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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Lower San Pedro Watershed Alliance; Center for Biological Diversity; Sierra Club; Maricopa Audubon Society; Tucson Audubon Society; and Cascabel Conservation Association, Plaintiffs, v. Col. Aaron Barta, in his official capacity as Commander of the Los Angeles District of the U.S. Army Corps of Engineers; Amy Lueders, in her official capacity as Regional Director of the Southwest Region of the U.S. Fish and Wildlife Service; the U.S. Army Corps of Engineers; and the U.S. Fish and Wildlife Service, Defendants.	No. CV-19-48-TUC-RCC Judge: Raner C. Collins **PLAINTIFFS' STATEMENT OF FACTS IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT ON NEPA AND CWA CLAIMS**

List of Acronyms

The following is a list of acronyms used throughout this Statement of Facts in Support of Motion for Partial Summary Judgment. The list is provided for the Court's convenience.

ADWR	Arizona Department of Water Resources
BLM	Bureau of Land Management
CWA	Clean Water Act
EA	Environmental Assessment
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
ESA	Endangered Species Act
FWS	Fish and Wildlife Service
HMMP	Habitat Mitigation and Monitoring Plan
IBA	Important Bird Area
JD	Jurisdictional Determination
LEDPA	Least environmentally damaging practicable alternative
LOS	level of service
NEPA	National Environmental Policy Act
RD	Revitalization District
SPRNCA	San Pedro Riparian National Conservation Area

Pursuant to LRCiv 56.1(a), Plaintiffs Lower San Pedro Watershed Alliance et al. (collectively, the Watershed Alliance) submit this statement of facts in support of their Motion for Partial Summary Judgment and Memorandum in Support on their National Environmental Policy Act (NEPA) and Clean Water Act (CWA) claims.

I. The San Pedro River and Watershed

A. The Last Major Free-Flowing River in the Desert Southwest

1. The San Pedro River is one of the most significant perennial undammed desert rivers in the United States and is unquestionably an aquatic resource of international ecological importance. ACOE-011113,[1] Environmental Protection Agency (EPA) May 25, 2006 Letter at 1. EPA thus designated the River as an Aquatic Resource of National Importance due to its ecological importance. ACOE-011104, EPA July 1, 2004 Letter at 3.

2. The River and its surrounding cottonwood-willow forest support one of the most important corridors for millions of migratory songbirds in the United States. ACOE-011113, EPA May 25, 2006 Letter at 1. It also serves as important habitat for

[1] References to documents with the prefix "ACOE" are to those in the Corps' administrative record in this case.

many other species of plants, fish, and wildlife, and provides a unique refuge for many threatened or endangered species protected by the Endangered Species Act (ESA), including the jaguar, western yellow-billed cuckoo, southwestern willow flycatcher, northern Mexican gartersnake, and Huachuca water umbel. *Id.*; ACOE046214-20, Watershed Alliance Notice of Intent to Sue at 11-17.

3. The San Pedro River is also a global Important Bird Area (IBA). ACOE-011245-57, Nat'l Audubon Soc'y, Lower San Pedro River IBA; ACOE-011259-64, Nat'l Audubon Soc'y, San Pedro Riparian National Conservation Area (SPRNCA) IBA. Thousands of bird watchers visit the San Pedro River each year to view native and migrating songbirds, generating millions of dollars in economic activity for the local economy. The total economic effect from watchable wildlife activities in Arizona in 2011 was estimated at $1.4 billion, which includes $14.2 million dollars in retail sales in Cochise County and $179.5 million in retail sales in Pima County. ACOE-017636-37, Tucson Audubon Soc'y, Proposed Western Yellow-Billed Cuckoo Critical Habitat Designation at 35-36.

B. The San Pedro Riparian National Conservation Area

4. In 1988, Congress recognized the importance of the San Pedro River and designated 36 miles of the River's upper basin as the first riparian National Conservation Area. ACOE-011131, Watershed Alliance Dec. 2017 Comments at 6. Congress mandated that SPRNCA be managed "to protect the riparian area and the aquatic, wildlife, archeological, paleontological, scientific, cultural, educational, and recreational resources of the public lands surrounding the San Pedro River." 16 U.S.C. § 460xx(a).

5. The United States holds an express federal reserved water right to accomplish the purposes of the SPRNCA reservation. Congress reserved federal water rights in a quantity "sufficient to fulfill the purposes" of SPRNCA, *id.* § 460xx-1(d), including rights for springs and groundwater to support riparian vegetation, *see id.* § 460xx(a).

6. St. David Cienega is a large groundwater-fed wet marsh within the northern boundary of SPRNCA that lies adjacent to the San Pedro River floodplain. ACOE-011269, Stevens et al. (2012) at 3; ACOE-011132, Watershed Alliance Dec. 2017 Comments at 7. The Bureau of Land Management (BLM) manages this site as a Research Natural Area within SPRNCA. ACOE-011269, Stevens et al. (2012) at 3. Due to the large number of species supported by St. David Cienega, the Audubon Society included it as a part of the SPRNCA IBA. *Id.*; ACOE-011259-64, Nat'l Audubon Soc'y, SPRNCA IBA.

7. St. David Cienega is an important indicator of the health of SPRNCA and the San Pedro River. ACOE-011269, Stevens et al. (2012) at 3. Recent declines in water depth at St. David Cienega and the area of wetted land, and the loss of wetland vegetation, threaten the ecological integrity of the San Pedro River basin, and St. David Cienega in particular. *Id.*

C. The Destruction of Ephemeral Waters Threatens the San Pedro River.

8. The physical, chemical, and biological integrity of the San Pedro River is sustained by its ephemeral and intermittent tributary stream network. ACOE-011113, EPA May 25, 2005 Letter at 1.

9. Collectively, ephemeral and intermittent tributaries serve as the filtering headwaters for the primary sources of drinking water across much of the southwest, and their coarse beds allow water infiltration that recharges groundwater aquifers. ACOE-011105, EPA July 1, 2004 Letter at 4. Healthy ephemeral streams also control rates of sediment deposition and dissipate the energy associated with flood flows. *Id.* In addition, ephemeral aquatic systems support diverse habitats for wildlife unique to the region. ACOE-011113, EPA May 25, 2005 Letter at 1. Desert streams are lined with larger and denser vegetation (known as xeroriparian habitat) than the surrounding habitat, thereby providing forage, cover, and nesting or denning habitat for desert animals. *Id.*

10. Impeding or filling ephemeral streams can alter the volume, duration, and frequency of water flows from those waters into downstream waters. ACOE-011106, EPA July 1, 2004 Letter at 5. Filling desert streams also can alter the amount of sediment transported into downstream waters. *Id.* Changes in sediment transport from the streams can alter downstream riparian habitat and the streams' xeroriparian habitat. *See* ACOE048406, Levick et al. (2006) at 3. Such habitat alterations can harm wildlife and aquatic ecosystems. ACOE048081-84, Fish and Wildlife Service (FWS) July 2015 Letter at 2-5.

11. There has been an incremental and significant loss of headwater streams in many watersheds of the Southwest. ACOE-011105, EPA July 1, 2004 Letter at 4. As a result, ephemeral streams are, more than ever, of critical value regionally, and their support of human health and the economies of the region underscore their national importance. *Id.* The loss of these waters results in increased costs associated with flood control facilities, as well as the increased need and associated development of drinking water and wastewater treatment infrastructure. ACOE-011113, EPA May 25, 2005 Letter at 1. Likewise, degraded water quality resulting from development in and around these waters may adversely affect recreational uses and wildlife throughout the watershed. *See id.*; *see also* ACOE048403-23, Levick et al. (2006); ACOE048082, FWS July 2015 Letter at 3.

D. Groundwater Pumping Threatens Surface Flows Along the San Pedro River and at SPRNCA.

12. The San Pedro River, SPRNCA, and their lush corridors of riparian habitat depend on groundwater contributions from the regional aquifer. ACOE-011700-01, Barlow & Leake (2012) at 19-20. Pressure in the regional aquifer causes groundwater to move from the deep, regional aquifer, up into the shallow aquifer, and then into the River as baseflow. ACOE046372, Meixner (2017) at 1; ACOE-011684, ACOE-011687, Barlow & Leake (2012) at 3, 6.

13. Groundwater studies have demonstrated that an area of vertical flow, i.e., groundwater rising from the deep aquifer and into the shallow system, is likely present along the San Pedro River near St. David Cienega. ACOE046350-52, Eastoe (2017) at 1-3; ACOE046357, ACOE046365, Eastoe (2018) at 1, 9 & fig.6.

14. Chris Eastoe, a hydrologist and expert in isotope geochemistry, conducted isotope testing at St. David Cienega in 2017. ACOE046350-56, Eastoe (2017). His results demonstrated that surface discharges at the Cienega were isotopically and thermally similar to the confined aquifer. These results show that there is a hydrologic connection between the confined aquifer and the surface flow system of the San Pedro River at St. David Cienega. ACOE046350-52, Eastoe (2017) at 1-3; ACOE046375, Meixner (2017) at 4.

15. In 2018, Eastoe conducted additional isotope testing and confirmed that there is a permeable zone connecting the San Pedro River to the confined aquifer at St. David Cienega. ACOE046357, ACOE046365, Eastoe (2018) at 1, 9 & fig.6. Due to this connection, large increases in groundwater withdrawal from the confined aquifer would likely reduce groundwater discharge from the aquifer at the Cienega and nearby springs. ACOE046368, Eastoe (2018) at 12.

16. Groundwater pumping is the greatest threat to the San Pedro River because it lowers the water table, reducing groundwater elevation and creating an expanding cone of depression. ACOE046372, Meixner (2017) at 1; ACOE-011692-94, Barlow & Leake (2012) at 11-13. The expanding cone of depression reduces groundwater flow towards the River and, in turn, pressure near the River. ACOE046372-73, Meixner (2017) at 1-2. This depression eventually “captures” water from the aquifer that would have otherwise reached the surface near the River and sustained riparian habitat, as well as River and spring flows. ACOE046372-73, Meixner (2017) at 1-2. Drawdown associated with the cone of depression also reduces the groundwater volume in storage in the aquifer. ACOE-011692-94, Barlow& Leake (2012) at 11-13.

17. Even small reductions in the aquifer caused by groundwater pumping could reduce the aquifer's artesian head, or the natural pressure that forces water to the ground surface, thereby eliminating or even reversing flows at seeps and springs near St. David Cienega. ACOE046365-68, Eastoe (2018) at 9-12 & fig.6; ACOE046372-74, Meixner (2017) at 1-3.

18. Groundwater pumping is already reducing stream flow levels along the San Pedro River. Over the last several decades, the rate of groundwater pumping from aquifers feeding the San Pedro River has far exceeded the rate of recharge of water to the aquifer, creating a groundwater "deficit." ACOE046398-402, Cordova et al. (2015) at 9-13; ACOE-011108, EPA July 1, 2004 Letter at 7. This pumping has begun to dry up the San Pedro River and its riparian vegetation and springs, leaving the San Pedro River with little water to spare. ACOE-011106, EPA July 1, 2004 Letter at 5.

19. Because there is a time lag between groundwater pumping and the point at which pumping affects a river, a well's effects on baseflows may not be fully realized until decades after the well stops pumping. ACOE-011723-24, ACOE-011750-53, Barlow & Leake (2012) at 42-43, 69-72; ACOE-011784-85, Leake et al. (2014) at 10-11. This is because the cone of depression created by groundwater pumping gradually radiates laterally until its edge is close enough to a stream that it begins to reduce baseflows. ACOE-011692-94, Barlow& Leake (2012) at 11-13. The farther from the river the center of a cone of depression is—both vertically and laterally—the longer it will take for elevation declines to affect baseflows in the river. ACOE-011694, Barlow & Leake (2012) at 13.

E. Groundwater Pumping Threatens Riparian Habitat Along the San Pedro River.

20. There is a cause-and-effect relationship between groundwater drawdown and loss of riparian habitat:

> The reduction in groundwater lowers the water table, while the reduction in streamflow reduces the length, width, and depth of wetted streambed. The

> net result is reduced plant regeneration, herbaceous and shrub growth, tree survival, foliar cover, woodland width, and prey abundance that coincides with the reduced length, width, and depth of wetted streambed and depth to groundwater.

ACOE048988, Rosemont Amended BiOp at 242.

