Defendants therefore had a duty to evaluate and mitigate any potentially significant harm or interference with the Tribes’ reserved water rights. *See Winters v. United*

States, 207 U.S. 564 (1908); *see also* 1863 Treaty with the Shoshoni-Goship, 13 Stats. 681.

They did not comply with this duty.

247. Defendants failed to engage in legally required “government-to-government” consultation regarding adverse impacts to Tribal cultural resources. Defendants further failed to draft a Programmatic Agreement that would afford any decision-making authority to the Tribes with regard to their own cultural resources. The current PA does not adequately protect Tribal cultural resources in accordance with both the letter and spirit of federal and Tribal laws. Drafting a Programmatic Agreement that no Indian tribes are willing to sign fails to satisfy Defendants’ heightened duty to protect cultural resources and engage in genuine government-to-government Tribal consultation.

248. Defendants’ failure to prevent unnecessary or undue degradation to public lands; to adequately evaluate and mitigate significant adverse impacts to Tribal cultural resources; water resources; reserved water rights; culturally significant plants and animals; traditional, cultural, ceremonial, and subsistence practices; and religion; or, to adequately consult with Tribal governments, is arbitrary, capricious, an abuse of discretion, and not in accordance with the law. 5 U.S.C. § 706(2). Because the federal government violated the FLPMA, NEPA and NHPA, it necessarily violated its minimum fiduciary duty to the Tribes.

TWELFTH CLAIM FOR RELIEF
Violation of NHPA

(Defendants Failed to Fulfill Section 106 Tribal Consultation Requirements)

249. Plaintiffs hereby incorporate by reference all preceding paragraphs.

250. Defendants violated Section 106 of the NHPA by failing to fulfill their duty to properly consult with potentially affected Indian Tribes.

251. Section 106 and its implementing regulations require that federal agencies consult with State Historic Preservation Offices and Native American tribes to identify and evaluate historic properties within the area of potential effect to determine whether they will be impacted by a particular project. 16 U.S.C. 470f; 36 C.F.R. § 800.4.

252. Where historic properties or properties eligible for listing are likely to be impacted, the agency must mitigate any adverse effects. *See Muckleshoot Indian Tribe v. Forest Service*, 177 F.3d 800, 808-809 (9th Cir. 1999)(Forest Service did not comply with its duty to mitigate impacts to a Traditional Cultural Property); 36 C.F.R. § 800.6.

253. Contrary to the FEIS's and ROD's assertions, meaningful Tribal consultation has not occurred. *See Confederated Tribes & Bands of Yakima Indian Nation v. FERC*, 746 F.2d 466 (9th Cir. 1984)(FERC violated its duty of Tribal consultation because the "consultation obligation is an affirmative duty"). Informal meetings and informational conferences do not constitute formal government-to-government consultation. Moreover, it is not possible to engage in meaningful Tribal consultation without any information regarding the locations of wells and the pipeline itself.

254. Defendants failed to fulfill their enhanced legal obligation to consult with, and take into consideration the views of, the Goshute Tribe, the Ely and Duckwater Shoshone Tribes, or any other Indian tribe that would be affected by this massive groundwater development and pipeline Project. Defendants' actions are therefore arbitrary, capricious, an abuse of discretion, and not in accordance with the law. 5 U.S.C. § 706(2).

THIRTEENTH CLAIM FOR RELIEF

Violation of Reserved Water Rights

(Defendants Failed to Fulfill Their Duties to Protect Tribal Federally Reserved Water Rights by Analyzing Impacts to Those Rights Under Federal Law)

255. Plaintiffs hereby incorporate by reference all preceding paragraphs.

256. In its arid ancestral lands, water has always been the Goshute, Ely Shoshone, and Duckwater Shoshone Tribes' most vital resource. Tribal cultural and religious practices depend on water. Tribal subsistence methods are inextricably linked to the water. The Tribes have thrived in a cultural landscape with extremely limited water resources since time immemorial because of their traditional subsistence, ceremonial, and religious practices.

