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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA  
SOUTHERN DIVISION**

CENTER FOR BIOLOGICAL DIVERSITY,	)	Case No. _____
	)	
Plaintiff,	)	<b>COMPLAINT FOR</b>
vs.	)	<b>DECLARATORY AND</b>
	)	<b>INJUNCTIVE RELIEF</b>
UNITED STATES BUREAU OF LAND	)	
MANAGEMENT; and UNITED STATES	)	
DEPARTMENT OF THE INTERIOR,	)	
	)	
Defendants.	)	

## INTRODUCTION

1. Plaintiff Center for Biological Diversity (“the Center”) challenges the decision of Defendants United States Bureau of Land Management and United States Department of the Interior (collectively referred to herein as “BLM”) to authorize the “Clark, Lincoln, and White Pine Counties Groundwater Development Project” (“Groundwater Project”).

2. The Groundwater Project includes the issuance of a permanent right-of-way to the Southern Nevada Water Authority to construct, operate, and maintain a 263-mile pipeline and related facilities to support the permanent pumping and transport of groundwater from Spring, Delamar, Dry Lake, and Cave Valleys in rural east-central Nevada to Las Vegas, Nevada.

3. The approved right-of-way and pipeline for the Groundwater Project will allow the Southern Nevada Water Authority to pump 83,988 acre-feet of groundwater per year, in perpetuity, in Spring, Delamar, Dry Lake, and Cave Valleys.

4. The Groundwater Project will result in severe and irreversible impacts to natural resources, including over 10,000 acres of direct impacts and 130,000 acres of indirect impacts to wildlife habitat; over 5,000 acres of impacts to wetlands and meadows; adverse affects to over 200 springs with flow reductions as high as 100 percent; adverse impacts to fish and wildlife species that are threatened or endangered with extinction; and the potential loss of local populations for some wildlife species, including imperiled sage grouse.

5. The Center seeks declaratory relief that the BLM violated the National Environmental Policy Act, Federal Land Policy and Management Act, and Administrative Procedure Act in developing and approving the Groundwater Project. The Center also seeks injunctive relief to prohibit the implementation of the Groundwater Project unless and until the BLM demonstrates full compliance with the law.

## **JURISDICTION AND VENUE**

6. 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. §§ 4331, *et seq.*; the Federal Land Policy and Management Act, 43 U.S.C. §§ 1701, *et seq.*; and the Administrative Procedure Act, 5 U.S.C. §§ 551, *et seq.*

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because Defendant BLM has offices in this judicial district, and a substantial part of the events or omissions giving rise to the claims in this Complaint occurred in this judicial district, and a substantial part of property that is the subject of this case is situated in this judicial district.

8. Venue is proper in the Southern Division of this District, as the challenged decision impacts federal lands and resources in Clark, Lincoln, and White Pine Counties. *See* L.R. 6-1, 8-1.

9. An actual, justiciable controversy exists between Plaintiff and Defendants, and the requested relief is proper under 28 U.S.C. §§ 2201-02.

## **PARTIES**

10. Plaintiff Center for Biological Diversity (“the Center”) is a nonprofit conservation organization with more than 50,000 members dedicated to the preservation, protection, and restoration of biodiversity and ecosystems throughout the world. The Center has members who reside in Clark, Lincoln, and White Pine Counties, Nevada.

11. The Center has offices in a number of states, including Las Vegas, Nevada. The Center works to insure the long-term health and viability of animal and plant species across the United States and elsewhere, and to protect the habitat these species need to survive.

12. The Center and its members regularly use and enjoy the federal public lands in Nevada, including the lands managed by the BLM in Clark, Lincoln, and White Pine Counties, for a number of activities including hiking, fishing, hunting, camping, photographing scenery and wildlife, and engaging in other vocational, scientific, and recreational activities. The Center and its members derive recreational, inspirational, religious, scientific, educational, and aesthetic benefits from their regular use and activities on these public lands. The Center and its members intend to continue to use and enjoy the federal public lands managed by the BLM in Clark, Lincoln, and White Pine Counties frequently and on an ongoing basis in the future, including this winter and spring.

13. The aesthetic, recreational, scientific, educational and religious interests of the Center and its members have been and will continue to be adversely affected and irreparably injured by the BLM's failure to comply with the National Environmental Policy Act, the Federal Land Policy and Management Act, and the Administrative Procedure Act prior to authorizing and approving the Groundwater Project. These are actual, concrete injuries caused by the BLM's failure to comply with mandatory duties under these federal laws. The injuries would be redressed by the relief sought.

14. On October 4, 2011, the Center submitted detailed comments on the draft environmental impact statement for the Groundwater Project. On September 25, 2012, the Center submitted additional comments on the final environmental impact statement for the Groundwater Project.

15. Defendant United States Bureau of Land Management ("BLM") is an agency of the United States, within the United States Department of Interior, and is responsible for the

lawful administration of the federal public lands at issue in this case. The BLM prepared the environmental impact statement and signed the Record of Decision for the Groundwater Project.

16. Defendant United States Department of Interior oversees the BLM, is charged with implementing the Federal Land Policy and Management Act, and provided the final approval for the Groundwater Project.

## **LEGAL BACKGROUND**

### **National Environmental Policy Act**

17. The National Environmental Policy Act (“NEPA”) requires federal agencies to prepare a detailed environmental impact statement (“EIS”) for major federal actions that may significantly impact the quality of the human environment. 42 U.S.C. § 4332(2)(C).

18. An EIS must consider the environmental impact of the proposed federal action, any adverse environmental effects which cannot be avoided should the proposal be implemented, alternatives to the proposed action, the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources if the proposed action is implemented. 42 U.S.C. § 4332(2)(C).

19. Prior to preparing an EIS, the agency must consult with and obtain the comments of any federal agency which has special expertise with respect to any environmental impact involved. 42 U.S.C. § 4332(2)(C).

