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9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE DISTRICT OF ARIZONA**

11 Hualapai Indian Tribe of the Hualapai Indian  
12 Reservation, Arizona,

13 *Plaintiff,*

14 v.

15 Debra Haaland, et al.,

16 *Defendants,*

17 and

18 Arizona Lithium, Ltd.

19 *Intervenor Defendants.*

No. CV-24-08154-PCT-DJH

**FIRST AMENDED  
COMPLAINT FOR VACATUR,  
DECLARATORY AND  
INJUNCTIVE RELIEF**

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**INTRODUCTION**

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2 1. This suit challenges the U.S. Bureau of Land Management’s (“BLM”) approval of a lithium exploration project that threatens a medicinal spring sacred to the Hualapai Tribe called Ha’Kamwe’. For generations and through modern day, Tribal members have used Ha’Kamwe’ (also known as Cofer Hot Spring) for cultural and traditional purposes. It features prominently in tribal songs and stories about their history and connection to their land, including those known as the Salt Song Trail. Both the historic flow and temperature of the spring are important attributes for its traditional uses. Located at Cholla Ranch on lands recently taken into trust by the Department of the Interior for the benefit of the Hualapai Tribe, Ha’Kamwe’ is recognized as a Traditional Cultural Property (“TCP”) eligible for listing on the National Register of Historic Places. On June 6, 2024, BLM issued a Decision Record (“DR”), Finding of No Significant Impact (“FONSI”), and Final Environmental Assessment (“Final EA”) for the proposed Project. On July 9, 2024, based on the DR, FONSI, and Final EA, BLM issued its decision approving the company’s Plan of Operations, authorizing the Project.



1           2.       As approved, the Sandy Valley Exploration Project (Phase 3) (“Project”)  
2 will allow Arizona Lithium (“Company”) to drill 131 exploratory wells in search of  
3 lithium on BLM-controlled lands directly adjacent to the spring. These exploratory  
4 wells—some of which will be drilled close to Ha’Kamwe’—will penetrate deep below  
5 ground into the aquifer that supports the spring’s flows. The Project will also create  
6 noise, light, vibrations, and other disturbances that will degrade Ha’Kamwe’s character  
7 and harm Tribal members’ use of the spring for religious and cultural ceremonies. It will  
8 adversely impact other resources important to the Tribe too, like plants and wildlife. The  
9 area contains designated critical habitats for three threatened and endangered species: the  
10 western yellow-billed cuckoo, southwestern willow flycatcher, and northern Mexican  
11 gartersnake. Despite repeated efforts by the Tribe to protect its sacred property, BLM  
12 ignored these harms and approved the Project. In doing so, it violated its mandates under  
13 the National Environmental Policy Act (“NEPA”), the National Historic Preservation Act  
14 (“NHPA”), and the Endangered Species Act (“ESA”). The Tribe brings suit under these  
15 statutes to stop harm to Ha’Kamwe’ and other natural resources.

16           3.       The Hualapai Tribe repeatedly attempted to secure protection for  
17 Ha’Kamwe’ and other resources important to the Tribe from impacts of this Project  
18 throughout the NEPA process, including by becoming a Cooperating Agency, providing  
19 comments about (among other things) the critical importance of Ha’Kamwe’ to Tribal  
20 members and the impact of the Project on critical aspects of their culture, and attempting  
21 to discuss its concerns with BLM.

22           4.       Among other requests, the Tribe asked BLM to consider alternatives to the  
23 Project—like drilling fewer wells or moving them farther from the spring—to reduce its  
24 negative effects. However, BLM refused to consider a reasonable range of alternatives to  
25 Big Sandy, Inc.’s proposal, considering only denying or approving the full exploration  
26 plan as proposed by the Company. As explained below, BLM violated NEPA by failing  
27 to consider a middle-ground alternative that would address the Tribe’s concerns.  
28

1           5.       NEPA also requires BLM to take a “hard look” at the environmental  
2 impacts of the exploration activity. Here, BLM failed to consider a recent study  
3 concluding that the Project is likely to cause impacts to Ha’Kamwe’. Instead, it relied on  
4 a single twenty-four-year-old study conducted for a different purpose to conclude that  
5 there will be no impact on Ha’Kamwe’. BLM’s failure to consider the most recent study,  
6 which focused specifically on the impacts of this Project on Ha’Kamwe’, violated its  
7 obligation to take a “hard look” at the Project’s impacts.

8           6.       The NHPA requires BLM to consider the impact of its actions on historic  
9 properties. BLM concluded that the Project will have no effect on Ha’Kamwe’, even  
10 though it is located very close to the Project, and even though BLM identified a list of  
11 impacts to Ha’Kamwe’ in its Final EA for the Project. BLM attempted to avoid a finding  
12 of adverse effect by simply labeling these impacts as temporary. BLM’s unsupported and  
13 self-contradicted finding of no effect under the NHPA is arbitrary and capricious.

14           7.       BLM failed to reconsider its finding of no effect under the NHPA despite  
15 requests from both the Tribe and the Advisory Council on Historic Preservation  
16 (“ACHP”)—the expert agency on NHPA matters—to reconsider that finding in light of  
17 impacts to Ha’Kamwe’ as set out in the Final EA.