21. Even minor declines in groundwater levels can have devastating impacts on riparian vegetation and the associated ecosystem. ACOE048808, Rosemont Amended BiOp at 62; ACOE048528, Leenhouts et al. (2006) at 3. Increasing depths to groundwater would eventually change the species composition of a sites' riparian community, i.e., hydroriparian communities would suffer decreased vigor and extent, and transition to a xeroriparian community. ACOE048808, Rosemont Amended BiOp at 62; ACOE046372-74, Meixner (2017) at 1-3.

22. Cottonwood-willow gallery forests require fairly persistent stream flows and shallow (high) groundwater depths to survive. ACOE048808, Rosemont Amended BiOp at 62; *see also* ACOE046372-74, Meixner (2017) at 1-3. This habitat would die off wherever the San Pedro River dries up. ACOE049228-41, Nguyen et al. (2014) (documenting impacts of regional groundwater pumping on riparian habitat along the San Pedro River).

23. If the water table in the Benson subarea continues to drop, sufficient groundwater likely would not reach the surface to support the springs and riparian vegetation in SPRNCA. *See* ACOE046363-68, Eastoe (2018) at 7-12; ACOE046372-74, Meixner (2017) at 1-3; *see also* ACOE048966, Rosemont Amended BiOp at 220.

24. Riparian systems, like the San Pedro River ecosystem, are particularly sensitive to hydrologic changes. ACOE049181, ACOE049185, Nilssen & Berggren (2000) at 783, 787. Even a minimal draw down on surface flows can have far reaching consequences for the aquatic ecosystem. FWS has thus found that "*any* appreciable (i.e. measurable) loss of stream flow, regardless of its cause . . . constitutes an adverse effect

on threatened and endangered aquatic species and . . . proposed and final critical habitat." ACOE048784, Rosemont Amended BiOp at 38 (emphasis added).

F. Climate Change Will Exacerbate Threats to the San Pedro River.

25. A group of expert hydrologists studied and modeled the impacts of climate change on nine aquifers in the southwest United States, including the San Pedro basin. ACOE-011913-25, Meixner et al. (2016). They found that existing data demonstrates that groundwater recharge in the San Pedro basin will decrease from between 30% to 100% over the next 100 years. ACOE-011921-22, Meixner et al. (2016) at 132-33; *see also* ACOE-001701-03, Tucson Audubon Soc'y May 2015 Comments at 7-9 (collecting studies regarding impacts of climate change on the San Pedro River).

26. EPA has also noted that climate change will worsen already fragile conditions in the southwest, explaining that groundwater pumping is already lowering water tables in this region. ACOE-015675-78, EPA Southwest Climate Change.

27. A group of climate scientists found that, based on modeling climate change simulations, the risk of a decade-scale drought occurring this century is at least 50% for most of the greater southwestern United States and may indeed be closer to 80%. ACOE-015669, Ault (2015) at 7545. The probability of multidecadal megadrought is also high: the likelihood of a 35-year event is between 10% and 50%. *Id.*

II. The Whetstone Ranch Master-Planned Community

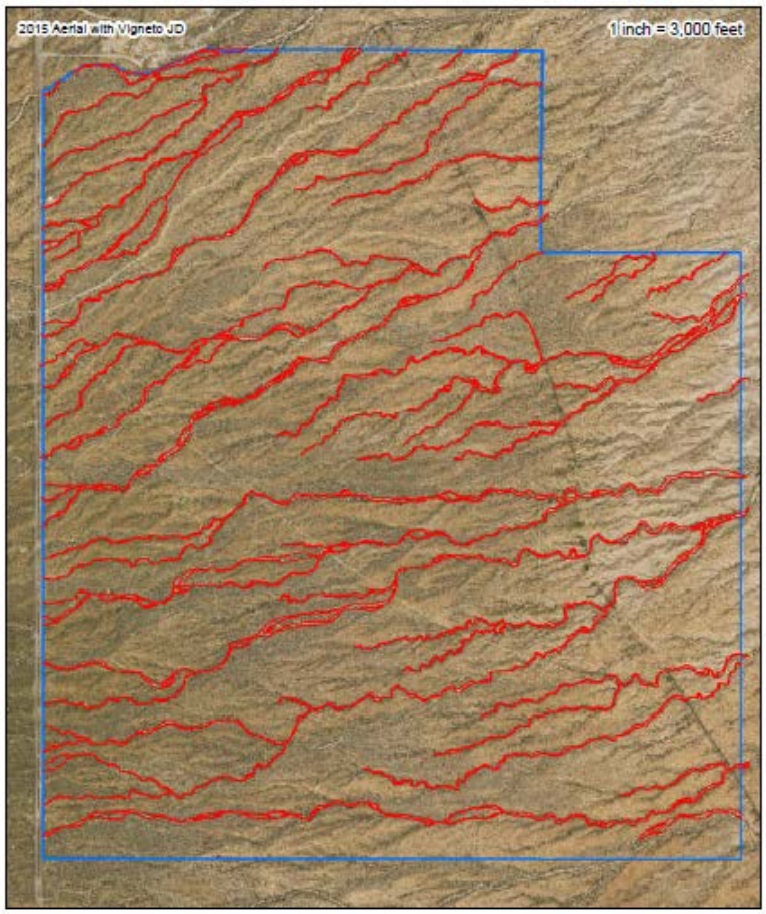
28. In 2003, Pulte Homes planned to construct an 8,212-acre master-planned community, known as the Whetstone Ranch, approximately two miles away from the San Pedro River. ACOE-000130, Whetstone 404 Permit Application (Sept. 23, 2003) at 1; ACOE-039644, Revised 2019 EA at 10. The proposed development would have included thousands of new residences and associated commercial development, located adjacent to State Route 90 and approximately five miles south of Interstate 10. ACOE-000100, Preliminary Jurisdictional Determination (JD) for Whetstone Ranch at 1; ACOE-

000287, ACOE-000292-94 Whetstone Renewed 404 Permit Application (Feb. 9, 2004) at 1, 6-8.

A. The Corps' Approved Jurisdictional Determination

29. Pulte inspected the 8,212-acre project site to determine the extent of jurisdictional waters of the United States protected by the CWA. ACOE-000100, Preliminary JD for Whetstone Ranch at 1. Its engineers evaluated the ephemeral waters on the site based on a set of field indicators, including the ordinary high water mark, hydrology, hydric soils, and hydrophytic vegetation. *Id.* Pulte identified a 75-mile network of jurisdictional waters that contain the right combination of those field indicators and a direct surface connection to other waters of the United States. *Id.*; ACOE-000109-23, Approved JD Letter at pdf. 7-23. These jurisdictional waters encompass approximately 475 acres, spread across the entire site, and have a median top width of about 45-feet. ACOE-000294, Whetstone Renewed 404 Permit Application (Feb. 9, 2004) at 8. The large ephemeral streams can carry upwards 600 cubic-feet per second of water. ACOE-039939, No Federal Action Alternative Memorandum at 3 n.2.

30. These jurisdictional waters are braided throughout the site like capillaries through tissue, as depicted in the map below:



ACOE-039866, Vigneto Scope of Analysis Memorandum.

31. This mosaic of ephemeral waters serves a vital support function for the San Pedro River as both hydrologic conduits and wildlife corridors. ACOE-011106, EPA July 1, 2004 Letter at 5. These ephemeral waterways provide for flood flow and sediment conveyance, protection of surface water quality, groundwater recharge, and erosion control. ACOE-011105-06, EPA July 1, 2004 Letter at 4-5. They also support xeroriparian habitat that provides forage, nesting, migration, and cover habitat for wildlife. ACOE-011105, EPA July 1, 2004 Letter at 4.

32. In 2003, The Corps delineated these ephemeral streams as jurisdictional waters of the United States in accordance with its regulations and guidelines. ACOE-

000103-23, Approved JD Letter at 1-2. It issued an approved jurisdictional determination that is binding on the Government and represents the Government's position in any subsequent Federal action or litigation regarding these waters. *Id.*; *see* U.S. Army Corps of Eng'rs, Memorandum of Agreement: Determination of Geographic Jurisdiction of the Section 404 Program and Application of Exemptions Under CWA Section 404(f), § 2 (Jan. 19, 1989).[2] This jurisdictional determination remains valid until the expiration of the 404 permit, providing certainty to the regulated public. U.S. Army Corps of Eng'rs, Regulatory Guidance Letter No. 05-02, §§ 1(a), 3(g) (June 14, 2005).[3]

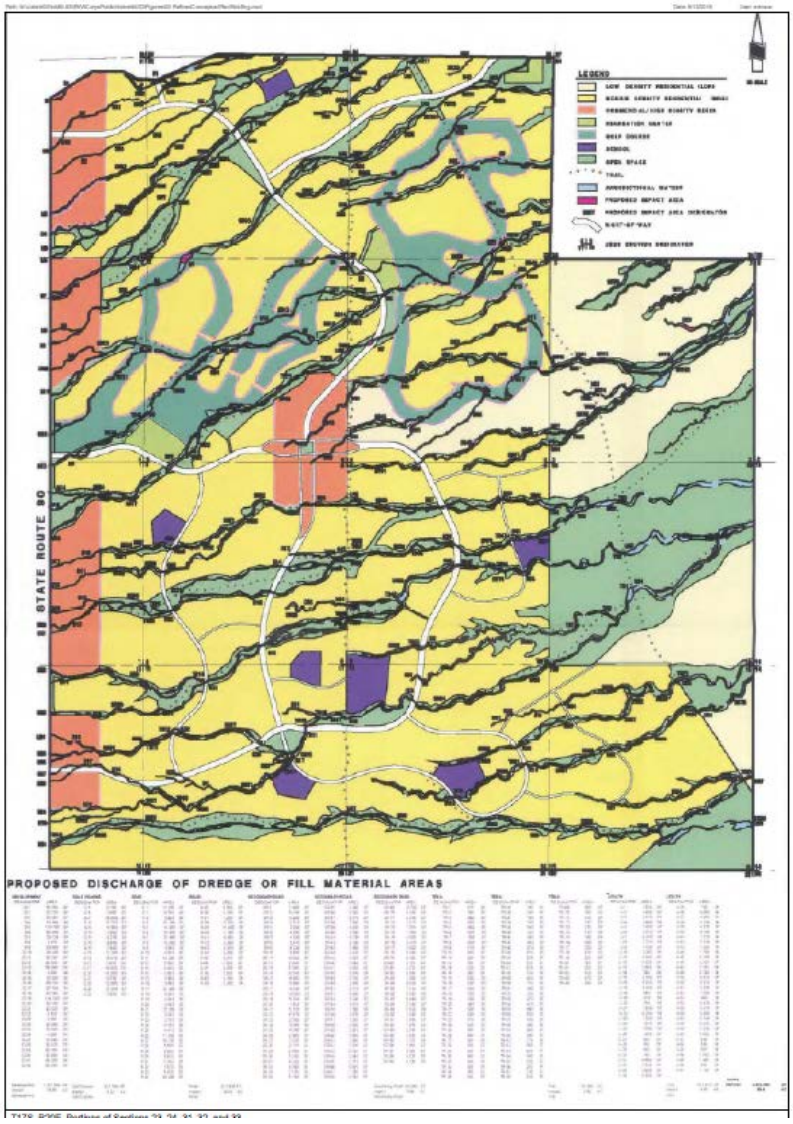
33. Any discharge of dredged or fill material within the designated jurisdictional waters requires a Section 404 permit from the Corps. ACOE-000104, Approved JD Letter at 2.

B. There is No Feasible Way to Develop a Master-Planned Community Without a 404 Permit.

34. In 2004, Pulte requested a 404 permit from the Corps so that it could construct a master-planned community and commercial development consistent with the City of Benson General Development Plan. ACOE-000280-326, Whetstone Renewed 404 Permit Application (Feb. 9, 2004); ACOE-001027, Whetstone 2006 Environmental Assessment (EA) at 2. Pulte needed to fill 51 acres of jurisdictional waters at approximately 350 locations spread across the project site to develop its master-planned community. ACOE-001027, Whetstone 2006 EA at 2. The following map depicts the locations where the jurisdictional waters would bisect the proposed development:

[2] The Memorandum of Agreement is available on EPA's website at https://www.epa.gov/cwa-404/memorandum-agreement-determiniation-geographic-jurisdiction-section-404-program-and.

[3] Regulatory Guidance Letter No. 05-02 is available on the Corps' website at https://www.nap.usace.army.mil/Portals/39/docs/regulatory/rgls/rgl05-02.pdf.



ACOE-039856, Vigneto Revised 404(b)(1) Alternatives Analysis.