20. The Council on Environmental Quality has promulgated regulations implementing NEPA, which are binding on all federal agencies. 40 C.F.R. § 1507.1.

21. NEPA is our basic national charter for protection of the environment. 40 C.F.R. § 1500.1(a). “NEPA was passed by Congress to protect the environment by requiring that federal

agencies carefully weigh environmental considerations and consider potential alternatives to the proposed action before the government launches any major federal action.” *Lands Council v. Powell*, 395 F.3d 1019, 1026 (9th Cir. 2005).

22. The purpose of the NEPA is to ensure “that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger [public] audience that may also play a role in both the decisionmaking process and implementation of that decision.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

23. “NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.” 40 C.F.R. § 1500.1(b). The information in an NEPA analysis must be of high quality, as accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. *Id.*

24. An EIS must describe the environment of the area to be affected by the alternatives under consideration. 40 C.F.R. § 1502.15.

25. An EIS must consider the environmental consequences of a proposed action, including analyses of the direct effects and their significance, the indirect effects and their significance, the energy requirements and conservation potential of various alternatives and mitigation measures, and the means to mitigate adverse environmental impacts. 40 C.F.R. § 1502.16.

26. When an agency is evaluating reasonably foreseeable significant adverse effects on the environment in an EIS and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking. 40 C.F.R. § 1502.22.

27. Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in an EIS. 40 C.F.R. § 1502.24. Agencies shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. *Id.*

28. The agency's "record of decision" must state whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. 40 C.F.R. § 1505.2(c). A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation. *Id.*

29. NEPA imposes a continuing duty on agencies to supplement previous environmental documents. *Price Road Neighborhood Ass'n. v. U.S. Dept. of Transp.*, 113 F.3d 1505, 1509 (9th Cir. 1997). Agencies must prepare a supplemental EIS if the agency makes substantial changes to an action that are relevant to environmental concerns; or there are significant new circumstances or information relevant to environmental concerns and bearing on the action or its impacts. 40 C.F.R. § 1502.9(c).

### **Federal Land Policy and Management Act**

30. In 1976, Congress enacted the Federal Land Policy and Management Act ("FLPMA").

31. Congress declares in FLPMA that the federal public lands shall be managed on the basis of multiple use and sustained yield unless otherwise specified by law. 43 U.S.C. § 1701(a)(7). Additionally, the public lands are to be managed in a manner that will protect the quality of the scientific, scenic, historic, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and

domestic animals; and that will provide for outdoor recreation and human occupancy and use.

43 U.S.C. § 1701(a)(8).

32. FLPMA defines “multiple use” as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people, taking into account the long-term needs of future generations for renewable and nonrenewable resources, and managing the various resources without permanent impairment of the productivity of the land and the quality of the environment.

43 U.S.C. § 1702(c).

33. FLPMA defines “sustained yield” as the achievement and maintenance in perpetuity of a high-level annual or regular period output of the various renewable resources of the public lands consistent with multiple use. 43 U.S.C. § 1702(h).

34. FLPMA directs the Secretary of Interior to manage the public lands under the principles of multiple use and sustained yield, in accordance with the applicable land use plan, except where a tract of land has been dedicated to specific uses according to any other provisions of law. 43 U.S.C. § 1732(a).

35. FLPMA requires that in managing the public lands, the Secretary of Interior shall take any action necessary to prevent unnecessary or undue degradation of the lands. 43 U.S.C. § 1732(b).

36. FLPMA authorizes the Secretary of Interior (and the Secretary of Agriculture with respect to lands within the National Forest System) to issue rights-of-way through public lands for a number of uses including the distribution of water. 43 U.S.C. § 1761(a)(1).

37. FLPMA authorizes permanent easements for water systems in only limited circumstances, as FLPMA only authorizes the Secretary of Agriculture to issue permanent



easements for water systems traversing federal lands within the National Forest System, in certain limited circumstances, if constructed and in operation or placed into operation prior to 1976. 43 U.S.C. § 1761(c)(1).

38. In designating right-of-way corridors, FLPMA directs the Secretary of Interior to take into consideration environmental quality, and to issue regulations containing the criteria and procedures to be used in designating such corridors. 43 U.S.C. § 1763.

39. Each right-of-way issued under FLPMA must be limited to the ground which the Secretary of Interior determines will do no unnecessary damage to the environment. 43 U.S.C. § 1764(a).

40. Each right-of-way issued under FLPMA must be limited to a reasonable term in light of all circumstances concerning the project. 43 U.S.C. § 1764(b). In determining the duration of the right-of-way the Secretary of Interior must take into consideration the cost of the facility, its useful life, and any public purpose it serves. *Id.* The right-of-way must specify whether it is or is not renewable and the terms and conditions applicable to the renewal. *Id.*

41. Each right-of-way issued under FLPMA must contain terms and conditions which will minimize damage to fish and wildlife habitat and otherwise protect the environment, require compliance with applicable air and water quality standards, protect the interests of individuals living in the general area traversed by the right-of-way who rely on the fish, wildlife, and other biotic resources of the area for subsistence purposes, and protect the public interest in the lands traversed by the right-of-way. 43 U.S.C. § 1765(a).

**The Southern Nevada Public Lands Management Act of 1998**

42. In 1998, Congress enacted the Southern Nevada Public Land Management Act. The Act directs the Secretary of Interior, upon application by a unit of local government or

regional governmental entity, to issue right-of-way grants on federal lands in Clark County, Nevada, for all reservoirs, canals, channels, ditches, pipes, pipelines, tunnels, and other facilities needed for the impoundment, storage, treatment, transportation, or distribution of water.

43. The Southern Nevada Public Land Management Act requires that the right-of-way grants be issued in perpetuity, and not require the payment of rental or cost recovery fees.

