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COLORADO RIVER INDIAN TRIBES

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

COLORADO RIVER INDIAN TRIBES, a federally recognized Indian Tribe,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF THE INTERIOR; SALLY JEWELL, in her official capacity as Secretary of the Interior; UNITED STATES BUREAU OF LAND MANAGEMENT; NEIL KORNZE, in his official capacity as Director of Bureau of Land Management; JAMES G. KENNA, in his official capacity as California State Director of Bureau of Land Management; TERI RAML, in her official capacity as District Manager, California Desert District, Bureau of Land Management; and JOHN KALISH, in his official capacity as Field Manager, Palm Springs South Coast Field Office, Bureau of Land Management,

Defendants.

Case No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF FOR VIOLATIONS OF THE ADMINISTRATIVE PROCEDURE ACT, THE NATIONAL HISTORIC PRESERVATION ACT, THE NATIONAL ENVIRONMENTAL POLICY ACT, AND THE FEDERAL LAND POLICY AND MANAGEMENT ACT

Introduction

1. This complaint challenges the actions of Defendants U.S. Department of Interior, U.S. Bureau of Land Management, and their officials (collectively, "BLM" or "Defendants") in approving the Modified Blythe Solar Power Project ("Blythe II" or "Project"), a utility-scale solar energy generation facility slated for development on federal land northwest of Blythe, California. As set forth below, this Court has jurisdiction over this action because it presents questions of federal law, involves federal defendants, and involves a federally recognized Indian tribe as plaintiff in a suit against federal defendants. 28 U.S.C. §§ 1331, 1361, 1362.

2. The Project site is located within the ancestral homelands of the members of the Colorado River Indian Tribes ("CRIT" or "Tribes"), whose reservation begins just a few miles northeast of the site. The religion and culture of CRIT's members are strongly connected to the physical environment of the area, including the ancient trails, petroglyphs, grindstones, hammerstones, and other cultural resources known to exist there. The removal or destruction of these artifacts and the development of the Project as planned will cause CRIT, its government, and its members irreparable harm.

3. As set forth below, BLM's approval of the Project violated the National Historic Preservation Act ("NHPA"), the National Environmental Policy Act ("NEPA"), and the Federal Lands Policy and Management Act ("FLPMA"). BLM conducted no government-to-government consultation with CRIT prior to approval of the Project. It then allowed the project developer to begin ground-disturbing activities before any cultural resource monitoring or treatment plans were in place. The Environmental Impact Statement ("EIS") prepared for the Project failed to take the requisite "hard look" at its impacts. And the Project itself is plainly inconsistent with the land use designations adopted by the United States under FLPMA to protect the fragile desert ecosystem and cultural resources found at the Project site.

4. To remedy these violations of federal law, CRIT brings this action, which seeks declaratory and injunctive relief vacating BLM's approval of the Project and

prohibiting further development there unless and until the agency complies with the NHPA, NEPA, and FLPMA.

Jurisdiction and Venue

5. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 because it arises under the laws of the United States, including the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551 et seq., the NHPA, 16 U.S.C. §§ 470 et seq., NEPA, 42 U.S.C. §§ 4321 et seq., and FLPMA 43 U.S.C. § 1701 et seq. This Court also has jurisdiction pursuant to 28 U.S.C. § 1361 because the suit is brought against officers of the United States, and pursuant to 28 U.S.C. § 1362 because the suit is brought by an Indian tribe with a governing body duly recognized by the Secretary of the Interior and arising under the Constitution, laws, or treaties of the United States. Declaratory, injunctive, and further necessary relief is proper pursuant to 5 U.S.C. § 703 and 28 U.S.C. §§ 2201, 2202.

6. Venue is proper in this district under 28 U.S.C. § 1391(e)(1)(B) because this action relates to federal lands located within this judicial district and because a substantial part of the events giving rise to the claim occurred within this judicial district.