18           8.       The ESA requires BLM to ensure that its actions are not likely to  
19 jeopardize threatened or endangered species or their habitat. The Project sits immediately  
20 adjacent to designated critical habitat for three threatened or endangered species: the  
21 western yellow-billed cuckoo, southwestern willow flycatcher, and northern Mexican  
22 gartersnake. Some of the Project’s drill holes would be less than 3,000 feet from this  
23 habitat, and the Project’s main access road runs through and along it, sandwiching the  
24 habitat between the main highway and the access road. The Project, including its noise,  
25 light, vibrations, increased truck traffic, and other impacts, “may affect” these species.  
26 50 C.F.R. § 402.14. BLM was therefore required to consult with the Service before  
27 approving the project. *Id.*; 16 U.S.C. § 1536(a).

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1 9. In short, BLM approved the Project without appropriately considering a  
2 reasonable range of alternatives or taking a hard look at water resources under NEPA,  
3 without mitigation measures under the NHPA for Ha’Kamwe’ and other resources  
4 important to the Tribe, and without appropriately consulting with the U.S. Fish and  
5 Wildlife Services (“FWS”) thus violating NEPA, the NHPA, and the ESA.

6 10. This action is brought by the Hualapai Tribe against Debra Haaland,  
7 Secretary of the Interior, BLM; Ray Suazo, State Director of the BLM Arizona State  
8 Office; and Amanda Dodson, Field Office Manager of the BLM Kingman Field Office.  
9 The Hualapai Tribe seeks vacatur of the illegal agency decisions, as well as declaratory  
10 and injunctive relief under the Administrative Procedure Act. Specifically, the Hualapai  
11 Tribe challenges BLM’s June 6, 2024, DR, FONSI, and Final EA for the Project and  
12 BLM’s July 9, 2024, Decision Letter approving the exploration plan and the required  
13 financial guarantee, which authorized the Project to proceed. *See* U.S. Bureau of Land  
14 Mgmt., *Big Sandy Inc. Phase 3 Sandy Valley Exploration Project*, DOI-BLM-AZ-C010-  
15 2021-0029-EA (June 2024), <https://eplanning.blm.gov/eplanning-ui/project/2012598/510>.

16 **JURISDICTION AND VENUE**

17 11. This action arises under NEPA, 42 U.S.C. § 4321 *et seq.*, the NHPA, 54  
18 U.S.C. § 300101 *et seq.*, the ESA, 16 U.S.C. § 1536 *et seq.*, and the APA, 5 U.S.C. §  
19 500 *et seq.*, which waives the Defendants’ sovereign immunity. The Court may issue a  
20 declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201–2202, 16 U.S.C. §  
21 1540(g), and 5 U.S.C. §§ 705–706.

22 12. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 (federal  
23 question) and 28 U.S.C. § 1346 (United States as defendant). An actual justiciable  
24 controversy exists between the parties within the meaning of 28 U.S.C. § 2201.

25 13. Venue is proper in this district court pursuant to 28 U.S.C. § 1391(e)(1)  
26 because officers of the United States are named defendants in their official capacities, and  
27 the federal land that is the subject of this action lies in this district. Venue is also proper  
28

1 in this Court pursuant to 28 U.S.C. § 1391(e)(1) because the decision to approve the  
2 Project occurred in BLM offices in this district.

3 14. This case should be assigned to the Prescott Division of this Court because  
4 the Project area lies within the counties of this Division and the challenged agency  
5 actions were taken within these counties. LR Civ. 77.1(a)

6 **PARTIES**

7 15. Plaintiff Hualapai Tribe (“Tribe”) is a federally recognized Indian tribe  
8 located in northwestern Arizona. The Tribe is formally recognized by the Secretary of the  
9 Interior as enjoying the privileges and immunities that accompany tribal status. *See*  
10 Indian Entities Recognized by and Eligible to Receive Services from the United States  
11 Bureau of Indian Affairs, 89 Fed. Reg. 944 (Jan. 8, 2024). The Tribe currently has  
12 approximately 2,300 enrolled members.

13 16. Hualapai, or “People of the Tall Pines,” historically inhabited an area of up  
14 to seven million acres, with archaeological evidence dating to 600 A.D. The Tribe’s  
15 homeland stretches from the Grand Canyon southward to the Bill Williams and Santa  
16 Maria Rivers and from the Black Mountains eastward to the San Francisco Peaks, located  
17 near what is today Flagstaff, Arizona.

18 17. The Tribe’s ancestral lands include the Big Sandy River Valley, where  
19 Ha’Kamwe’ and the Project are located. The Big Sandy River Valley is a sacred  
20 interconnected landscape for the Tribe. Ha’Kamwe’ is located on land known as Cholla  
21 Canyon Ranch, which is held in trust for the Tribe. Pub. L. No. 117-349, § 12; 136 Stat.  
22 6225, 6252 (2023). Cholla Canyon is directly adjacent to the Project site and will be  
23 surrounded on three sides by proposed exploratory drilling.

24 18. Tribal members use the area where the Project is situated for a variety of  
25 traditional and cultural purposes, including gathering native plants and other materials,  
26 observing and appreciating wildlife, including the endangered species that reside in the  
27 area, and holding ceremonies that are central to their cultural life and traditions. The  
28 Tribal members’ ability to continue these practices, especially with respect to the sacred

1 site of Ha’Kamwe’, will be severely adversely impacted by the proposed drilling activity.  
2 The Project risks depleting the flow and altering the temperature of Ha’Kamwe’, both of  
3 which are essential to the hot spring’s medicinal and sacred qualities. The Tribe’s  
4 members intend to continue to use the public lands on which the Project is located on an  
5 ongoing basis in the future although their experience would be negatively impacted by  
6 the Project.