**The Lincoln County Conservation, Recreation, and Development Act of 2004**

44. In 2004, Congress enacted the Lincoln County Conservation, Recreation, and Development Act. The Act directs the Secretary of Interior to grant to the Southern Nevada Water Authority and the Lincoln County Water District nonexclusive rights-of-way to federal land in Lincoln County and Clark County for any roads, wells, well fields, pipes, pipelines, pump stations, storage facilities, or other facilities and systems that are necessary for the construction and operation of a water conveyance system.

45. The Lincoln County Conservation, Recreation, and Development Act directs that the right-of-way shall be granted in perpetuity and shall not require the payment of a rental.

46. The Lincoln County Conservation, Recreation, and Development Act requires the Secretary of Interior to comply with the National Environmental Policy Act prior to granting the right-of-way, including the identification and consideration of potential impacts to fish and wildlife resources and habitat.

47. The Lincoln County Conservation, Recreation, and Development Act directs the Secretary of Interior to conduct a study to investigate groundwater quantity, quality, and flow characteristics in the deep carbonate and alluvial aquifers of White Pine County, Nevada, and any groundwater basins that are located in White Pine County or Lincoln County, and adjacent areas in Utah.

## FACTUAL BACKGROUND

48. On August 19, 2004, the BLM received a right-of-way application from the Southern Nevada Water Authority for the construction and operation of a pipeline system to pump and transport groundwater in southeastern Nevada.

49. The Southern Nevada Water Authority requested a right-of-way to convey groundwater in Spring, Cave, Dry Lake, Delamar, and Snake Valleys. The Southern Nevada Water Authority has identified the groundwater in these basins as a resource that would be used in the short term to offset drought impacts, and in the long-term to meet projected water needs.

50. On April 8, 2005, the BLM initiated the NEPA scoping process for the Groundwater Project by publishing a notice of intent to prepare an EIS. A second notice of intent was published on July 19, 2006, providing notice of changes to the proposed project.

51. The Ely District of BLM encompasses 12 million acres in eastern Nevada, including White Pine County, Lincoln County, and a small portion of Nye County. In August 2008, the BLM finalized and approved a Resource Management Plan for the Ely District.

52. The Resource Management Plan for the Ely District includes numerous standards and guidelines for site-specific projects on the District, including but not limited to:

SR-1: Restore and maintain desired range of conditions to increase infiltration, conserve soil moisture, promote groundwater recharge, and ground cover composition (including litter and biotic crusts) to increase or maintain surface soil stability and nutrient cycling.

VEG-18: Manage native range to meet the requirements of wildlife species. Management will focus on maintaining or establishing diversity, mosaics, and connectivity of sagebrush between geographic areas at the mid and fine scales.

WL-1: Emphasize management of priority habitats for priority species.

WL-4: Mitigate all discretionary permitted activities that result in the loss of aquatic and priority wildlife habitats by improving 2 acres of comparable habitat for every 1 acre of lost habitat as determined on a project-by-project basis.

WL-18: Restore natural water sources (i.e., springs and seeps) to increase water availability through restoration of riparian habitats and proper livestock and wild horse management.

WL-19: Identify areas of suitable wildlife habitat that are water limited in coordination with the Nevada Department of Wildlife and interested public.

SS-2: Develop and implement an interagency inventory and monitoring program for special status plant and animal species.

SS-5: Manage Bonneville cutthroat trout habitat by implementing those actions and strategies identified in the Conservation Agreement and Conservation Strategy for Bonneville Cutthroat Trout in the State of Nevada.

SS-6: Use the Revised Nevada Bat Conservation Plan (Bradley et al. 2006) for guidance on implementation of bat management actions, such as: Stopping conversion of native sagebrush vegetation communities to annual grasslands, and restoration to native rangelands.

SS-9: Perform springsnail surveys prior to the development of any spring source.

SS-10: Mitigate all discretionary permitted activities that result in the loss of special status species habitats on a ratio of 2 acres of comparable habitat for every 1 acre of lost habitat as determined on a project-by-project basis.

SS-11: Manage the refugium at Shoshone Ponds for Pahrump poolfish in accordance with the Recovery Plan for the Pahrump Killifish (now called the Pahrump poolfish).

SS-13: Manage the uplands around Shoshone Ponds to increase vegetation cover, reduce runoff, and prevent excessive siltation into the ponds.

SS-14: Develop additional ponds at Shoshone Ponds to increase the habitat for the Pahrump poolfish.

SS-15: Manage public lands adjacent to designated critical habitat for the White River spinedace, located on private land, in accordance with the White River Spinedace Recovery Plan.

SS-37: Manage greater sage-grouse habitat by implementing those actions and strategies identified in the BLM National Sage-Grouse Habitat Conservation Strategy, Greater Sage-Grouse Conservation Plan for Nevada and Eastern California, and local greater sage-grouse conservation plans that the Ely District Office has the authority to implement.

SS-38: Maintain intact and quality sagebrush habitat. Prioritize habitat maintenance actions from the BLM National Sage Grouse Conservation Strategy to: 1) maintain large areas of high quality sagebrush currently occupied by greater sage-grouse; 2) maintain

habitats which connect seasonal sagebrush habitats in occupied source habitats; and 3) maintain habitats that connect seasonal sagebrush habitats in occupied isolated habitats.

53. In 2008, the Southern Nevada Water Authority conducted preliminary jurisdictional determinations to determine the location and extent of any “waters of the United States” for which a United States Army Corps of Engineers Section 404 Permit would be required under the Clean Water Act for the construction of the pipeline and ancillary facilities. A total of 68 ephemeral washes were identified as “waters of the United States.” This inventory is in addition to 51 ephemeral washes that were identified in a prior permit application for a total of 119 ephemeral stream crossings for the Groundwater Development project. The United States Army Corps of Engineers has confirmed these jurisdictional determination findings.

54. On June 10, 2011, the BLM issued notice of the availability of the draft EIS for the Groundwater Project. During the public comment period on the draft EIS, the BLM received 461 comment letters from federal and state agencies, local governments, Indian tribes, conservation organizations, and other interested groups and individuals. An additional 20,000 letters were received in response to a Center for Biological Diversity action alert, all opposing the proposed action.