7. CRIT and its members have a direct and beneficial interest in BLM's compliance with the NHPA, NEPA, and FLPMA. That interest is directly and adversely affected by BLM's actions with respect to the approval of the Project, which violates provisions of law as set forth in this Complaint and which would cause substantial and irreversible harm to cultural resources. The relief requested will fully redress these injuries. The maintenance and prosecution of this action will confer a substantial benefit on the public by protecting the public from the environmental and other harms alleged herein.

8. CRIT submitted written and oral comments to BLM objecting to and commenting on BLM's actions before BLM approved the Project.

9. CRIT has satisfied any and all conditions precedent to filing this action and has exhausted any and all administrative remedies to the extent required by law.

Parties

10. Plaintiff CRIT is a federally recognized Indian tribe with a governing body recognized by the Secretary of the Interior. The lands and resources of the Colorado River Indian Reservation were reserved to the Tribes by an Act of Congress in 1865 (Act of March 3, 1865, 13 Stat. 559). Subsequent Executive Orders and Congressional Acts clarified the Reservation's boundaries. CRIT's members include Mohave, Chemehuevi, Navajo and Hopi peoples. The ancestral homelands of CRIT's members include the area where the Project is proposed to be built.

11. By filing this action, CRIT does not waive its sovereign immunity and does not consent to suit as to any claim, demand, offset, or cause of action of the United States, its agencies, officers, agents, or any other person or entity in this or any other court.

12. Defendant United States Department of the Interior is an agency of the United States government. As a federal agency, the Department must comply with NEPA, the NHPA, and FLPMA.

13. Defendant Sally Jewell is Secretary of the Interior. Defendant Jewell is sued in her official capacity. Defendant Jewell is responsible for ensuring that the Department of the Interior, including officials and employees under her supervision, complies with all applicable federal laws, including NEPA, the NHPA, and FLPMA.

14. Defendant Bureau of Land Management is an agency of Defendant Department of the Interior. Defendant BLM manages the federal public land at issue in this case and issued the approvals for the Modified Blythe Solar Power Project. As a federal agency, Defendant BLM must comply with NEPA, the NHPA, and FLPMA.

15. Defendant Neil Kornze is Director of Defendant BLM. Defendant Kornze is sued in his official capacity. Defendant Kornze is responsible for ensuring that BLM, including officials and employees under his supervision, complies with all applicable federal laws, including NEPA, the NHPA, and FLPMA.

16. Defendant James G. Kenna is California State Director of Defendant BLM.

Defendant Kenna oversees BLM's management of all public lands under BLM's jurisdiction in California. Defendant Kenna is sued in his official capacity. As a federal official, Defendant Kenna must comply with NEPA, the NHPA, and FLPMA.

17. Defendant Teri Raml is District Manager of the California Desert District of Defendant BLM. The federal land at issue in this case is located within the California Desert District. Defendant Raml is sued in her official capacity. As a federal official, Defendant Raml must comply with NEPA, the NHPA, and FLPMA.

18. Defendant John Kalish is Field Manager of the Palm Springs South Coast Field Office of Defendant BLM. Defendant Kalish, or previous Field Managers, took action to allow construction of the Project, including but not limited to issuing the Project's Right-of-Way Grant and Limited Notice to Proceed. Defendant Kalish is sued in his official capacity. As a federal official, Defendant Kalish must comply with NEPA, the NHPA, and FLMPA.

19. Defendants Department of Interior, Salazar, BLM, Abbey, Kenna, Raml and Kalish are referred to herein as "BLM" or "Defendants."

Factual Background

CRIT's Interest

20. CRIT is a federally recognized Indian tribe whose members include Mohave (Aha Macav), Chemehuevi, Hopi and Navajo peoples. The Tribes' ancestral homelands cover the Mohave Desert, including the Project site. CRIT's present-day Reservation was established by Congress in 1865. It begins several miles northeast of the Project site and includes approximately 300,000 acres.

21. The ancestors of CRIT's Mohave and Chemehuevi members occupied the Mohave Desert since time immemorial, using trails that cross the Project site and leaving behind the burial grounds, grindstones, hammerstones, petroglyphs, and trails that have been found in the Project vicinity.

