



February 4, 2014

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Dear Administrator Huerta, Director Pickard, Manager Williams, Director Halikowski, and
Manager Klein,

- RE: 1. Ongoing violation of the National Environmental Policy Act (“NEPA”) by the
FAA at the Sierra Vista Muni-Libby AAF Airport (FHU); and
2. This correspondence serves as a **CEASE and DESIST NOTICE to FAA
and ADOT** to stop spending of federal funds related to Taxiway “J” at the
Sierra Vista Muni-Libby AAF Airport.

The Center for Biological Diversity (“Center”) is a non-profit, public interest,
conservation organization with more than 675,000 members and online activists dedicated to the
protection of endangered species and wild places.

The City of Sierra Vista covets 203 acres of Fort Huachuca land the lies immediately
north of the existing Sierra Vista Muni-Libby airport footprint.

“The primary goal in the updated master plan is the same goal that the city had in 1996
– acquire 203 acres from Fort Huachuca to allow for expansion...”¹

¹ “Panel approves airport updates approved Master plan now goes to SV City Council for final vote,” David Rupkalvis, Sierra
Vista Herald, July 17, 2002.

“...The council also unanimously adopted the updated Airport Master Plan as a component of Vista 2010, the city's master plan. The airport plan outlines projects the city hopes to accomplish at the airport over the next 20 years.

A lot of the major projects hinge on a successful transfer of 203 acres of land from Fort Huachuca to the city...”²

“The stage two improvements in the master plan are almost all predicated on the city getting the 203 acres...

"Everything is all contingent on getting the land," Hemesath said. "The only thing we have available right now is seven acres. The first five years depend on when and if we get the land."

The proposed changes and improvements would cost more than \$37 million. The majority of the funds would come from federal grants, with the state also pitching in some money...”³

“‘It has a potential to be a huge economic engine for the city...’ said Jon Nelson, president of the city’s Airport Commission...

The master plan for the airport is on hold right now because there is no new land readily available, Potucek said. The city needs to find out what Fort Huachuca decides to do with 200 acres of land north of the airport before much planning for facilities can be done.”⁴

In 2001 and 2002, FAA attempted to sponsor expansion of the Sierra Vista Muni-Libby AAF Airport by transferring 203 acres of Fort Huachuca land to the City of Sierra Vista for development. FAA failed in these efforts because mitigation cannot be provided to prevent damage from the development on the San Pedro River and its dependent threatened and endangered species.

On February 1, 2002, “In the Final EA [Environmental Analysis] and this FONSI/ROD, the FAA has identified Alternative A3 in the Final EA as the FAA's "preferred alternative." Alternative A3 is to “Acquire 203 Acres North of the Airport.”⁵ An Environmental Analysis or an Environmental Impact Statement is necessary pursuant to the National Environmental Policy Act (NEPA) for all federal actions significantly affecting the environment.

² “Two council members defend city’s water efforts and spending,” David Rupkalvis, Sierra Vista Herald; July 26, 2002.

³ “SV moves ahead with airport plans: Hemesath says projects are flexible enough to adapt with a possible land transfer from Fort Huachuca, David Rupkalvis, Sierra Vista Herald; July 10, 2002.

⁴ “Money-making potential of Sierra Vista airport highlighted at work session,” Adam Curtis, Sierra Vista Herald, July 20, 2010.

⁵ See [1] Environmental Assessment for the Transfer and Development of 203 Acres of Property Adjacent to Sierra Vista Municipal Airport Prepared for the City of Sierra Vista, Federal Aviation Administration and the U.S. Department of the Army by Coffman Associates, Inc.; October 2001.; and, [2] Finding of No Significant Impact and Record of Decision (FONSI) for Proposed Transfer of 203 Acres of Federal Land to the city of Sierra Vista Municipal Airport; U.S. Department of Transportation Federal Aviation Administration Western-Pacific Region, Hawthorne, California; February 1, 2002.

FAA's February 1, 2002, finding of no significant impact resulting from the expansion of the airport was a lie. It was a lie because the transfer of the 203 acres of Federal land for expansion of the Sierra Vista airport will directly and indirectly, greatly increase the excessive local groundwater pumping that threatens to destroy the Upper San Pedro River and its dependent threatened and endangered species.

