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18 **UNITED STATES DISTRICT COURT**
19 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
20 **SAN FRANCISCO DIVISION**

21 THE WILDERNESS SOCIETY;)
BARK; CENTER FOR BIOLOGICAL)
22 DIVERSITY; DEFENDERS OF)
WILDLIFE, GREAT OLD BROADS)
23 FOR WILDERNESS; KLAMATH-) Civil Action No. _____
SISKIYOU WILDLANDS CENTER;)
24 NATIONAL PARKS)
25 CONSERVATION ASSOCIATION;) **COMPLAINT FOR**
NATIONAL TRUST FOR HISTORIC) **DECLARATORY AND**
26 PRESERVATION; NATURAL) **INJUNCTIVE RELIEF**
27 RESOURCES DEFENSE COUNCIL;)
OREGON NATURAL DESERT)
28 ASSOCIATION; SIERRA CLUB;)
SOUTHERN UTAH WILDERNESS)

1 ALLIANCE; WESTERN RESOURCE)
 2 ADVOCATES; WESTERN)
 3 WATERSHEDS PROJECT; COUNTY)
 4 OF SAN MIGUEL, COLORADO)
 5 Plaintiffs,)
 6 v.)
 7 UNITED STATES DEPARTMENT OF)
 8 INTERIOR; KEN SALAZAR, in his official)
 9 capacity as Secretary of the Department of)
 10 Interior; UNITED STATES BUREAU OF)
 11 LAND MANAGEMENT; MIKE POOL, in his)
 12 official capacity as acting director of the)
 13 Bureau of Land Management; UNITED)
 14 STATES DEPARTMENT OF)
 15 AGRICULTURE; TOM VILSACK, in his)
 16 official capacity as Secretary of the)
 17 Department of Agriculture; UNITED STATES)
 18 FOREST SERVICE; TOM TIDWELL, in his)
 19 official capacity as Chief of the Forest Service;)
 20 UNITED STATES DEPARTMENT OF)
 21 ENERGY; STEVEN CHU, in his official)
 22 capacity as Secretary of Energy,)
 23 Defendants.)
 24)
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INTRODUCTION

1. In the Energy Policy Act of 2005, P.L. 109-58 (“EPAct”), Congress directed several federal agencies to develop and designate corridors for the development of pipelines and electricity transmission and distribution facilities on federal public land in the 11 western states, and to “perform any environmental reviews that may be required” for the designation of such corridors. Rather than take this opportunity to transition the region toward a new energy pathway, the agencies – which include the Department of Energy, Department of Interior, Bureau of Land Management, and the Department of Agriculture, U.S. Forest Service (collectively “Agencies”) – created a sprawling, hop-

1 scotch network of 6,000 miles of rights-of-way known as the “West-wide Energy
2 Corridors,” without considering the environmental impacts of that designation, without
3 analyzing *any* alternatives to their preferred pathways, without considering numerous
4 federal policies that support renewable energy development, without ensuring the
5 corridors’ consistency with federal and local land use plans, and without consulting other
6 federal agencies or western states and local governments. As a result, the West-wide
7 Energy Corridors – within which applications to construct pipelines and power lines will
8 be expedited – align with, and perpetuate the use of, coal-fired power plants throughout the
9 West, and leave stranded or underserved and many areas with renewable energy resources.
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12 2. Accordingly, plaintiffs challenge the failure of the defendant Agencies to
13 adequately perform all environmental reviews in designating the West-wide Energy
14 Corridors, including the Agencies’ failure to consider all reasonable alternatives and
15 analyze the environmental consequences of the corridors at the programmatic level, in
16 violation of the Energy Policy Act of 2005 and several federal environmental laws
17 including the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.* (“NEPA”),
18 Federal Land and Policy Management Act, 43 U.S.C. 1763, *et seq.* (“FLPMA”), and
19 Endangered Species Act, 16 U.S.C. § 1531, *et seq.* (“ESA”). *See* U.S. Department of
20 Interior/U.S. Bureau of Land Management, *Approved Resource Plan Amendments/Record*
21 *of Decision for Designation of Energy Corridors on Bureau of Land Management-*
22 *Administered Lands in the 11 Western States* (Jan. 2009) (“BLM ROD”) at 7 (attached
23 hereto) (map depicting approximately 5,000 miles and 957 miles of Section 368 energy
24 corridors on BLM lands and Forest Service lands, respectively).
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1 plaintiffs again notified defendants of ESA violations arising from their issuance of the
2 Records of Decision.

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4 **PARTIES**

5 **A. Plaintiffs**

6 7. Plaintiff THE WILDERNESS SOCIETY is a non-profit national
7 membership organization that works to protect wilderness and to inspire Americans to care
8 for their wild places. Founded in 1935, TWS is headquartered in Washington, D.C. with
9 over 500,000 members and supporters nationwide, more than 170,000 of whom reside in
10 the 11 western states. TWS uses public education, scientific analysis, and advocacy to
11 work towards its mission. TWS attended numerous meetings with the Agencies and
12 submitted comprehensive comments throughout the Agencies' planning process for the
13 West-wide Energy Corridors, including scoping comments, comments on a preliminary
14 map, and comments on the Draft Programmatic Environmental Impact Statement. TWS
15 brings this action on its own behalf and on behalf of its members.

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18 8. Plaintiff BARK is a grassroots organization based in Northwest Oregon that
19 works to preserve the forests, waters, and wildlife of the Mt. Hood National Forest and
20 surrounding regions. Since 1999, Bark has been actively working to protect and restore
21 the ecosystems of Mt. Hood National Forest, and represents over 5,000 supporters who
22 share a connection to this land. Bark collaborates with the U.S. Forest Service and other
23 agencies when possible, holding them accountable to the public interest by encouraging the
24 public to experience Mt. Hood National Forest and participate in land management
25 decisions through commenting and monitoring. Bark has been actively involved in
26 tracking and informing its members and the public about a current proposal by the Federal
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1 Energy Regulatory Commission and the U.S. Forest Service to allow construction of a
2 natural gas pipeline within a segment of the West-wide Energy Corridor that intersects the
3 Mt. Hood National Forest, which is labeled as WWEC 230-248. Bark filed comments on
4 the draft Programmatic Environmental Impact Statement for the West-wide Energy
5 Corridors. Bark brings this action on its own behalf and on behalf of its members.
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7 9. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (“Center”) is a non-
8 profit 501(c)(3) corporation based in Tucson, Arizona with field offices in Alaska,
9 California, Illinois, Minnesota, Nevada, New Mexico, Oregon, Vermont, and Washington,
10 D.C. The Center works through science, law, and policy to secure a future for all species,
11 great or small, hovering on the brink of extinction. The Center is actively involved in
12 species and habitat protection issues worldwide, including throughout the western United
13 States. The Center has over 44,000 members throughout the United States and the world.
14 The Center has members who visit, observe, study, and recreate in areas that are impacted
15 by the West-wide Energy Corridors. Center members are injured by the West-wide Energy
16 Corridors because information about the West-wide Energy Corridors’ environmental
17 consequences was not disclosed to the public or analyzed by the agencies in the PEIS;
18 because West-wide Energy Corridors will impact resources and areas in which Center staff
19 and/or members recreate, observe, or study; and/or because development in the West-wide
20 Energy Corridors will impact the quality of air and water upon which Center members
21 depend. The Center filed comments on the draft Programmatic Environmental Impact
22 Statement for the West-wide Energy Corridors. The Center brings this action on its own
23 behalf and on behalf of its members.
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1 10. Plaintiff DEFENDERS OF WILDLIFE is a national nonprofit organization
2 dedicated to the protection and restoration of all native wild animals and plants in their
3 natural communities. Based in Washington, D.C., and with offices spanning from Florida
4 to Alaska, including locations in Arizona, California, Colorado, Idaho, Montana, New
5 Mexico, and Oregon, Defenders has more than 500,000 members across the nation.
6 Defenders has a long history of advocacy for the protection of BLM and U.S. Forest
7 Service lands. Defenders’ protection efforts include education, legal and policy advocacy,
8 and other efforts. Defenders’ staff and members derive recreational, scientific, aesthetic,
9 educational, moral, spiritual and conservation benefits from visiting and using BLM- and
10 U.S. Forest Service-administered lands throughout the Western United States, and
11 Defenders’ staff and members regularly observe, research, and enjoy wildlife that utilize
12 these lands. Defenders’ staff and members intend to continue their use and enjoyment of
13 the BLM- and Forest Service-administered lands impacted by the designation of West-
14 wide Energy Corridors in the future. The interests of Defenders’ staff and members in
15 enjoying and using the Forest Service- and BLM-administered lands are harmed by the
16 defendants’ designation of the West-wide Energy Corridors. Defenders filed comments on
17 the draft Programmatic Environmental Impact Statement for the West-wide Energy
18 Corridors. Defenders brings this action on behalf of itself and its adversely affected
19 members.
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24 11. Plaintiff GREAT OLD BROADS FOR WILDERNESS (“Great Old
25 Broads”) is a national, non-profit public lands conservation organization that uses the
26 voices and activism of elders to preserve and protect wilderness and wild lands. Great Old
27 Broads bring a unique perspective, and some well-earned wrinkles, to the wilderness
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1 effort. As life-long nurturers and care-givers, the Great Old Broads' approach is one of
2 perseverance and determination, rather than militancy and contentiousness. Representing
3 more than 4,000 members across the nation, Great Old Broads maintains a national office
4 in Durango, Colorado and two dozen volunteer-driven "Broadbands" (chapters) from coast
5 to coast. Great Old Broads, which brings this action on behalf of itself and its adversely-
6 affected members, has a long history of advocacy for the protection of public lands
7 administered by BLM and the Forest Service. Great Old Broads' protection efforts include
8 education, grassroots activism and service projects, monitoring, legal and policy advocacy,
9 and other efforts. Great Old Broads' staff and members derive recreational, scientific,
10 aesthetic, educational, moral, spiritual, and conservation benefits from visiting and using
11 BLM- and Forest Service-administered lands throughout the western United States, and
12 observe, research, and enjoy the plants and wildlife that occur on these public lands. Great
13 Old Broads' staff and members intend to continue their use and enjoyment of the BLM-
14 and Forest Service-administered lands impacted by the designation of the West-wide
15 Energy Corridors in the future. Great Old Broads' members and Board of Directors
16 participated in several of the public hearings regarding the West-wide Energy Corridors,
17 and Great Old Broads submitted comments regarding the West-wide Energy Corridors in
18 February 2008.