22. The religion and culture of CRIT's members are strongly connected to the physical environment of the area. Mohave and Chemehuevi members sing Bird Songs

and Salt Songs, which guide the singer literally and spiritually along the trails that pass through sacred landscapes. The physical objects, such as grindstones, hammerstones, and hearth sites, that were left in the area by their ancestors provide CRIT members with a link to their past. In addition, CRIT's Mohave members strongly associate these artifacts with the ancestors who used them. Disturbing them is taboo and CRIT's Mohave members experience significant spiritual harm when such resources are dug up, relocated or damaged.

23. With the exception of Interstate 10 and some small, rural outposts like the town of Blythe, the remains of CRIT's ancestors and the spiritual and cultural landscape of the Mohave Desert were left undisturbed until recently.

Recent Utility-Scale Solar Projects and Cultural Resource Impacts

24. In the early 2000s, California and the United States enacted legislation that incentivized the development of utility-scale renewable energy projects in the California desert. California adopted a Renewables Portfolio Standard ("RPS") that requires utilities and other electric service providers to buy at least 33 percent of their electricity from eligible renewable energy resources (including solar) by 2020. A few years later, Congress passed the American Recovery and Reinvestment Act ("ARRA"), which provided $18 billion in loans and credit subsidies for development of utility-scale renewable projects, with the majority allocated to utility-scale solar. Federal tax benefits, starting in 2006, have also created significant financial incentives. The Obama Administration also adopted an "All of the Above" energy strategy and a "fast-track" program for renewable energy projects designed to get renewable projects approved within the funding deadlines set out in the ARRA and the federal tax code.

25. As a result of these strategies, BLM has approved or is still actively considering 10 utility-scale solar energy projects within 50 miles of the CRIT Reservation since 2009. Together, these projects cover over 35,000 acres of CRIT's ancestral homeland. Dozens of additional applications in this area are still pending.

26. The BLM placed many of these projects in a "fast track" review program

that left little time for consultation with the Tribes about the cultural resources that would be impacted by the proposed projects. BLM also typically deferred any on-the-ground analysis of cultural resources until after project approval by entering into "programmatic agreements" with the state historic preservation officer. These programmatic agreements purport to satisfy BLM's NHPA obligations while deferring the analysis of and mitigation for cultural resource harms into the future.

27. CRIT initially signed on to programmatic agreements for several of these projects. These programmatic agreements required continual tribal consultations and other procedures to protect cultural resources prior to project construction.

28. These programmatic agreements did not always work as intended. For instance, when Genesis Solar LLC, a subsidiary of NextEra Energy Resources, LLC, began construction of the Genesis Solar Energy Project ("Genesis Project"), large quantities of prehistoric artifacts were unearthed, including hundreds of manos and metates (grinding tools used by the ancestors of CRIT's Mohave members), a stone pendant, and a possible cremation site. The mass disturbance of these resources caused CRIT's members substantial emotional, spiritual, and even physical pain.

29. CRIT was a signatory to the programmatic agreement for the Genesis Project. This programmatic agreement and the implementing "historic properties treatment plan" required BLM and the developer to notify the Tribes within 24 hours of any cultural resources discovery. However, CRIT was not notified of the discovery for two weeks. When CRIT was notified, it immediately demanded that BLM and Genesis Solar LLC comply with protections listed in the programmatic agreement and the historic properties treatment plan that had been prepared to implement the programmatic agreement. One of these protections was the requirement that any unanticipated cultural resources be avoided if feasible. However, BLM authorized the developer to pack up the unearthed cultural resources, store them in San Diego, and continue with project construction. This response did not alleviate the cultural harm experienced by CRIT's members.

30. When CRIT challenged BLM's decision to authorize removal of the cultural resources in court, the federal government argued that the programmatic agreement and related plans did not "purport to describe any obligation of the part of BLM," and that its obligations to protect cultural resources under the NHPA were discharged upon the signing of the programmatic agreement. Eventually, thousands of artifacts affiliated with CRIT members were unearthed, damaged, destroyed and relocated by this project.