35. Pulte acknowledged that it would not be able to develop "a true master-planned community" without a 404 permit (i.e., the no-action alternative). ACOE-000961, Pulte 404(b)(1) Alternatives Analysis at 6. The cost of spanning all of the jurisdictional waters with bridges or other structures would be "prohibitively high." *Id.* As such, Pulte would have to avoid crossing the streams as much as possible, prohibiting the construction of the integrated transportation network needed for a master-planned community. *Id.* Instead, roads would be confined between the streams, leading to

"elongated and inefficient roadway patterns through the Property" and "thereby isolating portions of the community from each other and reducing or eliminating connectivity." *Id.*

36. This elongated roadway system under the no-action alternative would "interfere with the inter-community connectedness that is essential for the development of a 'community.'" *Id.* For example "[r]esidents would have no incentive to shop or work within the bounds of an unconnected 'community' since access to retail and employment areas would require motorists to go in all events out to [State Route] 90 and then access other 'community' parcels from the highway." *Id.* Furthermore, "[t]his lack of connectivity would also adversely affect the need for and development of other master-planned community amenities such as recreational facilities and community centers." *Id.* Pulte thus concluded that the "net effect" of development under the no-action alternative was "to undermine the community concept by developing the Project as narrow residential subdivisions squeezed between jurisdictional washes, with few connections between them and few non-residential uses. This does not fulfill the project purpose of constructing a mixed-use master-planned community." *Id.*

37. In addition, Pulte explained that "erosion hazard potential and lack of roadway connectivity within any future development" without a 404 permit "may significantly hinder the potential of the City of Benson to ensure the mix housing required to meet the city residential development needs and objectives." ACOE-000295, Whetstone Renewed 404 Permit Application (Feb. 9, 2004) at 9. Pulte also envisioned a significant reduction in amount and diversity of homes under the no-action alternative. *Id.*

38. The Corps determined in 2006 that development without a 404 permit, or the no-action alternative, "would not meet the overall project purpose" and "is considered impracticable." ACOE-001033, Whetstone 2006 EA at 8. The Corps explained that the no-action alternative "does not result in similar development since it loses both the

connectivity essential to a 'community' which by its nature contains multiple uses, and numerous uses are limited or eliminated." ACOE-001167, Whetstone 2006 Supplemental EA at 10. The Corps also stated that "to build a 'community,' the Applicant has demonstrated that impacts to approximately 11% of the wa[ters] on-site are necessary." *Id.*

39. The Corps did not require Pulte "to exhaustively demonstrate that a no-action alternative is viable. If it does not fulfill the project purpose, it does not need to be evaluated in depth by the Corps." ACOE-001164, Whetstone 2006 Supplemental EA at 7.

40. The Corps granted Pulte a 404 permit in 2006 to discharge dredged or fill material into 51 acres of waters of the United States to develop the approximately 8,200-acre Whetstone Ranch as a master-planned community. ACOE-001150-51, Whetstone 404 Permit.

III. The Villages at Vigneto Master-Planned Community

41. Pulte never obtained final approval from the City of Benson for the Whetstone Ranch proposal and its preliminary approval lapsed in 2007. ACOE-039644, Revised 2019 EA at 10. Pulte never developed the property. *Id.* In 2014, it sold all of its undeveloped lands to El Dorado Benson, LLC (El Dorado). *Id.*; ACOE-004835, Permit Re-Evaluation Notice at 4.

42. El Dorado has since acquired additional property and now plans to construct an even larger, 12,167-acre master-planned community (approximately 20 square miles), known as the Villages at Vigneto, in the same location. ACOE-004835, Permit Re-Evaluation Notice at 4; ACOE-003678-80, Vigneto Master Plan at 15-17. The proposed development is almost 50% larger than the prior Whetstone Ranch proposal. ACOE-003680, Vigneto Master Plan at 17 Ex.17; ACOE-039644, Revised 2019 EA at 10. Accordingly, the City of Benson instructed El Dorado to prepare a master plan for its significantly larger development. ACOE-039644, Revised 2019 EA at 10.

43. El Dorado developed a Final Community Master and Development Plan (Master Plan) for the Villages at Vigneto. *See generally* ACOE-003652-890, Vigneto Master Plan. As El Dorado states, the Master Plan was "carefully considered and dynamically planned" to ensure a harmonious, cohesive, connected, and integrated community. ACOE-003681, Vigneto Master Plan at 18. El Dorado has marketed the Vigneto development as a unique community that integrates work, home, and amenities. *See* ACOE-032225, Watershed Alliance Notice of Intent to Sue at 6 (noting El Dorado's promotional video for the Villages at Vigneto, available at https://vignetoaz.com/).

44. According to the Master Plan, El Dorado plans to build the Villages at Vigneto around a Town Center—"[t]he heart of the community"—which would be located on a series of community lakes and contain a mix of commercial and office uses, ACOE-003667, ACOE003682, Vigneto Master Plan at 4, 19, a portion of which is depicted below:

ACOE-011147, Watershed Alliance Dec. 2017 Comments at 22.

45. The proposed development would include residences (28,000 dwellings), commercial developments (271 acres/3 million square feet), golf courses (four, totaling 546 acres), a resort (220 acres), and a Town Center (115 acres), among other things. ACOE-003775, Vigneto Master Plan at 112.

46. The Master Plan depends on an intricate network of roads, paths, and trails to integrate all of these uses into one harmonious community. ACOE-003730-33, ACOE-003774, Vigneto Master Plan at 67-70, 111 Ex.15.

47. The lifestyle of the residents within the Villages at Vigneto depends largely on the degree of mobility/access that the roadways, multi-modal pathways, and sidewalks provide. ACOE-003730, Vigneto Master Plan at 67. According to the Master Plan, transportation infrastructure must provide connectivity to regional roadways, address traffic control needs, and create well-coordinated circulation throughout the development. *Id.*

48. El Dorado prepared a Transportation Master Plan, which sets forth an integrated transportation network that would rely on a series of looping arterial, collector, and local roadways to provide internal circulation within the Vigneto development and access to State Route 90. ACOE-034158-213, Master Transportation Plan; ACOE-003730-33, Vigneto Master Plan at 67-70.

49. State Route 90, which runs North-South along the western boundary of the proposed development, can only handle 30,600 vehicle trips per day with a level of service (LOS) D. ACOE-034166, ACOE-034170-71, Master Transportation Plan at 5, 9-10. The LOS concept has been used in traffic engineering to describe the quality of traffic flow and the degree of congestion a driver can expect. ACOE-034164, Master Transportation Plan at 3. The concept defines the near-capacity condition as LOS “E”, while a free flow condition under which a driver would experience very little or no delay is defined as LOS “A”. ACOE-034164-65, Master Transportation Plan at 3-4. At LOS D

on State Route 90, traffic volume "borders on unstable flow." ACOE-034165, Master Transportation Plan at 4.

50. The Transportation Master Plan predicts that the majority of vehicle trips would begin and end within the Vigneto development due to the interconnected transportation network, thereby reducing the need for vehicles to exit the development and use State Route 90. ACOE-034187, Master Transportation Plan at 26. This network also ensures that emergency services, such as police and fire crews, can timely respond to emergencies within the Vigneto development. ACOE-003782, Vigneto Master Plan at 119 Ex.19.

51. The proposed transportation network would also include a system of multi-use paths for golf carts or similar electric vehicles, which would further reduce internal trips via automobile by 60% and limit traffic noise, pollution, and congestion. ACOE-034187-88, Master Transportation Plan at 26-27; ACOE-003732, Vigneto Master Plan at 69. By placing emphasis on multi-use paths, El Dorado claims that the transportation network would encourage greater neighborhood interaction and a more attractive environment. ACOE-003733, Vigneto Master Plan at 70.

52. According to the Master Transportation Plan, a 28,000-residence development would normally generate 237,607 vehicle trips per day. ACOE-034186, Master Transportation Plan at 25 & tbl.5 (total of estimated daily trips generated). For the Villages at Vigneto, however, the report assumed that the majority of vehicle travel (60%) would be satisfied internally and thus would not depend on State Route 90. ACOE-034187, Master Transportation Plan at 26. Even with this interconnected network and alternate modes of transport, the increased traffic along State Route 90 from the development would border on unstable flows. ACOE-034165, ACOE-034193, Master Transportation Plan at 4, 33.

53. In 2017, the City of Benson approved the Master Plan for the 12,167-acre Villages at Vigneto because it determined that the Master Plan ensures that the proposed

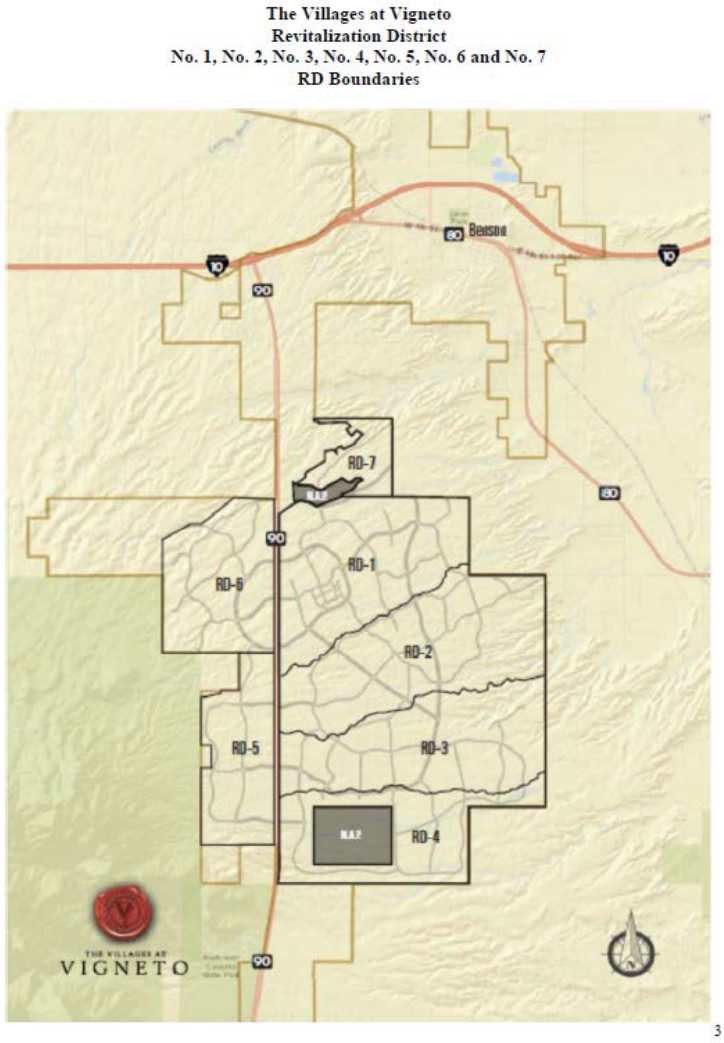
development complies with the City's General Development Plan, including the requirements for land use and traffic circulation. ACOE-003662-63, City of Benson, Ordinance 582 at 1-2.

54. The City of Benson prohibited El Dorado from making any major amendments to the Master Plan without approval from the Benson City Council. ACOE-003815, Vigneto Master Plan at 152; Benson, Ariz., Zoning Regulations at 34-36.[4] Major amendments include, but are not limited to, changing arterial street intersections at locations other than presented in the plan, or materially changing the objectives or goals of the Master Plan. ACOE-003823, Vigneto Master Plan at 160.

55. El Dorado signed an agreement with the City of Benson to develop the Villages at Vigneto in accordance with the approved Master Plan. ACOE047608, Revitalization District (RD) Agreement at pdf. 12 ¶23; ACOE047970, Draft Development Agreement at 4; ACOE-003815, Vigneto Master Plan at 152.

56. El Dorado applied to the City of Benson to form seven revitalization districts to secure public financing for the construction and acquisition of public infrastructure for the Vigneto development, as set forth in the Master Plan. *See generally* ACOE047191-566, RD Application. The seven districts cover the entire Vigneto development, as depicted below:

[4] The City of Benson's zoning regulations are available at https://www.cityofbenson.com/vertical/sites/%7BF59197D1-30ED-49AE-8751-2EBA89C105BA%7D/uploads/Zoning_Regulations_remove_Sec_16.pdf.