23 12. Plaintiff KLAMATH-SISKIYOU WILDLANDS CENTER ("KS Wild") is
24 a non-profit organization incorporated in Oregon with offices in Ashland and Williams,
25 Oregon. KS Wild has 1,800 members in over 10 states, with most members concentrated
26 in southern Oregon and northern California. KS Wild advocates for the forests, wildlife,
27 and waters of the Rogue and Klamath Basins. KS Wild works to protect and restore the
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1 extraordinary biological diversity of the Klamath-Siskiyou region of southwest Oregon and
2 northwest California, and has been actively engaged throughout the planning process for
3 the West-wide Energy Corridors. KS Wild submitted scoping comments on the West-wide
4 Energy Corridors, as well as comments on the draft Programmatic Environmental Impact
5 Statement for the West-wide Energy Corridors. KS Wild brings this action on its own
6 behalf and on behalf of its members.
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8 13. Plaintiff NATIONAL PARKS CONSERVATION ASSOCIATION

9 (“NPCA”) has been the leading voice of the American people in protecting our national
10 parks since 1919. With 325,000 members and supporters, the nonpartisan NPCA is the
11 largest independent membership organization dedicated to protecting the natural, cultural,
12 and historic treasures of our National Park System. NPCA’s mission is to protect and
13 enhance our national parks today for our children and grandchildren tomorrow. NPCA’s
14 staff and members derive and intend to continue deriving recreational, aesthetic,
15 educational, and conservation benefits from visiting and using national parks throughout
16 the western United States which could suffer significant negative impacts from defendants’
17 designation of the West-wide Energy Corridors. NPCA submitted comments on the
18 Preliminary Draft Map of Potential Energy Corridors and the West-wide Energy Corridor
19 Programmatic Environmental Impact Statement, and provided testimony for congressional
20 hearings regarding the West-wide Energy Corridors conducted in both the US Senate and
21 US House of Representatives.
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25 14. Plaintiff NATIONAL TRUST FOR HISTORIC PRESERVATION

26 (“National Trust”) is a non-profit organization chartered by Congress in 1949 to “facilitate
27 public participation in the preservation of sites, buildings and objects significant in
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1 American history and culture” and to further the purposes of federal historic preservation
2 laws. 16 U.S.C. §§ 461, 468. With the support of more than 233,000 members
3 nationwide, the National Trust advocates to preserve and protect historic properties
4 throughout the country, including those located on federal public lands. The National
5 Trust has traditionally played a unique role as an advocate in the historic preservation field
6 because as a private organization it can respond to enforcement problems from a national
7 perspective. The National Trust participated in the administrative process associated with
8 the designation of the West-wide Energy Corridors by commenting on the Draft
9 Programmatic Environmental Impact Statement and consulting with the Advisory Council
10 on Historic Preservation and other federal agencies during the review process mandated by
11 Section 106 of the National Historic Preservation Act. 16 U.S.C. § 470f. The National
12 Trust brings this action on its own behalf and on behalf of its members.

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15 15. Plaintiff NATURAL RESOURCES DEFENSE COUNCIL (“NRDC”) is a
16 non-profit environmental membership organization with more than 429,000 members
17 throughout the United States, some 145,000 of whom live in the 11 western states. NRDC
18 members use and enjoy public lands throughout the 11 western states for a variety of
19 purposes, including recreation, solitude, scientific study, and aesthetic appreciation.

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21 NRDC has had a longstanding and active interest in the protection of public lands in the
22 West and, over the years, has participated in a number of court cases involving resource
23 development and management issues, including NEPA and ESA compliance, throughout
24 this region. NRDC has also participated in numerous administrative processes, including
25 rulemakings and reviews of environmental impact statements. NRDC filed comments on
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1 the draft Programmatic Environmental Impact Statement for the West-wide Energy
2 Corridors. NRDC brings this action on its own behalf and on behalf of its members.

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4 16. Plaintiff OREGON NATURAL DESERT ASSOCIATION (“ONDA”) is an
5 Oregon non-profit public interest organization of more than 1,200 members with offices in
6 Portland and Bend, Oregon. ONDA’s mission is to protect, defend, and restore forever the
7 health of Oregon’s native deserts. ONDA and its members participate in information
8 gathering and dissemination, education and public outreach, commenting on proposed
9 agency actions, and other activities relating to BLM’s management and administration of
10 public lands where Oregon’s native deserts occur. ONDA participates in BLM and
11 Department of the Interior proceedings and decisions concerning the management of
12 public lands in eastern Oregon. BLM’s failure or refusal to comply with federal laws and
13 regulations in development of the West-wide Energy Corridors directly affects ONDA and
14 its members’ interests. ONDA brings this action on its own behalf and on behalf of its
15 members and staff, many of whom regularly enjoy and will continue to enjoy the public
16 lands that are affected by segments of the West-wide Energy Corridors for educational,
17 recreational, spiritual, and scientific activities. The interests of ONDA and its members
18 have been and will continue to be injured and harmed by BLM’s actions and/or inactions
19 as complained of herein. Unless the relief prayed for herein is granted, ONDA and its
20 members will continue to suffer on-going and irreparable harm and injury to their interests.
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22 ONDA filed comments on the draft Programmatic Environmental Impact Statement for
23 the West-wide Energy Corridors.
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26 17. Plaintiff SIERRA CLUB is a national non-profit organization of
27 approximately 1.3 million members and supporters dedicated to exploring, enjoying, and
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1 protecting the wild places of the earth; to practicing and promoting the responsible use of
2 the earth's ecosystems and resources; to educating and enlisting humanity to protect and
3 restore the quality of the natural and human environment; and to using all lawful means to
4 carry out these objectives. The Sierra Club has approximately 255,000 members in the 11
5 western states affected by the West-wide Energy Corridors. The Sierra Club's concerns
6 encompass the Agencies' development of corridors that perpetuate business-as-usual
7 energy policies that continue the nation's reliance on fossil fuel-based energy sources and
8 development that threatens western wildlife, public lands, and local communities. The
9 Club's particular interest in this case stem from the Agencies' failure to designate a
10 WWEC that facilitates renewable energy, protects iconic places and at-risk species, and
11 which discloses and analyzes the direct, indirect, and cumulative impacts of the West-wide
12 Energy Corridors. The Sierra Club and many of its local chapters filed comments on the
13 draft Programmatic Environmental Impact Statement for the West-wide Energy Corridors.
14 The Sierra Club brings this action on its own behalf and on behalf of its members.

18 18. Plaintiff SOUTHERN UTAH WILDERNESS ALLIANCE ("SUWA") is a
19 non-profit environmental membership organization dedicated to the sensible management
20 of all public lands within the State of Utah and the preservation and protection of plant and
21 animal species and Utah's remaining wild lands. SUWA has offices in Utah and in
22 Washington, D.C. SUWA has members in all 50 states and several foreign countries.
23 SUWA is also a charter member of the Utah Wilderness Coalition ("UWC"), a coalition of
24 over 200 local and national organizations dedicated to the passage of America's Red Rock
25 Wilderness Act (in the 111th Congress, H.R. 1919/S 1170), which would designate
26 approximately 9.5 million acres of stunning BLM-managed land in Utah as wilderness.
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1 SUWA’s members and staff use and enjoy public lands in and throughout Utah, including
2 Utah’s spectacular national monuments, wilderness study areas, wilderness character areas
3 and other remarkable public lands for a variety of purposes, including scientific study,
4 recreation, wildlife viewing, hunting, aesthetic appreciation, and financial livelihood.
5 These members frequently visit and recreate (*e.g.*, boating, camping, hiking, birding,
6 sightseeing, enjoying solitude, viewing cultural resources) throughout the public lands in
7 Utah, including those public lands affected by the West Wide Energy Corridors located on
8 Utah’s public lands and will continue to do so in the future. SUWA’s members regularly
9 visit and enjoy Utah’s spectacular national parks, monuments including Arches,
10 Canyonlands, Bryce and Zion National Parks and Dinosaur National Monument. SUWA
11 filed comments on the draft Programmatic Environmental Impact Statement for the West-
12 wide Energy Corridors. SUWA brings this action on its own behalf and on behalf of its
13 members.
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17 19. Plaintiff WESTERN RESOURCE ADVOCATES (“WRA”) is a non-profit
18 environmental law and policy organization that was founded in 1989 and is dedicated to
19 restoring and protecting the land, air, water and wildlife resources within the interior
20 western United States (“Interior West”). Specifically, WRA’s team of lawyers, scientists,
21 and economists works to: 1) promote a clean energy future for the Interior West that
22 reduces pollution and the threat of global warming; 2) restore degraded river systems and
23 to encourage urban water providers to use existing water supplies more efficiently; and 3)
24 protect public lands and wildlife throughout the region. WRA is actively engaged in
25 promoting sound electric transmission and energy corridor policies in the western United
26 States to ensure that: (1) power lines and associated rights-of-way/corridors are sited and
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1 constructed properly to ensure protection for sensitive land, water and wildlife resources;
2 and (2) new transmission lines are focused on bringing renewable energy sources like
3 wind, solar and geothermal on line so that we may achieve a balanced and sustained energy
4 policy in the region. The designation of West-Wide Energy Corridors directly and
5 negatively impacts WRA's transmission planning goals and efforts as described above,
6 including WRA's members who recreate and enjoy public lands that will be negatively
7 affected by the corridor designations. WRA was actively involved in the designation
8 process for the West-wide Energy Corridors including submitting scoping comments and
9 comments on the draft Programmatic Environmental Impact Statement. WRA brings this
10 action on its own behalf and on behalf of its members.
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13 20. Plaintiff WESTERN WATERSHEDS PROJECT is a regional, membership,
14 not-for-profit conservation organization, dedicated to protecting and conserving the public
15 lands and natural resources of the American West. Western Watersheds Project has offices
16 in Arizona, California, Idaho, Montana, Utah, and Wyoming, and more than 1,500
17 members located throughout the United States. Through agency proceedings, public
18 education, scientific studies, and legal advocacy conducted by its staff, members,
19 volunteers, and supporters, Western Watersheds Project is actively engaged in protecting
20 and improving wildlife habitat, riparian areas, water quality, fisheries, wildlife, and other
21 resources and ecological values of western watersheds. Western Watersheds Project, and
22 its staff and members, use and enjoy the wildlife, and other natural resources of the public
23 lands, including lands at issue in this project, for many health, recreational, scientific,
24 spiritual, educational, aesthetic, and other purposes. Western Watersheds Project has been
25 engaged in the planning process for the West-wide Energy Corridors and commented on
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1 the draft Programmatic Environmental Impact Statement. Western Watersheds Project
2 brings this action on its own behalf and on behalf of its members.