The Upper San Pedro River has been designated by the U.S. Congress as the Upper San Pedro Riparian National Conservation Area (SPRNCA) managed by the U.S. Bureau of Land Management.⁶

On March 29, 2002, the Center for Biological Diversity appealed FAA's FONSI.

On April 10, 2002, the Center for Biological Diversity filed a Notice of Intent to Sue FAA, and the U.S. Army for failing to protect the San Pedro River, SPRNCA and the threatened and endangered species affected by groundwater development interrelated and interdependent to the land transfer. (ATTACHED) On June 11, 2002, the U.S. Army notified the Center for Biological Diversity "that the Army has decided to set aside this transfer of property and will terminate further processing of this action." The U.S. Army withdrew its attempt to transfer the 203 acres after, on April 8, 2002, the Center won another lawsuit against the Army again establishing that the Army is failing to protect the San Pedro River and its dependent threatened and endangered species from its River-damaging groundwater dependent activities.⁷ The Army has still not protected the San Pedro from its River-damaging groundwater dependent activities.⁸

Subsequently, in 2002, FAA dropped its efforts to expand Sierra Vista Muni-Libby airport.

At least we thought this was the case.

On January 27, 2014, we discovered that FAA has not dropped its efforts to expand the Sierra Vista Muni-Libby airport. FAA is working on the transfer surreptitiously in violation of environmental law by funding building of the airport infrastructure upon which successful development on the transferred land depends. NEPA requires that there be no piecemealing of the evaluation or the undertaking of the federal activities to avoid public scrutiny.

We have received no scoping inquiries regarding the construction and/or development of Sierra Vista Muni-Libby airport taxiway "J," and its relationship to the development of the coveted transfer land and the effects of these actions on the San Pedro River and its dependent threatened and endangered species.

On January 27, 2014, on the City of Sierra Vista website: (http://www.sierravistaaz.gov/egov/documents/1390432150_70007.pdf), on PDF page 43, in the City of Sierra Vista Capital Improvement Plan FY2014-15 Capital Project Submittal Form (CPSF) for Sierra Vista Muni-Libby AAF Airport (FHU) we find:

"1. Department: Public Works

⁶ Arizona-Idaho Conservation Act of 1988; Public Law 100-696[S. 280]; November 18, 1988.

⁷ Center for Biological Diversity, et al. Plaintiffs, v. Donald H. Rumsfeld, Secretary of Defense, et al., Defendants, Coalition of Arizona/New Mexico Coalition of Counties for Stable Economic Growth, Defendant-Intervenors; CIV99-203 TUC ACM, United States District Court for the District of Arizona; 198 F. Supp. 2d 1139; 2002 U.S. Dist. LEXIS 7419; 54 ERC (BNA) 1391; 32 ELR 20640; April 8, 2002, Decided; April 11, 2002, Filed.

⁸ Center for Biological Diversity, et al., Plaintiffs, v. Kenneth L. Salazar, et al., Defendants; No. CV 07-484-TUC-AWT; May 28, 2011; 2011 WL 2160254 (D.Ariz.).

2. Department Priority:
3. Project Working Title: Design Taxiway “J”, “A”, and “B” Extension Phases 4 and 5
4. Project Location: Sierra Vista Municipal Airport
5. Project Description: The Taxiway “J”, “A”, and “B” Extension Phases 4 and 5 is a continuation of the overall Taxiway “J” project which will create a civilian side parallel taxiway to Runway 08/26 and complement the existing military side Taxiway “P”. *Taxiway “J” will ultimately open up land north of the airport for future development.*
6. Area and Population Served: The entire City of Sierra Vista
7. *Summary of Project Previously Submitted: Taxiway “J” Phase 1 Extension was completed in 2007, and Phases 2 and 3 were completed in 2010. Phases 4 and 5 will complete the Taxiway “J” project in its entirety.*
8. Strategic Plan Goal and/or Objective: Transportation
9. Project Justification:
 - a. Requirement/Need: *All developable land to the south of the main Runway 08/26 is consumed by military operations. This project will make developable land available on the north side of Runway 08/26.*
 - b. Sense of Urgency: Taxiway “J” is eligible for federal and state airport funding and will enable development north of Runway 08/26.
 - c. Empirical Data: The Sierra Vista Airport Master Plan identified this project as eligible for ADOT and FAA funding assistance.
 - d. Intangible **Benefit: Improved military and civilian employment opportunity and business potential from the completion of Taxiway “J.”** “ [EMPHASIS ADDED]

