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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

WESTERN WATERSHEDS PROJECT, CENTER FOR BIOLOGICAL DIVERSITY, CONFEDERATED TRIBES OF THE GOSHUTE RESERVATION, DUCKWATER SHOSHONE TRIBE, and ELY SHOSHONE TRIBE Plaintiffs, v. BUREAU OF LAND MANAGEMENT, Defendant.	Case No. 3:11-CV-53 **COMPLAINT**

INTRODUCTION

1. This action challenges the Bureau of Land Management's ("BLM") "fast track" approval of the industrial-scale Spring Valley Wind Energy Facility on public lands in Nevada, near one of the largest bat caves in the Great Basin and on one of the most important cultural and sacred sites for Western Shoshone Tribes. Despite very significant and unknown environmental and cultural impacts, and against the advice of several sister agencies and its own personnel, BLM refused to conduct the full environmental analysis required by the National Environmental Policy Act ("NEPA"). Instead, under pressure from high-level BLM officials and the industry proponent, BLM rushed through a short-cut analysis in order to meet arbitrary funding deadlines desired by the industry.

2. The project will entail construction of a massive network of roads (over 25 miles); 75 lighted, 400+ foot wind turbines; two gravel pits; over nine miles of new fencing; a microwave tower; overhead electrical lines; a switchyard, and other assorted facilities.

3. The many resource values threatened with imminent harm by this industrial development include the regionally significant population of Mexican (or Brazilian) free-tail bats (up to one million of which are known to seasonally roost in the nearby Rose Guano Cave), which are acutely vulnerable to death when flying near wind turbines, which they are attracted to. The project area and the adjacent Swamp Cedar Area of Critical Environmental Concern is a sacred site to the Western Shoshone, as the site of several Indian massacres, prehistoric village sites, and festivals. Tribes use the site for hunting, gathering, and religious purposes. Industrialization of the site would greatly diminish its cultural value. The project's industrial sprawl would likewise impair many other on-site and migratory native wildlife species including greater sage-grouse and raptors.

4. Because the Spring Valley Wind project has been approved by BLM and construction is expected to begin imminently – and will cause irreparable harm to environmental and Tribal cultural values – injunctive relief is necessary from this Court pending adjudication of the merits of Plaintiffs' claims.

JURISDICTION AND VENUE

5. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq*. ("NEPA"); the National Historic Preservation Act, 43 U.S.C. § 470, *et seq*. ("NHPA"); the Religious Freedom Restoration Act, 43 U.S.C. § 2000bb, *et seq*. ("RFRA"); the American Indian Religious Freedom Act of 1978, 42 U.S.C. § 1996 ("AIRFA"); the Administrative Procedure Act, 5 U.S.C. § 701, *et seq*. ("APA"); the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq*.; and the Equal Access to Justice Act, 28 U.S.C. § 2412, *et seq*.

6. An actual, justiciable controversy now exists between Plaintiffs and Defendant. The requested relief is therefore proper under 28 U.S.C. §§ 2201-2202 and 5 U.S.C. §§ 701-06.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because all or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district, and the affected public lands and resources are located in this judicial district.

8. The federal government has waived sovereign immunity in this action pursuant to 5 U.S.C. § 701 et seq.

PARTIES

9. WESTERN WATERSHEDS PROJECT ("WWP") is a not-for-profit conservation organization, dedicated to protecting and conserving the public lands and natural resources of watersheds in the American West. Western Watersheds has more than 1,400 members located

throughout Nevada and the United States. WWP, as an organization and on behalf of its members, is concerned with and active in seeking to protect and improve the wildlife, riparian areas, water quality, fisheries, and other natural resources and ecological values of watersheds throughout the West, including Nevada. WWP is also active in monitoring ecological conditions in the BLM's Ely District and Schell Field Office, where the Spring Valley Wind Project is located; in reviewing and commenting upon agency decisions there; and in publicizing the adverse ecological effects of poorly-sited energy development projects and grazing in this region.

10. The CENTER FOR BIOLOGICAL DIVERSITY (the "Center") is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 255,000 members and online activists throughout Nevada and the United States. The Center maintains offices throughout the United States, including an office in Las Vegas, Nevada. The Center's staff and members frequently use the public lands of Nevada, including the proposed project area, for recreational and scientific pursuits, and are deeply concerned about the protection of the species found there and their habitats. Center staff and members use the public lands at issue and intend to continue to do so in the future and have interests in conserving and protecting these public lands as habitat for rare and imperiled species including, but not limited to, golden eagles and other raptors, bats, sage grouse, pygmy rabbits, and rare and imperiled plants.

11. CONFEDERATED TRIBES OF THE GOSHUTE RESERVATION ("CTGR") is a federally recognized Indian tribe whose current reservation is located in eastern Nevada and western Utah, and whose aboriginal homelands encompass all of Spring Valley, Nevada, since

time immemorial. The CTGR has 546 enrolled members located throughout Nevada and the United States.

12. The DUCKWATER SHOSHONE TRIBE is a federally recognized Indian tribe whose current reservation is located in eastern Nevada, and whose aboriginal homelands encompass all of Spring Valley, Nevada, since time immemorial. The Duckwater Shoshone Tribe has 384 enrolled members located throughout Nevada and the United States.

13. The ELY SHOSHONE TRIBE is a federally recognized Indian tribe whose current reservation is located in eastern Nevada, and whose aboriginal homelands encompass all of Spring Valley, Nevada, since time immemorial. The Ely Shoshone Tribe has 637 members located throughout Nevada and the United States.

14. A large number of cultural resources significant to the three Plaintiff Tribes exist at or within close proximity to the proposed project area. In fact, the project area and the surrounding lands, including but not limited to the adjacent Swamp Cedar Area of Critical Environmental Concern and Swamp Cedars Massacre Site, encompass one of the most important cultural and sacred areas for the Western Shoshone (which includes the three Plaintiff Tribes). Tribal members frequent the project area for cultural, religious, and traditional purposes. Tribal members will continue using the project area into the foreseeable future and will be adversely affected by the construction and operation of the proposed wind energy facility. The integrity of sacred sites directly sustains the identity of the Tribes that hold them sacred. The effects to the environment and cultural resources will substantially burden Tribal members' ability to conduct religious activities at the site.