3 21. Plaintiff COUNTY OF SAN MIGUEL, COLORADO (“County”) is a
4 statutory county pursuant to Title 30 of the Colorado Revised Statutes. San Miguel County
5 is located in southwestern Colorado and is known for its colorful history and scenic beauty
6 that encompasses a diverse region ranging from the rugged mountain resort communities
7 of Telluride and Mountain Village to the arid ranching communities of the County’s west
8 end, Norwood, and Egnar. San Miguel County expends substantial resources to protect the
9 natural resource, aesthetic, and recreational values of the lands and wildlife within the
10 County. Public and private lands located within the County are directly impacted by
11 WWEC 130-274 and its alternative, WWEC 130-274(E), an entirely new multi-modal
12 corridor located near: Naturita Canyon, an area with exceptional scenic qualities; Lone
13 Cone, a significant mountain peak; the Dan Noble State Wildlife Area; and popular
14 recreational areas. The likely paths extending beyond WWEC 130-274 would also impact
15 private lands with high property values and extraordinary scenic qualities and habitat for
16 Gunnison sage-grouse, a highly-imperiled species that is being considered for listing under
17 the ESA and for which the County has worked for years to protect, including by
18 encouraging land uses and purchasing conservation easements to avoid impacts to and
19 protect Gunnison sage-grouse. The designation of WWEC 130-247 impacts tax revenues
20 gained from property taxes because the property values for the private lands across which
21 the WWEC extends will decrease as a result of defendants’ actions. San Miguel County
22 was not adequately consulted by the Agencies about the impacts of WWEC 130-274 to its
23 public or private lands during the Agencies’ preparation of the Programmatic
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1 Environmental Impact Statement for the WWEC, and as a result, the Agencies did not take
2 the County's land use policies into consideration or make the WWEC consistent with those
3 policies.
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5 22. Plaintiffs' use and enjoyment of public and private lands for a variety of
6 purposes are impacted by the West-wide Energy Corridors. Plaintiffs and their members
7 and constituents use, own, develop, obtain revenue from, visit, and recreate on (*e.g.*, camp,
8 hike, bird-watch, sightsee, enjoy solitude, view cultural resources, and engage in scientific
9 study) the lands that comprise and are directly, indirectly, and cumulatively affected by the
10 West-wide Energy Corridors. This includes the 6,000 miles of public lands that are
11 administered pursuant to the 92 BLM land use plans and 38 Forest Service land use plans
12 amended by the Agencies' actions, where the protection of ecological, biological,
13 hydrological, aesthetic, cultural, recreational and other resources are no longer the primary
14 land use or management goal as a result of the Agencies' designation of the West-wide
15 Energy Corridors. It also includes state, tribal, and private lands that are indirectly affected
16 by the West-wide Energy Corridors, which have recreational, socioeconomic, and
17 conservation values and where the corridors' foreseeable paths extend across the
18 landscape. Plaintiffs, and their members and constituents will continue to engage in these
19 uses, ownership, and/or enjoyment of the affected lands in the future. The designation of
20 the West-wide Energy Corridors is intended to expedite development of oil, gas and
21 hydrogen pipelines and electricity transmission and distribution facilities within those
22 corridors. Such development will negatively impact plaintiffs' and their members'
23 continued use and enjoyment of the affected public lands.
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1 23. Plaintiffs and their members and constituents have a substantial interest in
2 seeing that defendants comply with NEPA and its implementing regulations. The
3 Agencies' failure to comply with NEPA and its implementing regulations in the adoption
4 of amendments to 92 BLM land use plans and 38 Forest Service land use plans injures
5 plaintiffs by denying them (and agency decisionmakers) the information that NEPA and
6 Section 368 of the EPO Act require concerning analysis and disclosure of environmental
7 impacts and environmentally-superior alternatives to the adopted amendments. In
8 addition, the Agencies' failure to consider the basic purposes of the EPO Act when
9 developing and designating the West-wide Energy Corridors – *i.e.*, to improve reliability,
10 relieve congestion and enhance grid capability, comply with environmental laws, and
11 consult with interested parties – injures plaintiffs by resulting in the creation of energy
12 corridors that will harm the resources and value of private and public lands without
13 meeting the fundamental purposes that the corridors are intended to serve and without the
14 benefit of information that consultation with other federal agencies, local governments, and
15 interested parties would have provided. Plaintiff San Miguel County is also injured by the
16 uncertainty created by the effect of the corridors to private lands across which WWEC
17 130-274 (and 130-274(E)) reasonably extend, and this uncertainty immediately impacts
18 private property values, and, thus, County revenues gained from property taxes.

23 24. Plaintiffs and their members and constituents have a substantial interest in
24 seeing that federal agencies comply with FLPMA and its implementing regulations.
25 BLM's failure to coordinate with the land use planning and management programs of other
26 federal departments and agencies, and of states and local governments within which the
27 lands are located, injures plaintiffs by failing to assure that "consideration is given" to
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1 relevant state, local, and tribal land use plans and to ensure consistency with those plans
2 “to the extent practical”. 43 U.S.C. § 1712(c)(9). When revising 92 RMPs to incorporate
3 the designation of the West-wide Energy Corridors, BLM failed to consider or resolve
4 inconsistencies with relevant federal energy public land use planning and management
5 activities, and with state and local plans, programs, and policies that: prioritize the
6 production, development, and delivery of renewable energy, including the planning of a
7 comprehensive wind energy development program in 11 western states; and support the
8 exploration and development of geothermal resources, a solar energy development
9 program, and land use codes and land use plans of local governments such as plaintiff San
10 Miguel County.
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13 25. Defendants DOI’s and BLM’s failure to comply with the protest procedures
14 under FLPMA injures plaintiffs by denying them the opportunity to administratively
15 challenge BLM’s decision to amend 92 land use plans to open 5,000 miles of BLM lands
16 to energy development without protecting sensitive areas, species, values, and complying
17 with procedures required by law. DOI’s and BLM’s failure to comply with the protest
18 procedures established by FLPMA and its implementing regulations with respect to the
19 BLM land use plan amendments also injures plaintiffs and their members and constituents
20 by removing essential procedural safeguards meant to ensure that BLM actions amending
21 its land use plans are accountable, are responsive to public concerns, are reasoned rather
22 than arbitrary, and avoid unnecessary litigation.
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25 26. Defendants’ designation of corridors and amendments of land use plans,
26 without ensuring that there will be no jeopardy to listed species or adverse modification to
27 their critical habitat pursuant to section 7(a)(2) of the ESA and its implementing
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1 regulations, injures plaintiffs by risking the conservation of these species and their habitat,
2 including Quino checkerspot butterfly, bonytail chub, Virgin River chub, spikedace, coho
3 salmon, steelhead, Chinook salmon, woundfin, Colorado pikeminnow, bull trout,
4 razorback sucker, arroyo toad, desert tortoise, marbled murrelet, coastal California
5 gnatcatcher, northern spotted owl, Mexican spotted owl, San Bernardino Merriam's
6 kangaroo rat, and Peninsular bighorn sheep – all of which are listed as threatened or
7 endangered under the ESA, and some of which have designated critical habitat that would
8 be crossed by West-wide Energy Corridors. Plaintiffs and their members or constituents
9 have a substantial interest in defendants' compliance with the ESA.
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12 27. Plaintiffs' socioeconomic, recreational, scientific, spiritual, aesthetic, and/or
13 other interests have been, are being – and, unless this Court grants the requested relief –
14 will continue to be harmed and irreparably injured by defendants' actions.
15

16 **B. Defendants**

17 28. Defendant U.S. DEPARTMENT OF THE INTERIOR (“DOI”) is a
18 department of the United States Executive Branch. DOI is responsible for oversight of
19 agencies, including BLM, that administer public lands that have been designated as part of
20 the West-wide Energy Corridors, and is responsible for ensuring that BLM's management
21 of the nation's public lands is in accordance with all applicable laws and regulations.
22

23 29. Defendant KEN SALAZAR is sued in his official capacity as Secretary of
24 the Department of the Interior. Mr. Salazar is responsible for ensuring that lands
25 administered by the Department of Interior, including BLM lands, are managed in
26 accordance with all applicable laws and regulations.
27
28

1 30. Defendant BUREAU OF LAND MANAGEMENT (“BLM”) is an agency
2 within the Department of Interior responsible for administering 256 million acres of
3 federal public land, including certain lands designated as part of the West-wide Energy
4 Corridors, in accordance with all applicable laws and regulations. BLM was a lead agency
5 in the preparation of the PEIS for the West-wide Energy Corridors.
6

7 31. Defendant MIKE POOL is sued in his official capacity as Acting Director
8 of the BLM. Mr. Pool is responsible for ensuring that lands administered by BLM are
9 managed in accordance with all applicable laws and regulations.
10

11 32. Defendant UNITED STATES DEPARTMENT OF AGRICULTURE
12 (“DOA”) is a department of the United States Executive Branch. DOA is responsible for
13 oversight of agencies, including the Forest Service that administer public lands that have
14 been designated as part of the West-wide Energy Corridors, and is responsible for ensuring
15 that the Forest Service’s management of the nation’s public lands is in accordance with all
16 applicable laws and regulations.
17

18 33. Defendant TOM VILSACK is sued in his official capacity as Secretary of
19 the United States Department of Agriculture. Mr. Vilsack is responsible for ensuring that
20 lands administered by the Department of Agriculture, including Forest Service lands, are
21 managed in accordance with all applicable laws and regulations
22

23 34. Defendant UNITED STATES FOREST SERVICE (“Forest Service”) is an
24 agency within the Department of Agriculture. The Forest Service administers the nation’s
25 155 national forests and 20 national grasslands. The Forest Service is responsible for
26 managing its lands, including certain lands designated as part of the West-wide Energy
27
28

1 Corridors, in accordance with all applicable laws and regulations. The Forest Service was
2 a cooperating agency in the preparation of the PEIS for the West-wide Energy Corridors.

3 35. Defendant TOM TIDWELL is sued in his official capacity as Chief of the
4 United States Forest Service. Mr. Tidwell is responsible for ensuring that lands
5 administered by the Forest Service are managed in accordance with all applicable laws and
6 regulations.
7

8 36. Defendant UNITED STATES DEPARTMENT OF ENERGY (“DOE”) is
9 an agency of the United States concerned with the nation’s policies regarding energy.
10 DOE’s mission includes the promotion of America’s energy security through reliable,
11 clean, and affordable energy. DOE was a lead agency in the preparation of the
12 Programmatic Environmental Impact Statement for the West-wide Energy Corridors.
13

14 37. Defendant STEVEN CHU is sued in his official capacity as Secretary of the
15 United States Department of Energy. Mr. Chu is responsible for ensuring that the DOE
16 comply with its statutory obligations, including obligations under the Energy Policy Act of
17 2005.
18

19 **STATUTORY BACKGROUND**

20 **A. The Energy Policy Act of 2005 (“EPAact”)**

21 38. On August 8, 2005, the President signed into law the Energy Policy Act of
22 2005 (“EPAact”). P.L. 109-58.
23

24 39. Section 368 of the EPAact directs the Secretaries of Agriculture, Commerce,
25 Defense, Energy, and Interior – in consultation with the Federal Energy Regulatory
26 Commission, States, tribal or local units of governments as appropriate, affected utility
27 industries, and other interested persons – to designate corridors for oil, gas and hydrogen
28

1 pipelines and electricity transmission and distribution facilities on federal land, beginning
2 with 11 western States (Arizona, California, Colorado, Idaho, Montana, Nevada, New
3 Mexico, Oregon, Utah, Washington, and Wyoming). 42 U.S.C. § 15926(a). Collectively,
4 these corridors have come to be known as the “West-wide Energy Corridors” or “WVEC.”
5

6 40. Section 368 further directs the Agencies to “perform any environmental
7 reviews required to complete the designation” of the West-wide Energy Corridors, and to
8 formalize the designations by “incorporat[ing] the designated corridors into the relevant
9 agency land use and resource management plans or equivalent plans.” 42 U.S.C.
10

11 §§ 15926(a)(2) and (3).

12 41. Section 368 directs the Agencies to designate the West-wide Energy
13 Corridors within two years of the EAct’s enactment, and to designate similar corridors on
14 federal land in the remaining states within four years. 42 U.S.C. §§ 15926(a) and (b).
15

16 42. In designating energy corridors on federal land, Section 368 requires the
17 Agencies to “take into account the need for upgraded and new electricity transmission and
18 distribution facilities to (1) improve reliability; (2) relieve congestion; and (3) enhance the
19 capability of the national grid to deliver electricity.” 42 U.S.C. § 15926(d). In addition,
20 the Agencies must “at a minimum, specify the centerline, width, and compatible uses of
21 the corridor.” 42 U.S.C. § 15926(e).
22

23 43. Once corridors are designated, Section 368 imposes ongoing responsibilities
24 on the Agencies. Within designated corridors the Agencies are obligated to “expedite
25 applications to construct or modify oil, gas, and hydrogen pipelines and electricity
26 transmission and distribution facilities . . . taking into account prior analyses and
27 environmental reviews....” 42 U.S.C. § 15926(c)(2). The Agencies must also ensure that
28

1 additional corridors are “promptly identified and designated as necessary.” 42 U.S.C.
2 § 15926(c)(1).