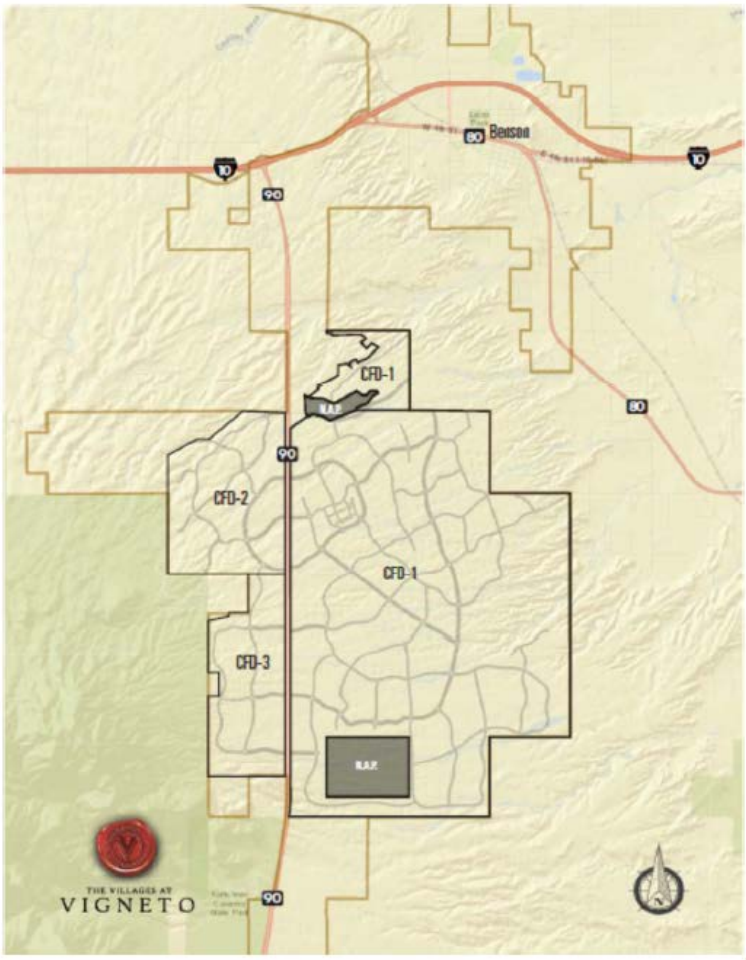


ACOE047196, RD Application at 3.

57. El Dorado would rely on these revitalization districts to issue almost $1 billion in municipal bonds needed to develop the infrastructure and utilities essential to the Master Plan. ACOE047200-01, RD Application at 7-8.

58. El Dorado also submitted an application to form three Community Facilities Districts so that it would have the ability to levy taxes on future owners to pay for the construction and operation of Vigneto's public infrastructure. ACOE047859, RD Agreement at pdf. 314. These Community Facility Districts cover the entire Vigneto development, as depicted in the map below:

The Villages at Vigneto
Community Facilities Districts
No. 1, No. 2 and No. 3
CFD Boundary Map



3

ACOE047884, RD Agreement at pdf. 339.

59. The City of Benson approved the formation of all seven revitalization districts. *See generally* ACOE047567-965, RD Agreement.

60. This public financing is contingent on El Dorado's compliance with the Master Plan. ACOE047608, RD Agreement at pdf. 12 ¶23; ACOE047970, Draft Development Agreement at 4. With this public money, El Dorado plans to develop the districts in sequential order on an accelerated timeline, commencing with Units 1 through 9, and moving on to the remaining units (Units 10-14). ACOE047335, RD Application at

pdf. 145 Ex.G. El Dorado projects a 20-year buildout for the development. ACOE047335, ACOE047343-45, RD Application at pdf. 145 Ex.G, pdf. 153-55 Ex.J. El Dorado provided the following schedule for selling 29,400 residential units and 2.9 million square feet of commercial space across the Villages at Vigneto development:

Exhibit G
The Villages at Vigneto
Revitalization Districts
No. 1, No. 2, No. 3, No. 4, No. 5, No. 6 and No. 7
Estimated Absorption Schedule

Years (3)	RD 1		RD 2		RD 3		RD 4	
	Residential (1)	Commercial (2)	Residential (1)	Commercial (2)	Residential (1)	Commercial (2)	Residential (1)	Commercial (2)
2017-2019	200	-	-	-	-	-	-	-
2020-2024	5,300	244,507	-	-	-	-	-	-
2025-2029	215	337,792	6,499	589,297	3,286	-	-	-
2030-2035	-	-	-	72,814	2,216	560,474	3,652	372,042
2035-2039	-	-	-	-	-	-	-	-
2040-2044	-	-	-	-	-	-	-	-
Total	5,715	582,299	6,499	662,111	5,502	560,474	3,652	372,042

Years (3)	RD 5		RD 6		RD 7		Total	
	Residential (1)	Commercial (2)	Residential (1)	Commercial (2)	Residential (1)	Commercial (2)	Residential (1)	Commercial (2)
2017-2019	-	-	-	-	-	-	200	-
2020-2024	-	-	-	-	-	-	5,300	244,507
2025-2029	-	-	-	-	-	-	10,000	927,089
2030-2035	2,873	13,450	-	-	-	-	8,741	1,018,780
2035-2039	194	299,064	3,842	366,456	1,123	-	5,159	665,520
2040-2044	-	-	-	24,885	-	114,405	-	139,290
Total	3,067	312,515	3,842	391,341	1,123	114,405	29,400	2,995,186

Source: Applicant

Footnotes

(1) Represents units.

(2) Represents square footage.

(3) Assumes total anticipated absorption within the time period illustrated.

ACOE047335, RD Application at pdf. 145 Ex.G.

61. El Dorado has acquired all 12,167 acres of land subject to the Master Plan. ACOE-004835, Permit Re-Evaluation Notice at 4; ACOE-039644, Revised 2019 EA at 10. El Dorado has continued to acquire additional lands adjacent to the Villages at Vigneto development. ACOE-004835, Re-Evaluation Notice at 4. On June 1, 2016, El Dorado signed a new development agreement with the City of Benson allowing it to expand the Vigneto development by an additional 2,433 acres on adjacent or contiguous lands that it now owns or will purchase. *Id.*

IV. The Corps Refuses to Analyze the Impacts of the Proposed Vigneto Development Before Issuing a 404 Permit.

62. The Corps suspended the 404 permit for the Whetstone Ranch in 2016 because FWS had listed new species under the ESA and designated new critical habitat in the area. ACOE-004833-35, Permit Re-Evaluation Notice at 2-4; ACOE-003891, 2016 Suspension Letter.

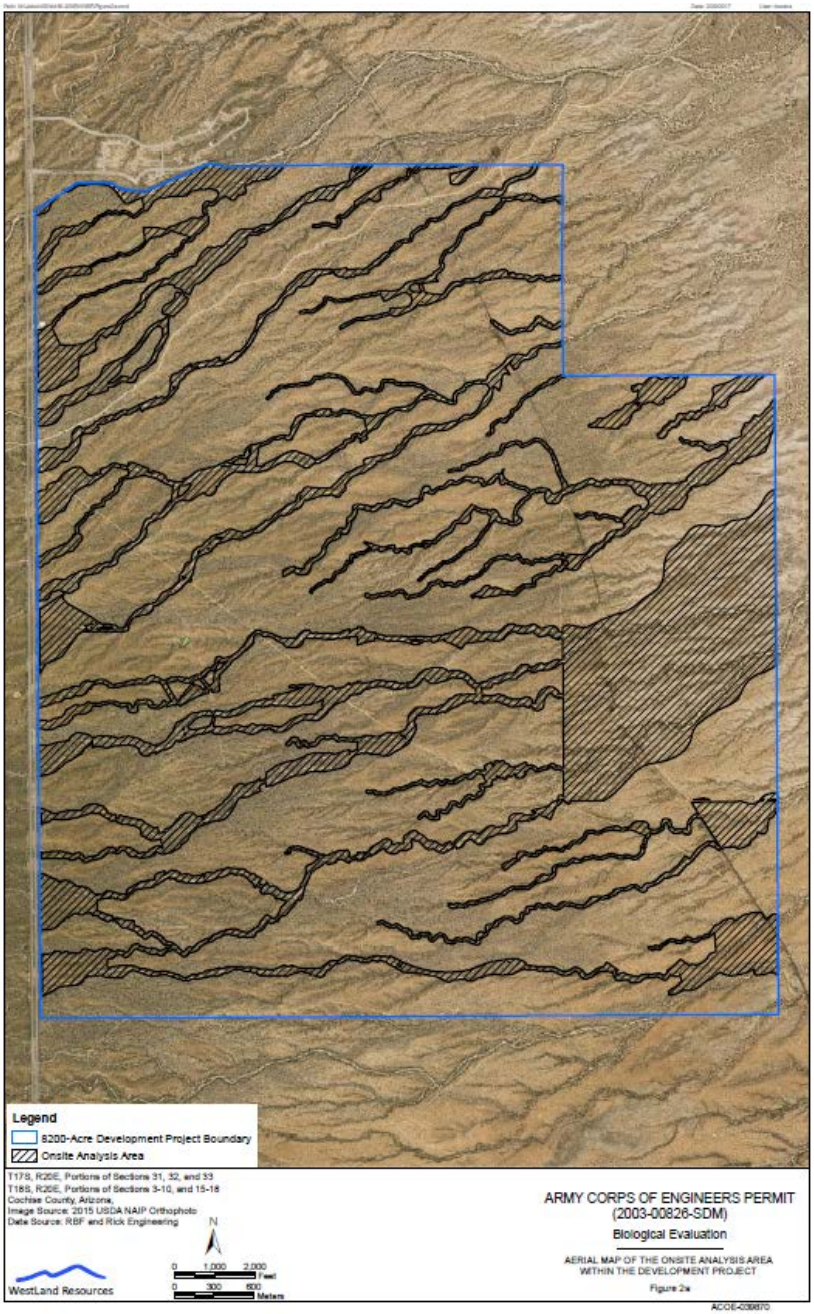
63. The Master Plan acknowledges that El Dorado needs to obtain authorization from the Corps to fill jurisdictional waters across the 12,167-acre Vigneto development. ACOE-003676, Vigneto Master Plan at 13. El Dorado did not, however, submit the entire project to the Corps for a 404 permit. *Id.* Instead, it sought to reinstate the 404 permit for the prior 8,212-acre Whetstone Ranch proposal. *Id.*

64. The Corps issued a public notice requesting advice from the public and its sister agencies, including EPA, on whether to issue a 404 permit for the Vigneto development. ACOE-004832-38, Permit Re-Evaluation Notice. The Corps also stated its intention to reinitiate consultation with FWS as required by the ESA. ACOE-003891, 2016 Suspension Letter; ACOE-004833, Permit Re-Evaluation Notice at 2.

65. The Corps limited its scope of analysis under NEPA to the 8,212-acre permit area used for the prior Whetstone Ranch proposal. ACOE-004835, Permit Re-Evaluation Notice at 4. The Corps did not include in its scope of analysis the remaining 3,955 acres of land covered by the planned Vigneto development. *Id.*; ACOE-031392, Vigneto 2018 EA at 9 ("[T]he remaining approximately 3,955 acres of land owned by El Dorado are not part of this evaluation.").

66. Within this 8,212-acre area, the Corps further limited its NEPA scope of analysis based on El Dorado's assertion that it would develop the property without a 404 permit (i.e., the no-action alternative). ACOE-039865, Scope of Analysis Memorandum at 5; ACOE-031393-94, Vigneto 2018 EA at 10-11; ACOE-004797-98, El Dorado Sept. 2017 Letter to Corps at 2-3. Based on this assertion, the Corps constrained its scope of

analysis to jurisdictional waters and limited upland areas on the development site, as depicted below:



ACOE-039870, Vigneto Scope of Analysis Memorandum at fig.2a. As a result, the Corps' scope of analysis only encompasses 1,775 acres on the development site and a 144-acre offsite parcel proposed for compensatory mitigation activities (for a total of

1,919 acres). ACOE-031393-94, Vigneto 2018 EA at 10-11; ACOE-039865, Scope of Analysis Memorandum at 5.

67. The Corps' scope of analysis area focuses almost exclusively on El Dorado's plan to set aside 1,624 acres of land as open space. ACOE-039951, Vigneto Groundwater Use Memorandum at 2 tbl.1. The Corps only included 151 acres of commercial and residential development within its scope of analysis, which is approximately 1.8% of the commercial and residential development identified in the Vigneto Master Plan. ACOE-039952, Vigneto Groundwater Use Memorandum at 3 tbl.2 (identifying 8,266.5 acres of commercial and residential development within Vigneto Master Plan).