Further investigation beyond the City of Sierra Vista’s Capital Improvement Plan FY2014-15, yields very troubling findings. In Arizona Department of Transportation’s (ADOT’s) Five-Year Airport Development Program FY 2010 – 2014, we find,

“FY 2011 Federal/State/Local Grants...Airport Name: Sierra Vista Muni-Libby AF...Project Component: Taxiways: Rehabilitate Taxiway – Reconstruct...County: Cochise...Project Description: Construct Twy J realignment between Rwy 12/30 & Twy G...State Share: \$87,500...Local Share: \$87,500; Federal Share: \$3,325,000.”

In ADOT’s 2011 – 2015 Five Year Airport Captital Improvement Program, we find,

“Airport Projects – by County...Cochise County; Airport Name: Sierra Vista Muni-Libby AAF; Project Component: FY 2013 Taxiways: Construct Taxiway – Capacity; Project Description: Design approx. 4,200 lf by 75 ft wide of Twy J Extension Project, Phase IV. Twy J Extension Project will create civilian side parallel Twy to the main Rwy 08/26.; State Share: \$7,500...Local Share: \$7,500; Federal Share: \$300,000.”

In ADOT's 2012 – 2016 Five-Year Transportation Facilities Construction Program, Airport Projects – by Airport, we find,

“Airport Name: Sierra Vista Muni-Libby AAF; County: Cochise; FY 2013; Project Component: Planning: Conduct <Environmental Assessment/Environmental Impact Statement/Feasibility> <study update>; Project Description: EA of approx. 4,200 lf x 75 ft wide of Twy J extension project, Ph. 4. Twy J extension project will create a civilian side parallel Twy to main Rwy 08/26.; State Share: \$7,500...Local Share: \$7,500; Federal Share: \$265,000.”; and

“Airport Name: Sierra Vista Muni-Libby AAF; County: Cochise; FY 2015; Project Component: Taxiways: Construct Taxiway – Capacity; Project Description: Construct approx. 4,200 lf x 75 ft of Twy J extension – Ph 4. The Twy J extension project will create a civilian side parallel Twy to main Rwy 08/26.; State Share: \$87,500...Local Share: \$87,500; Federal Share: \$3,500,000.”

In ADOT's 2013 – 2017 Five-Year Transportation Facilities Construction Program Airport Capital Improvement Program, Airport Projects – by Airport, we find,

“Airport Name – County: Sierra Vista Muni-Libby AAF – Cochise; FY 2013; Project Component: Planning: Conduct <Environmental Assessment/Environmental Impact Statement/Feasibility> <study/update>; Project Description: EA of approx. 4,200 lf x 75 ft wide of Twy J extension project, Ph. 4. Twy J extension project will create a civilian side parallel Twy to main Rwy 08/26.; State Share: \$17,880...Local Share: \$17,880; Federal Share: \$364,240.”; and

“Airport Name: Sierra Vista Muni-Libby AAF; County: Cochise; FY 2016; Project Component: Taxiways: <Extend/Widen/Strengthen> Taxiway – Standards; Project Description: Design approx. 4,200 lf x 75 ft of Twy J extension – Ph 4. Twy J extension project will create a civilian side parallel to main Rwy 08/26.; State Share: \$20,115; Local Share: \$20,115; Federal Share: \$409,770.”; and,

“Airport Name: Sierra Vista Muni-Libby AAF; County: Cochise; FY 2017; Project Component: Taxiways: Construct Taxiway – Capacity; Project Description: Construct approx. 4,200 lf x 75 ft of Twy J extension – Ph 4. Twy J extension project will create a civilian side parallel Twy to main Rwy 08/26.; State Share: \$156,450; Local Share: \$156,450; Federal Share: \$3,187,100.”