31. Construction of new transmission lines for other solar projects in the area have also disturbed a number of burial sites and inadvertently destroyed a known sacred rock circle.

32. Since this experience with the Genesis Project, CRIT has participated extensively in the administrative review processes for utility-scale solar projects proposed within the ancestral homelands of its members. It is the first tribe to ever intervene in a California Energy Commission proceeding regarding siting approval for renewable energy generation facilities. At these proceeding, CRIT's members testified about the cultural resource and environmental justice impacts of these projects.

33. BLM has told CRIT that the agency will continue to approve renewable energy projects proposed in the 147,910-acre "solar energy zone" located near Blythe.

The Original Blythe Project

34. One of the early, fast-tracked solar projects was the Blythe Solar Power Project ("Blythe I" or "Original Project"). In 2009, Palo Verde Solar I, LLC ("Palo Verde") applied to BLM for a right-of-way grant to develop a 1,000 megawatt ("MW") solar energy generating plant on nearly 7,000 acres of federal land northwest of the town of Blythe.

35. Blythe I proposed to utilize solar parabolic trough technology to generate electricity.

36. BLM approved Blythe I in 2010.

37. In conjunction with this approval, BLM entered a programmatic agreement, deferring the agency's determination of whether the project would affect historic

resources and the development of measures to mitigate such effects. CRIT signed the programmatic agreement as a "concurring party." The programmatic agreement required BLM to prepare and implement a plan (called a "historic properties treatment plan" or "HPTP") for identifying historic resources, mitigating impacts to them, and handling unanticipated discoveries of cultural resources or historic properties. It also required BLM to consult with area tribes, including CRIT, in the preparation and implementation of the HPTP and related cultural resource plans. Under the programmatic agreement, the HPTP was required to be finalized before construction could begin.

38. Following BLM's approval of Blythe I, Palo Verde began installing fencing and an access road. Palo Verde soon ran into financial difficulties, however, and ceased construction. Its preliminary construction activity disturbed only 180.7 acres of the 7,000 acre project site. In 2012, Palo Verde's parent companies filed for Chapter 11 bankruptcy.

The New Blythe Project

39. In 2013, NextEra – Blythe Solar ("NextEra"), a subsidiary of NextEra Energy Resources, LLC, purchased the unbuilt assets of Blythe I. NextEra then relinquished approximately 35 percent of the right-of-way grant area. It submitted a new plan to develop the remaining 65 percent with a photovoltaic, solar energy generation facility ("Blythe II" or "Project").

40. Blythe II would generate 485 MW of solar electricity on approximately 4,000 acres of federal land. Photovoltaic solar generation utilizes a different technology than Blythe I. Instead of using solar thermal technology, Blythe II would use photovoltaic panels.

41. BLM issued a Notice of Intent to prepare an EIS for the Project after determining that it was "not within the range of alternatives analyzed in the EIS prepared in connection with the original 2010 decision for the [Blythe I] project . . . ."

42. In early 2014, BLM issued a draft environmental impact statement ("DEIS") for the Project.

43. CRIT submitted comments on the DEIS, identifying a number of flaws. For example, CRIT noted that the listing of cultural resources affected by the Project was incomplete, in part because it did not list all of the prehistoric archaeological sites identified by the California Energy Commission ("CEC") in its parallel review of the Project. Moreover, the DEIS failed to incorporate any new information about cultural resources that had been presented to BLM since the original project had been approved, including information about buried cultural resources that had come to light during the construction of other, similar projects and additional information about historic trails that run through the Project site. CRIT also commented that the DEIS's use of the Original Project, developed on the reduced acreage of the current right-of-way grant, as the "No Action" alternative violated NEPA. There was no evidence in the record to suggest that, if BLM denied Blythe II, the Original Project would be built. Instead, the Original Project's proponents had gone through bankruptcy proceedings and sold their interest in the property, and the new project proponent, NextEra, had no plans (or the solar trough technology) to implement the Original Project.