55. On October 11, 2011, the Nevada Department of Wildlife submitted comments on the draft EIS for the Groundwater Project, and expressed significant concerns about the Project and its potential effects on wildlife species. The Department commented that the Project’s impacts would be greater than those estimated in the draft EIS, based on the Department’s many years of experience. The Department commented that the draft EIS’s analysis of the cumulative impacts of climate change and the proposed action is “woefully inadequate.” The Department commented that the draft EIS’s sections concerning mitigation were “very inadequate,” and that

the Project could result in potential widespread and wholesale extirpations of populations of fish, and significant disruptions of terrestrial wildlife species.

56. On October 11, 2011, the United States Fish and Wildlife Service submitted comments on the draft EIS for the Groundwater Project. The Service commented that the magnitude of the proposed groundwater withdrawal is large compared to the rate of recharge, and that the Project is likely to result in widespread and substantial declines in groundwater levels, accompanied by impacts to springs, stream baseflows, wetlands, and ground-water dependant vegetation. The Service commented that the groundwater pumping approved by the Project is expected to continue in perpetuity, and that the effects of the pumping are expected to take hundreds to thousands of years to fully develop. The Service expressed concern about the large predicted impacts to biological resources in Spring Valley as a consequence of the Project, including extensive impacts to groundwater-dependant ecosystems and associated fauna.

57. On November 28, 2011, the United States Army Corps of Engineers submitted comments on the draft EIS for the Groundwater Project. The Corps commented that it would require pre-construction notification for the Project because of the adverse impacts to waters of the United States, especially those impacts associated with the long-term effects of the drawdown on wetland habitat. The Corps commented that due to the significance of the impacts to “waters of the United States,” including wetlands, the EIS should include a separate analysis concerning impacts to wetlands.

58. On November 30, 2011, the United States Environmental Project Agency (“EPA”) submitted comments on the draft EIS for the Groundwater Project. The EPA commented that the environmental impacts identified in the draft EIS are severe in magnitude, duration and scope. The EPA expressed substantial concerns regarding the magnitude and extent

of impacts, including the long-term irreversible flow reductions and drying up of perennial water sources, the loss of thousands of acres of wetlands, the long-term reductions in vegetation, the permanent extraction of stored groundwater, the permanent impacts from surface subsidence caused by the groundwater pumping, the irreversible commitment of resources important to wildlife, the long-term impacts to agriculture, the impacts to water resources within Great Basin National Park, and potential water quality impacts.

59. In its November 30, 2011 comments, EPA explained that permit applicants must comply with EPA's Clean Water Act Section 404(b)(1) Guidelines. As stated by EPA, the proposed project will likely result in significant degradation to waters of the United States, could violate water quality standards, may result in jeopardy of endangered species, and may not be mitigable, which are each an independent criterion under the Section 404(b)(1) Guidelines that would prohibit issuance of a Section 404 permit for the project. In addition, EPA noted that compensatory mitigation for lost acres of water of the United States may also be needed, and that such losses may be unmitigable due to the potential need for thousands of acres of created waters of the United States and compensatory wetlands. EPA therefore commented that the final EIS should describe the status of the Clean Water Act Section 404 permit application and consultation with the Corps, and include an analysis demonstrating compliance with EPA's 404(b)(1) Guidelines.

60. On August 3, 2012, the EPA published notice of the availability of the final EIS for the Groundwater Project in the federal register. The BLM received more than 40 comment submissions on the final EIS. In addition, the BLM received over 40,000 letters responding to action alerts from the Center for Biological Diversity and other organizations, all opposing the proposed action.

61. In the final EIS, the BLM identified a modified Alternative F as its preferred alternative.

62. Alternative F, as described in the EIS, would require 263 miles of pipeline and 280 miles of power lines.

63. The final EIS documents numerous severe and irreversible environmental impacts that would result from the implementation of Alternative F.

64. Regarding the construction of the main pipeline, the environmental consequences of implementing Alternative F include the following:

- a) Approximately 10,681 acres of native shrublands and woodlands would be removed or disturbed by construction of the pipeline, which would require from 20 to 200 years to recover, with approximately 945 acres permanently converted to industrial uses;
- b) Approximately 581 crossing of ephemeral streams;
- c) The reduction of forage areas and habitat fragmentation on a long-term basis for big game species, including antelope (6,345 acres), elk (4,019 acres), and mule deer (3,547 acres);
- d) The long-term reduction of approximately 2,350 acres of desert tortoise habitat;
- e) The long-term reduction of approximately 2,232 acres of priority sage grouse habitat and 1,636 acres of general sage grouse habitat, along with displacement and habitat fragmentation; and
- f) The long-term reduction of approximately 10,460 acres of golden eagle foraging habitat.

65. Regarding the construction and operation of well fields and related facilities, the environmental consequences of implementing Alternative F include:

- a) Approximately 4,080 acres of surface disturbance resulting from the construction of well pads, access roads, gathering pipelines, and electrical service lines, with two-thirds committed to long-term industrial uses;
- b) Construction could alter aquatic habitat in 13 perennial streams and four springs with aquatic biological resources; and



c) Riparian habitat near waterbodies could be affected on a long-term basis.