15. Plaintiffs have members and staff who work, live, study, recreate, and conduct religious and cultural events throughout the high desert ecosystem including the lands under the

BLM Schell Field Office's administration and the proposed Spring Valley Wind Energy Facility site specifically. Plaintiffs' members and staff derive religious, traditional, cultural, aesthetic, recreational, scientific, inspirational, educational, and other benefits from this area on a regular and continuing basis and intend to do so frequently, including in the immediate and foreseeable future.

16. Defendant's violations of law and failure to manage the public lands within the Schell Field Office under the mandates of law adversely and irreparably injure the religious, traditional, cultural, aesthetic, commercial, conservation, scientific, recreational, educational, wildlife preservation and other interests of Plaintiffs and their staff and members. These are actual, concrete injuries caused by Defendant's violations of law, for which judicial relief is required to remedy the harm caused to Plaintiffs.

17. Defendant BUREAU OF LAND MANAGEMENT is an agency or instrumentality of the United States, within the U.S. Department of Interior, and is the federal agency charged by law with administering the public lands within the Schell Field Office.

LEGAL BACKGROUND: THE NATIONAL ENVIRONMENTAL POLICY ACT

18. NEPA, 42 U.S.C. § 4321 *et seq*., is our "basic national charter for protection of the environment." 40 C.F.R. § 1500.1(a). It serves two purposes: (1) "it ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts," and (2) it "guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

19. NEPA requires agencies to prepare an environmental impact statement ("EIS") for "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). An agency may avoid an EIS only if it finds, after preparing an environmental assessment ("EA"), that the action will have "no significant impact." 40 C.F.R. §§ 1508.9(a), 1508.13.

20. BLM must prepare an EIS if "the agency's action *may* have a significant impact upon the environment." *Nat'l Parks & Conservation Ass'n v. Babbitt*, 241 F.3d 722, 730 (9th Cir. 2001) (emphasis in original; internal quotes omitted). "This is a low standard." *Klamath Siskiyou Wildlands Ctr. v. Boody*, 468 F.3d 549, 562 (9th Cir. 2006). BLM bears the burden of producing "a convincing statement of reasons" showing why the impacts of its plan are insignificant. *Nat'l Parks*, 241 F.3d at 730. The NEPA regulations establish ten factors that help determine whether an agency action's intensity "may" cause significant impacts and therefore require an EIS. 40 C.F.R. § 1508.27(b). The factors include: unique characteristics of the geographic area such as proximity to cultural resources, park lands, or ecologically critical areas; the degree to which the action may cause loss or destruction of significant scientific, cultural, or historic resources; the presence of cumulative impacts; the presence of effects that are highly uncertain, involve unique or unknown risks, or are likely to be highly controversial; and the degree to which the action may establish a precedent for future actions with significant effects. *Id*. The presence of even just "one of these factors may be sufficient to require preparation of an EIS in appropriate circumstances." *Ocean Advocates v. U.S. Army Corps of Engineers*, 402 F.3d 846, 865 (9th Cir. 2005).

21. The NEPA document must "provide full and fair discussion of significant environmental impacts." 40 C.F.R. § 1502.1. Agencies must "consider every significant aspect

of the environmental impact of a proposed action." *Ore. Natural Desert Ass'n v. BLM*, 531 F.3d 1114, 1130 (9th Cir. 2008) (citation omitted). This includes studying the direct, indirect, and cumulative impacts of the action. *See* 40 C.F.R. §§ 1508.7, 1508.8.

22. Cumulative impacts are impacts that "result[] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency . . . undertakes such other actions." 40 C.F.R. § 1508.7. Cumulative impacts "can result from individually minor but collectively significant actions taking place over a period of time." *Id.*

23. In analyzing the cumulative effects of a proposed action, an agency must do more than just catalogue "relevant past projects in the area": it must also include a "useful analysis of the cumulative impacts of past, present and future projects." *City of Carmel-by-the-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1160 (9th Cir. 1997) (citation omitted). Agencies must provide "some quantified or detailed information" about cumulative impacts – "[g]eneral statements about possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided." *Ocean Advocates*, 402 F.3d at 868 (quotation omitted). When an EA does not "sufficiently identify or discuss the incremental impacts" expected from successive projects, or "how those individual impacts might combine or synergistically interact with each other to affect the [] environment," it does not satisfy NEPA. *Klamath-Siskiyou Wildlands Ctr. v. BLM*, 387 F.3d 989, 994 (9th Cir. 2004).

24. In addition, an agency must disclose and discuss any "responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised." 40 C.F.R. §1502.9(b). "This disclosure requirement obligates the agency to make available to the public high quality information, including accurate scientific

analysis, expert agency comments and public scrutiny, before decisions are made and actions are taken." *Ctr. for Biol. Diversity v. U.S. Forest Serv*., 349 F.3d 1157, 1167 (9th Cir. 2003).

25. Analysis prepared in order to satisfy NEPA must include consideration of a reasonable range of alternatives to a proposed action. 42 U.S.C. § 4332(2)(C)(iii) (alternatives); *see also* 40 C.F.R. § 1502.14 (alternatives including the proposed action).

FACTUAL ALLEGATIONS

A. Setting and Resources of Spring Valley

26. Spring Valley is located in eastern central Nevada. The narrow valley runs north-south, surrounded by the towering Snake Range to the east (which includes Great Basin National Park and the Mount Moriah Wilderness) and the Schell Range to the west (which includes the High Schells Wilderness).

27. Great Basin National Park lies at the southern end of the Snake Range, only about five miles east of the proposed project site. The Park is known for the 13,063-ft. Wheeler Peak, the Lehman Caves (a marble cave with many stalactites and stalagmites) at the peak's base, groves of ancient bristlecone pines, and its stunning views of Spring Valley and surrounding mountains. The Park is also known for its dark sky. The National Park Service Night Sky Team determined that the Park's night skies are among the darkest in the country, and the Park features astronomy programs which rely upon and take advantage of this significant park resource.

28. Spring Valley, including the project area, is one of the most important cultural and sacred areas for Western Shoshone Tribes. The project area is on or adjacent to the site of an Indian massacre known as the Goshute War of 1863. The project area, along with the adjacent Swamp Cedar Area of Critical Environmental Concern ("ACEC"), contains a rare low-elevation occurrence of Rocky Mountain juniper, known as swamp cedar. The Western Shoshone hold the

cedar trees sacred. The Tribes believe that for every person who was massacred around the Swamp Cedar area, a cedar tree grew in their place and Shoshone spirits exist as part of those trees.