3
4 44. Section 1221 of the EPCA, 16 U.S.C. § 824p, requires the DOE Secretary
5 to conduct a study of electric transmission congestion and designate as a “national interest
6 electric transmission corridor” (“NIETC”) “any geographic area experiencing electric
7 energy transmission capacity constraints or congestion that adversely affects consumers.
8 *Id.* § 824p(a)(2). DOE finalized a congestion study in 2007 that identified a large area in
9 California and Arizona as a NIETC, within which electric transmission projects are
10 therefore now subject to an abridged approval process that allows for FERC to grant
11 permits to site and operate energy transmission lines and related facilities using expedited
12 environmental reviews led by DOE. *Id.* § 824p; 71 Fed. Reg. 36258 (June 26, 2006) (draft
13 regulations for siting projects in NIETCs issued by FERC); 71 Fed. Reg. 45047 (Aug. 8,
14 2006) (draft congestion study issued for comment by DOE); 72 Fed. Reg. 56992 (Oct. 5,
15 2007) (congestion study finalized).

16
17
18 **B. Federal Land Policy and Management Act (FLPMA)**

19 45. FLPMA establishes requirements for land use planning on public lands
20 managed by BLM. 43 U.S.C. §§ 1701-1785. FLPMA requires BLM to “prepare and
21 maintain on a continuing basis an inventory of all public lands and their resource and other
22 values, 43 U.S.C. § 1711(a), and requires BLM to use this inventory to “develop, maintain,
23 and when appropriate, revise land use plans” in order to ensure that public lands
24 management is conducted “on the basis of multiple use and sustained yield.” 43 U.S.C.
25 §§ 1701(a)(7). FLPMA also requires BLM to manage public lands in accordance with
26
27
28

1 these land use plans – also known as “resource management plans” (“RMPs”). 43 U.S.C.
2 § 1732(a); 43 C.F.R. § 1610.5-3(a).

3 46. FLPMA and its implementing regulations set forth the processes by which
4 BLM land use plans are to be developed, approved, maintained, amended, and revised.
5 *See* 43 C.F.R. Part 1600. When developing and revising land use plans, FLPMA requires
6 that BLM, “to the extent consistent with the laws governing the administration of the
7 public lands, coordinate the land use inventory, planning, and management activities of or
8 for such lands with the land use planning and management programs of other Federal
9 departments and agencies and of the States and local governments within which the lands
10 are located.” 43 U.S.C. § 1712.

11 47. The implementing regulations for FLPMA further provide that “[p]ublic
12 notice and opportunity for participation in resource management plan preparation ... shall
13 be provided” at specific points in the planning process, including at the point of
14 “[p]ublication of the proposed resource management plan and final environmental impacts
15 statement”, which “triggers the opportunity for protest.” 43 C.F.R. § 1610.2(f)(4)
16 (emphasis added); *see also id.* § 1610.5-2 (protest procedures). Additionally, the
17 regulations provide that a proposed resource management plan cannot be approved until
18 final action has been completed on any protests. 43 C.F.R. § 1610.5-1(b).

19 48. FLPMA also establishes guidelines for granting federal rights-of-ways to
20 private entities that entitle them to develop public land. 43 U.S.C. §§ 1763-1764. FLPMA
21 directs federal agencies to grant rights-of-way in order to “minimize adverse
22 environmental impacts” and “the proliferation of separate rights-of-way” by utilizing
23 rights-of-way “in common” “to the extent practicable.” 43 U.S.C. § 1763.

1 **C. National Environmental Policy Act (NEPA)**

2 49. Congress enacted NEPA to “promote efforts which will prevent or
3 eliminate damages to the environment.” 42 U.S.C. § 4321. To achieve this goal, NEPA
4 requires federal agencies to fully consider and disclose the environmental consequences of
5 an agency action before proceeding with that action. *Id.* § 4332(2)(C); 40 C.F.R.
6 §§ 1501.2, 1502.5. Agencies’ evaluation of environmental consequences must be based on
7 “accurate scientific information” of “high quality.” 40 C.F.R. § 1500.1(b). In addition,
8 federal agencies must notify the public of proposed projects and allow the public the
9 chance to comment on the environmental impacts of their actions. 40 C.F.R. § 1506.6.
10
11

12 50. The cornerstone of NEPA is the environmental impact statement (“EIS”).
13 An EIS is required for all “major Federal actions significantly affecting the quality of the
14 human environment.” 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.4. It must provide a “full
15 and fair discussion of significant environmental impacts and . . . inform the decisionmakers
16 and the public of reasonable alternatives which would avoid or minimize adverse impacts
17 or enhance the quality of the human environment.” 40 C.F.R. § 1502.1.
18

19 51. In the EIS, the federal agency must identify the direct, indirect, and
20 cumulative impacts of the proposed action, consider alternative actions and their impacts,
21 and identify all irreversible and irretrievable commitments of resources associated with the
22 proposed action. 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1508.7, 1508.8, 1502.14. Direct
23 effects are those “which are caused by the action and occur at the same time and place.”
24 40 C.F.R. § 1508.8(a). Indirect effects are “caused by the action and are later in time or
25 farther removed in distance, but are still reasonably foreseeable.” *Id.* § 1508.8(b).
26 Cumulative impacts are impacts from “past, present and reasonably foreseeable future
27
28

1 actions regardless of what agency (Federal or non-Federal) or person undertakes such other
2 actions.” *Id.* § 1508.7. “Cumulative impacts can result from individually minor but
3 collectively significant actions taking place over a period of time.” *Id.*

4
5 52. NEPA requires agencies to consider “alternatives to the proposed action.”
6 42 U.S.C. § 4332(C)(iii) & (E). The discussion of alternatives is the “heart” of the NEPA
7 process and is intended to provide “a clear basis for choice among options by the
8 decisionmaker and the public.” 40 C.F.R. § 1502.14.

9
10 53. NEPA also requires agencies to disclose and analyze measures to mitigate
11 the impacts of proposed actions. 40 C.F.R. §§ 1502.14(f), 1502.16(h). An agency’s
12 analysis of mitigation measures must be reasonably complete in order to properly evaluate
13 the severity of the adverse effects of an agency’s proposed action prior to the agency
14 making a final decision.

15
16 **D. Endangered Species Act (ESA)**

17 54. Recognizing that the nation’s “species of fish, wildlife, and plants are of
18 aesthetic, ecological, educational, historical, recreational, and scientific value to the Nation
19 and its people,” 16 U.S.C. § 1531(a)(3), Congress enacted the ESA in 1973 with the
20 express purpose of providing both a “means whereby the ecosystems upon which
21 endangered and threatened species depend may be conserved” and “a program for the
22 conservation of such endangered species.” *Id.* § 1531(b). The Supreme Court has
23 recognized that the ESA “is the most comprehensive legislation for the preservation of
24 endangered species ever enacted by any nation.” *Tennessee Valley Authority v. Hill*, 437
25 U.S. 153, 174, 180 (1978) (“*TVA v. Hill*”). As the Court found in *TVA v. Hill*, “the plain
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1 intent of Congress in enacting this statute was to halt and reverse the trend toward species
2 extinction, whatever the cost.” *Id.* at 184.

3
4 55. Principal responsibilities for implementing the requirements of the Act have
5 been delegated to the U.S. Fish and Wildlife Service (“USFWS”), an agency within DOI,
6 and to the fisheries division of the National Oceanic and Atmospheric Administration,
7 (“NOAA Fisheries”), an agency within the Department of Commerce (collectively
8 “Services”). USFWS is responsible for implementing the ESA for terrestrial species. 16
9 U.S.C. § 1532(15); 50 C.F.R. §§ 402.01. NOAA Fisheries (also known as “NMFS”) is
10 responsible for implementing the ESA for marine species. *Id.*

11
12 56. Section 7(a)(2), 16 U.S.C. § 1536(a)(2), is a critical component of the
13 ESA’s statutory and regulatory scheme to conserve endangered and threatened species.
14 Section 7(a)(2) and its implementing regulations require, among other things, that every
15 federal agency determine whether its actions “may affect” any endangered or threatened
16 species. *Id.*; 50 C.F.R. Part 400. To make this determination, any agency considering
17 whether to authorize, fund, or undertake an activity must ask the Services whether any
18 listed species are present in the area of the proposed action (the “action area”). 16 U.S.C.
19 § 1536(c)(1). The “action area” includes all areas that will be “affected directly or
20 indirectly by the Federal action and not merely the immediate area involved in the action.”
21 50 C.F.R. § 402.02. If the action “may affect” listed species, unless it is determined that
22 the actions are unlikely to “adversely affect” the species, the agency must formally consult
23 with NOAA Fisheries or USFWS in order to “insure” that the actions that they fund,
24 authorize, or undertake “[are] not likely to jeopardize the continued existence of any
25 endangered species or threatened species or result in the destruction or adverse
26
27
28

1 modification” of their designated “critical habitat.” 16 U.S.C. § 1536(a)(2); 50 C.F.R. Part
2 400.

3 57. Section 11 of the ESA contains a citizen suit provision under which
4 plaintiffs bring ESA claims in this case. *See id.* §§ 1540(g), 1540(g)(1).
5
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10 **ALLEGATIONS**

11 **A. Development of PEIS for the West-wide Energy Corridors**

12 58. The Agencies determined “that designating corridors as required by Section
13 368 of the [EPAct] constitutes a major Federal action which may have a significant impact
14 upon the environment within the meaning of [NEPA].” 70 Fed. Reg. 56647 (Sep. 28,
15 2005). Accordingly, the Agencies commenced development and designation of the West-
16 wide Energy Corridor by announcing their intent to develop a Programmatic
17 Environmental Impact Statement (“PEIS”) pursuant to NEPA and beginning a 60-day
18 formal scoping period on September 28, 2005. *Id.* at 56647-49. DOE and BLM were
19 identified as co-lead agencies, with the Forest Service participating as a cooperating
20 agency. *Id.*
21
22

23 59. Many plaintiffs submitted scoping comments on November 23, 2005,
24 recommending that the Agencies conduct an adequate NEPA analysis at the landscape
25 level and take into account cumulative, connected and similar actions, including other
26 programmatic efforts affecting the same lands and resources. These comments also
27
28

1 recommended that the NEPA analysis consider development that would be facilitated by
2 the Agencies' designation of the West-wide Energy Corridors.