44. CRIT also objected to the DEIS's statement that BLM had "consulted" with the Tribes in preparing the document. There had been only two meetings between CRIT and BLM where the project had been listed for discussion. These meetings were general, informational meetings that covered the Project together with at least ten other proposed utility-scale solar projects. At one of these meetings, the Project was never even discussed. CRIT repeatedly requested that BLM conduct true government-to-government consultation with the Tribes before approving the Project, but such consultation never occurred.

45. In addition, CRIT noted that it had never been provided with any cultural resource monitoring or treatment plans, as required by the programmatic agreement. Nor had it been informed when that agreement was amended, even though CRIT was a concurring party entitled to consultation prior to the agreement being changed.

46. Finally, CRIT commented that BLM could not approve the Project because

it conflicts with land use designations established under the Federal Land Policy and Management Act ("FLPMA") and the California Desert Conservation Act ("CDCA") Plan to protect and conserve the areas environmental and cultural resources. The DEIS admits that the Project would "not conform" to various requirements under these statutes. As a result, CRIT asserted, BLM could not approve it.

47. Other parties also submitted comments on the EIS. For example, some commenters noted that the EIS failed to adequately analyze the Project's water use, and hence its impacts on groundwater and the Colorado River. Others noted that the EIS did not adequately identify potential impacts to migrating birds and failed to include analysis from the CEC estimating potential bird mortality.

48. BLM issued the final environmental impact statement ("FEIS") for the Project in May 2014. CRIT commented to BLM that the FEIS had failed to remedy the flaws identified in CRIT's earlier letter. BLM did not modify the EIR's inaccurate "No Action" alternative, conducted no additional evaluation of known cultural resources, and ignored CRIT's request for government-to-government consultations regarding these resources. Further, BLM did not require modifications that would bring the Project into conformity with FLPMA land use designations for the area.

49. On August 1, 2014, BLM issued its Record of Decision ("ROD"), approving an amendment to the right-of-way issued for Blythe I to allow development of the Blythe II.

The Limited Notice to Proceed with Ground Disturbing Activities

50. By August 11, CRIT had heard that BLM was planning to issue a "Limited Notice to Proceed" authorizing NextEra to begin certain ground-disturbing activities. In a letter to BLM officials, CRIT reiterated its concern that BLM had never properly consulted with CRIT about the Project. CRIT also noted it had still not received a draft version of the HPTP or any other cultural resource monitoring plans from BLM and ground-disturbing activities could not begin until these plans were in place.

51. On or about August 12, BLM issued a revised right-of-way for the project.

On or about August 13, the agency issued a "Limited Notice to Proceed." This notice authorized NextEra to install temporary desert tortoise fencing, conduct geotechnical investigation activities, reactivate an existing well, and conduct related staking and surveying. Although the Limited Notice to Proceed did not disclose this fact, the desert tortoise fencing involved disturbance of approximately 2,000 acres, an activity that could have unearthed buried cultural resources.

52. On or about August 14, BLM staff met with members of CRIT's Tribal Council to discuss a number of concerns the Tribes had with BLM-approved solar projects. On the agenda were CRIT's concerns that cultural resource monitoring plans for the neighboring McCoy Solar Energy Project were not being implemented properly; damage to a known archaeological site in connection with development of a transmission line designed to serve these new solar facilities; and a status update on Blythe II. Rather than attempting to resolve these concerns, the BLM representative in declared he "was not the BLM" and had no ability to address any of the Tribes' concerns.

53. On or about Friday, August 15, BLM provided CRIT with a copy of the "Limited Notice to Proceed." Shortly thereafter, CRIT was contacted by NextEra about providing tribal monitors to assist in cultural resource monitoring for the authorized work. A settlement agreement related to the Genesis Project required NextEra to hire CRIT tribal monitors for the Project, if it received approval. CRIT noted that it still objected to BLM's approval of the Project—and, in particular, its failure to consult with the Tribes—but, in the interest of protecting the Tribes' cultural resources, CRIT stated it would provide tribal monitors for this work.

54. By the first week of September, NextEra had completed installing tortoise fencing. Concerned that NextEra would soon request approval to begin more extensive construction activities, CRIT sent BLM a letter requesting that the agency provide it with drafts of the HPTP and any related monitoring plans so that the parties would have adequate time to review and consult.