29. The surface and groundwater that helps support the unique Swamp Cedar area has spiritual and traditional importance to the Tribes, and the area is used to pass down traditional information from generation to generation.

30. BLM has determined that the Swamp Cedar area is eligible as a Traditional Cultural Property under the National Register of Historic Places, and began the process of formal nomination for listing on the National Register. *See* 36 C.F.R. § 800.5(a)(1).

31. The Swamp Cedar ACEC was designated by BLM because of its historical significance as well as for its rare and endemic plant community. The unique plant community is related to the fact that it has a "perched" aquifer (*i.e.*, it is higher than the surrounding water table). BLM is considering a plan to expand the ACEC.

32. Spring Valley and its surrounding mountains support a diverse array of wildlife, including numerous species of bats, ringtail cats, Rocky Mountain bighorn sheep, greater sage-grouse, and pygmy rabbit.

33. Spring Valley is an important bat location, including for resident bats and as a migratory bat flyway. The Rose Guano Cave is located only four miles from the proposed project site, and is a regionally significant bat hibernaculum for at least four species of bats – including a large population of Mexican free-tailed bats estimated at up to *one million bats* during fall migration. Because of its nature as a migratory stopover cave, the seasonal total could be much higher. Numerous other bat species have been confirmed in the Park, including

the pallid bat, long-eared myotis, long-legged myotis, silver-haired bat, and Townsend's big-eared bat.

34. Mexican free-tailed bats are migratory bats that can migrate over one thousand miles each way per season. The Rose Guano Cave is near the northern edge of their territory. The species has been described as looking like "gnomes with an overbite." They get their name from their tail, which protrudes freely beyond the tail membrane.

35. Mexican free-tailed bats form the largest colonies of bats in the world. The bats emerge by sundown to feed on flying insects at night. The bats can travel up to 60 miles one-way per night to search for food, and can consume their body weight in insects nightly. This enormous amount of insect consumption has a significant effect on controlling costly agricultural pests.

36. After exiting the cave at sundown, the majority of the bats of Rose Guano Cave fly south into Spring Valley toward agricultural fields to forage for food. This pattern takes them near the Spring Valley Wind project site.

37. Bats have proven to be uniquely vulnerable to the mortality from wind turbines. Large die-offs of bats have been documented at wind energy facilities. Bats are killed both by being struck by moving blades, and by a phenomenon known as "barotrauma." Essentially, the change in pressure that accompanies spinning turbine blades causes the blood vessels in bats' lungs to explode. The factors affecting mortality risks are not fully understood, and are likely the result of complex interactions among many factors.

38. Mexican free-tail bats are particularly vulnerable to wind turbine-caused mortality, in part due to their extensive high altitude travel.

39. Exacerbating the problem, research indicates that bats are actually *attracted* to wind turbines. Bats appear to be attracted to insect concentrations near the turbines, or visual or sound cues from the turbines. They also may see the turbines as possible roosting sites. This attraction means wind facilities change the flight patterns of bats. Thus, pre-construction surveys of bat activity at a wind energy site cannot accurately forecast bat mortality.

40. For these reasons, various federal guidance documents strongly discourage locating wind energy facilities in important bat areas. For example, a May 2010 guidance document from the U.S. Fish and Wildlife Service instructs project planners to "[a]void locating wind energy facilities in areas identified as having a demonstrated and unmitigatable high risk to birds and bats." BLM's 2005 Programmatic Environmental Impact Statement on Wind Energy Development likewise cautions to avoid locating turbines near known bat hibernation, breeding, and maternity/nursery colonies, in migration corridors, or in flight paths between colonies and feeding areas.

41. Spring Valley also contains a variety of raptors and migratory birds, including golden and bald eagles, prairie falcons, northern harriers, and western burrowing owls.

42. Wind turbines have been shown to have similarly devastating impacts on birds, which are killed or dismembered by collisions with turbine blades. Birds are also killed or injured by collisions with towers and transmission lines.

43. Among the multitudes of bird species in Spring Valley is a declining and vulnerable population of greater sage-grouse.

44. Sage-grouse once numbered more than one million birds across 16 western states and 3 Canadian provinces, but sage-grouse numbers have declined severely over the last 50 years. The current population of greater sage-grouse represents less than 10% of historic

population levels, *i.e.*, sage-grouse populations have experienced a 90% or more decline from historic levels.

45. The sage-grouse is a "sagebrush-obligate" species, meaning it depends on sagebrush all year to provide its biological needs, including for nesting, brood-rearing, cover and even food. Moreover, sage-grouse require large contiguous areas with a variety of sagebrush communities to meet its life-history needs. Sage-grouse have strong fidelity to mating locations known as "leks," returning year after year to the same lek.

46. Nevada sage-grouse populations and sagebrush habitats comprise a significant portion of the range-wide distribution of the species. For this reason, management actions in Nevada have implications on a range-wide scale for the species. Population fluctuations and decline in Nevada during the past century are similar to those documented throughout the species' range.

47. In December 2009, the United States Geological Survey announced the release of a publication titled *Ecology and Conservation of Greater Sage-Grouse: A Landscape Species and Its Habitats*, to be published in the peer-reviewed scientific journal *Studies in Avian Biology* In this publication – commonly referred to as the "Monograph" – federal, state, university and nongovernmental experts published over two dozen articles reflecting new scientific information and understanding about greater sage-grouse populations, sagebrush habitats, and relationships among sage-grouse, sagebrush habitats and land use.

48. The Monograph provides substantial new scientific information documenting the imperiled status of the sage-grouse and its habitat. For example, much of the research published in the Monograph shows that sage-grouse are affected by impacts to their habitat at far greater spatial scales than previously recognized—from habitat selection, to lek persistence, to nest-site

selection, to nest success. The Monograph also contains unprecedented studies of major new threats to the species, including from global climate change and West Nile virus.