7 19. The Tribe brings this action in its own capacity and as *parens patriae* on  
8 behalf of its members. The Tribe and its members’ cultural, spiritual, recreational,  
9 conservation, and wildlife preservation values have been, are being, and will continue to  
10 be adversely and irreparably injured by Defendants’ failure to follow federal law. These  
11 are actual, concrete injuries caused by the BLM’s refusal to comply with environmental  
12 and cultural resource preservation laws. The Tribe’s injuries will be redressed by the  
13 relief sought.

14 20. The Tribe has a substantial interest in ensuring that BLM complies with all  
15 applicable laws, including the procedural requirements of NEPA, the NHPA, the ESA,  
16 and the APA. The Tribe was a Cooperating Agency under NEPA and submitted extensive  
17 comments to BLM during both the public comment period for the Draft EA and as a  
18 Cooperating Agency. The Tribe also filed a State Director Review request that was  
19 denied. All of the issues and claims raised in this complaint were previously raised to the  
20 agency and are properly before this Court for judicial review. The Tribe has exhausted its  
21 administrative remedies.

22 21. Defendant BLM is an administrative agency within the U.S. Department of  
23 the Interior, responsible for managing federal lands and subsurface mineral estates  
24 underlying federal, state, and private lands across the United States, including the land  
25 and mineral estate at issue in this Project.

26 22. Defendant Debra Haaland, sued in her official capacity, is the U.S.  
27 Secretary of Interior. As Secretary, Ms. Haaland is the official ultimately responsible for  
28

1 managing federal public lands and resources and in that capacity is responsible for  
2 implementing and complying with applicable laws and regulations.

3 23. Defendant Ray Suazo is sued in his official capacity as the State Director of  
4 BLM in Arizona. As State Director, Mr. Suazo is the official ultimately responsible for  
5 managing Arizona’s federal public lands and resources and in that capacity is responsible  
6 for implementing and complying with applicable laws and regulations.

7 24. Defendant Amanda Dodson, sued in her official capacity, is the Field  
8 Office Manager for BLM’s Kingman Field Office. As Field Office Manager, Ms. Dodson  
9 is responsible for administering and managing public lands and resources within the  
10 Kingman Planning Area, including the lands and resources located within and around the  
11 Project area. Ms. Dodson is the official responsible for reviewing staff recommendations  
12 on the proposed action, reviewing the environmental assessment for the Project,  
13 considering and rejecting alternatives, and ultimately approving the Project. Ms. Dodson  
14 signed the July 9, 2024 decision approving the Project’s Plan of Operations.

15 **STATUTORY BACKGROUND**

16 **A. National Historic Preservation Act of 1966**

17 25. The NHPA established a national preservation program to protect historic  
18 properties as a cooperative effort between the federal government and states, local  
19 governments, Tribes, Native Hawaiian organizations, and private organizations. 54  
20 U.S.C. § 300101.

21 26. The NHPA charges the ACHP with the responsibility to “advise the  
22 President and the Congress on matters relating to historic preservation,” and to “review  
23 the policies and programs of Federal agencies and recommend” methods for harmonizing  
24 those policies and programs with the NHPA. 16 U.S.C. § 470j(a)(1), (6).

25 27. Section 106 of NHPA requires federal agencies to consider the impact of  
26 their actions on historic properties. 54 U.S.C. § 306108. As a part of this process, the  
27 agency must determine the area of potential effects, which is the geographic area or areas  
28 within which an undertaking may directly or indirectly cause alterations in the character



1 or use of historic properties. 36 C.F.R. § 800.16(d). The agency must then determine  
2 whether the Project will affect any historic property within the area of potential effects.  
3 *Id.* § 800.4. An effect is defined as an alteration to the characteristics of a historic  
4 property qualifying it for inclusion in the National Register. *Id.* § 800.16(i).

5 28. If the agency concludes that a historic property will be affected, it must  
6 then determine whether the effects are adverse. *Id.* § 800.5. Effects are adverse the  
7 proposal “may alter, directly or indirectly, any of the characteristics of a historic property  
8 that qualify the property for inclusion in the National Register in a manner that would  
9 diminish the integrity of the property’s location, design, setting, materials, workmanship,  
10 feeling, or association.” *Id.* § 800.5(a)(1). If adverse effects are found, then the agency  
11 must explore measures to avoid, minimize, or mitigate adverse effects on historic  
12 properties and reach a written agreement with the State or Tribal Historic Preservation  
13 Officer on measures to resolve them. *Id.* § 800.6.

14 29. Federal agencies must consult with any Tribe that “attaches religious and  
15 cultural significance” to a historic property affected by an undertaking. 54 U.S.C. §  
16 302706(b); 36 C.F.R. § 800.2(c)(2)(ii). This consultation must recognize the government-  
17 to-government relationship between the Federal Government and Tribes and give the  
18 Tribe the opportunity to “advise on the identification and evaluation of historic  
19 properties, including those of traditional religious and cultural importance” and  
20 “participate in the resolution of adverse effects.” 36 C.F.R. § 800.2(c)(2)(ii). Tribes  
21 “possess special expertise in assessing the eligibility of historic properties that may  
22 possess religious and cultural significance to them.” 36 C.F.R. § 800.4(c)(1).