68. The Corps prepared an Environmental Assessment (EA) which only considered the impacts of activities occurring within its 1,919-acre scope of analysis. ACOE-031384-513, Vigneto 2018 EA. The Corps concluded that any impacts within this scope of analysis were insignificant, and thus did not prepare a comprehensive environmental impact statement (EIS). ACOE-031512, Vigneto 2018 EA at 129. The Corps also concluded that the permitted activity on the development site would not affect listed species or critical habitat, and so did not engage in formal consultation with FWS. ACOE-031505-05, Vigneto 2018 EA at 121-22; ACOE-039792-93, Revised 2019 EA at 158-59.

69. The Corps issued the 404 permit for the Villages at Vigneto in October 2018, authorizing El Dorado to discharge fill into waters of the United States throughout the project site. ACOE-031514-18, Vigneto 2018 404 Permit. One condition of the permit required El Dorado to undertake mitigation activities on the development site and on the 144-acre offsite parcel located northeast and downstream of the development site along the San Pedro River, in accordance with El Dorado's Habitat Mitigation and

Monitoring Plan (HMMP). ACOE-031514, Vigneto 2018 404 Permit at 1; ACOE-039871-900, 2018 HMMP.[5]

70. Seven days after the permit was suspended in July 2016, El Dorado stated that it did not expect any delays in construction and would press forward with plans to develop the property. ACOE-034218, *Government Suspends Vigneto Permit* (July 27, 2016) at 2 (stating that "we do not anticipate any impacts on our current time frames for development"). Yet El Dorado did not begin construction on the property in the two years the 404 permit was suspended from July 2016 to October 2018, despite the fact that its build-out schedule included plans to begin residential construction by 2017. ACOE047335, RD Application at pdf. 145 Ex.G.

V. EPA Insists on a Comprehensive Analysis of the Entire 12,167-acre Master-Planned Community.

71. EPA rejected the Corps' constrained analysis, and insisted on a comprehensive analysis of the entire 12,167-acre master-planned community. ACOE-011092-123, EPA Dec. 4, 2017 Letter (incorporating prior letters to the Corps on Whetstone Ranch). EPA noted that the "extensive, dendritic, capillary-like assemblage of streams and desert grassland habitats" on the project site required the Corps to analyze the entire development. ACOE-011120, EPA May 25, 2006 Letter at 8. First, EPA rejected the Corps' attempt to artificially limit its analysis to just 8,212 acres of the 12,167-acre development. ACOE-011092, EPA Dec. 4, 2017 Letter at 1. Second, even within the limited 8,212-acre area, EPA demonstrated that any large-scale development without a 404 permit is "unrealistic, impracticable," and "fails to meet the project purpose." ACOE-011111, EPA May 25, 2006 Letter. Thus, EPA urged the Corps to

[5] Citations to the HMMP are to the version attached to the revised 2019 EA issued after the Corps suspended the 404 permit again in February 2019. *See infra* section V.C. El Dorado did not update its HMMP with the new modified 404 permit issued in July 2019. *See* ACOE-039871, 2018 HMMP (dated March 2018).

expand its scope of analysis and prepare an EIS to adequately "assess the direct, secondary, and cumulative impacts" of the master-planned community. ACOE-011094, EPA June 14, 2004 Letter.

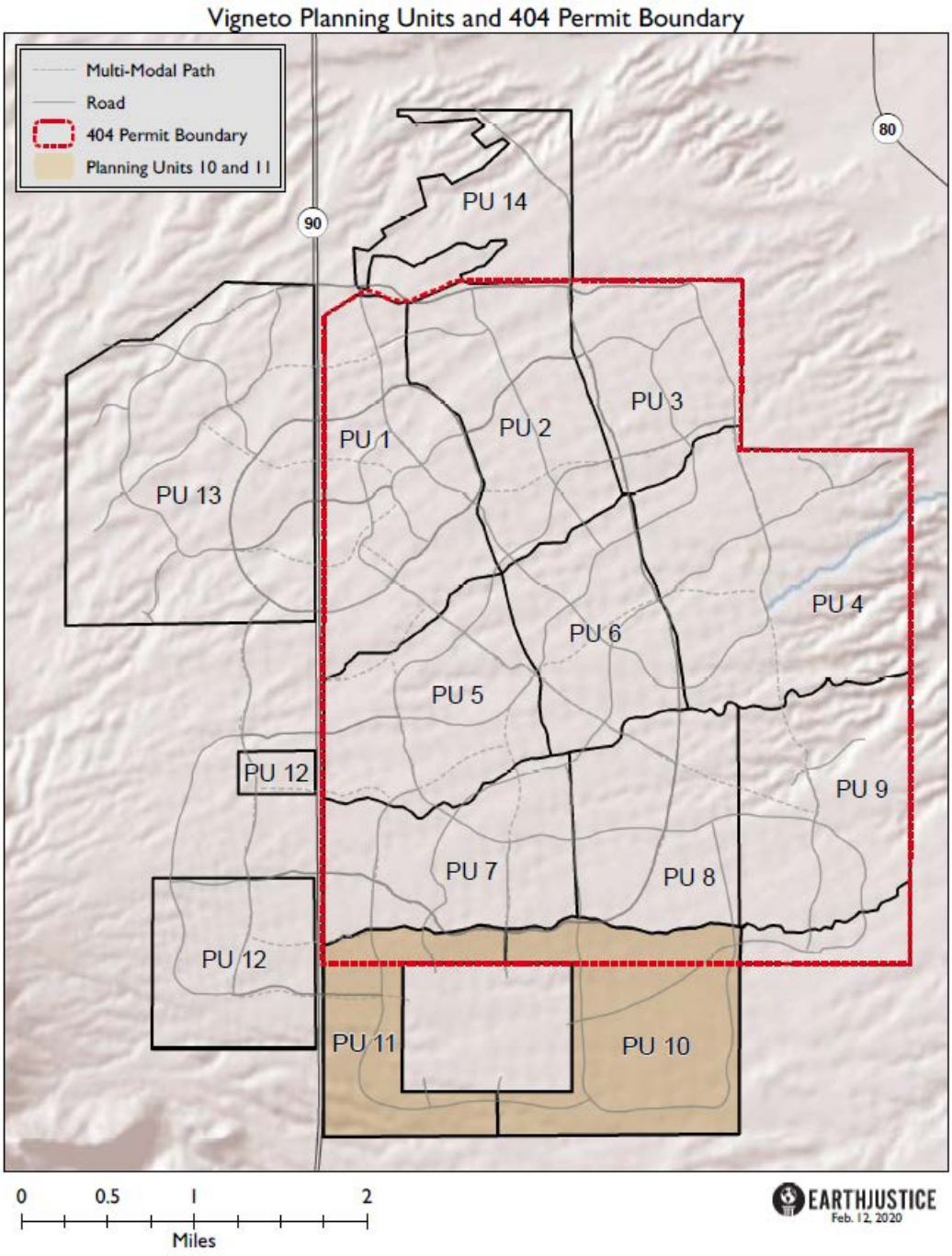
A. EPA Requests an Analysis Based on El Dorado's Approved 12,167-Acre Master Plan.

72. EPA urged the Corps to prepare a comprehensive analysis based on El Dorado's approved Master Plan to develop a 12,167-acre master-planned community. ACOE-011092, EPA Dec. 4, 2017 Letter at 1.

73. The Corps based its scope of analysis on the 8,212-acre Whetstone Ranch proposal, which was abandoned by Pulte over a decade ago. ACOE-039644, Revised 2019 EA at 10; ACOE-004835, Re-Evaluation Notice at 4. The Corps labeled this 8,212-acre area as a so-called "Phase I" of the Villages at Vigneto. ACOE-004832, Permit Re-Evaluation Notice at 1.

74. The Corps' 8,212-acre area does not align with the boundaries of the significantly larger 12,167-acre proposed Villages at Vigneto. *See* ACOE-003680, Vigneto Master Plan at 17 Ex.5 (depicting inconsistency between 8,212-acre permit area and Vigneto Master Plan). Nor does the Corps' permit area align with the boundaries of the Revitalization Districts or Community Facilities Districts created for Vigneto. ACOE047196, RD Application at 3, ACOE047884, RD Agreement at pdf. 339. The Master Plan does not identify an 8,212-acre "phase" of the planned development. *See generally* ACOE-003652-890, Vigneto Master Plan.

75. The 8,212-acre permit boundary used by the Corps does not align with the planning units laid out in the Master Plan, as depicted below:



Planning units 10 and 11 overlap and extend beyond the 8,212-acre permit area. Unless El Dorado constructs a looping circulation network during "Phase I" with a 404 permit, Units 10 and 11 will be isolated from the rest of the development by the large stream that runs along the Units' northern boundary (and is squarely within the 8,212-acre permit area). ACOE-003731, Vigneto Master Plan at 68 Ex.11. Without the looping

transportation network, access to these units would "be restricted to a 'right in/right out' pattern" along State Route 90. ACOE-039941, No Federal Action Alternative Memorandum at 5.

76. The planning units covering the remaining 3,955 acres do not contain the harmonious elements of the Master Plan, such as the Town Center—"the heart of the community." ACOE-003667, ACOE-003774, Vigneto Master Plan at 4, 111 Ex.15. Nor do they contain the Golf Club House or any of the Information Centers, Community Recreation Centers, or Public Services (i.e., fire station and hospitals) included in the Master Plan. ACOE-003774, ACOE-003782, Vigneto Master Plan at 111 Ex.15, 119 Ex.17 (depicting location of facilities).

77. In constructing the so-called Phase I, El Dorado would discharge fill into 51 acres of jurisdictional waters; the remaining phases would discharge additional fill into those same waters. ACOE-039609, Watershed Alliance May 2019 Comments at 3 (depicting streams running across property). Phase I would degrade 8,212 acres of upland habitat, increasing runoff and erosion into waters that feed the San Pedro River. ACOE048403-23, Levick et al. (2006). The remaining phases would degrade an additional 3,955 acres of adjacent upland habitat, further increasing runoff and erosion in those same waters. Phase I would deplete 6,032 acre-feet per year of groundwater, drawing down flows along the San Pedro River and at St. David Cienega. ACOE-039952, Vigneto Groundwater Use Memorandum at 3 tbl.2; ACOE-039053-55, ACOE-039061, Prucha (2016) at 29-31, 37. The remaining phases would deplete an additional 2,395 acre-feet from the same aquifer, ACOE-039952, Vigneto Groundwater Use Memorandum at 3 tbl.2, further drawing down surface flows along the San Pedro River and at St. David Cienega, ACOE-039053-55, ACOE-039061, Prucha (2016) at 29-31, 37.

B. Any Large-Scale Development Without a 404 Permit is Unrealistic, Impracticable, and Fails to Meet the Project Purpose.

78. Even within the 8,212-acre area, EPA concluded that any development without a 404 permit (i.e., the no-action alternative) would be "unrealistic [and] impracticable," and would "fail[] to meet the project purpose." ACOE-011111, EPA May 25, 2006 Letter.