49. Based on this and other information, on March 5, 2010, FWS determined that the greater sage-grouse "warranted" listing as an "endangered" or "threatened" species under the Endangered Species Act; but that further action on a proposed listing rule was "precluded" by other pending listing proposals. 75 Fed. Reg. 13,909 (Mar. 23, 2010). This March 2010 "warranted" determination provided extensive analysis of the loss of sage-grouse populations and habitats, and threats facing them – particularly from energy development and other land management actions – to conclude that sage-grouse face a serious threat of extinction within the foreseeable future, and hence qualify for protection under the ESA.

50. As documented in both the Monograph and the March 2010 "warranted" finding, the threats to sage-grouse and its habitat across the West are numerous. They include energy development and utility corridors; high road densities, which fragment sagebrush habitats; fences, which pose a collision hazard for the low-flying birds and also provide perches for the bird's predators; and the proliferation of the non-native annual grass cheatgrass, which thrives in disturbed areas and replaces sagebrush.

51. The reasons for sage-grouse decline from energy development are not fully understood, but the best available science shows that sage-grouse avoid proximity to tall structures due to the potential for sage-grouse predators such as raptors or crows to perch on them. Even if the tall structures have anti-perching devices, grouse will avoid the area. For this reason, energy projects on or adjacent to sage-grouse habitat reduces and impairs such habitat beyond the mere footprints of the various facilities and structures.

52. Energy development also contributes to fragmentation of habitat, which is known to be a primary cause of sage-grouse decline, as the species requires large expanses of contiguous sagebrush. Fragmentation and disturbance also facilitate the invasion of exotic annual plants such as cheatgrass, which does not provide suitable cover and other functions necessary for sage-grouse survival and reproductive needs.

53. Tall structures associated with energy development, including fence posts and power lines, serve as perches for predators of sage-grouse. Sage-grouse survival is significantly reduced near such structures due to increased predation on sage-grouse.

54. Additionally, the barbed-wire between fence posts poses a mortality threat for sage-grouse, as the low-flying grouse become injured or die when they collide with barbed wire. Substantial new scientific information has emerged within recent years documenting the mortality caused by such fencing to sage-grouse, as BLM has acknowledged.

55. Livestock grazing and "vegetation treatments" (typically shrub removal) are two other activities that adversely affect sage-grouse by removing the vegetation sage-grouse eat and hide under. Livestock grazing occurs just adjacent to the project site; and BLM has conducted many vegetation treatments in the Schell Field Office and Ely District in recent years.

56. The Spring Valley Wind project area contains at least 3,643 acres of sage-grouse habitat. The Nevada Department of Wildlife labeled the entire project area as sage-grouse habitat. There are three leks within one mile of the project boundary, only one of which is active, confirming that sage-grouse are on a downward decline in this area. There are two other active leks within five miles of the project.

B. BLM's 2005 Wind PEIS.

57. In June 2005, BLM issued a Final Programmatic EIS on Wind Energy Development on BLM-Administered Lands in the Western United States ("Wind PEIS"). This document purported to evaluate the consequences of establishing a "Wind Energy Development Program" across all BLM lands in the American West, which total over 160 million acres. It identified policies and Best Management Practices ("BMPs") intended to be "minimum requirements" for management of all wind energy projects on such lands.

58. The Wind PEIS included as its BMPs:

a. The BLM will not issue ROW authorizations for wind energy development on lands on which wind energy development is incompatible with specific resource values.

b. Operators shall determine the presence of bat colonies and avoid placing turbines near known bat hibernation, breeding, and maternity/nursery colonies; in known migration corridors; or in known flight paths between colonies and feeding areas.

c. Locations that are heavily utilized by migratory birds and bats should be avoided.

d. Avoid, when possible, siting energy developments in sage-grouse breeding habitats.

e. Turbine arrays should be configured to minimize avian mortality (e.g., orient rows of turbines parallel to known bird movements).

f. Scientifically rigorous avian and bat use surveys shall be conducted.

g. When feasible, wind energy projects should be sited on already altered landscapes.

h. Projects shall be planned . . . to minimize the number and length/size of new roads.

59. The Wind PEIS generally analyzed the predicted impacts upon affected resources. The analysis was based on the assumption that the BMPs would be followed. It was also based on an assumption that there was 34,700 acres of economically developable land for wind power in Nevada.

60. The analysis does not discuss impacts specific to any specific region, much less at a more local level. The Wind PEIS specifically does not address the Schell Field Office, or the specific wildlife, environmental, cultural, historic, or other resources there, including bats, sage-grouse, or the Swamp Cedar Massacre Site and ACEC.

61. The analysis of environmental conditions and impacts in the Wind PEIS is now badly out-of-date on wildlife science. For example, the analysis of impacts on bats only discusses possible collisions with wind facilities; it does not discuss barotrauma whatsoever. Nor does it discuss that bats are attracted to wind turbines. The brief analysis of sage-grouse is based upon science from 2004 or older, fails to acknowledge many threats to sage-grouse now known to be problematic, and fails to acknowledge the deeply imperiled status of the species, among other deficiencies.

62. The Wind PEIS acknowledged that BLM would need to make subsequent site-specific decisions as to what level of NEPA analysis was required for each project.

C. Approval of Spring Valley Wind Energy Facility

63. Contrary to NEPA's requirements and normal practices, BLM failed to alert all interested agencies and the public to the fact that it was beginning to plan the Spring Valley Wind project through the process known as "scoping." Likewise, despite the fact that NEPA requires a full Environmental Impact Statement be prepared for every major federal action that may significantly affect the human environment, BLM has refused to prepare any EIS for the Spring Valley Wind project.

64. Instead, in December 2010 and July 2010, BLM issued preliminary versions of an "Environmental Assessment" ("EA") for the Spring Valley Wind project, through which BLM asserted that the project would pose no significant environmental impacts whatsoever, such that BLM could approve it based on the EA and a "Finding of No Significant Impact" ("FONSI").

65. WWP and the Center both submitted written comments on the draft EAs in January 2010 and August 2010 detailing their concerns about impacts to bats, birds, and other wildlife, and the inadequacies of the EA. WWP additionally attended a field tour of the site with BLM in fall 2009, as well as submitted numerous additional email comments.

66. Plaintiff Tribes submitted written comments, and additionally met with BLM on numerous occasions to inform BLM of their religious and cultural concerns. However, BLM was not forthcoming in sharing information with the Tribes. For example, BLM did not permit the Tribes to review or provide input on its archaeological inventory report, nor did BLM provide the Tribes with a reasonable opportunity to participate in the Traditional Cultural Property boundary delineation or decisions on whether sites or landscapes were eligible on the National Register of Historic Places. And BLM has still refused, to this day, to share the

archaeological and ethnographic data on this project with the Tribes, claiming that the data on the Tribes' history and culture is confidential.