3
4 60. In their scoping comments, plaintiffs identified the need for the Agencies to
5 consider a range of alternatives in order to identify the alternative that would most limit the
6 adverse environmental impacts of the designated corridors. Plaintiffs also identified areas
7 that should be excluded from corridors and emphasized the importance of collecting and
8 making available geographic information system ("GIS") data concerning these lands, such
9 as: designated Wilderness; Wilderness Study Areas; National Monuments; National Parks;
10 Forest Service Roadless Areas; National Wildlife Refuges; citizen-proposed wilderness
11 areas; areas with exceptional scenic and aesthetic qualities; threatened, endangered, and
12 sensitive species habitat; and critical cores and linkages for wildlife. For these areas,
13 plaintiffs either submitted GIS data or identified sources for the Agencies to contact for the
14 information.
15

16
17 61. The Agencies released a preliminary map of the proposed West-wide
18 Energy Corridors for a 30-day public comment period in June 2006. The map did not
19 provide detailed information about the specific locations or types of lands impacted. The
20 map also only delineated the corridors as they cross federal public land, hop-scotching over
21 interspersed private, state, and tribal lands.
22

23 62. In comments submitted to the Agencies on July 10, 2006, many plaintiffs
24 reiterated their concerns with the corridors' apparent crossing of lands with conservation
25 values, the lack of clear information on corridor locations and impacts, the need for the
26 Agencies to consider environmentally-sensitive alternatives, and the need to ensure that
27
28

1 corridors were only designated where needed as demonstrated by, for example, congestion
2 studies being conducted in connection with the designation of NIETCs.

3 63. The Agencies issued the Draft Programmatic Environmental Impact
4 Statement for the West-wide Energy Corridors (“Draft PEIS”) on November 16, 2007,
5 which proposed to designate approximately 6,000 miles of corridors encompassing 3
6 million acres of public lands. 72 Fed. Reg. 64591 (Nov. 16, 2007).

7
8 64. Plaintiffs and many others attending public meetings in January and
9 February 2008 raised numerous concerns with the draft proposal including, but not limited
10 to, concerns about: proposed corridor routes; the lack of information concerning the
11 corridors’ impacts; the Agencies’ lack of consultation with other federal agencies, states,
12 tribes, and local governments; and the Agencies’ failure to consider and develop
13 alternatives that would have less environmental damage and/or support renewable energy
14 development.
15

16
17 65. On February 14, 2008, San Miguel County and the other plaintiffs
18 submitted comprehensive comments on the Draft PEIS that addressed its significant legal
19 deficiencies.

20
21 66. Plaintiffs’ comments expressed concern that the proposed corridors would
22 impermissibly cross or impact lands with high conservation, scenic, natural, and other
23 values, such as the Sevilleta National Wildlife Refuge in New Mexico, the Snake River-
24 Birds of Prey National Conservation Area in Idaho, the Lower Deschutes Wild and Scenic
25 River in Oregon, Grand Staircase-Escalante National Monument and Arches National Park
26 in Utah, and Naturita Canyon in San Miguel County, Colorado. Plaintiffs also emphasized
27 the complete failure of the Draft PEIS to acknowledge or consider GIS data on proposed
28

1 wilderness and national land use policies and local land use plans that plaintiffs had
2 submitted to the Agencies.

3 67. Plaintiffs emphasized the failure of the proposed WWEC to meet the
4 EPA's fundamental purposes, which are to designate corridors in order to improve
5 reliability, relieve congestion, and enhance the capability of the national grid.
6

7 68. Plaintiffs criticized the Agencies' failure to "take into consideration national
8 and state land use policies" in designating the corridors, as required under FLPMA. *See* 43
9 U.S.C. § 1763 (mandating that "in designating right-of-way corridors and in determining
10 whether to require that rights-of-way be confined to them, the Secretary concerned shall
11 "take into consideration national and State land use policies" and other factors). For
12 example, plaintiffs pointed out that BLM and the Forest Service – the two federal agencies
13 with the most lands directly affected by the WWEC – have enacted policies and committed
14 to encourage the use of renewable energy on public lands. San Miguel County also
15 pointed out that proposed WWEC 130-274 would reasonably extend across private lands
16 that are occupied by the highly-imperiled Gunnison sage-grouse, which is under consider
17 for listing as threatened or endangered under the ESA, and stated that placing an energy
18 corridor in occupied habitat "flies in the face of substantial conservation efforts on behalf
19 of the Gunnison Sage Grouse undertaken by County government and private partnerships."
20 San Miguel County also noted that its own land use policies would favor siting any
21 WWEC segments passing through its boundaries in a western portion of the County, where
22 the population is sparser.
23
24
25

26 69. Plaintiffs also criticized the Agencies' failure to consider alternatives other
27 than the Agencies' favored West-wide Energy Corridors, such as alternatives supporting
28

1 renewable energy, energy conservation, and energy efficiency. The one action alternative
2 developed by the Agencies aligned the corridors with virtually every existing and proposed
3 coal plant throughout the West but did not similarly consider any alternatives that would
4 support development of renewable energy resources, which are constrained by geographic
5 location. Plaintiffs also pointed out that any need for certain corridors could be obviated
6 altogether by increased efficiency of existing capacity. Plaintiffs proposed specific
7 alternatives that should have been considered by the Agencies, including realignment of
8 corridors, consideration of limited use for corridors near conservation lands, and
9 alternatives that would avoid impacts to natural resource, ecological, aesthetic, and
10 recreational values. Many of these concerns were reiterated and supported by other
11 commenters, such as the State of New Mexico and American Wind Energy Association,
12 and those with technical expertise, such as Utility System Efficiencies, Inc.

13
14
15 70. Plaintiffs criticized the Agencies' refusal to consider the environmental
16 consequences of the West-wide Energy Corridors as required by NEPA, including: the
17 direct effects of the corridors on federal lands; the indirect effects of the corridors' likely
18 paths on State, tribal, county, and private lands; the indirect effects resulting from the
19 proposed corridors' facilitation of continued dependence on coal-fired power plants and
20 other fossil fuels; and the cumulative effects of the corridors, including but not limited to
21 the cumulative effect to wildlife due to habitat fragmentation occurring at the landscape
22 level.
23
24

25 71. Many comments on the Draft PEIS noted the Agencies' refusal to comply
26 with the ESA's section 7(a)(2) consultation requirement, including comments submitted by
27 plaintiffs and other environmental organizations. This same flaw was noted by state and
28

1 federal agencies and local governments, including: California Department of Fish and
2 Game; Colorado Division of Wildlife; County of San Diego, State of California; and
3 plaintiff San Miguel County.
4

5 72. In addition, NOAA Fisheries specifically noted that “ESA consultation
6 requirements are triggered when a proposed Federal action ‘may affect’ ESA listed species
7 or their critical habitat” and stated that the agency did “not agree with the [Agencies’]
8 conclusion” that designation of corridors has no effect to ESA-listed species.
9

10 73. On April 15, 2008, the Subcommittee on National Parks, Forests, and
11 Public Lands and Subcommittee on Energy and Mineral Resources of the House Natural
12 Resources Committee held a joint oversight hearing on the West-wide Energy Corridors
13 process. Oral and written testimony emphasized the Agencies’ failures to consult with
14 state, tribal, and local governments such as the Hualapai Indian Tribe of Arizona, San
15 Miguel County, and the village of Placitas, New Mexico. Testimony from the State of
16 New Mexico, Interwest Energy Alliance, and Southern California Edison emphasized the
17 Agencies’ failure to take into account renewable energy development and the lack of
18 corridors’ facilitation of this development. Testimony also focused on unacceptable
19 impacts to lands with important conservation values.
20
21

22 74. On November 20, 2008, the Agencies issued the Final Programmatic
23 Environmental Impact Statement for the West-wide Energy Corridors (“Final PEIS”). 73
24 Fed. Reg. 72521 (Nov. 28, 2008). The Agencies made only minor changes to the West-
25 wide Energy Corridors in the Final PEIS.
26

27 75. In its Notice of Availability (“NOA”) for the Final PEIS and proposed land
28 use plan amendments for BLM lands, BLM stated that the DOI Assistant Secretary of

1 Interior for Land and Minerals Management is the “responsible official for publishing the
2 proposed plan amendments affecting public lands,” and as such, the NOA “is the final
3 decision” for the DOI. 73 Fed. Reg. 72521 (Nov. 28, 2008). Thus, according to the NOA,
4 “[t]his decision is not subject to administrative review (protest) under the BLM (DOI) land
5 use planning regulations.” *Id.* at 72525.
6

7 76. Although the Secretary of Interior eliminated the statutorily-guaranteed
8 opportunity for public protests, on October 31, 2008, the BLM initiated the 60-day
9 Governors’ Consistency Review of the Final PEIS pursuant to 43 C.F.R. § 1610.3-2, which
10 affords governors of states affected by BLM land use plans or amendments 60 days to
11 review RMPs and amendments, “identify inconsistencies” with State or local plans, and
12 provide recommendations in writing. 43 C.F.R. § 1610.3-2(e). BLM received letters from
13 the Governors of Idaho, New Mexico, Utah, Montana, and Wyoming. New Mexico
14 Governor Bill Richardson’s consistency review highlighted the Agencies’ failure to
15 accommodate renewable energy; protect conservation lands, such as citizen-proposed
16 wilderness and National Wildlife Refuges; and consult with local governments, such as the
17 City of Las Cruces.
18
19

20 77. On January 14, 2009, former BLM Director James Caswell signed the ROD
21 for the WWEC, which amended 92 BLM land use plans to incorporate designation of the
22 Section 368 energy corridors.
23

24 78. On January 14, 2009, former USDA Undersecretary Mark Rey signed a
25 ROD amending 38 National Forest Land Management plans to incorporate designation of
26 the Section 368 energy corridors.
27
28

1 79. The RODs constitute final agency action for the designation of the Section
2 368 energy corridors on federal public lands in the 11 Western States.

3 **B. The WWEC Final PEIS**

4 80. Although the Agencies made some minor changes from the Draft PEIS, in
5 the Final PEIS for the WWEC the Agencies did not remedy the numerous legal
6 deficiencies highlighted by other federal agencies, state agencies, local governments, state
7 governors, and plaintiffs.

8
9 ***I. WWEC PEIS Alternatives***

10 81. Although NEPA requires federal agencies to consider a reasonable range of
11 alternatives to their proposed activities, the Agencies only considered two alternatives in
12 connection with the WWEC: the “no action” alternative, where no corridors would have
13 been designated, and the “proposed action,” which was comprised of the sole corridor
14 network that was developed, considered, and ultimately designated by the Agencies.

15
16 82. The Final PEIS does identify numerous alternatives that were proposed by
17 the public, *see* Final PEIS at 2-48 to 2-52, but states that the Agencies ultimately refused to
18 consider any of them because they believed that none would “meet the purpose and need of
19 Section 368, support designation of federal energy corridors, or address the energy
20 transmission congestion issues of the electricity transmission grid in the West.” *Id.* at 2-
21 48. In an appendix to the Final PEIS, the Agencies attempt to explain further their refusal
22 to consider any other action alternative, by claiming summarily that their chosen approach
23 was “the only reasonable, rational, and feasible way” to comply with EPAct Section 368.
24
25 *Id.* at Volume IV, page 17.