66. Regarding the groundwater pumping, the environmental consequences of implementing Alternative F include:

- a) Approximately 3,096 acres of wetlands and meadow would be adversely affected by ten feet or greater drawdown within the initial 75 years after full build out, and approximately 5,519 acres of wetlands and meadow would be adversely affected within 200 years after full build out;
- b) Approximately 89,049 acres of basin shrub-land habitat would be adversely affected by ten feet or greater drawdown within the initial 75 years after full build out, and approximately 130,591 acres of shrub-land habitat would be adversely affected within 200 years after full build out;
- c) Approximately 131 springs would be at moderate to high risk of being adversely affected by ten feet or greater drawdown of groundwater within the initial 75 years after full build out, and 203 springs would be adversely affected within 200 years after full build out;
- d) Approximately 21 miles of perennial streams would be at moderate to high risk of being adversely affected by ten feet or greater drawdown of groundwater within the initial 75 years after full build out, and 33 miles of perennial streams would be adversely affected within 200 years after full build out;
- e) An estimated 33 percent reduction in the spring discharge in Spring Valley at full build out, an estimated 73% reduction at 75 years after full build out, and an estimated 80% reduction at 200 years after full build out;
- f) It is assumed that big game could be displaced due to the reduction in water availability and associated habitats, and that displaced individuals could be lost from the population, but “this loss cannot be quantified”;
- g) The reduction in groundwater dependant vegetation communities would affect the amount of nesting, brooding, and foraging habitat for upland game birds, and denning and foraging habitat for small mammals, and “some animals could be lost from the population”;
- h) The potential groundwater pumping impacts, when combined with the potential groundwater development surface impacts, could result in the reduction or even loss of some local sage-grouse populations;
- i) Flow reductions would modify aquatic habitat by decreasing depths, water velocities, and wetted area in spring, pond, lake, and stream habitat; and

- j) Estimated percent flow reductions in specific springs would be as high as 100 percent by 200 years after full build out.

67. In March 2012, the Nevada State Engineer granted the Southern Nevada Water Authority 83,988 acre-feet per year of groundwater in Spring, Cave, Delamar, and Dry Lake valleys.

68. In April 2012, several parties including the Center for Biological Diversity filed petitions for judicial review in state court to challenge the Nevada State Engineer's decision.

69. On September 25, 2012, EPA submitted comments on the final EIS for the Groundwater Project. EPA commented that even though the preferred alternative in the final EIS would avoid pumping in Snake Valley, its impacts would be much more severe within the remaining valleys, especially Spring Valley. EPA commented that according to the final EIS, the Project would result in significant impacts to water dependant resources; the likely loss of wetland vegetation for 3,096 acres after 75 years, and 5,519 acres after 200 years; moderate to high risk to 4,949 acres of hydric soils after 75 years, and 8,403 acres after 200 years; and approximately 242 square miles of surface subsidence greater than five feet after 200 years which may be permanent even if the pumping ceases. EPA further expressed concerns with the adaptive management proposal because management objectives have not been identified, and the time lags associated with monitoring impacts to groundwater present substantial challenges.

70. On December 18, 2012, the BLM signed the Record of Decision approving the future granting of a right-of-way to the Southern Nevada Water Authority and authorizing the Groundwater Project. According to the Record of Decision, this decision was effective on the date it was signed.

71. In the Record of Decision, BLM decided to issue a right-of-way to the Southern Nevada Water Authority to construct, operate, and maintain the main conveyance pipeline and related facilities to support the future pumping and transport of groundwater from Spring, Delamar, Dry Lake, and Cave Valleys based on a modified version of Alternative F as described in the Final EIS. The alternative chosen by BLM allows the pumping and development of 83,988 acre-feet per year of groundwater in Spring, Cave, Delamar, and Dry Lake Valleys, as approved in March 2012 by the Nevada State Engineer.

72. The Groundwater Project will develop and convey groundwater from rural east-central Nevada to the Las Vegas metropolitan area, where the water will be used for municipal purposes.

73. According to the United States Fish and Wildlife Service, the Groundwater Project is likely to result in widespread declines in groundwater levels over time, accompanied by reductions in natural discharge, both within and beyond the project basins.

74. The BLM issued the right-of-way in perpetuity for all three counties.

75. The right-of-way is for a permanent main water conveyance pipeline and two laterals for a total of approximately 263 miles in length, 100 feet in width, and up to 84 inches in diameter. The right-of-way includes approximately 10,586 acres of disturbance, including 945 acres of permanent disturbance. The right-of-way also includes power lines of approximately 251 miles in length and 100 feet in width (230-kilovolts) and approximately 21 miles in length and 60 feet in width (25 kilovolts).

76. The right-of-way included a number of related facilities, including three pump stations; two primary and four secondary electrical substations; five regulation tanks; three

pressure reducing tanks; a water treatment facility; a buried water storage reservoir; and other facilities to operate the main conveyance pipeline.

77. On December 19, 2012, the Department of Interior approved the BLM's decision. According to the Record of Decision, the Department of Interior's approval constitutes the final decision of the Department and is not subject to administrative appeal; and any challenge of the decision must be brought in federal district court.

78. On December 10, 2013, the Seventh Judicial District Court of the State of Nevada issued a decision in *White Pine County et al. v. Jason King, P.E., Nevada State Engineer, et al.*, CV1204049 (hereinafter "*White Pine County*"), in which the plaintiffs appealed the Nevada State Engineer's rulings 6164, 6165, 6166, and 6167 concerning the granting of water rights to the Southern Nevada Water Authority in Spring Valley, Cave Valley, Dry Lake Valley, and Delamar Valley.

79. The court in *White Pine County* remanded the State Engineer's rulings for recalculation of the water available from the respective basins; for additional hydrological study of Delamar, Dry Lake, and Cave Valley; and to establish standards for mitigation in the event of a conflict with existing water rights or unreasonable effects to the environment or the public interest.

80. The state court's findings and decision in *White Pine County* raise a number of significant issues related to the Groundwater Project, including: (1) that for the Spring Valley appropriations, the State Engineer's calculations and findings show that equilibrium will never be reached, and that the appropriation is unfair to future generations of Nevadans and not in the public interest; (2) that the monitoring and mitigation agreement between the Southern Nevada Water Authority and federal agencies is flawed in several respects, including the failure to

include objective standards or thresholds for determining when an environmental impact is unreasonable, or for when mitigation will be required and implemented, and the failure to include a plan for monitoring such a large area; (3) the double appropriation of water rights in Cave, Dry Lake, and Delamar Valleys; and (4) the court's remand ordering the State Engineer to recalculate the appropriations for this entire area.