In ADOT's Five-Year Transportation Facilities Construction Program FY 2014 – 2018; Airport Projects – by Airport, we find,

“Airport Name: Sierra Vista Muni-Libby AAF; County: Cochise; FY 2016; Project Component: Taxiways:<Extend/Widen/Strengthen> Taxiway – Standards; Project Description: Design approx. 7,000 lf x 75 ft wide of Twy J extension, 2,000 lf of adjoin Twy A & B Ph. 4 Twy J extension project will create a civilian side parallel Twy to main Rwy 08/26.;... State Share: \$20,115; Local Share: \$20,115; Federal Share: \$409,770.”; and

“Airport Name: Sierra Vista Muni-Libby AAF; County: Cochise; FY 2017; Project Component: Taxiways:<Construct Taxiway - Capacity; Project Description: Constr. approx. 4,500 lf x 75 ft wide of Twy J extension Ph. 4 and adjoin 1,000 lf of Twy B extension. The Twy J extension project will create a civilian side parallel Twy to

main Rwy 08/26.”... State Share: \$100,575; Local Share: \$100,575; Federal Share: \$2,048,850.”

ADOT Five-Year Program documents are not readily available prior to 2010.

The fact that “[t]axiway “J” will ultimately open up land north of the airport for future development” relates directly to FAA’s previous efforts to help transfer this “developable land” land from the Department of Defense to the City of Sierra Vista in 2001 and 2002.⁹ On February 1, 2002, FAA issued a “Finding of No Significant Impact [FONSI] and Record of Decision for the Proposed Transfer of 203 Acres of Federal Land to the City of Sierra Vista for Further Development of Sierra Vista Municipal Airport.”

FAA funding of Sierra Vista Muni-Libby AAF Airport’s expansion activities should have already triggered NEPA compliance studies, especially for taxiway “J.” NEPA mandates that all federal agencies take a "hard look" at the environmental implications of their actions or non-actions.¹⁰

The court determines whether or not a non-federal project is a “major federal action” by considering three factors; (1) whether the project is federal or non-federal, (2) whether the project receives significant federal funding, and (3) when the project is undertaken by a non-federal party, whether the federal agency must undertake "affirmative conduct" before the non-federal party may act.¹¹ A non-federal project is generally considered a "major federal action" if it cannot begin or continue without prior approval of a federal agency.¹² The use of federal funds for the project is sufficient to bring it under NEPA if (1) the federal financial commitment is clear,¹³ (2) if the federal action “cannot begin or continue without prior approval by a federal agency and the agency possesses authority to exercise discretion over the outcome,”¹⁴ or (3) if an agency's action "may" have a significant impact on the environment.¹⁵

The U.S. Department of Transportation and the FAA “IMPLEMENTING INSTRUCTIONS FOR AIRPORT ACTIONS, Order 5050.4B defines “federal action” as,

“...For ARP [FAA’s Office of Airports], a Federal action may include one or more of the following: ...(1) Conditional, unconditional, or mixed approval of Federal funding for airport planning and development projects, including separate funding of plans and specifications for those projects...”¹⁶

⁹ Environmental Assessment for the Transfer and Development of 203 Acres of Property Adjacent to Sierra Vista Municipal Airport Prepared for the City of Sierra Vista, Federal Aviation Administration and the U.S. Department of the Army by Coffman Associates, Inc.; October 2001.

¹⁰ *Kleppe v. Sierra Club*, 427 U.S. 390,410 n.21 (1976).

¹¹ *Mineral Policy Center v. Norton*, 292 F.Supp.2d 30, 54-55 (D.D.C. 2003), citing *Macht v. Skinner*, 916 F.2d 13 (D.C. Cir. 1990).

¹² *Maryland Conservation Council. Inc. v. Gilchrist*, 808 F.2d at 1042, citing *Biderman v. Morton*, 497 F.2d 1141, 1147 (2nd Cir. 1974); and *Foundation on Economic Trends v. Heckler*, 756 F.2d 143, 155 (D.C. Cir. 1985).

¹³ NEPA LAW AND LITIGATION, Daniel R. Mandelker; Section 8:20 (2nd ed. 2004).

¹⁴ *Sugarloaf Citizens Association v. Federal Energy Regulatory Commission*, 959 F.2d 508,513-14 (4th Cir. 1992).

¹⁵ *National Parks and Conservation Association v. Babbitt*, 241 F.3d 722 (9th Cir. 2001).