55. On October 8, 2014, BLM held a "consulting party" meeting on the HPTP

and monitoring plans. At the meeting, BLM explained that the HPTP and monitoring plans were still not prepared, but they nevertheless anticipated that construction would start in January.

56. On or about November 13, 2014, BLM mailed CRIT a copy of the draft HPTP and monitoring plans, none of which had adequate protections for either the know or as-yet unknown cultural resources on-site.

Legal Background

The National Historic Preservation Act

57. Section 106 of the NHPA, prohibits a federal agency from engaging in any federal undertaking unless the agency first takes into account the effects of the undertaking on historic properties. 16 U.S.C. § 470(f).

58. The regulations that implement Section 106 state that, under certain circumstances, BLM may defer some analysis and evaluation of cultural resource sites by executing a programmatic agreement to "govern the implementation of a particular program or the resolution of adverse effects from certain complex project situations." 36 C.F.R. §§ 800.4(b)(2), 800.14(b).

59. Under these regulations, a programmatic agreement may be used in the following five situations: (1) when effects on historic properties are similar and repetitive or are multi–State or regional in scope; (2) when effects on historic properties cannot be fully determined prior to approval of an undertaking; (3) when nonfederal parties are delegated major decisionmaking responsibilities; (4) where routine management activities are undertaken at Federal installations, facilities, or other land-management units; or (5) where other circumstances warrant a departure from the normal section 106 process. 36 C.F.R. § 800.14(b)(1).

60. The regulations also "require the agency to consult extensively with Indian tribes." *Quechan Tribe of Fort Yuma Indian Reservation v. U.S. Department of Interior*, 755 F. Supp. 2d 1104, 1109 (S.D. Cal. 2010).

61. The regulations state that: "It is the responsibility of the agency official to

make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process. Consultation should commence early in the planning process, in order to identify and discuss relevant preservation issues and resolve concerns about the confidentiality of information on historic properties." 36 C.F.R. § 800.2(c)(2)(ii)(A).

62. In addition, "Consultation with an Indian tribe must recognize the government-to-government relationship between the Federal Government and Indian tribes." 36 C.F.R. § 800.2(c)(2)(ii)(c).

The National Environmental Policy Act

63. NEPA places on all federal agencies the responsibility to help assure "for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings," as well as "the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences." 42 U.S.C. § 4331(b)(2), (3).

64. Federal agencies have a duty to prepare an EIS whenever a major federal action may significantly affect the environment. 42 U.S.C. § 4332(2)(c), 40 C.F.R. § 1501.4(a)(1).

65. The fundamental purpose of an EIS is to force the decisionmaker to insure that the policies and goals defined in NEPA are infused into the ongoing programs and actions of the federal government. 40 C.F.R. § 1502.1.

66. An EIS must "provide [a] full and fair discussion of significant environmental impacts of the proposed action." 40 C.F.R. § 1502.1. To comply with this requirement, agencies must take a "hard look" at the likely effects of the proposed action by conducting a "thorough analysis" of environmental impacts. *Oregon Natural Res. Council Fund v. Goodman*, 505 F.3d 884, 889 (9th Cir. 2007).

67. NEPA does not allow agencies to defer a thorough analysis of cultural resource impacts when approving a project-specific EIS. An agency may only rely on a programmatic agreement deferring a thorough analysis when it is preparing a

"programmatic" EIS that will be followed by additional environmental review in a project-level Environmental Assessment or EIS.

68. An EIS must also include alternatives to the proposed action and compare the environmental impacts of the proposal and the alternatives. 40 C.F.R. §1502.14. The alternatives analysis is "the heart of the environmental impact statement" and is intended "to provid[e] a clear basis for choice among options by the decisionmaker and the public." *Id.*

69. The alternatives analysis must include a no action alternative that discusses the likely environmental impacts of continuing with the "status quo." *Ctr. for Biological Diversity v. U.S. Dep't of Interior*, 623 F.3d 633, 642 (9th Cir. 2010).