81. On December 19, 2013, the Center for Biological Diversity sent a letter to the BLM to notify the agency that due to the state court's decision in *White Pine County*, the BLM must withdraw the Record of Decision for the Groundwater Project in order to reevaluate the proposed project and its purpose and need. The Center for Biological Diversity further notified the BLM that it must at the very least prepare a supplemental EIS for the Groundwater Project due to the state court's findings and decision.

82. The BLM has not responded to the Center for Biological Diversity's December 19, 2013 letter. The BLM has taken no action concerning the Groundwater Project in response to or subsequent to the state court's decision in *White Pine County*.

83. The Southern Nevada Water Authority has appealed the state district court's decision in *White Pine County* to the Nevada Supreme Court.

#### **CLAIMS FOR RELIEF**

##### **FIRST CLAIM: The BLM Violated NEPA in Failing and Refusing to Prepare a Supplemental EIS for the Groundwater Project**

84. Plaintiff incorporates by reference all preceding paragraphs.

85. NEPA requires agencies to prepare a supplemental EIS if (1) the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (2) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. 40 C.F.R. § 1502.9(c)(1).

86. As result of the state court's decision in *White Pine County et al. v. Jason King, P.E., Nevada State Engineer, et al.*, CV1204049, the BLM will need to make substantial changes to the Groundwater Project that are relevant to environmental concerns.

87. The state court's findings, conclusions, and decision in *White Pine County et al. v. Jason King, P.E., Nevada State Engineer, et al.*, CV1204049 constitutes significant new circumstances and information relevant to the environmental concerns and bearing on the Groundwater Project and its impacts.

88. The BLM's failure and refusal to prepare a supplemental EIS for the Groundwater Project violates NEPA. 40 C.F.R. § 1502.9(c)(1).

89. The BLM's failure to prepare a supplemental EIS for the Groundwater Project constitutes agency action unlawfully withheld and unreasonably delayed pursuant to the APA. 5 U.S.C. § 706(1). The BLM must be compelled to prepare the required supplemental EIS. *Id.*

90. The BLM's decision to not prepare a supplemental EIS for the Groundwater Project is arbitrary, capricious, an abuse of discretion, and not in accordance with NEPA and the procedures required by NEPA. 5 U.S.C. § 706(2). The BLM's decision not to prepare a supplemental EIS must be held unlawful and set aside. *Id.*

**SECOND CLAIM: The BLM Violated NEPA in Preparing the EIS and Authorizing the Groundwater Project**

91. Plaintiff incorporates by reference all preceding paragraphs.

92. In preparing an EIS, agencies must take a "hard look" at the potential environmental consequences of a proposed action, and must consider relevant factors and important aspects of the proposed action. *See Northern Plains Resource Council v. Surface Transp. Board*, 668 F.3d 1067, 1074-75 (9<sup>th</sup> Cir. 2011).

93. Information in an EIS must be of high quality, and accurate scientific analysis is viewed as essential to implementing NEPA. 40 C.F.R. § 1500.1(b); *see also* 40 C.F.R. § 1502.24 (agencies must insure the scientific integrity of the analysis in an EIS).

94. In the EIS for the Groundwater Project, the BLM violates NEPA by failing to consider a number of relevant factors concerning the potential environmental consequences of the proposed action, including the following:

- a) the EIS fails to analyze and consider the environmental consequences resulting from drawdowns of less than ten feet in the analysis of impacts to water resources, aquatic habitat, wetlands, and other resources resulting from groundwater pumping;
- b) the EIS fails to adequately consider the substantial time lag between the cessation of pumping in a particular watershed, the extent of the resulting overdraft, and the future stabilization and recovery of groundwater levels;
- c) the EIS fails to establish numeric, quantifiable thresholds or otherwise accurately define what would represent an unreasonable and unacceptable impact to resources and trigger the cessation of groundwater pumping in each watershed;
- d) the EIS fails to analyze and consider impacts lasting longer than 200 years even though the right-of-way would be issued in perpetuity, and groundwater pumping impacts could last hundreds to thousands of years;
- e) the EIS fails to adequately analyze and disclose the adverse impacts of the groundwater pumping and drawdown on wetlands; and
- f) the EIS fails to adequately analyze and consider whether the chosen and relied upon mitigation measures will be adequately funded and collectively effective in preventing unacceptable impacts to resources, including but not limited to safe yield and overdraft.

95. In the EIS for the Groundwater Project, the BLM further violates NEPA by under-estimating and understating the drawdown in groundwater that is likely to result from implementation of the Groundwater Project, along with the resulting impacts to aquatic species, water resources, wetlands, and other resources.

96. By not considering and disclosing these important and relevant factors within the Groundwater Project EIS, and under-estimating the likely groundwater drawdown, the BLM

violated NEPA. 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1500-1508. The Groundwater Project Record of Decision is therefore arbitrary, capricious, an abuse of discretion, and contrary to law, and shall be set aside. 5 U.S.C. § 706(2)(A).

**THIRD CLAIM: The BLM Violated NEPA by Failing to Consider the Combined Impacts of the Proposed Action and Climate Change in the EIS**

97. Plaintiff incorporates by reference all preceding paragraphs.

98. NEPA requires agencies to engage in reasonable forecasting when preparing EISs. *Northern Plains Resource Council v. Surface Transp. Board*, 668 F.3d 1067, 1079 (9<sup>th</sup> Cir. 2011). Speculation is implicit in NEPA, and therefore the courts reject attempts by agencies to shirk their responsibilities under NEPA by labeling the discussion of future environmental effects as “crystal ball inquiry.” *Id.*

99. NEPA guidance from the Council on Environmental Quality states that climate change effects should be considered in the EIS for projects that are designed for long-term utility and located in areas that are considered vulnerable to specific effects of climate change within the project’s timeframe.