67. In addition to comments from Plaintiffs, BLM received numerous comments from agencies and other organizations urging the preparation of a full EIS due to the significant environmental impacts and sensitive location of the site and advising that BLM's analysis of environmental impacts in the EA was greatly inadequate.

68. The National Park Service ("NPS") expressed strong reservations about the project and its potentially adverse impacts on the Great Basin National Park in particular, which NPS administers. NPS advised that an EIS was required, that a FONSI was not justified, that the issuance of a FONSI prior to allowing public comments on the EA predisposed the final outcome, that the cumulative impacts were not adequately analyzed nor disclosed, and that impacts to Park resources were not adequately disclosed. The NPS was particularly concerned about impacts to the Park's visual resources from the industrialization of the project site and the night lighting inherent to wind energy facilities. It stated that the EA failed to disclose that the project had the potential to adversely impact Park scenic values. It stated BLM failed to properly analyze the cumulative impacts of this project in conjunction with a nearby Southern Nevada Water Authority groundwater development and two other proposed wind projects in Spring Valley.

69. U.S. Fish and Wildlife Service and Nevada Department of Wildlife ("NDOW") biologists also submitted comments to BLM which expressed concerns with the adequacy of the baseline data, environmental analysis, and proposed mitigation. For example, FWS noted that raptor passage rates were underestimated due to problems with the protocols used. The wildlife

agencies repeatedly emphasized that the degree of impacts on birds and bats was highly uncertain.

70. The wildlife agencies also stated that the effectiveness of the mitigation measures was highly uncertain. For example, NDOW was unable to assess the experimental proposed radar system for preventing bat and bird mortality, because the industry proponent refused to share data from its projects that used the same system, and concluded that it should be assumed not to work.

71. Internal BLM documents show that many key personnel in the local BLM office had strong reservations about use of an EA/FONSI, rather than an EIS, due to impacts to bats and visual resources. However, the industry proponent and higher levels of the BLM repeatedly pressured the local BLM to issue an EA/FONSI, largely because of the industry proponent's desire to meet financing goals and deadlines. The local office finally relented.

72. On October 15, 2010, BLM's Schell Field Office Manager Mary D'Aversa approved the Spring Valley project through a Decision Record ("DR") and Finding of No Significant Impact. On or around that date, BLM also issued a Final Environmental Assessment, identified as DOI-BLM-NV-L020-2010-0007-EA**,** for the project.

73. The FONSI includes a very brief review of the NEPA "intensity factors" found at 40 C.F.R. § 1508.27(b). The review relies heavily on the EA's Avian and Bird Protection Plan ("ABPP"). With respect to controversial impacts, BLM asserts that potentially controversial issues have been "addressed" through the selected alternative and the EA's mitigation measures. With respect to highly uncertain impacts, BLM admits that "the ultimate degree of impacts that will occur from the SVWEF Project is unknown," but asserts that the ABPP will ensure that

impacts remain below "designated mortality thresholds" and prevent significant impacts to avian and bat populations.

74. BLM's Decision Record states that "[i]n accordance with 43 CFR 2801.10(b), this Decision is in full force and effective immediately."

75. Based on the Decision Record, FONSI, and EA, on October 22, 2010, BLM issued two Rights-of-Way ("ROWs") to the project proponent, Spring Valley Wind, LLC. One is for the wind generation facility and substation. The other is for a switchyard, overhead electrical lines, fiber-optic cable, microwave tower, and associated facilities.

76. As approved by BLM, the Spring Valley Wind project is a 75-turbine industrial-scale wind facility on BLM land within the Ely District's Schell Field Office. The wind turbines will be between 125–130.5 meters (410–428 feet) tall. The project components also include over 25 miles of 28-foot-wide roads, two gravel pits, a 400-foot-long overhead transmission line, and over nine miles of new fencing to keep cows out of the project area.

77. Extensive disturbance of the site is permitted in the 7,673-acre project area. For example, during construction, vehicles are permitted to "drive and crush" up to 0.25 mile from existing roads for "geotechnical investigations." Construction will also entail excavation for the wind turbine foundations, which poses a risk of "puncturing" the fragile perched aquifer that supports the Swamp Cedar ACEC.

78. The EA considered three alternatives: two alternatives proposing 75-tower wind energy facilities in slightly different configurations, and one no-action alternative.

79. The EA purports to "tier" to the Wind PEIS, as well as the 2007 revised Ely Resource Management Plan's Final FEIS.

80. The EA admits there will be impacts to bats, and that "previous studies indicate that there is the potential to injure or kill numerous bats at wind energy facilities." The EA further admits that "researchers have not been able to make a strong correlation between pre-construction data and post-construction mortality for bats," making it "impossible to provide an accurate quantitative assessment of mortality" to bat species. The EA does not discuss the phenomenon of bats being attracted to wind turbines and how that would affect impacts on bats.

81. BLM set its acceptable "mortality threshold" for bats at 192 bat deaths per year. The EA does not explain why this threshold is non-significant. The EA does not provide any explanation or assessment of this impact on bat populations at the regional, local, or Rose Guano Cave level. Nor does it require monitoring of the Rose Guano Cave to gauge what the impacts will be on the cave.

82. The EA admits that if bat mortality thresholds are exceeded, "the [Technical Advisory Committee] would determine what mitigation, *if any*, should be recommended for implementation, and the BLM Authorized Officer would approve the measure *if determined appropriate*." (emphasis added). Thus, BLM admits if species thresholds are exceeded, there is no guarantee that further mitigation would be implemented.

83. The EA does not disclose concerns that expert wildlife agencies, including FWS and NDOW, expressed regarding the selected site for the project and the significant, uncertain nature of impacts upon bats and birds.

84. The EA admits there will be impacts to raptors and other migratory birds from electrocution as well as collisions with turbines, towers, and transmission lines. The EA admits that "researchers have not been able to make a strong correlation between pre-construction data

and post-construction mortality for raptors," making it "impossible to provide an accurate quantitative assessment of mortality to these species."