70. The alternatives analysis must also include a rigorous evaluation of reasonable alternatives that respond to the underlying purpose and need for the project. 40 C.F.R. §§ 1502.13, 1502.14.

The Federal Land Policy and Management Act

71. FLPMA requires federal agencies to manage the uses of public lands through sound planning principles. 43 U.S.C.A. § 1701(a), 1712(a).

72. Section 601 of FLPMA finds that the California desert contains multiple resources requiring special protections and creates the California Desert Conservation Area ("CDCA") "to provide for the immediate and future protection and administration of the public lands in the California desert within a framework of a program of multiple use and sustained yield, and the maintenance of environmental quality." 43 U.S.C. § 1781(a)(1), (b).

73. FLPMA directed the Secretary of Interior to "prepare and implement a comprehensive, long-range plan for the management, use, development, and protection of the public lands within the [CDCA]." 43 U.S.C. § 1781(d).

74. In 1980, the Secretary approved the CDCA Plan as the long-range land use plan for the CDCA. 46 Fed. Reg. 3287-01.

75. The CDCA Plan designates the Project area as Class L, which "protects

sensitive, natural, scenic, ecological, and cultural resource values" by prohibiting projects that would "significantly diminish" those values.

76. FLPMA also requires federal agencies to protect the scenic values of public lands. 43 U.S.C. §§1701(a)(8); 1711(a). Through its Visual Resource Management Policy, BLM has designated the Project area as a Class III Visual Resource Management classification, which (1) requires approved uses to at least partially retain the existing character of the landscape; (2) prevents significant changes to the characteristic landscape; and (3) prevents management activities that dominate the view of the casual observer.

First Cause of Action

(Violation of the APA, 5 U.S.C. § 551 et seq., NHPA, 16 U.S.C.,§ 470 et seq., and NHPA Regulations, 36 C.F.R. Part 60 et seq. and 36 § C.F.R. 800 et seq.)

77. Plaintiff hereby realleges and incorporates by reference the allegations contained in paragraphs 1 through 76 herein.

78. BLM's actions approving the Project, as alleged herein, were arbitrary and capricious and violated federal law, and thus violated the APA, 5 U.S.C. §551 et seq. These actions violated the NHPA, 16 U.S.C. § 470 et seq.; its implementing regulations, 36 C.F.R. Part 60 et seq. and 36 C.F.R. § 800 et seq.; and the specific terms of the Programmatic Agreement for the Project. For example:

a. BLM failed to fulfill its obligation to meaningfully consult with the Tribes as required by the NHPA and the Programmatic Agreement.

b. BLM failed to make a reasonable and good faith effort to identify and evaluate cultural resources and prehistoric sites that could be affected by the Project and avoid or mitigate any adverse effects prior to approving the Project and;

c. BLM violated the NHPA and the Programmatic Agreement by authorizing construction to begin prior to preparing the requisite plans in consultation with the Tribes.

79. Plaintiff is suffering legal wrong and is adversely affected by BLM's actions

because it was deprived of its rights under the law and because its cultural resources have been and will be harmed by BLM's actions. 5 U.S.C. § 702.

Second Cause of Action

(Violation of the APA, 5 U.S.C. § 551 et seq., NEPA, 42 U.S.C. § 4321 et seq., and NEPA Regulations, 40 C.F.R. § 1500 et seq.)

80. Plaintiff hereby realleges and incorporates by reference the allegations contained in paragraphs 1 through 79 herein.