### 23 **B. National Environmental Policy Act**

24 30. NEPA is the “basic national charter for protection of the environment.” *Ctr.*  
25 *for Biological Diversity v. Bernhardt*, 982 F.3d 723, 734 (9th Cir. 2020). The law has  
26 “twin aims.” *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council*, 462 U.S. 87, 97 (1983).  
27 First, a federal agency must “consider every significant aspect of the environmental  
28 impact of a proposed action”; and second, the agency must “inform the public that it has

1 indeed considered environmental concerns in its decisionmaking process.” *Kern v. U.S.*  
2 *Bureau of Land Mgmt.*, 284 F.3d 1062, 1066 (9th Cir. 2002) (internal quotations and  
3 citations omitted). The Fiscal Responsibility Act (“FRA”) amended NEPA on June 3,  
4 2023. However, BLM’s review of the proposed Project began prior to FRA’s enactment,  
5 so the pre-FRA NEPA requirements apply.

6 31. To fulfill these purposes, NEPA requires that: (1) agencies take a “hard  
7 look” at the environmental impacts of their actions before the actions occur, thereby  
8 ensuring “that the agency, in reaching its decision, will have available, and will carefully  
9 consider, detailed information concerning significant environmental impacts,” and (2)  
10 “the relevant information will be made available to the larger audience that may also play  
11 a role in both the decisionmaking process and the implementation of that decision.”  
12 *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989); “General  
13 statements about ‘possible’ effects and ‘some risk’ do not constitute a ‘hard look’ absent  
14 a justification regarding why more definitive information could not be provided.”  
15 *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1380 (9th Cir. 1998).

16 32. NEPA also requires an agency to prepare a detailed statement regarding the  
17 alternatives to a proposed action. *See* 42 U.S.C. § 4332(C)(iii), (E). Consideration of  
18 reasonable alternatives is necessary to ensure that the agency has taken into account all  
19 possible approaches to, and potential environmental impacts of, a particular project.

20 33. Courts review an EA “with two purposes in mind: to determine whether it  
21 has adequately considered and elaborated the possible consequences of the proposed  
22 agency action when concluding that it will have no significant impact on the  
23 environment, and whether its determination that no EIS is required is a reasonable  
24 conclusion.” *Env’t Def. Ctr.*, 36 F.4th at 872 (9th Cir. 2022) (citation omitted).

25 34. The Department of Interior’s implementing regulations, codified at 43  
26 C.F.R. §§ 46.10–46.450, specify that EAs “must contain objective analyses that support  
27 conclusions concerning environmental impacts.” 43 C.F.R. § 46.310(g).  
28

1           35.     Additionally, the Department of Interior’s regulations require BLM to  
2 “consult, coordinate, and cooperate with . . . tribal governments . . . concerning the  
3 environmental effects of any Federal action” that is “within the jurisdictions or related to  
4 the interests” of the Tribe. 43 C.F.R. § 46.155.

### 5           **C. Endangered Species Act**

6           36.     The ESA is “the most comprehensive legislation for the preservation of  
7 endangered species ever enacted by any nation.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153,  
8 180 (1978). Its purpose is to “provide a means whereby the ecosystems upon which  
9 endangered species and threatened species depend may be conserved.” 16 U.S.C. §  
10 1531(b).

11           37.     Section 7 is the “heart of the ESA.” *W. Watersheds Project v.*  
12 *Kraayenbrink*, 632 F.3d 472, 495 (9th Cir. 2011). It requires each federal agency to  
13 ensure that its actions are “not likely to jeopardize the continued existence of threatened  
14 or endangered species or result in the destruction or adverse modification of designated  
15 critical habitat.” 16 U.S.C. § 1536(a)(2). Consultation is required under Section 7 of the  
16 ESA for any action that “may affect” a listed species or designated critical habitat. *Karuk*  
17 *Tribe of Cal. v. U.S. Forest Serv.*, 681 F.3d 1006, 1027 (9th Cir. 2012) (citations  
18 omitted). *See also* 16 U.S.C. § 1536(c)(1); 50 C.F.R. § 402.14(a).

19           38.     The bar for engaging in Section 7 consultation is “low.” *Kraayenbrink*, 632  
20 F.3d at 496. “*Any possible effect*, whether beneficial, benign, adverse or of an  
21 undetermined character, triggers the requirement.” *Karuk Tribe*, 681 F.3d at 1027  
22 (emphasis in original, citations omitted). In assessing potential impacts on listed species,  
23 agencies must use “the best scientific and commercial data available.” 16 U.S.C. §  
24 1536(c)(1).

### 25           **D. Administrative Procedure Act (APA)**

26           39.     The APA provides a right of review for any “person suffering legal wrong  
27 because of agency action.” 5 U.S.C. § 702. Actions that are reviewable under the APA  
28

1 include final agency actions “for which there is no other adequate remedy in a court.” *Id.*  
2 § 704.