100. The BLM recognizes in the EIS for the Groundwater Project that the southwestern United States is likely to be a climate change “hotspot” in the coming decades, that recent warming in the Southwest is among the most rapid in the nation, and that the projections indicate continued stronger warming in the region, with significant increases in temperature and decreases in precipitation. The BLM further recognizes that a warmer atmosphere and an intensified water cycle are likely to result in a greater likelihood of drought in the Southwest. The BLM also acknowledges that under such conditions, future impacts could be substantial for some resources, including biodiversity.



101. In the EIS for the Groundwater Project, the BLM does not consider or disclose the combined effects of the Groundwater Project, including groundwater pumping, along with the anticipated climate change impacts. The BLM instead states that due to uncertainties regarding the potential effects of climate change, it was not possible to predict the combined effects of the Groundwater Project and climate change on various resources such as water, groundwater, vegetation and wildlife.

102. Due to the extremely long-term nature of the Groundwater Project, the direct relationship between the proposed action and the anticipated impacts of climate change in the region on water resources, and the location of the proposed action in a climate change hotspot that is already experiencing significant climate change effects, it was arbitrary and unreasonable for BLM to neglect to consider and disclose in the EIS the combined impacts of the Groundwater Project and the anticipated climate change impacts on water, groundwater, vegetation, wildlife and other resources.

103. By not considering the combined impacts of climate change and the proposed Groundwater Project on water, groundwater, wildlife and other resources in the EIS, the BLM violated NEPA. 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1500-1508. The Groundwater Project Record of Decision is therefore arbitrary, capricious, an abuse of discretion, and contrary to law, and shall be set aside. 5 U.S.C. § 706(2)(A).

**FOURTH CLAIM: The BLM Violated NEPA in Authorizing the Groundwater Project by Failing to Consider and Disclose Compliance with the Clean Water Act Section 404(b) Guidelines and Compensatory Mitigation Rule**

104. Plaintiff incorporates by reference all preceding paragraphs.

105. Agencies must consider and disclose in the EIS whether the alternatives that are considered will or will not achieve compliance with other environmental laws and policies. 40

C.F.R. § 1502.2(d). Agencies must also take a “hard look” at the potential environmental consequences of a proposed action, and must consider relevant factors and important aspects of the proposed action. *See Northern Plains Resource Council v. Surface Transp. Board*, 668 F.3d 1067, 1074-75 (9<sup>th</sup> Cir. 2011).

106. Section 404 of the Clean Water Act, and the Section 404(b) Guidelines, impose restrictions on discharges of dredge and fill material. 33 U.S.C. § 1344; 40 C.F.R. § 230.10. No discharge of dredge or fill material is permitted if there is a practicable alternative that would have less adverse impact on the aquatic ecosystem; if the discharge causes or contributes to violations of state water quality standards; if the discharge jeopardizes a threatened or endangered species; if the discharge causes or contributes to significant water degradation; or if appropriate and practicable steps have not been taken which will minimize the potential adverse impacts of the discharge on the aquatic ecosystem. 40 C.F.R. § 230.10.

107. The BLM fails to adequately consider or disclose in the EIS for the Groundwater Project whether or not the project will comply with Section 404 of the Clean Water Act, and the Section 404(b) Guidelines.

108. The EPA and United States Army Corps of Engineers have jointly developed detailed rules for “Compensatory Mitigation for Losses of Aquatic Resources.” 33 C.F.R. Part 332; 40 C.F.R. Part 230, Subpart J. Compensatory mitigation for unavoidable impacts may be required to ensure that an activity requiring a Section 404 permit complies with the Clean Water Act Section 404(b)(1) Guidelines. 33 C.F.R. § 332.1(c)(2); 40 C.F.R. § 230.91(c)(2). Moreover, it may be determined that a Clean Water Act Section 404 permit cannot be issued because of the lack of appropriate and practicable compensatory mitigation options. 33 C.F.R. § 332.1(c)(3); 40 C.F.R. § 230.91(c)(3).

109. The required compensatory mitigation must generally be located within the same watershed. 33 C.F.R. § 332.3(b); 40 C.F.R. § 230.93(b). A minimum one-to-one acreage compensation ratio must be used, and a ratio greater than one-to-one may be necessary. 33 C.F.R. § 332.3(f); 40 C.F.R. § 230.93(f).

110. The BLM fails to adequately consider or disclose in the EIS for the Groundwater Project whether the project will comply with the mandatory Compensatory Mitigation Rule.

111. By failing to consider and disclose whether or not the Groundwater Project will comply with the Clean Water Act Section 404(b) Guidelines and Compensatory Mitigation Rule, the BLM failed to comply with NEPA in developing the EIS for the Groundwater Project. 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1500-1508. The Groundwater Project Record of Decision is therefore arbitrary, capricious, an abuse of discretion, and contrary to law, and shall be set aside. 5 U.S.C. § 706(2)(A).

**FIFTH CLAIM: BLM Violated FLPMA by Authorizing A Permanent Right-of-Way In White Pine County**

112. Plaintiff incorporates by reference all preceding paragraphs.

113. Pursuant to FLPMA, a permanent right-of-way for a water system is only allowed if the right-of-way is issued by the Secretary of Agriculture and would be located on National Forest System lands, under certain limited circumstances. 43 U.S.C. § 1761(c).

114. For each right-of-way or permit issued by BLM pursuant to FLPMA, the right-of-way or permit must be limited to a reasonable term in light of all circumstances concerning the project. 43 U.S.C. § 1764(b). The right-of-way must specify whether it is or is not renewable and the terms and conditions applicable to the renewal. *Id.*

115. Congress has authorized the Secretary of Interior to issue permanent rights-of-way in Clark County and Lincoln County. *See* Lincoln County Conservation, Recreation, and

Development Act of 2004, Section 301(b); Southern Nev. Public Land Management Act of 1998, Section 4(b)(2). No statute authorizes the Secretary of Interior or BLM to issue a permanent right-of-way for a water pipeline in White Pine County.