81. BLM's actions issuing the ROD approving the EIS for the Project and amendment to the Right-of-Way grant for the Project were arbitrary and capricious and violated federal law, and thus violated the APA, 5 U.S.C. § 551 et seq. These actions violated NEPA, 42 U.S.C. § 4321 et seq.; and its implementing regulations, 40 C.F.R. § 1500 et seq. For example:

a. The EIS fails to include a full and fair discussion of the Project's significant environmental impacts as required by NEPA because it does not sufficiently identify the cultural resources that will be affected by the Project or analyze how those resources will be impacted.

b. The EIS also fails to include a full and fair discussion of the Project's significant environmental impacts as required by NEPA because it does not sufficiently discuss the Project's environmental justice impacts to CRIT members and other Native Americans who place historical and spiritual significance on the cultural resources that will be impacted by the Project.

c. The EIS fails to include a "No Action" alternative that complies with NEPA because, instead of reflecting the current undeveloped nature of the site, the "No Action" alternative assumes that a prior, now defunct version of the Project will be developed.

d. The EIS fails to fully consider environmentally superior alternatives to achieving the Project's goals because the EIS narrowly defined the purpose and need for the Project as responding to the applicant's request.

e. The EIS fails to include a full and fair discussion of the Project's significant environmental impacts as required by NEPA because it does not sufficiently analyze the Project's impacts on groundwater or Colorado River Water.

f. The EIS fails to include a full and fair discussion of the Project's significant environmental impacts as required by NEPA because it does not sufficiently analyze the Project's impacts on migrating birds.

82. Plaintiff is suffering legal wrong and is adversely affected by BLM's actions. 5 U.S.C. § 702.

Third Cause of Action

(Violation of the APA, 5 U.S.C. § 551 et seq., FLPMA, 43 U.S.C. § 1701 et seq., and FLPMA Regulations, 43 C.F.R. § 1600 et seq.)

83. Plaintiff hereby realleges and incorporates by reference the allegations contained in paragraphs 1 through 82 herein.

84. BLM's actions approving the Project were arbitrary and capricious and violated federal law, and thus violated the APA, 5 U.S.C. § 551 et seq. These actions violated FLPMA, 43 U.S.C. § 1701 et seq.; and its implementing regulations, 43 C.F.R. § 1600 et seq. For example:

a. The Project is inconsistent with the Class L designation of the site because it will significantly diminish the natural, scenic and cultural resource values of the area by replacing 4,000 acres of native desert with reflective photovoltaic panels and other industrial infrastructure.

b. The Project is inconsistent with BLM's Visual Resource Management Policy for the site because it will significantly change the characteristic of visual landscape and dominate views on 4,000 acres of land with a Class L designation.

85. Plaintiff is suffering legal wrong and is adversely affected by BLM's actions. 5 U.S.C. § 702.

Prayer for Relief

WHEREFORE, Plaintiff respectfully requests this Court grant the following relief:

1. Adjudge and declare that BLM failed to engage in consultation as required by the NHPA and its implementing regulations and the programmatic agreement for the Project;

2. Adjudge and declare that, in issuing the Record of Decision for the Modified Blythe Solar Power Project, approving the decision to amend Right-of-Way Grant CACA-048811 for the Project, and in issuing a Limited Notice to Proceed with the Project, BLM violated the NHPA and the programmatic agreement;

3. Adjudge and declare that BLM violated the requirements of the Programmatic Agreement for the Project;

4. Adjudge and declare that, in issuing the Record of Decision for the Modified Blythe Solar Power Project and approving the decision to amend Right-of-Way Grant CACA-048811 based on the Final EIS for the Project, BLM violated NEPA;

5. Adjudge and declare that, in issuing the Record of Decision for the Modified Blythe Solar Power Project and the amended Right-of-Way Grant CACA-048811, BLM violated FLPMA;

6. Issue an order requiring BLM to rescind the Record of Decision for the Modified Blythe Solar Power Project and its approval of Right-of-Way Grant CACA-048811 and corresponding Final EIS for the Project;

7. Preliminarily and permanently enjoin the BLM from permitting ground-disturbing activities within the Project area identified in the Right-of-Way Grant CACA-048811 and from issuing any future notice to proceed for the Modified Blythe Solar Power Project until BLM complies with the NHPA, NEPA, and FLPMA;

8. Award Plaintiff its reasonable attorneys' fees and costs of suit; and

9. Award such other and further relief as the Court deems proper.

DATED: December 4, 2014

SHUTE, MIHALY & WEINBERGER LLP

By: /s/
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COLORADO RIVER INDIAN TRIBES

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