3 40. Under the APA, reviewing courts shall “hold unlawful and set aside agency  
4 action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of  
5 discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

6 41. While a court’s review of an agency decision under the arbitrary and  
7 capricious standard is narrow, an agency must nevertheless “examine the relevant data  
8 and articulate a satisfactory explanation for its action, including a ‘rational connection  
9 between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n v. State Farm*  
10 *Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v.*  
11 *U.S.*, 371 U.S. 156, 168 (1962)). In general, an agency decision is arbitrary and  
12 capricious where “the agency has relied on factors which Congress has not intended it to  
13 consider, entirely failed to consider an important aspect of the problem, offered an  
14 explanation for its decision that runs counter to the evidence before the agency, or is so  
15 implausible that it could not be ascribed to a difference in view or the product of agency  
16 expertise.” *Id.*

## 17 FACTUAL BACKGROUND

### 18 **A. Ha’Kamwe’ and the Interconnected Cultural Landscape**

19 42. The Hualapai Tribe holds sacred an interconnected cultural landscape in the  
20 area surrounding Ha’Kamwe’ near Wikieup, Arizona. The landscape consists of  
21 archaeological sites, traditional cultural places, the final resting place of Hualapai people,  
22 native plants, wildlife, and water resources, including the sacred medicinal hot spring  
23 Ha’Kamwe’.

24 43. The site of Ha’Kamwe’, as well as the surrounding Big Sandy River  
25 Valley, mountains, hills, and deserts, are part of the ancestral homelands of the Hualapai  
26 Tribe.

27 44. Ha’Kamwe’ is part of a sacred cultural landscape recounted in what is  
28 known collectively as the Salt Spring Trail. Ha’Kamwe’ means “warm spring.” The

1 spring is specifically recounted by one of the Hualapai keepers of the Salt Song Trail  
2 cycle as part of the song cycle and documented in highly sensitive oral history interviews  
3 and audio recordings of Salt Songs that the Tribe keeps privately.

4 45. Since time immemorial, the Hualapai people have gone to Ha’Kamwe’ for  
5 healing and prayer, and to conduct ceremonies related to birth, young women’s coming  
6 of age, and other important life transitions.

7 46. In 2002, in connection with another unrelated proposal, see *infra* at 45-46.  
8 BLM and the Western Area Power Authority (“WAPA”), under the Department of  
9 Energy, determined that Ha’Kamwe’ is eligible for listing in the National Register of  
10 Historic Places as a Traditional Cultural Property (“TCP”).

11 47. Ha’Kamwe’ is located on a parcel of land held in trust by the Department  
12 of the Interior for the Hualapai Tribe and known as Cholla Canyon Ranch. The Hualapai  
13 Tribe uses the land at Cholla Canyon for ceremonial purposes, economic pursuits such as  
14 horticulture, and tribal use or recreation.

15 48. Cholla Canyon Ranch is directly adjacent to the proposed Project site and  
16 would be surrounded on three sides by the proposed exploratory drilling.

#### 17 **B. Previous Projects and Exploration at the Project Site**

18 49. BLM first studied Ha’Kamwe’ and the aquifer that feeds it in 1999–2002  
19 when assessing the since canceled Big Sandy Energy Project. Caithness Big Sandy, LLC  
20 (“Caithness”) had planned to develop a gas-fired power plant in the area southeast of  
21 Wikieup.

22 50. BLM and WAPA conducted a draft Environmental Impact Statement and  
23 Supplemental Analysis that included many relevant findings about the impact of  
24 development in the area on Ha’Kamwe’ and the Hualapai Tribe’s cultural resources. *See*  
25 U.S. Bureau of Land Mgmt. & Western Area Power Admin., *Big Sandy Energy Project:*  
26 *Draft Environmental Impact Statement*, BLM/AZ/PL-01/004, DOE/EIS-0315 (June  
27 2001); *see also* U.S. Bureau of Land Mgmt. & Western Area Power Admin., *Big Sandy*  
28

1 *Energy Project: Supplement Analysis*, BLM/AZ/PL-01/004, DOE/EIS-0315 (May 2002)  
2 (“Supp. Analysis”).

3 51. It was as part of this process that BLM and WAPA determined Ha’Kamwe’  
4 to be a TCP eligible for listing on the National Register of Historic Places.

5 52. The Big Sandy Energy Project was ultimately abandoned, in part because  
6 of impacts to Ha’Kamwe’. *See* Supp. Analysis at 3-9 (“[T]he Hualapai Nation considers  
7 the spring a traditional cultural resource and the spring is a National Register-eligible  
8 property to which Project impacts cannot be satisfactorily mitigated . . .”).

9 53. In 2018 and 2019, Hawkstone Mining, Ltd., an Australian company, under  
10 their domestic subsidiary Big Sandy, Inc., conducted two phases of exploratory drilling  
11 for lithium clay on BLM-managed public lands adjacent to Ha’Kamwe’.

12 54. In 2021, Hawkstone Mining, Ltd. formally changed its name to Arizona  
13 Lithium, Ltd.

14 55. In Phase 1, the Company drilled 12 holes in the Project area. In Phase 2, it  
15 drilled 37 holes in the Project area.

16 56. BLM never notified or consulted with the Tribe prior to authorizing these  
17 drilling operations.

### 18 **C. Phase 3 Sandy Valley Exploration Project**

19 57. In September 2019, the Company, doing business under its previous name,  
20 Big Sandy Inc., submitted an exploration plan to the BLM Kingman Field Office for the  
21 Project, the Big Sandy Inc., Sandy Valley Exploration Project (Phase 3).

22 58. The Project would include 131 drilling sites on BLM-managed public lands  
23 to explore mining claims for lithium and poly-metal minerals. It would directly disturb 21  
24 acres of public land, and the drill holes are expected to reach depths of approximately 300  
25 feet into the aquifer.