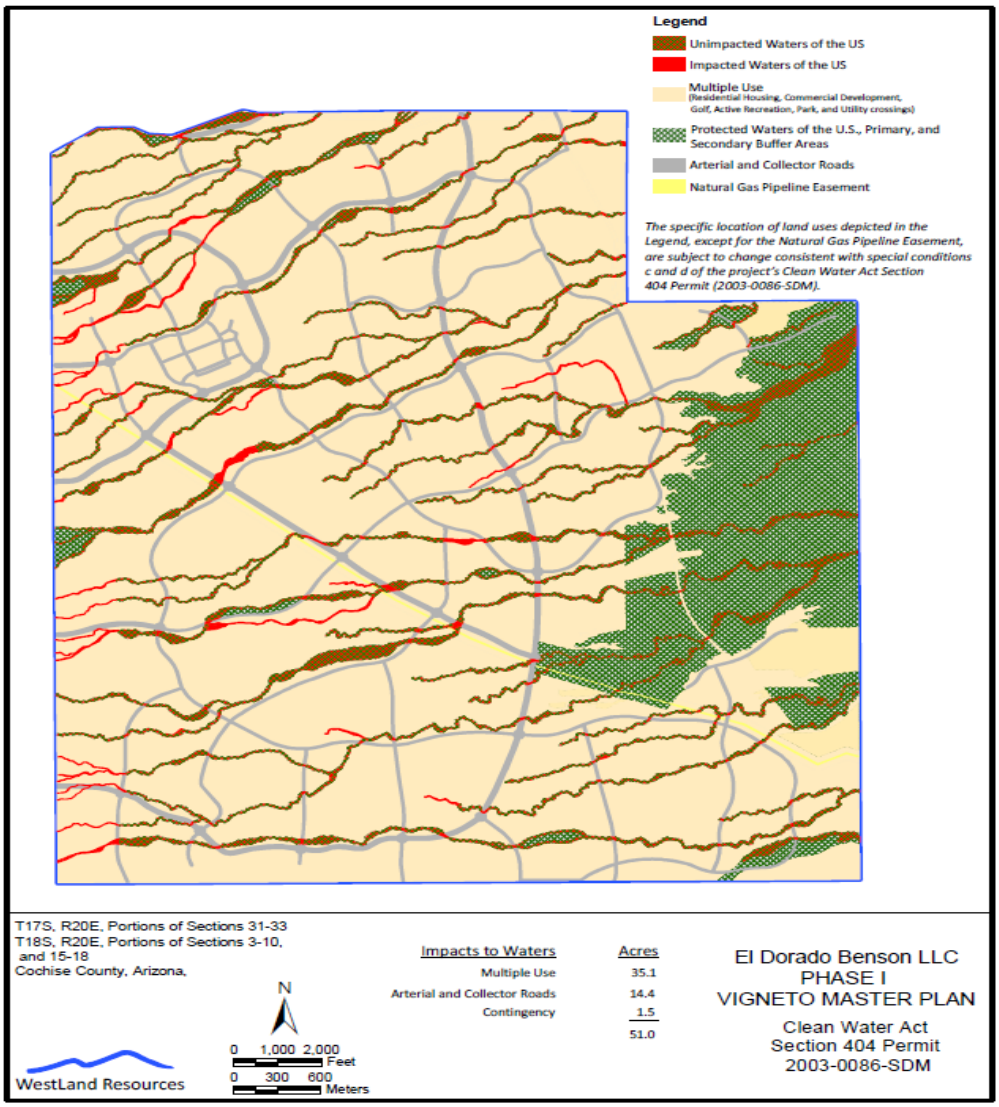
79. El Dorado requested a 404 permit based on its purpose and need to develop "a master-planned community with interrelated villages in or proximate to the City of Benson, Arizona, and proximate to regional transportation infrastructure." ACOE-031395, Vigneto 2018 EA at 12; ACOE-039648, Revised 2019 EA at 14 (same). El Dorado identified a series of basic objectives, including a transportation infrastructure that would provide connectivity to regional roadways, address traffic control needs, create well-coordinated circulation throughout the development, and accommodate land use objectives. ACOE-031395-97, Vigneto 2018 EA at 12-14; ACOE-039648-49, Revised 2019 EA at 14-15.

80. Thus, the Corps determined that El Dorado's overall project purpose is to build a master-planned community consisting of residential, commercial, and recreational facilities, including all appurtenant features, such as building pads, roads, and utilities, in the Benson, Arizona, area that is proximate to local, regional, and national transportation facilities. ACOE-031397-98, Vigneto 2018 EA at 14-15; ACOE-039650, Revised 2019 EA at 16.

81. As made clear by the Master Transportation Plan, an interconnected transportation network is a fundamental prerequisite of the development, as "land use and transportation are *inextricably linked*." ACOE-034162, Master Transportation Plan at 1 (emphasis added).

82. To achieve its purpose of developing a master-planned community and the requisite transportation infrastructure, El Dorado requested a 404 permit to fill the

network of jurisdictional waters on the project site at 350 locations broadly dispersed across the site, as depicted below:



ACOE-039804, Revised 2019 EA (fig.2, overlay of transportation network and jurisdictional waters); ACOE-039857, Vigneto Revised 404(b)(1) Alternatives Analysis (fig.3, identifying 350 discharge locations); ACOE-031256, Vigneto 2018 404(b)(1) Alternatives Analysis (fig.4 – same). The jurisdictional waters are so prevalent that El Dorado requested a special flexibility condition for the permit that allows it to fill any of jurisdictional waters throughout the permit area. ACOE-031515, Vigneto 2018 404

Permit at 2; ACOE-040060, 2019 Modified 404 Permit at 2; ACOE-011118-19, EPA May 25, 2006 Letter at 6-7 (discussing this "flexibility" condition).

83. EPA demonstrated that El Dorado would not be able to develop a master-planned community without a 404 permit due to the "extensive, dendritic, capillary-like assemblage of washes and desert grassland habitats" on the site. ACOE-011120, EPA May 25, 2006 Letter at 8. The cost of spanning these waters with bridges to create an integrated transportation network is "prohibitively high." ACOE-000961, Whetstone 404(b)(1) Alternatives Analysis at 6; ACOE-039941, No Federal Action Alternative Memorandum at 5. Instead, to avoid the costs of bridges, streets "would be oriented west-to-east between the major washes, and would not be interconnected and integrated." ACOE-004798, El Dorado Sept. 2017 Letter to Corps at 3. Access to the property would "be restricted to a 'right in/right out' pattern" along State Route 90, ACOE-039941, No Federal Action Alternative Memorandum at 5, leading to a series of "roads to nowhere," ACOE-003651, July 7, 2017 Corps-FWS Meeting Notes.

84. As explained by EPA, the lack of an integrated transportation network would create "significant logistical considerations," ACOE-011116, EPA May 25, 2006 Letter at 4, rendering any large-scale development "impracticable" without a 404 permit. ACOE-011111, EPA May 25, 2006 Letter. EPA highlighted the lack of "a traffic circulation system" under the no-action alternative "that could meet current standards for design, setback, and emergency and fire vehicle access." ACOE-011116, EPA May 25, 2006 Letter at 4. Assuming full build-out of the site, the no-action alternative would generate approximately 237,607 vehicle trips per day. ACOE-034186, Master Transportation Plan at 25 & tbl.5 (Site Generated Traffic: identifying 237,607 vehicle trips per day). This volume of traffic would be funneled "in all events" to State Route 90 due to the lack of interconnected roads or multi-modal pathways under the no-action alternative. ACOE-000961, Whetstone 404(b)(1) Alternatives Analysis at 6; *see also* ACOE-0039943, No Federal Action Alternative Memorandum at 7 (explaining how the

jurisdictional waters on the project site would prohibit "development of an effective north-south transportation network" and limit traffic to "right-in/right-out access points" along State Route 90).

85. Traffic flows on State Route 90 would be "severely restricted" and border on "unstable flows" at 30,600 trips per day, which equates to a LOS D for this four-lane state route. ACOE-034165, ACOE-034171, Master Transportation Plan at 4, 10. Traffic volumes in excess of 30,600 would lead to "forced or breakdown flows." ACOE-034165, Master Transportation Plan at 4. Each vehicle would experience at least an 80 second delay at every signaled intersection and at least a 50 second delay at every unsignalized intersection. ACOE-034164, Master Transportation Plan at 3 tbl.1. The no-action alternative would require five signalized intersections as well as 15 additional "right in/right out" access points from State Route 90. ACOE-039943, No Federal Action Alternative Memorandum at 7.

86. To ensure "safe and efficient State highway systems," the Arizona Department of Transportation requires any proposed development to mitigate its traffic impact on a State Route to ensure a LOS of C or better. Ariz. Dep't of Transp., Traffic Engineering Guidelines and Processes: Section 200 - Traffic Studies (2015), 240-1, 240-10.[6]

87. The state of Arizona requires ambulance service providers to obtain Certificates of Necessity in order to operate in the state. Ariz. Rev. Stat. § 36-2233(A). The Certificate must set forth specific response times, approved by the Arizona Department of Health Services, with which the service provider must comply to maintain its Certificate. Ariz. Admin. Code § R9-25-902(A)(2)(d). The response times are categorized by response code, or the priority level assigned to a request for ambulance services. *Id.* § R9-25-901(34).

[6] The Traffic Engineering Guidelines are available at https://azdot.gov/sites/default/files/2019/05/tgp0240-2015-06.pdf.

88. The ambulance service provider that would cover the Vigneto development, Healthcare Innovations, Inc., has a Certificate setting forth the following response times for the City of Benson:

> Code 3 Five (5) minutes on sixty (60) percent of all ambulance calls;
>
> Seven (7) minutes on seventy-six (76) percent of all ambulance calls;
>
> Ten (10) minutes on eighty-seven (87) percent of all ambulance calls;
>
> Thirty-Five (35) minutes on one-hundred (100) percent of all ambulance calls.
>
> Code 2 Seven (7) minutes on eighty (80) percent of all ambulance calls;
>
> Ten (10) minutes on eighty-five (85) percent of all ambulance calls;
>
> Fifteen (15) minutes on ninety-one (91) percent of all ambulance calls;
>
> Thirty (30) minutes on one-hundred (100) percent of all ambulance calls.

ACOE-034215, Certificate of Necessity.

89. EPA also concluded that developing 28,000 homes under the no-action alternative is "unrealistic." ACOE-011111, EPA May 25, 2006 Letter. Without a 404 permit, any development would be limited to "subdivisions placed between the wash areas with as few crossings as possible to limit the spanning costs." ACOE-039826, Vigneto Revised 404(b)(1) Alternatives Analysis at 17; ACOE031224, Vigneto 2018 404(b)(1) Alternatives Analysis at 18 (same). A subdivision of this design located adjacent to the Vigneto site contains hundreds of vacant lots to this day, as depicted below. ACOE-020259-61, Watershed Alliance March 2018 Comments at 1-3; ACOE-

020242, Watershed Alliance March 2018 Comments Exhibit A (photos of undeveloped lots).

Aerial Photo of Northern Edge of the Villages at Vigneto Development (taken 12/8/2017)

See also ACOE-020243, March 2018 Supplemental Comment Letter Exhibit A (Google map image showing undeveloped lots). Furthermore, residents would have no incentive to shop or work within the bounds of an "unconnected" community. ACOE-000961, Whetstone 404(b)(1) Alternatives Analysis at 6.

90. There would be a decreased absorption rate (i.e., lack of housing demand) under the no-action alternative. ACOE-039940, No Federal Action Alternative Memorandum at 4; ACOE-031225, Vigneto 2018 404(b)(1) Alternatives Analysis at 19 & n.2; ACOE-039827, Vigneto Revised 404(b)(1) Alternatives Analysis at 18 & n.2. Lack of housing demand under the no-action alternative would be problematic for development, as the Arizona Department of Commerce projects the City of Benson's population to grow by just 114 residents over the next 30 years. ACOE049663, Benson

General Development Plan Technical App. at 9 tbl.5. Rather than developing residential and commercial properties, El Dorado would develop vineyards and nut orchards on up to 3,000 acres of the 8,212-acre permit area under the no-action alternative. ACOE-039940, No Federal Action Alternative Memorandum at 4; ACOE-031225, Vigneto 2018 404(b)(1) Alternatives Analysis at 19; ACOE-039827, Vigneto Revised 404(b)(1) Alternatives Analysis at 18. El Dorado does not have certification from the Arizona Department of Water Resources (ADWR) for this groundwater use. ACOE-039695, Revised 2019 EA at 61.

91. El Dorado must obtain approval from the City of Benson before it makes any major amendments to the Master Plan. ACOE-003815, Vigneto Master Plan at 152; Benson, Ariz., Zoning Regulations at 34-36.

92. A major amendment is defined to include any change that "provides arterial street intersections along the exterior boundary of the Project at locations other than generally presented in the [Master Plan]" or "results in a significant change in pedestrian or traffic circulation along the exterior boundary of the Project at locations other than generally presented in the [Master Plan]." ACOE-003823, Vigneto Master Plan at 160. The no-action alternative would require 15 additional "right in/right out" access points from State Route 90. ACOE-039943, No Federal Action Alternative Memorandum at 7.

93. The Master Plan also defines a major amendment to include any alterations that "materially change the objectives or goals of the [Master Plan]." ACOE-003823, Vigneto Master Plan at 160. The transportation and access objective of the overall project purpose would not be achieved by the No Federal Action Alternative. ACOE-039944, No Federal Action Alternative Memorandum at 8.

94. El Dorado has not obtained authorization to make any major amendments to its Master Plan, which was approved on July 18, 2016. ACOE-003662-63, City of Benson, Ordinance 582 at 1-2.

95. El Dorado admitted in a 2017 letter to the Corps that "developing our property [without a 404 permit] would not meet our project purpose and will be less efficient from a land planning standpoint." ACOE-004798, El Dorado Sept. 2017 Letter to Corps at 3. El Dorado explained that its "core concept of interconnected villages would be difficult to retain." *Id.*

96. Any development without a 404 permit would "happen without the sense of place and cohesive community afforded through development of a master planned community." ACOE-039941, No Federal Action Alternative Memorandum at 5. In particular, the transportation and access objective of the overall project purpose would not be achieved by the no-action alternative. ACOE-039944, No Federal Action Alternative Memorandum at 8.