1 83. The Agencies eliminated important issues from detailed study in the
2 alternatives section of the Final PEIS, such as the need for increased transmission of
3 energy and for effective mitigation measures, for limiting developments to upgrades of
4 existing transmission structures in sensitive landscapes, and for siting corridors to support
5 renewable energy development and transmission.
6

7 **2. WVEC PEIS Consideration of Environmental Impacts**

8 84. The Final PEIS “includes an analysis of types of potential impacts that
9 could result from a typical energy transmission project, irrespective of its location on the
10 landscape,” but does not contain any analysis of the actual impacts of designating
11 particular energy corridors across particular landscapes. *Id.* at S-11. The Final PEIS also
12 fails to assess the corridors’ direct, indirect, and cumulative environmental effects to
13 affected resources in combination with changing environmental conditions resulting from
14 climate change.
15

16 85. The Agencies acknowledged that the corridor segments on federal lands
17 will eventually connect by crossing state, private, and tribal lands. *Id.* at 3-32.
18 Nevertheless, the Final PEIS does not assess the direct, indirect, and cumulative impacts of
19 the corridors to nonfederal lands – including impacts to natural resources, wildlife and
20 plants, scenic values, and recreational opportunities – between the designated corridors on
21 federal public lands.
22

23 86. Although the West-wide Energy Corridors align with virtually every
24 existing and proposed coal-fired power plant in the 11 western states, the Final PEIS does
25 not consider or disclose those plants’ collective contribution to the problem of climate
26 change. Similarly, the Final PEIS does not consider the climate impacts from increased oil
27
28

1 and gas development activities that are reasonably foreseeable impacts of the development
2 and use of pipelines within the WWEC, including pipelines for liquefied natural gas, which
3 has a greater carbon impact than domestic and conventional natural gas. *See generally id.*
4 at 4-42 to 4-51.
5

6 **3. WWEC PEIS Consideration of Cumulative Impacts and Connected**
7 **Actions**

8 87. The Final PEIS acknowledged that NEPA requires the Agencies to consider
9 the connected, cumulative, and similar actions, as well as the cumulative impacts of the
10 WWEC when added to other past, present and “reasonably foreseeable” actions. *Id.* at 4-4
11 to 4-42. Yet, the Final PEIS does not address numerous connected, cumulative, similar
12 actions, or other actions, including, *inter alia*, the TransWest Express, Rockies Express and
13 Ruby pipelines, BLM’s Programmatic Vegetation Treatment EIS and Environmental
14 Report, BLM’s Wind Energy Development Programmatic EIS, the BLM and Forest
15 Service Programmatic EIS for Geothermal Leasing in the Western United States, and the
16 Western Oregon Plan Revisions covering six BLM districts.
17

18 **4. WWEC PEIS Consideration of Mitigation Measures**
19

20 88. The Final PEIS identifies the need for mitigation measures to address
21 potential impacts of projects sited in the corridors. *Id.* at 3-35. The Final PEIS also
22 identifies general types of mitigation measures that could be used. *Id.* at 3-35 to 3-36.
23 Additional types of mitigation measures are also identified for each of the affected
24 resources listed in Chapter 3, but the chapter describes only “standard mitigation
25 measures” whose implementation is not required by the Agencies. *Id.* at 3-2 (standard
26 mitigation measures “*may be used*”) (emphasis added). The Final PEIS does not provide
27
28

1 an analysis of, or discuss the scientific support for, the measures. The Final PEIS also does
2 not consider specific mitigation measures that were proposed by plaintiffs.

3 **4. WWEC PEIS Consideration of National and Local Land Use Policies**

4
5 89. In their comments on the draft PEIS for the WWEC, plaintiffs informed the
6 Agencies that FLPMA requires the Agencies to consider national, state and local land use
7 policies when designating the corridors. The Agencies did not, however, address certain
8 policies in the Final PEIS.

9
10 90. BLM, DOE, and the Forest Service have developed numerous policies to
11 encourage the development and transmission of certain types of renewable energy on
12 public lands that were not considered in the designation of the WWEC, including the
13 following policies.

14 a. In 2003, BLM began a planning process to amend, develop, and implement
15 a comprehensive wind energy development program in 11 western states and to
16 amend 52 BLM land use plans to adopt the new program. 68 Fed. Reg. 59814
17 (Oct. 17, 2003). This planning process culminated in the development of a
18 programmatic EIS for a wind energy development program in the western U.S., for
19 which BLM signed a ROD in December 2005. DOI/BLM, *Record of Decision,*
20 *Implementation of a Wind Energy Development Program and Associated Land Use*
21 *Plan Amendments* (Dec. 2005).

22
23
24 b. In 2007, BLM announced it would take steps to boost geothermal leasing in
25 areas with high potential for near-term exploration and development of geothermal
26 resources, 72 Fed. Reg. 32679 (June 13, 2007), and in 2008 BLM and the Forest
27 Service signed a Record of Decision that amended 114 BLM RMPs and
28

1 specifically delineated federal public lands as open or closed to possible geothermal
2 leasing applications. DOI/BLM and U.S. Department of Agriculture/Forest
3 Service, *Record of Decision and Resource Management Plan Amendments for*
4 *Geothermal Leasing in the Western United States* (Dec. 2008).

5
6 c. In May 2008, DOI, BLM, and DOE began preparation of a PEIS to evaluate
7 solar energy development on public lands, to develop and implement programs for
8 solar energy projects, and to amend federal land use plans to establish a BLM solar
9 energy development program in areas or zones with the fewest resource conflicts to
10 facilitate the development of solar energy more quickly. 73 Fed. Reg. 30907 (May
11 29, 2008). On April 27, 2009, BLM announced that the release of the Draft PEIS
12 for Solar Energy Development, which was originally scheduled for the spring of
13 2009, will be postponed until fall of 2009 in order to allow BLM to consider results
14 of a transmission study that has been initiated by the Western Governors'
15 Association, and to more closely align the proposed alternatives in the Draft PEIS
16 with the DOI Secretary's recently-announced policies for renewable energy
17 development on public lands. On Tuesday, June 30, 2008, BLM announced that it
18 will re-open the scoping period for the Draft PEIS, as it is planning to withdraw
19 about 680,000 acres of public lands from all other uses while it determines which
20 areas are appropriate for solar-energy development. See 74 Fed. Reg. 31307 (June
21 30, 2008). Through this process, DOI and BLM will evaluate 24 specific areas
22 with high development potential for solar energy. *Id.*

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27 91. In addition to the many federal policies favoring expedited development of
28 renewable energy on public lands, state and local governments also have official plans,

1 policies and programs to encourage renewable energy development. The Western
2 Governors' Association has commenced a process to involve stakeholders in delineating
3 areas with high quality and developable renewable energy resources. Eight of the 11
4 western states that are directly affected by the WWEC have renewable energy portfolio
5 standards, requiring them to obtain certain amounts of energy from renewable sources.
6 Many of these states have also created programs and agencies to assist in siting renewable
7 energy projects or transmission. For example, California has a Renewable Energy
8 Transmission Initiative underway, and New Mexico has created a Renewable Energy
9 Transmission Authority, which submitted comments on the Draft WWEC PEIS and voiced
10 concerns with the Agencies' failure to develop corridors in a manner that supports the
11 State's efforts. San Miguel County has adopted a Land Use Code and Comprehensive
12 Development Plan which prioritize the use and development of renewable energy while
13 minimizing adverse impacts of development to species like the Gunnison sage-grouse and
14 other values.
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18 92. Despite the clear relationship between these federal and non-federal policies
19 and the West-wide Energy Corridors, the Agencies did not incorporate any of the policies
20 into the decisionmaking process for the West-wide Energy Corridors, *e.g.*, by including
21 any alternatives to the chosen corridors that promote the transmission of renewable energy
22 resources.
23

24 **6. *The Agencies' Failure to Ensure No Jeopardy or Adverse Modification***
25 ***Through ESA Section 7(a)(2) Consultation***

26 93. Within the "project area" of the WWEC (*i.e.*, within those counties directly
27 impacted by designated corridors), there are 154 plant and 175 animal species that are
28 listed as threatened or endangered under the ESA, proposed for listing, or candidates for

1 listing. *See* Final PEIS at Appendix R. These include but are not limited to the Quino
2 checkerspot butterfly, bonytail chub, Virgin River chub, spikedace, coho salmon,
3 steelhead, Chinook salmon, woundfin, Colorado pikeminnow, bull trout, razorback sucker,
4 arroyo toad, desert tortoise, marbled murrelet, coastal California gnatcatcher, northern
5 spotted owl, Mexican spotted owl, San Bernardino Merriam’s kangaroo rat, and Peninsular
6 bighorn sheep – all of which are listed as threatened or endangered under the ESA, and
7 some of which have designated critical habitat that would be crossed by the West-wide
8 Energy Corridors. The Agencies acknowledged that such species may be directly affected
9 by land disturbance, construction, or operation of energy transport systems within the
10 West-wide Energy Corridors, and indirectly affected by erosion, harassment, noise, spread
11 of invasive species, and increased human access. *See id.* at R-3, Table 3.8-10.

14 94. During the public comment period for the Draft PEIS, NOAA Fisheries
15 informed the Agencies that corridors in Washington and Oregon directly overlap and/or
16 cross designated critical habitat for ESA-listed salmonids. For example, NOAA Fisheries
17 noted that the corridors cross habitat for four populations of upper Columbia River
18 steelhead, two of three populations of upper Columbia River spring-run Chinook salmon,
19 and Puget Sound Chinook and steelhead. In light of this, NOAA Fisheries recommended
20 that DOE (a lead agency in the preparation of the WWEC) “should engage in a
21 consultation with NMFS pursuant to the ESA on the proposed designation of energy
22 corridors.”

25 95. Despite these effects to ESA-listed species and NOAA Fisheries’ comment
26 that the Agencies should engage in section 7(a)(2) ESA consultation to consider them, the
27 Agencies did not consult with USFWS or NOAA Fisheries, and claimed that ESA section
28

1 7 consultation is not required. Final PEIS at Volume IV: Comments and Responses at 13
2 (Topic 4.1).

3 **7. Specific WWEC Segments**

4 96. Although the Final PEIS slightly adjusted several corridors to avoid
5 particular conservation lands, the vast majority were unchanged from the Draft PEIS, and
6 many of the WWEC segments will significantly impact public lands in ways that were not
7 considered in the PEIS. The Final PEIS also failed to consider alternatives and mitigation
8 measures that could have avoided or substantially reduced these impacts on public lands.
9

10 97. WWEC 130-274 is a new multi-modal corridor that bisects plaintiff San
11 Miguel County and is located near: Naturita Canyon, an area with exceptional scenic
12 qualities; Lone Cone, a significant mountain peak; the Dan Noble State Wildlife Area; and
13 popular recreational areas. The likely paths extending beyond WWEC 130-274 (and its
14 alternate route, WWEC 130-274(E)) would also impact private lands with extraordinary
15 scenic qualities and habitat for the Gunnison sage-grouse, a highly-imperiled species that is
16 being considered for listing under the ESA and for which the County has worked for years
17 to protect. The PEIS does not disclose or consider the impacts of WWEC 130-274 to these
18 areas and resources.
19

20 98. WWEC 101-263 tracks the Van Duzen River, a major tributary of the Eel
21 River, and goes through the Six Rivers National Forest. The Van Duzen River is a popular
22 recreational and fishing destination and supports threatened and endangered populations of
23 steelhead, chinook, and coho salmon. The PEIS does not disclose or consider the impacts
24 of WWEC 101-263 to these imperiled fish or other resources.
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1 99. WWEC 230-248 crosses wetlands, ascends and descends mountains, and
2 traverses three Wild and Scenic River corridors in the Mt. Hood National Forest. Because
3 most of WWEC 13-274 (and the alternate route, WWEC 130-274(E)) does not track any
4 locally designated rights-of-way, construction of transmission lines, pipelines, and related
5 facilities within the corridor will result in impacts to relatively undisturbed areas. Such
6 impacts could include a 47-mile long, 100 to 150-foot wide construction corridor clearcut,
7 50 feet of which will be permanently cleared of growth using herbicides. This corridor
8 will destroy mature and old-growth forest stands set aside to protect the northern spotted
9 owl and result in the construction of new roads, including roads in one area where over one
10 hundred miles of road were recently removed by the Forest Service because of their
11 impacts. WWEC 230-248 also crosses the highly-popular Pacific Crest Trail as well as
12 streams, creeks, and rivers that provide critical habitat for ESA-protected populations of
13 salmon and clean drinking water for communities downriver. WWEC 230-248 will
14 support the construction of a specific natural gas pipeline project that will have reasonably
15 foreseeable environmental impacts. The PEIS does not disclose or consider these impacts.