26 59. BLM waited until June 6, 2020, eight months after Big Sandy, Inc.  
27 submitted its proposed plan of operations in September 2019, to contact the Hualapai  
28 Tribe about the Project. BLM’s letter invited the Tribe to participate in an NHPA Section

1 106 consultation and requested the Tribe’s help in identifying cultural properties or other  
2 areas of concern that may be affected by the Project. Notably, BLM’s letter did not  
3 mention Ha’Kamwe’, even though the Project would surround the spring on three sides.

4 60. On June 29, 2020, the Tribe sent a letter accepting the invitation for  
5 consultation. The letter also informed BLM of Ha’Kamwe’s existence and status as a  
6 TCP, expressed concern over the Project’s effects on the spring, and requested  
7 Cooperating Agency status under NEPA. When BLM did not respond, the Tribe sent  
8 another letter dated November 2, 2020, raising these concerns again and requesting a  
9 response.

10 61. On November 10, 2020, BLM formally determined that the Project would  
11 not affect any historic properties for purposes of the NHPA. under 36 C.F.R. §  
12 800.4(d)(1). It did so having defined an area of potential effects that cut out Cholla  
13 Ranch, including Ha’Kamwe’.

14 62. In April 2021, the Hualapai Tribal Council passed Resolution 24-2021, the  
15 Hualapai Tribe Objection to the Sandy Valley Lithium Project. The resolution opposed  
16 the Plan, the Sandy Valley Exploration Project, and any further disturbance of the sacred  
17 cultural landscape by mining or exploration activities. The Inter-Tribal Association of  
18 Arizona, which comprises 21 Tribal governments in Arizona, passed a similar resolution  
19 the same month.

20 63. The Hualapai Tribe submitted comments on the Draft EA on June 10, 2021,  
21 and supplemental comments on July 9, 2021, both within the public comment period. The  
22 Tribe’s comments highlighted how BLM failed to consult with the Tribe and failed to  
23 analyze affected tribal interests, rights, and resources, including impacts on Ha’Kamwe’.

24 64. The ACHP—which, as noted, is the expert agency on NHPA issues—sent a  
25 letter to BLM on January 11, 2023, and again on May 31, 2024, urging BLM to revisit its  
26 finding of no effect on cultural resources under the NHPA. In its May 31, 2024, letter the  
27 ACHP, after reviewing the Draft EA, found “that there is the clear potential for effects on  
28 the Ha’Kamwe’ historic property, including noise, vibration, and disruption to cultural

1 practices conducted by the Tribe.” Letter from Christopher Koepfel, Office of Federal  
2 Agency Program, Advisory Council on Historic Preservation to Amanda Dodson, Field  
3 Manager, Bureau of Land Mgmt., 2 (May 31, 2024). The BLM failed to respond to  
4 ACHP’s May 31, 2024, letter.

5 65. The ACHP explained how the proposed drilling activity could harm the  
6 spring and its historic character:

7 [T]he characteristics of the historic property qualifying it for inclusion in  
8 the National Register include (in addition to the physical components of the  
9 property, such as the spring itself and surrounding landscape features) the  
10 setting and feeling of Ha’Kamwe’ and its environs and the cultural  
11 practices conducted there, both of which will be altered (albeit temporarily)  
12 by the drilling equipment and ground disturbance proposed in close  
13 proximity.

14 ACHP May 31, 2024, letter at 2.

15 66. The Tribe submitted comments as a Cooperating Agency on March 13,  
16 2024, and May 24, 2024. As part of the Tribe’s March 2024 comments, the Tribe also  
17 submitted a hydrology report.

18 67. Though the Final EA correctly documented the above-noted effects on  
19 Ha’Kamwe’ like noise, vibration, and disruption of cultural practices, it falsely concluded  
20 that the Project will not impair the spring’s flows. BLM’s analysis in the Final EA lacks  
21 credible evidence that the source of Ha’Kamwe’s water would not be impacted. BLM  
22 relies on a single twenty-four-year-old study—which was conducted for the earlier  
23 Caithness project and focused on a different outcome, using limited test holes—to  
24 conclude that the Project will not impact Ha’Kamwe’. However, that study had a  
25 different purpose. It was focused on proving a sufficient volume of groundwater existed  
26 to satisfy the demand of a proposed electrical power-generating plant and did not  
27 determine the source of groundwater for Ha’Kamwe’.

28 68. Relying on that study, BLM made a factually flawed assumption when  
concluding that the Project will not disturb Ha’Kamwe’s source. It asserted that the Big  
Sandy aquifer is divided into an upper, a middle, and a lower aquifer and that drilling will



1 take place in the Upper Aquifer while the source of Ha’Kamwe’ is in the Lower Aquifer.  
2 This terminology was lifted from the abandoned Big Sandy Energy Project and was  
3 based on that project’s corporate interests in establishing groundwater sources as cooling  
4 water for the energy project. However, the aquifer divisions were based on observations  
5 from only a few deep wells that do not characterize the aquifer as a whole. Further, BLM  
6 admitted that water for Ha’Kamwe’ may also come from the Upper Aquifer.

7 69. In contrast, the hydrology report that the Tribe submitted specifically  
8 evaluated whether and how the Project would disrupt Ha’Kamwe’s flows—and found  
9 that disruptions are likely. That report also pointed out several critical issues regarding  
10 the spring’s hydrology that BLM had not assessed in its own evaluation. BLM ignored  
11 that evidence, however, focusing solely on the inadequate energy project study.