97. Consequently, both the Corps in its 2018 EA and El Dorado in its 2018 404(b)(1) analysis concluded that the no-action alternative was *not* practicable because it would *not* meet El Dorado's overall project purpose and need to develop a cohesive master-planned community on the site. ACOE-031404-05, ACOE-031434-44, Vigneto 2018 EA at 21-22, 51-52; ACOE-031225-27, Vigneto 2018 404(b)(1) analysis at 19-21.

98. In its 2018 EA, the Corps explained that it relied on four criteria for determining whether the no-action alternative could meet the project purpose and need and achieve the objectives of the approved Master Plan: (1) transportation and access, (2) land uses, (3) open spaces, and (4) community infrastructure. ACOE-031431, Vigneto 2018 EA at 48. Based on an evaluation of these factors, the Corps concluded that "[t]he No Federal Action Alternative would *not* meet the Overall Project Purpose and the Permittee's need for action, therefore the Corps has determined that the No Federal Action [Alternative] is not practicable in accordance with the requirements of the 404(b)(1) Guidelines." ACOE-031435, Vigneto 2018 EA at 52 (emphasis added); *see also* ACOE-039943, No Federal Action Alternative Memorandum at 7 (agreeing that the no-action alternative "does not meet the overall project purpose").

99. Likewise, El Dorado admitted in the 2018 404(b)(1) analysis that it would *not* be able achieve its core objectives or meet its project purpose of developing an interconnected master-planned community without a 404 permit. ACOE-031225-27, Vigneto 2018 404(b)(1) analysis at 19-21.

C. The Corps Fails to Address the Flaws in Its Analysis.

100. On February 15, 2019, the Corps suspended the 404 permit again, stating that it needed to clarify and correct its analysis in the 2018 EA and determine whether further modifications of the 404 permit were necessary. ACOE-032280, 2019 Suspension Letter.

101. The Corps reinstated the 404 permit on July 26, 2019, based on the same limited scope of analysis and without undertaking any further analysis of the impacts of the Vigneto development. ACOE-039640-46, Revised 2019 EA at 6-12 (using same scope of analysis area as 2018 EA); ACOE-040059, 2019 Modified 404 permit at 1. Thus, the Corps did not assess the remaining 3,955 acres of the Vigneto development outside of the 8,212-acre permit area. ACOE-039644, Revised 2019 EA at 10; ACOE-039868, Scope of Analysis Memorandum at 7 (claiming that development on remaining 3,955 acres is too "speculative" because the "details and planning decisions regarding future phases has not been completed by the developer"). The Corps also further limited its analysis to just 1,919 acres of the development (1,775 acres on the development site and 144 acres on the offsite parcel). ACOE-039646, Revised 2019 EA at 12.

102. El Dorado again did not undertake any construction on the site while the permit was suspended.

103. In the revised 2019 EA, the Corps reversed its position on the no-action alternative and now asserts that the no-action alternative meets El Dorado's purpose and need for the 404 permit. ACOE-039691, Revised 2019 EA at 57. However, El Dorado's proposed project design for the no-action alternative did not change from the time the Corps issued the 2018 EA to when it issued the revised 2019 EA. *Compare* ACOE-

031224-27, Vigneto 2018 404(b)(1) Alternatives Analysis at 18-21, *with* ACOE-039826-28, Vigneto Revised 404(b)(1) Alternatives Analysis at 17-19 (providing same analysis)

104. Rather, the revised 2019 EA acknowledges that there would be fundamental differences between the no-action alternative and the proposed Vigneto development. ACOE-039657, Revised 2019 EA at 23. For example, the Corps explained in the 2019 EA that an essential part of the Vigneto development was the establishment of an efficient system of arterial, collector, and local roadways and the construction of multi-modal pathways to link residences to trip generators to encourage alternative means of transportation in order to reduce vehicle miles traveled within the development. ACOE-039648-49, Revised 2019 EA at 14-15. The Corps stated that "[t]he lifestyle of the residents within the Villages at Vigneto depends largely on the degree of mobility/access that the roadways, multi-modal pathways, and sidewalks provide" and that "[t]ransportation infrastructure would provide connectivity to regional roadways, address traffic control needs, and create well-coordinated circulation throughout the development." ACOE-039648, Revised 2019 EA at 14; *see also* ACOE-039825, Vigneto Revised 404(b)(1) Alternatives Analysis at 16 (stating that permitted fill activities are "*necessary* to implement the community's . . . traffic circulation plans. This wide distribution cannot be practically concentrated or changed substantially *without disrupting the overall plan* [for the development]." (emphasis added)).

105. The Corps acknowledged in the 2019 EA that the no-action alternative would lack this critical infrastructure and the connectivity essential to a master-planned community. ACOE-039687, ACOE-039695, Revised 2019 EA at 53, 61.

106. El Dorado also acknowledged in its revised 2019 404(b)(1) analysis that the no-action alternative "would change the nature and character of the resulting development." ACOE-039828, Vigneto Revised 404(b)(1) Alternatives Analysis at 19. The no-action alternative would require major changes in construction methods for the development of transportation and utility infrastructure alignments and how the

neighborhoods within the community relate spatially to each other. ACOE-039827, Vigneto Revised 404(b)(1) Alternatives Analysis at 18.

VI. Improper Political Pressure Taints the Consultation Process under the ESA.

107. For years, FWS insisted on a comprehensive analysis of the Vigneto development because of its reasonably certain adverse impacts on listed species and critical habitat. ACOE-000449-50, FWS July 2004 Letter; ACOE048080-85, FWS July 2015 Letter; ACOE-003973-76, FWS Oct. 2016 Non-Concurrence.

108. FWS refused to concur with the Corps' limited analysis and refusal to undertake formal consultation regarding the impacts of the Vigneto development. ACOE-003973-76, FWS Oct. 2016 Non-Concurrence. FWS expressed concern that, without a comprehensive analysis, the proposed development could "be implemented in a piecemeal manner that does not include analyses of its full environmental impact." ACOE-003975, FWS Oct. 2016 Non-Concurrence at 3.

109. In a series of meetings in July and August 2017, FWS State Director, Steven Spangle, insisted on a comprehensive analysis of the entire Vigneto development, concluding that the 404 permit would facilitate development on the site. ACOE-040057, Chronology of ESA Consultation at 3; ACOE045713, July 6, 2017 Corps-FWS Meeting Notes; ACOE045714-15, August 15, 2017 Corps-FWS Meeting Notes. Spangle found that the Corps' hypothetical no-action alternative did not meet the "straight-face test." FWS010320, *High-level Trump Appointee Sought Reversal*.

110. FWS stated its intention to prepare a comprehensive Biological Opinion for the entire development, including an analysis of water use impacts resulting from the development. ACOE045713, July 6, 2017 Corps-FWS Meeting Notes. El Dorado objected to any such analysis as it would slow down the process of obtaining a 404 permit. *Id.*

111. Instead, El Dorado's owner, Mike Ingram, met with Secretary David Bernhardt in an off-the-books meeting at a hunting lodge in Montana. FWS010317,

High-level Trump Appointee Sought Reversal. Shortly thereafter on August 31, 2017, Spangle received a call from Interior Deputy Solicitor Peg Romanik telling him that a "high-level" political appointee in the Trump administration disagreed with his position. FWS010317-19, *High-level Trump Appointee Sought Reversal*; ACOE045811, ACOE045813, *I Got Rolled*. Romanik told Spangle that "if he knew what was good for him politically at his job," he would reverse FWS's position. ACOE045813, *I Got Rolled*.

112. Spangle followed orders, reversing FWS's position, not "based on fact," but rather "based on politics." ACOE045811, *I Got Rolled*. He then issued a Letter of Concurrence in October 2017, acquiescing in the Corps' narrow scope of analysis and decision to forego formal consultation. ACOE-005839-47, FWS Oct. 2017 Letter of Concurrence. The Corps then was able to issue the 404 permit. ACOE-031514-18, Vigneto 2018 404 Permit.

VII. The 404 Permit Would Have Significant Impacts on the Environment.

113. EPA determined that the development would have "substantial and unacceptable impact[s]" which "clearly pass NEPA's 'significance' threshold, both individually and cumulatively." ACOE-011105-07, EPA July 1, 2004 Letter at 4-6.

A. The Vigneto Development Would Significantly Impact the San Pedro River.

114. EPA concluded that the proposed project would exacerbate degradation of the San Pedro River. ACOE-011106, EPA July 1, 2004 Letter at 5. "Specifically, the aquatic ecosystems will be impaired by altered hydrological processes, the increase in the velocity and volume of stormwater flows, the discharge of pollutants into receiving waters, and groundwater extraction." ACOE-011099, EPA June 14, 2004 Letter at 6.

1. Dramatic Increases in Runoff From the Vigneto Development Would Degrade the San Pedro River.

115. To construct the proposed development, El Dorado must fill 51 acres of ephemeral waters that are critical to the San Pedro River. ACOE-011105, EPA July 1,

2004 Letter at 4. The channelization, shortening, straightening, and lining of these waters with hardscape materials increases velocities and encourages channel incision downstream and head cutting upstream. ACOE-011106, EPA July 1, 2004 Letter at 5. Disconnecting the active channels from their former floodplains reduces a channel's capacity to dissipate flow volumes and energy on their floodplains and usually has negative impacts on a full spectrum of ecosystem functions. *Id.*

116. In addition, the development would convert thousands of acres of desert habitat into suburban development. *See* ACOE-003775, Vigneto Master Plan at 112. Hydrologists with the U.S. Department of Agriculture and EPA conducted a hydrologic modeling study of the previously proposed Whetstone Ranch development to assess the impacts of that development on the San Pedro River. ACOE048403-23; Levick et al. (2006). Their results showed that the proposed land-use changes for the Whetstone Ranch would have resulted in major alteration of the hydrologic regime both within and downstream of the impacted watersheds where they empty into the San Pedro River. ACOE048422-23, Levick et al. (2006) at 19-20.

117. Increases in sediment yield would be most significant for the smaller, more frequent rainfall events. ACOE048410, ACOE048422, Levick et al. (2006) at 7, 19. For the two-year, one-hour event, average runoff and sediment yield would increase 413% and 231%, respectively, for the Whetstone Ranch proposal. ACOE048410, Levick et al. (2006) at 7.

118. Increased surface runoff and/or sediment yield would result in adverse impacts to the aquatic ecosystem. ACOE048407, ACOE048422, Levick et al. (2006) at 4, 19. These impacts would include more frequent and severe flooding, stream channel adjustment, stream bank erosion, water quality degradation from sedimentation and contaminant transport, habitat destruction, and decreased biological diversity. ACOE048407, Levick et al. (2006) at 4.

2. Groundwater Drawdown to Support the Vigneto Development Would Degrade the San Pedro River.

119. Groundwater pumping at the Vigneto development poses two threats to surface flows on the San Pedro River. First, pumping intercepts groundwater flowing east from the Whetstone Mountains that otherwise would flow into the San Pedro River and maintain the River's baseflows. *See* ACOE-011701, Barlow & Leake (2012) at 20. Second, groundwater pumping lowers the water table in the regional aquifer to levels that are too low for the aquifer's groundwater to flow into the alluvial aquifer and the San Pedro River. *See generally* ACOE-039025-62, Prucha (2016); *see also* ACOE046368, Eastoe (2018) at 12 (discussing how groundwater depletion caused by Vigneto pumping could "capture" surface flows at St. David Cienega); ACOE046372, Meixner (2017) at 1.