19 100. WWEC 24-228 lies between the Alvord Desert and Bowden Hills
20 Wilderness Study Areas (“WSA”) and habitat for greater sage-grouse on BLM lands in
21 Oregon. The PEIS and maps do not depict these units and the PEIS does not disclose the
22 proximity of these or other WSAs that are located within one mile of WWEC 24-228.

24 101. WWEC 7-24 is located in eastern Oregon and runs through an area known
25 as the East-West Gulch, an area with wilderness values acknowledged by the BLM. The
26 PEIS does not disclose the existence of these values (despite plaintiffs’ repeated
27

1 submission of applicable GIS data) or discuss how the designation of WVEC 7-24 will
2 affect them.

3 102. WVEC 68-116 runs through Grand Staircase-Escalante National
4 Monument in Utah. This segment also intersects with the Paria River in Southern Utah,
5 which has been classified as Wild and Scenic River Act (“WSRA”)-suitable in BLM’s
6 Monument Management Plan. The Paria River encompasses scenic, recreational, wildlife,
7 geological, historic, and riparian values. From the intersection point with the corridor, the
8 Paria flows immediately through the Paria Canyon/Vermillion Cliffs Wilderness Area and
9 then to the Colorado River. The Monument Management Plan for the Grand Staircase-
10 Escalante National Monument (“MMP”) states that “BLM will safeguard the remote and
11 undeveloped character of the Monument, which is essential to the protection of the
12 scientific and historic resources.” MMP at iv. The majority of the area is classified as
13 Visual Resource Management Class II, which requires BLM to retain the existing character
14 of the landscape and to ensure that the level of change to the characteristic landscape
15 should be low, not attracting the attention of the casual observer. *Id.* at 60-61. WVEC 68-
16 116 is inconsistent with the management priorities of the Monument and risks damage to
17 its myriad natural and cultural values. This corridor’s impacts to the remote and
18 undeveloped character of the Grand Staircase-Escalante National Monument were not
19 disclosed or considered in the WVEC PEIS.

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24 103. WVEC 133-142 runs through the northern portion of the Yampa River unit
25 of the Colorado’s Canyon Country Wilderness Proposal. This corridor does not follow a
26 road, would be 3,500-feet wide, and would be open to all uses. The Canyon Country
27 Wilderness Proposal includes a 17-mile stretch of the Yampa River west of Milk Creek as
28

1 it meanders past Duffy Mountain. Extensive wildlife populations include dozens of bald
2 eagles wintering along the river and large numbers of deer and elk foraging on the area's
3 winter range. Brood-rearing grounds for greater sage-grouse are found in rolling
4 sagebrush steppe along the area's southwestern edge, and hikers and boaters frequently spy
5 pronghorn along the hillsides flanking the river. This segment of the Yampa River
6 contains critical habitat for the endangered Colorado pikeminnow as well. None of these
7 values or the ways in which WVEC 133-142 will affect them were disclosed or considered
8 in the PEIS, despite plaintiffs' repeated submission of applicable GIS data highlighting the
9 potential conflicts.
10
11

12 104. WVEC 81-272 crosses through Sevilleta National Wildlife Refuge in New
13 Mexico, which is home to a vast array of wildlife and a number of important and
14 endangered species, including desert bighorn sheep, bald eagles, and Gunnison prairie
15 dogs. Although the Agencies have limited the width of the corridor segment through the
16 refuge, the PEIS does not limit its use. Large-scale use will necessarily interfere with the
17 protection of the wildlife in the refuge. WVEC 81-272 also passes through the Rio
18 Grande corridor (one of the most stressed rivers in the country), habitat for the endangered
19 Pecos sunflower and two New Mexico State Wildlife Refuges, which are not
20 acknowledged in the PEIS, despite plaintiffs' specific comments. Plaintiffs repeatedly
21 urged the Agencies to consider whether this corridor is needed and whether it is compatible
22 with the mission of the National Wildlife Refuge System generally and the purpose of the
23 Sevilleta National Wildlife Refuge specifically. The State of New Mexico raised concerns
24 with the designation as well. However, the Agencies refused to consider an alternative in
25 the PEIS that would omit this corridor.
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1 105. WWEC 7-24 crosses habitat for greater sage-grouse in southeastern Oregon
2 in an area that plaintiff ONDA has proposed as a National Conservation Area. Although
3 designation of WWEC 7-24 and related development is likely to have significant impacts
4 on sage-grouse, which are already being adversely affected by energy development in the
5 West, the PEIS did not consider these impacts or take measures to avoid them by
6 relocating this corridor or limiting use of the corridor to buried lines. WWEC 7-24 also
7 crosses areas proposed for wilderness protection by ONDA, but these values and impacts
8 were not considered, despite the repeated submission of GIS data and reiteration of the
9 conflicts by plaintiffs.
10
11

12 106. WWEC 66-212, approved for all uses in the PEIS, is within and will
13 dramatically impact the outstanding viewshed of Arches National Park, which currently
14 has no developed areas or industrial sites. WWEC 66-212 is 3,500-foot wide and runs
15 along the border of Arches and then broadens (to 4-5 miles wide) south of Arches and the
16 town of Moab, Utah. Much of the area has been proposed for wilderness preservation,
17 including 1,000-foot-high cliffs, slickrock domes, streams and floodplains, sensitive soils,
18 and critical wildlife habitat. The corridor also crosses the Colorado River at the narrow
19 cliffs of the Portal near Moab. Connecting the corridor segments across non-federal land
20 shows a path either through private property or along the rims in BLM WSAs. WWEC 66-
21 212's impacts to the viewshed of Arches and likely impacts to the town of Moab and
22 private property owners were not acknowledged or evaluated in the PEIS. The Agencies
23 likewise failed to consider mitigation measures for these impacts. Although plaintiffs
24 proposed re-routing segment 66-212 east along Interstate 70 to connect, to segment 132-
25 136 in Western Colorado, this alternative was not evaluated in the PEIS. Plaintiffs also
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1 proposed that this corridor segment be limited to “upgrade only,” so that no development
2 could impact the viewshed, but this also was not evaluated in the PEIS. Plaintiffs and
3 expert commenters also proposed an evaluation of efficiency measures that would obviate
4 the need for this particular corridor altogether, but this alternative was also ignored by the
5 Agencies.
6

7 **CLAIMS FOR RELIEF**

8 **FIRST CLAIM FOR RELIEF**

9 **NEPA Violation: Failure to Consider Reasonable Range of Alternatives** 10 **Against Defendants DOA, Vilsack, Forest Service,** 11 **Tidwell, DOI, Salazar, BLM, and Pool**

12 107. The allegations contained in paragraphs 1-106 are incorporated herein by
13 reference.

14 108. NEPA requires federal agencies, including defendants, to include within an
15 EIS “alternatives to the proposed action.” 42 U.S.C. § 4332(2)(C)(iii). NEPA’s
16 implementing regulations underscore this requirement by requiring agencies to
17 “[r]igorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R.
18 § 1502.14(a). This evaluation extends to considering more environmentally-protective
19 alternatives and mitigation measures. *See, e.g.*, 40 C.F.R. § 1505.2(b); 40 C.F.R.
20 § 1502.14(f).
21

22 109. In the final PEIS, the Agencies considered only two alternatives – the
23 “proposed” alternative and a “no action” alternative – even though the agencies were
24 presented with numerous reasonable proposals for alternate locations and considerations
25 (such as limiting types or scale of development as part of corridor designations), including
26 alternatives that would:
27

- 28 a. Support and/or prioritize renewable energy development;

1 b. Minimize and/or eliminate the need for new transmission, including through
2 increasing efficiency of existing transmission and increasing conservation;

3 c. Minimize or avoid damage from corridors on lands with important
4 conservation values, such as national parks, national monuments, national
5 conservation areas, and national wildlife refuges; and/or
6

7 d. Decrease the effects of WWEC designation and related development on
8 global climate change.

9 110. The Agencies' failure to rigorously explore and objectively evaluate a
10 reasonable range of alternatives in the manner described above violates NEPA its
11 implementing regulations and is arbitrary, capricious, or otherwise not in accordance with
12 law within the meaning of the APA. 42 U.S.C. § 4332(2)(C)(iii); 40 C.F.R. § 1502.14(a);
13 5 U.S.C. § 706(2)(A).
14
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16

17 **SECOND CLAIM FOR RELIEF**
18 **NEPA Violation: Failure to Consider and Disclose Impacts**
19 **Against Defendants DOA, Vilsack, Forest Service,**
20 **Tidwell, DOI, Salazar, BLM, and Pool**

21 111. The allegations contained in paragraphs 1-106 are incorporated herein by
22 reference.

23 112. NEPA and its implementing regulations require federal agencies to take a
24 "hard look" at the direct, indirect, and cumulative environmental impacts of proposed
25 actions using the best available scientific information. 42 U.S.C. § 4332; 40 C.F.R.
26 § 1502.15; *see also* 40 C.F.R. § 1508.9 (effects include ecological, aesthetic, historical,
27 cultural, socioeconomic, social or health impacts, whether direct, indirect or cumulative);
28 40 C.F.R. § 1508.7 (EISs must assess all "reasonably foreseeable" impacts); 40 C.F.R.

1 § 1508.25(c) (EIS shall consider three types of impacts, including direct, indirect, and
2 cumulative effects); 40 C.F.R. § 1508.25(a)(2) (EISs must analyze the effects of actions
3 “which when viewed with other proposed actions have cumulatively significant impacts”).
4

5 113. Implicit in NEPA’s requirement that an agency prepare a detailed statement
6 on “any adverse environmental effects which cannot be avoided should the proposal be
7 implemented,” is an understanding that an EIS will discuss the extent to which adverse
8 effects can be avoided. 42 U.S.C. § 4332(C)(ii). NEPA’s implementing regulations
9 require that the federal agencies analyze possible mitigation measures in defining the scope
10 of the EIS, 40 C.F.R. § 1508.25(b), in discussing alternatives to the proposed action, 40
11 C.F.R. § 1502.14(f), in analyzing the consequences of that action, 40 C.F.R. § 1502.16(h),
12 and in explaining the agency’s ultimate decision, 40 C.F.R. § 1505.2(C).
13

14 114. In the WWEC PEIS, the Agencies failed to take a hard look at the direct,
15 indirect and cumulative impacts of the designated energy corridors, as well as a hard look
16 at proposed mitigation measures to reduce those impacts. The Agencies failed to
17 adequately consider, *inter alia*: the foreseeable paths of the corridors across state, private,
18 and tribal lands; the effects of the corridors in combination with changing environmental
19 baseline conditions due to climate change; the impacts of generation facilities and oil and
20 gas development activities that the corridors will support; the climate change impacts of
21 development facilitated by the corridors; the health and safety risks posed by the corridors;
22 the corridors’ impacts to lands with wilderness characteristics and other lands with
23 recognized conservation values, such as national parks, national monuments, national
24 conservation areas, and national wildlife refuges; damage to wildlife, plants, and species
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1 habitat; the impacts of altering existing rights-of-way; socioeconomic impacts; and impacts
2 of community expansion and sprawl that will be facilitated by the corridors.