12 70. Further, a U.S. Geological Survey report the Tribe submitted to BLM  
13 shows that BLM’s characterization of the aquifer is wrong. Due to erosional  
14 unconformities, the Big Sandy Formation varies widely in thickness, from measured  
15 sections ranging from 57 to 245 feet. In addition, the energy project study shows that the  
16 aquifer’s impermeable layers vary in thickness, undercutting BLM’s assumption that the  
17 aquifer sits neatly in three distinct and uniform confined units. These variations also  
18 indicate that the proposed borehole depths of 360 feet would penetrate thinner confining  
19 layers and thus reach pressurized portions of the aquifer, potentially disrupting subsurface  
20 flows that feed Ha’Kamwe’. BLM failed to explain how these variations affected its  
21 assessment.

22 71. BLM also failed to analyze or consider geologic faults and related impacts  
23 on the source for Ha’Kamwe’. Faults and fractures can become conduits for water  
24 between aquifers. The drilling proposed in the Project would encounter subsurface faults  
25 and fractures, providing a pathway for the transmission of groundwater to or from the  
26 Ha’Kamwe’ spring. The Final EA does not analyze the potential for exploration  
27 boreholes to intersect faults and fractures, which would further impact the source of  
28 groundwater for Ha’Kamwe’.

1           72. The Final EA provides that if a water intersection occurs during the drilling  
2 process, then the hole will be plugged. However, there is no analysis in the Final EA that  
3 demonstrates this measure will be effective in mitigating harmful effects on Ha’Kamwe’.  
4 Further, there is no analysis regarding the potential impacts to hydrology by plugging  
5 these wet holes.

6           73. The incomplete and inaccurate hydrologic data in the Final EA undermines  
7 BLM’s finding that the Project will not harm Ha’Kamwe’. Final EA at 3. The only study  
8 to directly assess this question determined that harmful effects are likely—a reality BLM  
9 ignored.

10           74. BLM also failed to consult with FWS regarding impacts of the Project on  
11 three ESA-listed species in the area: southwestern willow flycatcher (endangered),  
12 western yellow-billed cuckoo (threatened), and northern Mexican gartersnake  
13 (threatened). The FWS advised BLM that it was required to consider these species in an  
14 “effects analysis” to comply with the ESA. The FWS further advised that this analysis  
15 should include the entire action area, which can extend outside the Project boundary.  
16 However, the BLM’s biological evaluation excluded all of the listed species from  
17 evaluation, finding that there is no habitat in the Project area. In taking that approach,  
18 BLM ignored the species’ designated critical habitat immediately adjacent to the Project  
19 site, ignored recent findings showing that the Project may in fact contain cuckoo habitat,  
20 and failed to consider harms on all three species stemming from the Project’s noise, light,  
21 vibration, traffic, and other effects which “may affect” the listed species and their habitat.

22           75. The Tribe sent BLM (and the Secretary of the Interior) a letter on July 15,  
23 2024 notifying the agency of its unlawful failure to consult and the Tribe’s intent to sue  
24 over the BLM’s violation of the ESA. *See* 16 U.S.C. § 1540(g)(2)(A)(i) (citizen suit  
25 provision). The letter is attached as Exhibit 1. BLM took no action in response to the  
26 Tribe’s notice letter.

### **FIRST CLAIM FOR RELIEF**

#### **Violation of the NHPA: Erroneous Finding of No Historic Properties Affected**

1           76. The Tribe hereby realleges and incorporates by reference the facts and  
2 allegations set forth in all preceding paragraphs as if set forth in full herein.

3           77. The NHPA required BLM to identify the Project’s effects on “any historic  
4 property.” 54 U.S.C.A. § 306108. To do so, BLM was required to identify the “[a]rea of  
5 potential effects,” meaning “the geographic area or areas within which [the Project] may  
6 directly or indirectly cause alterations in the character or use of historic properties.” 36  
7 C.F.R. § 800.16(d).

8           78. Ha’Kamwe’ is a recognized TCP. A “traditional cultural property” is a  
9 historic property “that is eligible for inclusion in the National Register because of its  
10 association with cultural practices or beliefs of a living community that (a) are rooted in  
11 that community’s history, and (b) are important in maintaining the continuing cultural  
12 identity of the community.” National Park Service, U.S. Dep’t of the Interior, *National*  
13 *Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural*  
14 *Properties*, 1 (1998).

15           79. Although BLM was aware of Ha’Kamwe’s existence, status as a TCP, and  
16 its importance to the Tribe, BLM narrowly defined the area of potential effects to exclude  
17 Cholla Ranch and Ha’Kamwe’, concluding that no historic properties will be affected.

18           80. As the ACHP recognized, however, the Final EA contradicts this finding.  
19 The EA expressly states that the Project will cause “visual effects” and “[n]oise and  
20 vibration” that may, among other harms, “[d]isrupt[] . . . cultural practices at and/or near  
21 *Ha’Kamwe’*.” Final EA at 15. After reviewing the Project’s EA, the ACHP concluded—  
22 as did the Tribe—that “there is the clear potential for effects on the Ha’Kamwe’ historic  
23 property, including noise, vibration, and disruption to cultural practices conducted by the  
24 Tribe.” ACHP’s May 31, 2024 letter. These findings in the EA mean that BLM was  
25 obligated to include in the area of potential effects for its NHPA analysis and make a  
26 finding of “[h]istoric properties affected” under 36 C.F.R. § 800.4(d)(2).