257. Long before federal environmental statutes existed, these Tribes protected their cultural landscape and its water resources. Today, the Goshutes, the Ely Shoshone, and the Duckwater Shoshone retain legally protected reserved water rights. The Tribes are entitled to the flows of quantity, force, quality and timing necessary to satisfy the Tribes' subsistence and ceremonial water needs. *See* Exec. Order No. 1539 (1912); Exec. Order No. 1903 (1914); 1863 Treaty with the Shoshoni-Goship, 13 Stats. 681. The reserved water right is not limited to waters located on an Indian reservation but extends off-reservation to whatever waters and sources of water are necessary to satisfy the Tribes' needs. *See Arizona v. California*, 373 U.S. 546, 595 n. 97 (1963).

258. Defendants' failure to analyze potentially significant and adverse impacts to the Tribes' reserved water rights during the environmental review process is arbitrary, capricious, an abuse of discretion, and contrary to law. *See* 42 U.S.C. §§ 4321 *et seq.*; 5 U.S.C. § 706(2).

FOURTEENTH CLAIM FOR RELIEF

Violation of Right to Freedom of Religion by Tribes and Tribal Members
(Defendants Failed to Adequately Evaluate and Mitigate Impacts to Tribal Ceremonial and Religious Practices, Including Sacred Sites, as Required under Federal law)

259. Plaintiffs hereby incorporate by reference all preceding paragraphs.

260. It is impossible to separate the cultural landscape within the vast Project area from Tribal culture, traditions, ceremonies and religion. Many areas within the Project area are of particular cultural importance to the Tribes and Tribal members. These areas have been used since time immemorial for ceremonies and other religious activities by the Tribes and their Tribal members. Many of them continue to be used for religious and ceremonial purposes today.

261. Tribal religious traditions are inextricably tied to these cultural areas and the environment for many reasons. Tribal members actively and regularly participate in Tribal ceremonies, festivals and other traditional activities within the Project area. Tribal members visit the area to pass traditional and religious information on to the next generation, and to perform ceremonies and bless the spirits of their ancestors. Water resources are used for religious ceremonies and retain their traditional Goshute and Shoshone names today.

262. The American Indian Religious Freedom Act (AIRFA) declares that it is the “policy of the United States to protect and preserve” the inherent rights of Indians “to believe, express, and exercise” their traditional religions. *See* 42 U.S.C. § 1996.

263. Defendants failed to adequately evaluate and mitigate adverse impacts to Tribal religious and ceremonial practices, including sacred sites, during the environmental review process. *See* 42 U.S.C. §§ 4321 *et seq.*

264. Defendants further failed to consider that Article IX of the Treaty of Guadalupe Hidalgo of 1848 guarantees free exercise of religion without restriction. Because Nevada was a part of Mexico at the time of the Treaty, Goshute and Indian people are also entitled to protection

of Article IX of the Treaty of Guadalupe Hidalgo within the Project area. *See e.g. United States v. Abeyta*, 632 F. Supp. 1301 (D.N.M. 1986)(United States must honor religious freedom of Pueblo people under Article IX of Treaty of Guadalupe Hidalgo).

265. Failing to adequately consider and mitigate impacts to Tribal religious and ceremonial practices, including access to water resources and sacred sites, based on government-to-government Tribal consultation, is arbitrary, capricious, an abuse of discretion, and contrary to law. 5 U.S.C. § 706 (2).

VII. RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Declare that Defendants' EIS and ROD violate NEPA, FLPMA, NHPA, AIRFA, regulations promulgated thereunder, and Defendants' federal trust duty to the Indian Tribal Plaintiffs;

B. Declare that the Defendants' failure to prepare a Supplemental EIS violates NEPA;

C. Set aside Defendants' actions;

D. Void the validity of the right-of-way pending full compliance with NEPA, FLPMA, NHPA, AIRFA, regulations and policies promulgated thereunder, and Defendants' federal trust duty to the Indian Tribal Plaintiffs;

E. Suspend and enjoin any operations on the right-of-way and order any facilities built on the right-of-way to be immediately removed and remediated;

F. Retain continuing jurisdiction of this matter until Defendants fully remedy the violations of law complained of herein;

G. Award Plaintiffs their fees, costs, and other expenses as provided by applicable law; and

H. Grant Plaintiffs such further relief as may be requested subsequently by Plaintiffs or as may be deemed by the Court to be just, proper, and equitable to remedy the violations of law complained of herein.

Respectfully submitted this 12th day of February, 2014,

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