3 115. The Agencies' failure to adequately analyze the direct, indirect, and
4 cumulative impacts of the proposed action in the WVEC PEIS violates NEPA and its
5 implementing regulations and is arbitrary, capricious, or otherwise not in accordance with
6 law within the meaning of the APA. 42 U.S.C. § 4332; 40 C.F.R. §§ 1502.14, 1502.15,
7 1502.16; 1505.2, 1508.7, 1508.9, 1508.25; 5 U.S.C. § 706(2)(A).
8

9
10 **THIRD CLAIM FOR RELIEF**
11 **NEPA Violation: Failure to Consider Cumulative Impacts**
12 **Against Defendants DOA, Vilsack, Forest Service,**
13 **Tidwell, DOI, Salazar, BLM, and Pool**

14 116. The allegations contained in paragraphs 1-106 are incorporated herein by
15 reference.

16 117. NEPA requires that an EIS include a cumulative impacts analysis, which is
17 an analysis of the project's "incremental impact . . . when added to other past, present, and
18 reasonably foreseeable future [Federal and non-Federal] actions." 40 C.F.R. § 1508.7.

19 118. The Agencies failed to adequately analyze the cumulative impacts to
20 wildlife, air quality, and other resources from the proposed action in combination with
21 other past, present and reasonably foreseeable actions that will impact resources in
22 common with the proposed action, including but not limited to the TransWest Express,
23 Rockies Express and Ruby pipelines, BLM's Wind Energy Development Programmatic
24 EIS, BLM's and Forest Service's Programmatic EIS for Geothermal Leasing in the
25 Western United States, and the Western Oregon Plan Revisions covering six BLM
26 districts.
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1 capricious, an abuse of discretion, or otherwise not in accordance with law within the
2 meaning of the APA. 43 U.S.C. §§ 1712(c)(9), 5 U.S.C. § 706(2).

3
4 **FIFTH CLAIM FOR RELIEF**

5 **FLPMA and APA Violations: Failure to Permit Public Protest of the Proposed RMP**
6 **Amendments in Violation of 43 U.S.C. §§ 1712(f), 1739(e); 43 C.F.R. §§ 1610.2,**
7 **1610.5; Amendment of Protest Procedures Without Notice and Comment**
8 **Against Defendants DOI, Salazar, BLM, and Pool**

9 124. The allegations contained in paragraphs 1-106 are incorporated herein by
10 reference.

11 125. FLPMA § 202(f), 43 U.S.C. § 1712(f), provides that “[t]he Secretary . . . by
12 regulation shall establish procedures, including public hearings where appropriate, to give
13 Federal, State, and local governments and the public, adequate notice and opportunity to
14 comment upon and participate in the formulation of plans and programs relating to the
15 management of the public lands.” *See also* 43 U.S.C. § 1739(e). The regulations
16 promulgated under this authority specifically provide that the opportunity to “participate”
17 goes beyond the opportunity to “comment” on plan amendments, and includes the
18 opportunity to file administrative protests. *See, e.g.*, 43 C.F.R. §§ 1610.2(a) (public must
19 be provided both opportunities to meaningfully participate and comment); 1610.2(f)
20 (publication of FEIS and proposed RMP “triggers the opportunity for protest”); 1610.5-
21 1(b) (approval of draft RMPs “shall be withheld on any portion of a plan or amendment
22 being protested until final action has been completed on such protest”); 1610.5-2 (“Any
23 person who participated in the planning process and has an interest which is or may be
24 adversely affected by the approval or amendment of a resource management plan may
25 protest such approval or amendment.”)

1
2 130. The allegations contained in paragraphs 1-106 are incorporated herein by
3 reference.

4 131. ESA section 7(a)(2) requires that every federal agency, in consultation with
5 FWS and NOAA Fisheries, to “insure that any action authorized, funded, or carried out by
6 such agency ... is not likely to jeopardize the continued existence of any endangered
7 species or threatened species or result in the destruction or adverse modification” of
8 designated critical habitat. 16 U.S.C. § 1536(a)(2). An agency must consult with NOAA
9 Fisheries or USFWS under section 7(a)(2) whenever it takes an action that “may affect” a
10 listed species, and complete such consultation before proceeding with the action. 16
11 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a).
12

13
14 132. Although the WWEC designation “may affect” listed species and their
15 designated critical habitat, the Agencies did not consult with USFWS or NOAA Fisheries
16 at all as required by section 7(a)(2) of the ESA and its implementing regulations. 16
17 U.S.C. § 1536(a)(2); 50 C.F.R. Part 400.
18

19 133. The Agencies’ refusal to ensure no jeopardy or adverse modification to
20 listed species through consultation with the Services is a violation of their mandatory,
21 affirmative duties under section 7(a)(2) of the ESA, and is agency action that is arbitrary,
22 capricious, an abuse of discretion, otherwise not in accordance with law within the
23 meaning of the APA. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a); 5 U.S.C. § 706(2).
24

25 **SEVENTH CLAIM FOR RELIEF**
26 **EPAct Violation: Failure to Consult with Other Units of Government**
27 **and Interested Persons**
28 **Against Defendants DOA, Vilsack, Forest Service, Tidwell, DOI, Salazar,**
BLM, Pool, DOE and Chu

1 134. The allegations contained in paragraphs 1-106 are incorporated herein by
2 reference.

3 135. Section 368(a) of the EPAct required the Agencies to consult with “States,
4 tribal or local units of governments as appropriate, affected utility industries, and other
5 interested persons.” 42 U.S.C. § 15926(a).

6 136. As evidenced by the consistency review submitted by the State of New
7 Mexico, which objected among other things to the Agencies’ failure to consult with the
8 City of Las Cruces, the concerns raised by San Miguel and La Plata Counties, Colorado,
9 and concerns raised by tribes such as the Hualapai Nation at the April 15, 2008, oversight
10 hearing, the Agencies failed to consult with State, tribal, and local governments as required
11 by FLPMA. Other communities were also not consulted or advised of potential impacts,
12 due in part to the Agencies’ refusal to acknowledge the likely paths of the corridors, as
13 evidenced by the comments and testimony submitted by the Village of Placitas, New
14 Mexico.
15

16 137. In addition, the Agencies ignored the recommendations and information
17 submitted by the interested public. Despite numerous submissions of information
18 regarding citizen-proposed wilderness, the Agencies failed to respond to recommendations
19 for protection, to consider impacts, or even to acknowledge or disclose relevant GIS data.
20 Similarly, the Agencies failed to consider information and recommendations regarding
21 support of renewable energy, protection of conservation lands, and energy efficiency and
22 conservation options.
23

24 138. The Agencies’ failure to consult with States, tribal or local units of
25 governments, affected utility industries, and other interested persons is a violation the
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1 Agencies' nondiscretionary duty to involve these interested parties in the West-wide
2 Energy Corridors designation process and is agency action that is arbitrary, capricious, an
3 abuse of discretion, otherwise not in accordance with law within the meaning of section
4 706(2) of the APA. 42 U.S.C. § 15926(a); 5 U.S.C. § 706(2).
5

6 **EIGHTH CLAIM FOR RELIEF**

7 **EPAct Violation: Failure to Perform all Necessary Environmental Reviews**
8 **Against Defendants DOA, Vilsack, Forest Service, Tidwell, DOI, Salazar,**
9 **BLM, Pool, DOE and Chu**

10 139. The allegations contained in paragraphs 1-106 are incorporated herein by
11 reference.

12 140. EPAct Section 368(a)(2) required the Agencies to conduct all necessary
13 environmental reviews in designating the West-wide Energy Corridors and amending
14 BLM and Forest Service land management plans. 42 U.S.C. § 15926(a)(2).

15 141. The Agencies found that designation of energy corridors on federal land
16 constitutes a major federal action requiring compliance with NEPA. However, by failing
17 to take a hard look at the direct, indirect, and cumulative impacts of the proposed action –
18 and by failing to consider alternatives that would protect conservation lands, support
19 renewable energy, or rely on conservation and efficiency – the agencies failed to comply
20 with NEPA. Additionally, the Agencies failed to perform required environmental reviews
21 by refusing to consult with NOAA Fisheries or USFWS pursuant to ESA section 7(a)(2).
22

23 142. The Agencies' failure to comply with NEPA and the ESA is a violation of
24 the Agencies' statutory duty under the EPAct to conduct all necessary environmental
25 reviews for designation of energy corridors and amendment of management plans, and is
26 agency action that is arbitrary, capricious, an abuse of discretion, otherwise not in
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28

1 accordance with law within the meaning of the APA. 42 U.S.C. § 15926(a)(2).; 5 U.S.C.
2 § 706(2).

3 **NINTH CLAIM FOR RELIEF**

4 **EPAct Violation: Failure to Account for the Need for Corridors that Will Improve**
5 **Reliability, Relieve Congestion, or Enhance Grid Capability**
6 **Against Defendants DOA, Vilsack, Forest Service, Tidwell, DOI, Salazar,**
7 **BLM, Pool, DOE and Chu**

8 143. The allegations contained in paragraphs 1-106 are incorporated herein by
9 reference.

10 144. EPAct Section 368(d) required the Agencies to consider “the need for
11 upgraded and new electricity transmission and distribution facilities to – (1) improve
12 reliability; (2) relieve congestion; and (3) enhance the capability of the national grid to
13 deliver electricity.” 42 U.S.C. § 15926(d) (emphasis added).

14 145. The PEIS does not provide information regarding the need for the
15 designated West-wide Energy Corridors. The PEIS also is silent as to how the corridors
16 will fulfill EPAct section 368’s requirements that the designations improve reliability,
17 relieve congestion, or enhance the capability of the national electric grid. Although the
18 Agencies prepared a National Electric Transmission Congestion Study pursuant to Section
19 1221 of EPAct that examined in-depth historical data, existing studies of transmission
20 expansion needs, and region-wide modeling of the western transmission grid to identify
21 areas of additional need for transmission, the designations of the West-wide Energy
22 Corridors do not correspond to these areas. The Agencies’ failure to incorporate the need
23 for transmission by incorporating their own in-depth study of this issue demonstrates that
24 the Agencies failed to fully consider the need for corridors to improve reliability; relieve
25 congestion; and enhance the capability of the national grid to deliver electricity.
26
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1 E. Grant plaintiffs such additional relief as the Court may deem just and
2 proper.

3 DATED: July 7, 2009

Respectfully submitted,

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