27           81. For these reasons, BLM’s narrow definition of the area of potential effects;  
28 subsequent finding of “[n]o historic properties affected”; project approval; and the DR,

1 FONSI, and Final EA violate the NHPA and its implementing regulations and policies  
2 and are arbitrary, capricious, not in accordance with law, and without observance of the  
3 procedures required by law, within the meaning of the APA, 5 U.S.C. §706. BLM’s  
4 violation of law prejudices and adversely affects the Tribe’s rights and interests.

5 **SECOND CLAIM FOR RELIEF**

6 **Violation of NEPA: Failure to Consider a Reasonable Range of Alternatives**

7 82. The Tribe hereby realleges and incorporates by reference the facts and  
8 allegations set forth in all preceding paragraphs as if set forth in full herein.

9 83. NEPA requires federal agencies to rigorously explore and objectively  
10 evaluate all reasonable alternatives. Federal agencies must devote substantial treatment to  
11 each alternative considered in detail.

12 84. The Final EA unlawfully fails to consider a reasonable range of  
13 alternatives. It considers only two alternatives: approving or denying the proposed  
14 exploration plan in full. It failed to consider a middle-ground alternative that better  
15 protects Tribal and environmental interests. BLM’s approach in the Final EA (1) ignores  
16 other options for meeting the Project’s stated purpose and need and (2) lacks factual  
17 support given the Final EA’s inadequate and superficial assessment of impacts on Tribal  
18 interests.

19 85. Due to the significant concerns that the Tribe has raised throughout this  
20 process, BLM should have evaluated an alternative approving only one or two of the  
21 three proposed drill sites; an alternative requiring relocation of drill sites farther from  
22 Ha’Kamwe’, an alternative approving fewer total wells across the three drill sites; an  
23 alternative involving less new road construction; and/or an alternative requiring stricter  
24 controls on noise, light, and vibrations. Consideration of one or more such alternatives is  
25 consistent with BLM’s own observation in the Final EA that the “decision to be made”  
26 was to approve the plan, deny the plan, or approve the plan “subject to changes or  
27 conditions necessary to meet” regulatory requirements. Final EA at 2.  
28

1 86. BLM’s issuance of the DR, FONSI, and Final EA and project approval  
2 violate NEPA and its implementing regulations and policies and are arbitrary, capricious,  
3 not in accordance with law, and without observance of the procedures required by law,  
4 within the meaning of the APA, 5 U.S.C. §706. BLM’s violation of law prejudices and  
5 adversely affects the Tribe’s rights and interests.

6 **THIRD CLAIM FOR RELIEF**

7 **Violation of NEPA: Failure to Take a Hard Look at Impacts on Water Resources**

8 87. The Tribe hereby realleges and incorporates by reference the facts and  
9 allegations set forth in all preceding paragraphs as if set forth in full herein.

10 88. NEPA requires an agency preparing an EA to take a “hard look” at all  
11 reasonably foreseeable direct, indirect, and cumulative effects before approving a  
12 proposed action. 40 C.F.R. § 1508.1(i). These effects include impacts on natural  
13 resources, historic values, and cultural values. 40 C.F.R. § 1508.1(i)(4).

14 89. BLM failed to take a hard look at the direct, indirect, and cumulative  
15 impacts of the Project on water resources, including the source for Ha’Kamwe’.

16 90. BLM’s failure to take a hard look at the impacts of the Project on water  
17 resources, including the source for Ha’Kamwe’ in the DR, FONSI, and Final EA and  
18 project approval violate NEPA and its implementing regulations and policies and are  
19 arbitrary, capricious, not in accordance with law, and without observance of the  
20 procedures required by law, within the meaning of the APA, 5 U.S.C. § 706. BLM’s  
21 violation of law prejudices and adversely affects the Tribe’s rights and interests.

22 **FOURTH CLAIM FOR RELIEF**

23 **Violation of ESA: Failure to Consult with Fish and Wildlife Service**

24 91. The Tribe hereby realleges and incorporates by reference the facts and  
25 allegations set forth in all preceding paragraphs as if set forth in full herein.

26 92. The ESA requires an agency to initiate formal consultation with the FWS if  
27 its proposed action may affect listed species or critical habitat. 50 C.F.R. § 402.14; 16.  
28 U.S.C. § 1536(a)(2).

1 93. BLM failed to initiate consultation with the FWS for any of the three ESA-  
2 listed species present in the area.

3 94. BLM's failure to initiate consultation with the FWS violates the ESA and is  
4 arbitrary, capricious and not in accordance with law. BLM's violation of law prejudices  
5 and adversely affects the Tribe's rights and interests.

6 **REQUEST FOR RELIEF**

7 Therefore, Plaintiff respectfully requests that this Court:

8 A. Declare that BLM violated NEPA in issuing its DR, FONSI, and Final EA  
9 and otherwise authorizing the Project;

10 B. Declare that BLM violated the NHPA in issuing its DR, FONSI, and Final  
11 EA and otherwise authorizing the Project;

12 C. Declare that BLM violated the ESA by failing to consult with FWS;

13 D. Order BLM to consult with FWS under Section 7 of the ESA regarding the  
14 Project's effects and prohibit implementation of BLM's Project approval until BLM  
15 complies with the ESA;

16 E. Set aside and vacate BLM's DR, FONSI, and Final EA and authorization of  
17 the Project;

18 F. Award the Tribe its reasonable attorneys' fees and costs; and

19 G. Grant such other and further relief as the Court deems just, equitable, and  
20 proper.

21 Respectfully submitted this 14<sup>th</sup> day of December 2024.

22  
23 /s/Laura Berglan

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