¹⁶ U.S. DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) IMPLEMENTING INSTRUCTIONS FOR AIRPORT ACTIONS, ORDER

NEPA requires federal agencies to evaluate the cumulative impacts of their actions in concert with “other past, present, and reasonably foreseeable future actions. . . .”¹⁷ Inclusion of “foreseeable action” in any NEPA evaluation is compulsory for FAA’s overdue NEPA studies concerning FAA funding of the State of Arizona’s plan to expand Sierra Vista Muni-Libby AAF Airport to facilitate and accommodate new San Pedro River-damaging groundwater-dependent development. The U.S. Department of Transportation and the FAA “IMPLEMENTING INSTRUCTIONS FOR AIRPORT ACTIONS,” Order 5050.4B defines “reasonably foreseeable action” as,

“...[a]n action on or off-airport that a proponent would likely complete and that has been developed with enough specificity to provide meaningful information to a decision maker and the interested public.”¹⁸

The FAA “IMPLEMENTING INSTRUCTIONS FOR AIRPORT ACTIONS,” Order 5050.4B further defines “reasonably foreseeable action” as,

“...Off-airport action....The proponent has committed to completing the proposed action. As a result, the action is or will be the subject of a NEPA document, or a Federal, State, local, or Tribal government permit application or approval and would occur within the same time frames as those evaluated for the proposed airport action.

... Would affect all, some, or one of the environmental resources that the proposed action would affect. ... Would occur within the same time frames as the time frames analyzed for the proposed airport action....¹⁹

Sierra Vista Muni-Libby AAF Airport expansion is intimately interrelated to and interdependent with the transfer of land north of the airport from Fort Huachuca to the City of Sierra Vista.²⁰ Failure to do full NEPA studies violates the regulations for implementing NEPA prepared by the Council on Environmental Quality which include evaluation of cumulative, indirect, and direct effects.²¹

5050.4B; http://www.faa.gov/airports/resources/publications/orders/environmental_5050_4/; April 28, 2006; CHAPTER 1. ORDER OBJECTIVES AND DEFINITIONS...9. DEFINITIONS:... g. Federal action.

¹⁷ 40 C.F.R. § 1508.7.

¹⁸ U.S. DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) IMPLEMENTING INSTRUCTIONS FOR AIRPORT ACTIONS, ORDER 5050.4B; ; http://www.faa.gov/airports/resources/publications/orders/environmental_5050_4/; April 28, 2006; CHAPTER 1. ORDER OBJECTIVES AND DEFINITIONS...9. DEFINITIONS:...q. Reasonably foreseeable action.

¹⁹ Ibid.

²⁰ “Money-making potential of Sierra Vista airport highlighted at work session,” Adam Curtis, Sierra Vista Herald, July 20, 2010.; City of Sierra Vista Capital Improvement Plan FY2014-15 Capital Project Submittal Form (CPSF) for Sierra Vista Muni-Libby AAF Airport (FHU), (http://www.sierravistaaz.gov/egov/documents/1390432150_70007.pdf), web accessed January 27, 2014.; Arizona Department of Transportation’s (ADOT’s) Five-Year Airport Development Program FY 2010 – 2014.; ADOT’s 2012 – 2016 Five-Year Transportation Facilities Construction Program, Airport Projects – by Airport; ADOT’s 2013 – 2017 Five-Year Transportation Facilities Construction Program Airport Capital Improvement Program, Airport Projects – by Airport.; ADOT’s Five-Year Transportation Facilities Construction Program FY 2014 – 2018; Airport Projects – by Airport.

²¹ 40 CFR Chapter V Parts 1500 *et. seq.*

For “indirect effects,” 40 CFR 1508.8, states,

“Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.”

CONCLUSION

This correspondence serves as a CEASE and DESIST NOTICE to FAA, and its partner, ADOT, to stop all spending of federal funds related to Sierra Vista Muni-Libby AAF Airport until (a) the requirements of NEPA and ESA are obeyed, and (b) until your harm to the San Pedro River, the San Pedro Riparian National Conservation Area, and their dependent threatened and endangered species is stopped.

Please notify us of your intentions within 10 days (by close of business, February 18, 2014). If you have any further questions about this request, please contact Dr. Robin Silver, by mail at Center for Biological Diversity, PO Box 1178, Flagstaff, AZ 86002; by mail at (602) 799-3275; or by email at rsilver@biologicaldiversity.org.

Sincerely,



Robin Silver, M.D.
Co-Founder and Board Member