85. BLM set its acceptable "mortality threshold" for birds at 203 bird deaths per year. The EA does not explain why this threshold is non-significant. The EA does not provide any explanation or assessment of this impact on avian populations at the regional or local level. The EA states that if avian mortality thresholds are exceeded, the Technical Advisory Committee would be responsible for identifying and recommending suitable mitigation. Thus, BLM admits if species thresholds are exceeded, there is no guarantee that further mitigation would be implemented.

86. The turbines are to be arranged in rows oriented east-west, which is directly contrary to guidance in BLM's Wind PEIS that turbine arrays should be oriented parallel to bird movements in order to minimize bird mortalities. BLM did not consider any alternatives orienting the turbines in north-south arrays so as to be parallel to bird movements.

87. The EA admits that the project area contains sage-grouse habitat. It states that sage-grouse are expected to avoid areas of up to two miles surrounding wind turbines and transmission lines. The EA does not discuss new science from the Monograph or the FWS's March 2010 "warranted" finding indicating that effects from development can occur on far larger areas. The EA does not attempt to analyze or disclose the impacts of the project on sage-grouse from a landscape or population perspective, does not discuss the range-wide threats facing sage-grouse, and does not discuss any of Nevada's sage-grouse guidance documents. The EA fails to discuss how the project would affect connectivity between northern and southern Spring Valley.

88. The EA does not discuss in detail or quantify the impacts on sage-grouse of the many components of the projects. Such components include: vegetation mowing and site

clearing, excavation, bulldozing 25 miles of roads, construction of over nine miles of fencing, construction of the wind towers, and construction of a transmission line.

89. The EA includes a brief section on cumulative impacts, which discloses that there are three other proposed wind energy facilities within the Spring Valley watershed, as well as the SNWA groundwater development project. The EA does not disclose that there are up to 15 other proposed wind energy facilities within the BLM Ely District, and others nearby in Utah. The EA does not discuss in detail what impacts these additional facilities, in combination with the Spring Valley project, would have on wildlife including bats, raptors and migratory birds, and sage-grouse.

90. The cumulative impacts analysis does not discuss in any detail or attempt to quantify the cumulative impacts posed by the other 15 wind facilities planned in the Ely District and the others nearby in Utah on bats, beyond noting a "potential for a somewhat larger percent increase in mortality for Brazilian free-tailed bats throughout eastern Nevada." It does not discuss in any detail or attempt to quantify the cumulative impacts posed by such other wind facilities to raptors or migratory birds. It does not discuss in any detail or attempt to quantify the cumulative impacts posed by such other wind facilities, in addition to the many other threats present on the Schell Field Office such as livestock grazing and vegetation treatments, to sage-grouse.

91. The cumulative impacts analysis does not discuss what cumulative effects the SNWA groundwater development project could have in concert with the Spring Valley Wind project on the groundwater-dependent Swamp Cedar ACEC.

92. The EA fails to disclose or discuss numerous baseline facts and impacts upon cultural resources. The EA's discussion of cultural resources omits numerous facts, and fails to

address that the affected region lies within one of the most significant cultural and sacred sites for the Western Shoshone. BLM incorrectly states that Spring Valley "appears to fall outside the Aboriginal Western Shoshone Territory." The EA fails to identify the significance of the cedar trees at the Swamp Cedar ACEC to the Tribes, including by failing to recognize that Tribal members believe that the trees represent those killed in the massacre that occurred there, and thus attach extraordinary religious and cultural significance to the trees. The EA fails to assess the impacts of the project upon TCP eligibility. The EA fails to assess impacts of the development upon the Tribes' ability to utilize the site for religious and cultural purposes, including visual and noise impacts.

93. The EA's cumulative impacts analysis does not discuss the cumulative impacts of the disruption of the many cultural components of the project site and adjacent Swamp Cedar ACEC upon cultural resources and the ability of the Tribes to utilize the site for cultural and religious purposes.

94. BLM relies heavily upon an Avian and Bat Protection Plan ("ABPP") to mitigate impacts to bats and birds. The ABPP's measures include a mitigation fund, radar detection, AnaBat acoustic surveys, and wind turbine curtailment.

95. The mitigation fund would fund unspecified research and off-site mitigation for three years. The ABPP does not identify on what sites off-site mitigation would occur, or what kind of mitigation it would entail. The ABPP does not explain how research would mitigate impacts to wildlife mortality from the Spring Valley Wind project. The ABPP does not explain how three years of funding will offset impacts from a project that is planned to be in existence for several decades. The ABPP does not disclose that the expert wildlife agencies advocated for

significant changes, including more money over a longer time, as well as more specificity as to the proposed mitigation, but that these changes were rejected.

96. The ABPP relies upon an experimental radar system which could allegedly trigger turbine shutdowns, but the system is not planned to come into service until "necessary data" has been collected. "Necessary data" is not defined. The ABPP does not disclose any data in support of the effectiveness of the radar monitoring system; it does not disclose that the expert wildlife agencies considered the system highly experimental; and it does not disclose that the industry proponent apparently refused to share data with the expert wildlife agencies, claiming that the data was proprietary. The ABPP does not disclose under what conditions the radar would be triggered to shut down the turbines.

97. The ABPP relies upon AnaBat acoustic surveys, but it does not disclose the limited range of such detectors.

98. No monitoring of population or population trends at Rose Guano Cave is required under the ABPP.

99. The ABPP's curtailment mitigation measures are implemented through an adaptive management framework. Higher levels of mortality would trigger different "phases" of mitigation. Only two phases of curtailment can be implemented in a single year. Under this plan, species mortality threshold counts would start over at zero each time a new mitigation measure is implemented. The ABPP places strict limits on how many hours curtailment may occur within a year, regardless of bat or bird fatalities.

100. The EA does not address that the expert wildlife agencies recommended significant changes to the ABPP's curtailment measures, including requiring the amount of curtailment and cut-in speed reduction to be whatever is needed to reduce wildlife impacts below

threshold levels, deleting the provision to start counts at zero after new mitigation measures, or insertion of a "catastrophe clause."

101. Many components of the ABPP are optional. For example, the ABPP creates a Technical Advisory Committee to monitor the wind facility and recommend mitigation measures, but BLM's decision to adopt the Committee's recommendations is optional. Further, BLM may terminate the Committee if it "determines that it is no longer a necessary pathway in reducing avian and bat impacts."