116. Any regulation promulgated by BLM pursuant to FLPMA that purports to authorize a permanent right-of-way or easement for a water system on federal public lands managed by the BLM within White Pine County is contrary to FLPMA and unlawful.

117. The Groundwater Project Record of Decision states that the pipeline right-of-way is issued in perpetuity for Clark, Lincoln, and White Pine Counties. The right-of-way within White Pine County is not limited to a reasonable term.

118. In authorizing the issuance of a permanent pipeline right-of-way within White Pine County, the BLM Record of Decision for the Groundwater Project violates FLPMA. 43 U.S.C. § 1761(c); 43 U.S.C. § 1764(b). The Groundwater Project Record of Decision is therefore arbitrary, capricious, an abuse of discretion, and contrary to law, and shall be set aside. 5 U.S.C. § 706(2)(A).

**SIXTH CLAIM: The Groundwater Project in White Pine County Violates FLPMA's Mandate to Manage the Public Lands Under Principles of Multiple Use and Sustained Yield**

119. Plaintiff incorporates by reference all preceding paragraphs.

120. Pursuant to FLPMA, the Secretary of Interior shall manage the public lands under principles of multiple use and sustained yield, in accordance with the applicable land use plan, except where a tract of public land has been dedicated to specific uses according to any other provisions of law. 43 U.S.C. § 1732(a); *see also* 43 U.S.C. § 1701(7).

121. Multiple use is defined as the management of public lands and their various resource values so that they are utilized in the combination that will best meet the present and

future needs of the American people, taking into account the long-term needs of future generations for renewable and nonrenewable resources, and without permanent impairment of the productivity of the land and quality of the environment. 43 U.S.C. § 1702(c). Sustained yield is defined as the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use. 43 U.S.C. § 1702(h).

122. No statute or any other provision of law overrides or conflicts with FLPMA's multiple use and sustained yield mandate for the public lands managed by BLM within White Pine County.

123. The Groundwater Project Record of Decision authorizes a permanent right-of-way and related groundwater pumping in White Pine County that fails to comply with the principles of multiple use and sustained yield, in violation of FLPMA. 43 U.S.C. § 1732(a).

124. The permanent right-of-way and related groundwater pumping in White Pine County authorized by the Groundwater Project will result in the permanent and irreversible impairment of the productivity of the land and the quality of the environment. The Groundwater Project will result in the permanent impairment of renewable and nonrenewable resources within White Pine County including water, springs, groundwater, wetlands, and wildlife habitat. The Groundwater Project will result in widespread and irreversible declines in groundwater over time, accompanied by reductions in natural discharge, including within White Pine County.

125. In developing and prior to authorizing the Groundwater Project, the BLM failed to consider a number of relevant factors concerning the impacts of the project on multiple use and sustained yield. For instance, the BLM failed to consider the future needs of the American people, including the future residents of White Pine County and the surrounding areas; failed to

consider the long-term needs of future generations for renewable and nonrenewable resources; and failed to consider the achievement and maintenance in perpetuity of a high-level or regular periodic output of the groundwater and other resources in White Pine County.

126. In authorizing the issuance of a permanent right-of-way and groundwater pipeline within White Pine County, the BLM's Record of Decision for the Groundwater Project violates FLPMA. 43 U.S.C. § 1732(a). The Groundwater Project Record of Decision is therefore arbitrary, capricious, an abuse of discretion, and contrary to law, and shall be set aside. 5 U.S.C. § 706(2)(A).

**SEVENTH CLAIM: The BLM Failed to Demonstrate Compliance with the Ely District Resource Management Plan for the Groundwater Project in White Pine County, in Violation of FLPMA**

127. Plaintiff incorporates by reference all preceding paragraphs.

128. Pursuant to FLPMA, the Secretary of Interior is required to manage the public lands in accordance with the applicable resource management plan. 43 U.S.C. § 1732(a); 43 U.S.C. § 1712. All resource management authorizations and actions must comply with the applicable resource management plan. 43 C.F.R. § 1610.5-3(a).

129. The BLM has failed to demonstrate that the authorized permanent right-of-way and related groundwater pumping within White Pine County will comply with all applicable standards and guidelines of the Ely District Resource Management Plan, including the mandatory provisions specified above in this Complaint. The BLM has therefore failed to demonstrate that the Groundwater Project within White Pine County will comply with all applicable standards and guidelines of the Ely District Resource Management Plan.

130. In authorizing the issuance of a permanent right-of-way and related groundwater pumping within White Pine County, the BLM Record of Decision for the Groundwater Project

violates FLPMA. 43 U.S.C. § 1732(a); 43 U.S.C. § 1712; 43 C.F.R. § 1610.5-3(a). The Groundwater Project Record of Decision is therefore arbitrary, capricious, an abuse of discretion, and contrary to law, and shall be set aside. 5 U.S.C. § 706(2)(A).

**REQUEST FOR RELIEF**

The Center respectfully requests that the Court grant the following relief:

A. Order, declare, and adjudge that the BLM violated the National Environmental Policy Act in failing and refusing to prepare a supplemental EIS for the Clark, Lincoln, and White Pine Counties Groundwater Development Project;

B. Order, declare, and adjudge that the BLM violated the National Environmental Policy Act, the Federal Land Policy and Management Act, and the Administrative Procedure Act in developing and authorizing the Clark, Lincoln, and White Pine Counties Groundwater Development Project;

C. Reverse and set aside the December 2012 Record of Decision for the Clark, Lincoln, and White Pine Counties Groundwater Development Project;

D. Enjoin the BLM from implementing the Clark, Lincoln, and White Pine Counties Groundwater Development Project pending full compliance with the law;

E. Enter such other temporary, preliminary, and/or permanent injunctive relief as may be requested hereafter by the Center;

F. Award the Center its reasonable costs, litigation expenses, and attorney fees associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and

G. Grant such further relief as the Court deems just and proper in order to remedy Defendants' violations of law.

Dated this 12<sup>th</sup> day of February.

Respectfully submitted,

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