102. Many other project mitigation measures are optional. For example, the key mitigation measures for sage-grouse set forth in the Decision Record are all prefaced with the phrase "where appropriate," with no explanation of what that means or how it will be determined in practice.

103. The EA does not disclose that there was significant dissent within BLM on the issue of whether to prepare an EIS, or that BLM decided to prepare an EA largely because of pressure from the industry proponent and high levels of BLM.

104. The U.S. Department of Interior ("Interior"), of which BLM is an subsidiary agency, placed the Spring Valley Wind project on an artificial "fast-track" in order to achieve the industry applicant's goal of obtaining millions of dollars of federally-available financing under the American Recovery and Reinvestment Act that purportedly required project approval prior to the end of 2010. However, that deadline was extended by Congress in late December 2010.

105. BLM arbitrarily and unlawfully rushed the NEPA process, and failed to adequately evaluate the adverse environmental and other impacts associated with the project, in order to reach this pre-determined, arbitrary approval date.

106. On November 13, 2010, Plaintiffs WWP and the Center, as well as other conservation groups, submitted an administrative appeal and petition for stay of BLM's Decision Record, FONSI, EA, and ROWs to the Interior Board of Land Appeals ("IBLA").

107. On November 15, 2010, Plaintiff Tribes also filed an appeal before IBLA; and they filed separate Statements of Reasons on December 15, 2010.

108. Plaintiffs WWP and the Center filed a notice of dismissal of their IBLA appeal on January 11, 2011. Under Interior regulations, if the IBLA fails to rule on a petition for stay within 45 days, the petition for stay is deemed to be denied and the decision is made effective. 43 C.F.R. § 4.21(a)(3), (b)(4). The IBLA dismissed the appeal on January 12, 2011.

109. Plaintiff Tribes filed a notice of dismissal of their IBLA appeal on January 20, 2011.

110. Plaintiffs have exhausted all administrative remedies required under the Administrative Procedure Act, 5 U.S.C. § 701 *et seq*.

111. BLM's counsel in the IBLA proceeding represented that it may issue a Notice to Proceed as soon as mid-February, 2011.

112. Consistent with its "fast-track" designation by Interior, construction of the project is expected to proceed extremely rapidly once the Notice to Proceed is issued. According to the EA, "Construction is expected to commence in the later part of 2010, with the final mechanical completion, commissioning, and testing expected to be completed by the third quarter of 2011." Specifically, activities scheduled in "4th quarter 2010" include "construction mobilization" and "commence civil works (roads, underground electrical foundations)." Site preparation for construction will include vegetation mowing and vegetation clearing "using bulldozers, road graders, or other standard earth-moving equipment," as well as over nine miles of planned fence

construction. Construction will also include bulldozing the over 25 miles of planned new roads. Turbine deliveries are to commence in 2nd quarter 2011. The EA asserts that three to five towers can be erected weekly.

113. The imminent bulldozing, site clearing, and road construction—as well as construction of the rest of the project—constitute irreparable environmental and cultural harm for which Plaintiffs lack an adequate remedy at law. Thus, an injunction is needed.

FIRST CLAIM FOR RELIEF:
VIOLATIONS OF NEPA

114. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

115. This First Claim for Relief challenges Defendant's violation of the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq*., and NEPA's implementing regulations in approving the Spring Valley Wind project based on the Decision Record, FONSI, EA, and ROWs. Plaintiffs bring this claim pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

116. Defendant violated NEPA and federal regulations in multiple respects through issuance of the challenged decisions, including but not limited to:

a. Adopting the challenged decisions without first preparing an EIS addressing the proposed actions, and instead electing to rely on an EA/FONSI, even though BLM approval of the project constitutes a major federal action which will have significant adverse impacts to the human environment;

b. Adopting the challenged decisions without producing a convincing statement of reasons establishing why the project's impacts are insignificant;

c. Adopting the challenged decisions without taking the requisite "hard look" at all of the significant and potential environmental impacts, including cumulative

impacts, of the proposed actions, including impacts to bats, raptors, sage-grouse, cultural resources, hydrology, and other resources; and without adequate baseline data;

d. Adopting the challenged decisions without discussing responsible opposing views in the EA itself;

e. Failing to consider an adequate range of alternative courses of action.

f. Failing to consider the significance and baseline of the affected region to Western Shoshone Tribes, including that the affected region lies within one of the most significant cultural and sacred sites for the Western Shoshone, failing to identify the significance of cedar (juniper) trees at the Swamp Cedar ACEC to the Tribes, and incorrectly defining the spatial extent of Western Shoshone aboriginal territory; and

g. Failing to allow review and input from the Tribes on the archaeological inventory report;

117. Accordingly, Defendant's final decisions are arbitrary, capricious, an abuse of discretion, and not in accordance with law, and must be reversed and set aside pursuant to the APA, 5 U.S.C. § 706(2)(A).

SECOND CLAIM FOR RELIEF:
VIOLATIONS OF RFRA AND AIRFA
(BROUGHT BY TRIBAL PLAINTIFFS ONLY)

118. Tribal Plaintiffs reallege and incorporate by reference all preceding paragraphs.

119. This Second Claim for Relief challenges Defendant's violation of the Religious Freedom Restoration Act of 1993, 42 U.S.C §§ 2000bb et seq., and the American Indian Religious Freedom Act of 1978, 42 U.S.C. § 1996, in approving the Spring Valley Wind Project

based on the Decision Record, FONSI, EA, and ROWs. Tribal Plaintiffs bring this claim pursuant to the judicial review provisions of the APA. 5 U.S.C. § 706.

120. Defendant violated RFRA, AIRFA, and federal regulations in multiple respects through issuance of the challenged decisions, by substantially burdening the religious exercise of the Western Shoshone Tribes including but not limited to:

a. Adversely impacting the Tribes' ability to practice their religion by contributing 35-50 dbA of noise to the Swamp Cedars area;

b. Substantially diminishing the viewshed that is a critical aspect of their religious practices;

c. Degrading the landscape from construction activities that will have long-term adverse impacts on the physical surrounding environment which will degrade the religious significance of the region;

d. Potentially increasing invasive plants in the affected region;

e. Affecting the environmental quality, spiritualness of the area, and causing health complications due to fugitive dust generation in the region;

f. Altering surface water quality and surface water flows which are profoundly sacred to the Western Shoshone Tribes;

g. Altering the quantity and quality of water from springs around the project area that the Tribes hold sacred through groundwater extraction, surface disturbance, and excavation; and

h. Altering the nighttime lighting and sky glow which affects the integrity of sacred areas.

121. Accordingly, Defendant's final decisions are arbitrary, capricious, an abuse of discretion, and not in accordance with law, and must be reversed and set aside pursuant to the APA. 5 U.S.C. § 706(2)(A).

THIRD CLAIM FOR RELIEF:
VIOLATION OF TRUST RESPONSIBILITY
(BROUGHT BY TRIBAL PLAINTIFFS ONLY)

122. Tribal Plaintiffs reallege and incorporate by reference all preceding paragraphs.

123. This Third Claim for Relief challenges Defendant's violation of its trust responsibility. In carrying out its treaty obligations with the Indian tribes, the federal government is something more than a mere contracting party. Under a humane and self imposed policy which has found expression in many acts of Congress and numerous Supreme Court decisions, the Government of the United States has charged itself with moral obligations of the highest responsibility and trust. Its conduct as disclosed in the acts of those who represent it in dealings with the Indians should therefore be judged by the most exacting fiduciary standards. *United States v. Mason*, 412 U.S. 391, 398 (1973); *Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942). This trust responsibility restrains federal governmental action that affects Indians and therefore is an important source of protection for Indian rights. The trust responsibility of the United States applies to all federal agencies and to federal actions occurring outside the boundaries of Indian reservations. *See, e.g., Nance v. EPA*, 645 F.2d 701 (9th Cir. 1981).

124. Numerous executive orders also require the government to protect Tribal interests including, but not limited to: Executive Order 13175 (government to government consultation policy for proposed federal actions affecting tribes), Executive Order 12898 (Environmental

Justice), Executive Order 13007 (Indian Sacred Sites), and Executive Order 11593 (Protection and Enhancement of the Cultural Environment).

125. In approving the Decision Record, FONSI, EA, and ROWs in violation of federal laws and regulations, BLM has failed to live up to its trust responsibility and the obligations imposed by the above-referenced executive orders designed to protect Indian tribal interests.

126. Accordingly, Defendant's final decisions are arbitrary, capricious, an abuse of discretion, and not in accordance with law, and must be reversed and set aside pursuant to the APA. 5 U.S.C. § 706(2)(A).

FOURTH CLAIM FOR RELIEF:
VIOLATIONS OF NHPA
(BROUGHT BY TRIBAL PLAINTIFFS ONLY)

127. Tribal Plaintiffs reallege and incorporate by reference all preceding paragraphs.

128. This Fourth Claim for Relief challenges Defendant's violation of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, in approving the Spring Valley Wind project based on the EA, FONSI, and DR. Tribal Plaintiffs bring this claim pursuant to the judicial review provisions of the APA. 5 U.S.C. § 706.

129. Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f, requires that agencies of the United States shall, prior to approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of the license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register."

130. Like NEPA, the NHPA is designed to ensure that federal decision-makers thoroughly evaluate the impacts of their proposed actions on NHPA-eligible resources prior to taking final action.

131. Prior to approval of a federal undertaking, the agency must: (a) identify the "historic properties" within the area of potential effects; (b) evaluate the potential effects that the undertaking may have on historic properties; and (c) resolve the adverse effects through the development of mitigation measures. 36 C.F.R. §§ 800.4; 800.5; 800.6. Throughout all of these processes, the agency must consult with Indian tribes that attach religious and cultural significance to properties within the affected area. 36 C.F.R. § 800.3(f)(2); 800.4(a)(4); 800.5(c)(2)(iii); 800.6(a); 800.6(b)(2). The agency must recognize the government-to-government relationship between the Federal Government and Indian tribes and the consultation is to be conducted in a manner sensitive to the concerns and needs of the Indian tribe. 36 C.F.R §800.2(c)(2)(ii)(C).

132. BLM did not fully comply with the steps of the Section 106 process, as described in the preceding paragraph, prior to executing the Decision Record, FONSI, EA, and ROWs. Defendant violated NHPA and federal regulations in multiple respects through issuance of the challenged decisions, including but not limited to:

a. Failing to conduct the consultation in a manner sensitive to the concerns and needs of the Tribes;

b. Failing to resolve adverse effects of the project;

c. Failing to meaningfully consult with the Tribes to identify issues relating to the project's potential effects on historic properties;

d. Failing to meaningfully consult with the Tribes to take steps necessary to identify historic properties within the area of potential effects;

e. Failing to meaningfully consult with the Tribes to apply National Register criteria to properties within the identified area; and

f. Failing to provide the ethnographic and archaeological reports and invite the Tribes input and/or participation.

133. Accordingly, Defendant's final decisions are arbitrary, capricious, an abuse of discretion, and not in accordance with law, and must be reversed and set aside pursuant to the APA. 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that the Court grant the following relief:

A. Order, adjudge, and declare that the Decision Record, EA, FONSI, and ROWs violate NEPA, NHPA, RFRA, AIRFA, BLM's trust obligations, and/or the APA;

B. Reverse and remand the Decision Record, EA, FONSI, and ROWs;

C. Enter temporary, preliminary, or permanent injunctive relief as hereinafter prayed for by Plaintiffs, including by enjoining BLM from allowing the Spring Valley Wind Project to proceed through ground-clearing, site preparation and wind tower construction until such time as BLM has fully complied with law;

D. Award Plaintiffs their reasonable costs, litigation expenses, and attorney's fees associated with this litigation and the related administrative proceedings pursuant to the Equal Access to Justice Act, 28 U.S.C. §§ 2412 et seq., and/or all other applicable authorities; and/or

E. Grant such further relief as the Court deems necessary or appropriate to redress the BLM's legal violations and protect the public lands and resources of the Spring Valley Wind Energy Facility project area from further degradation.

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Dated this 25th day of January, 2011.

Respectfully submitted,

/s/ Christopher W. Mixson

Christopher W. Mixson

Attorney for Plaintiffs Western Watersheds Project, Center for Biological Diversity, Confederated Tribes of the Goshute Reservation, Duckwater Shoshone Tribe, and Ely Shoshone Tribe