120. The following figure depicts how groundwater pumping at Vigneto would impact baseflows along the San Pedro River and spring flows at St. David Cienega:

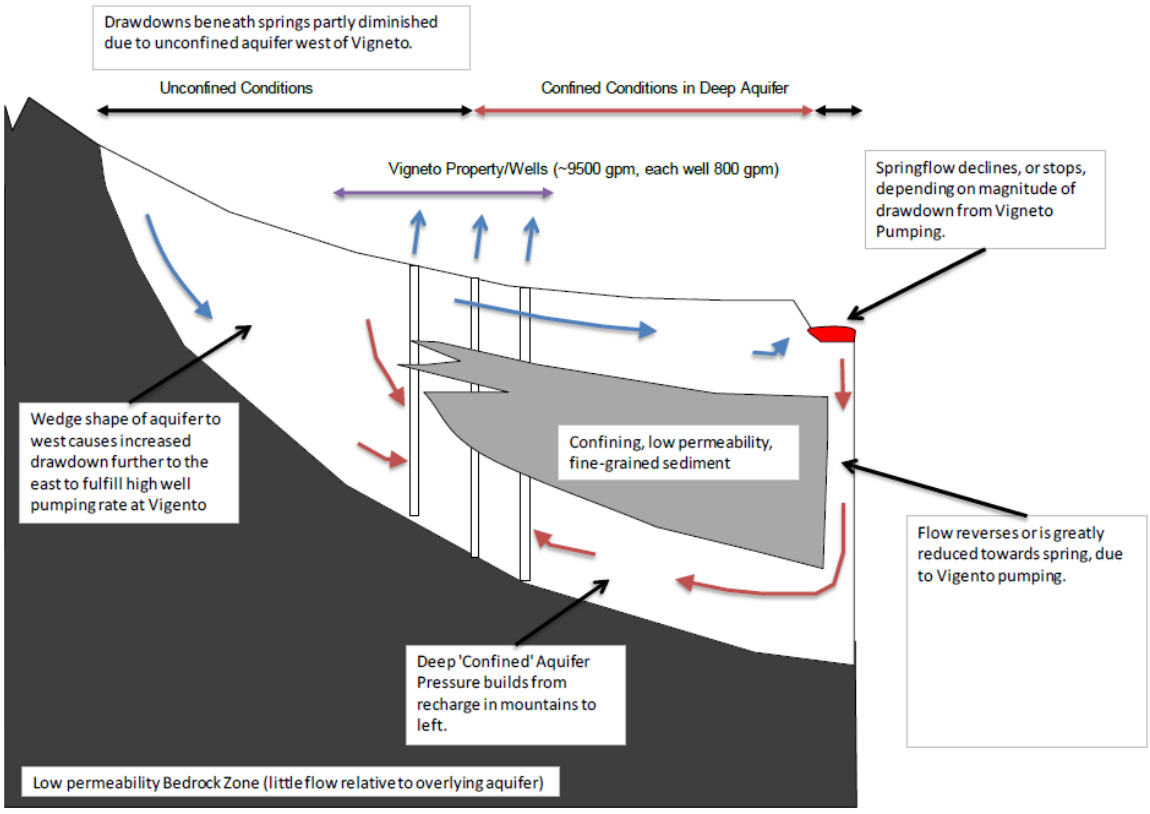


Figure 12. Conceptual section shows influence of proposed Vigneto pumping on spring flow located south of Vigneto and groundwater deep aquifer flows.

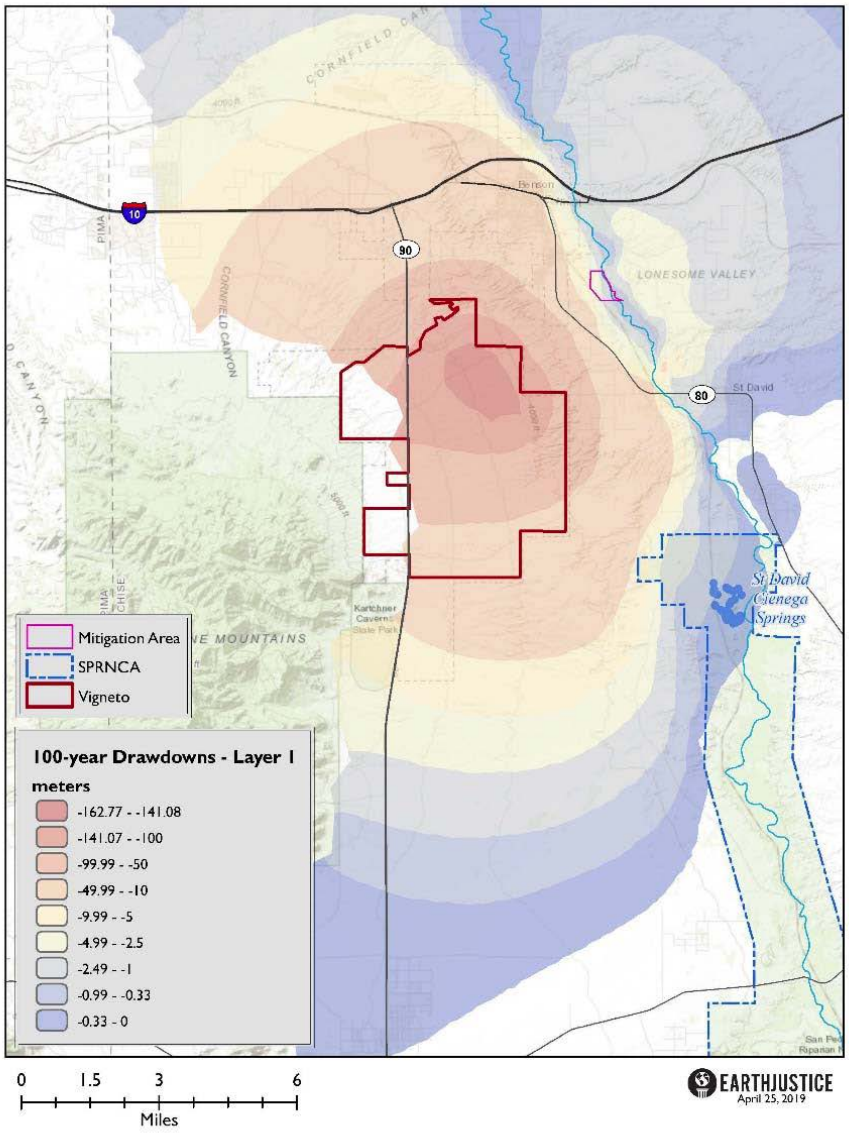
ACOE-039047, Prucha (2016) at 23 fig.12.

121. The City of Benson allocated 12,000 acre-feet of water per year to the Villages at Vigneto, nearly 15 times Benson's current groundwater demand of approximately 800 acre-feet per year. ACOE048431-32, ADWR Water Designation at 1-2. El Dorado would need 8,427 acre-feet per year for the 12,167-acre development. ACOE-039952, Vigneto Groundwater Use Memorandum at 3 tbl.2.

122. Dr. Robert Prucha, an expert in hydrogeology and water resource engineering, updated a prior, peer-reviewed groundwater model to evaluate the potential impacts of groundwater pumping at the Villages at Vigneto development. *See generally* ACOE-039025-62, Prucha (2016). Dr. Prucha's model predicts that groundwater pumping at the Vigneto development would spread to distant quarters of the aquifer

system due to the effects of the aquifer's confining layer. ACOE-039046-47, ACOE-039054-61, Prucha (2016) at 22-23, 30-37.

123. The model predicts that groundwater pumping at the Vigneto development could draw down the aquifer below the San Pedro River east of the development site by five meters after 100 years. ACOE-039055, Prucha (2016) at 31 fig.17. The groundwater model also predicts that groundwater drawdown could adversely impact spring flow in the St. David Cienega area on the order of 0.25 to 0.45 meters after 100 years. ACOE-039053-54, ACOE-039061, Prucha (2016) at 29-30, 37. These impacts are depicted in the figure below:



ACOE-039610, Watershed Alliance May 2019 Comments at 4.

124. Another expert hydrologist reviewed Dr. Prucha's groundwater model and concluded that the model is reasonable given that St. David Cienega is a known discharge point for groundwater in the basin, i.e., a location where groundwater percolates all the way to the surface. ACOE046373-75, Meixner (2017) at 2-4. The same hydrologist rejected the Corps' prior assumption that the groundwater aquifer was not connected to

the unconfined aquifer that feeds the San Pedro River and St. David Cienega. ACOE046375, Meixner (2017) at 4.

125. The magnitude of predicted drawdown would have a significant impact on the San Pedro River along the stretch east of the Vigneto development. ACOE-039055, Prucha (2016) at 31 fig.17. This stretch of the River is already losing water to the aquifer as groundwater levels decline. ACOE-011100, EPA June 14, 2004 Letter at 7. EPA thus explained that:

> Given the potential for the project to accelerate and exacerbate this problem, it is reasonably foreseeable that the San Pedro River could be ultimately converted from a perennial to an intermittent or ephemeral aquatic system. This increasing degradation would be contrary to the goals of the CWA—protecting the physical, chemical, and biological integrity of the Nation's waters.

Id.

B. Constructing the Remaining 3,955 Acres of the Vigneto Development Would Cause Cumulatively Significant Impacts.

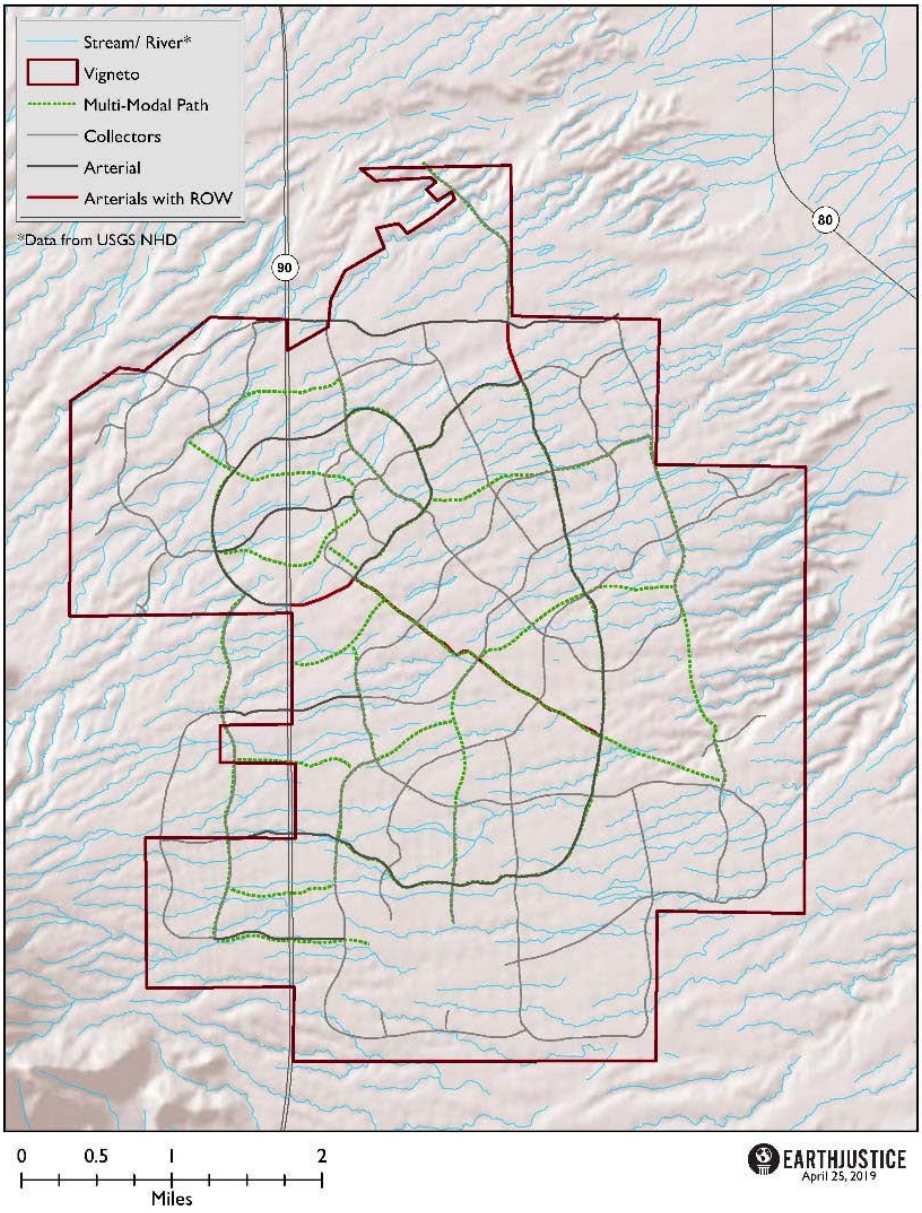
126. In the revised 2019 EA, the Corps stated that it considered development on the remaining 3,955 acres in its cumulative effects analysis because development of those acres is "reasonably foreseeable." ACOE-039781, Revised 2019 EA at 147.

127. The Master Plan contains maps and budgets setting out the transportation system and land uses across the entire property, including the remaining 3,955 acres of the development. ACOE-003731, ACOE-003774, Vigneto Master Plan at 68 Ex.11, 111 Ex.15 (depicting maps of Conceptual Traffic Circulation Plan and Land Use Final Development Plan); ACOE-003775, Vigneto Master Plan at 112 tbl.16 (setting forth Land Use Budget).

128. The Corps can estimate the extent of aquatic resources on the remaining 3,955 acres "by using the number of blue-line streams . . . , as shown on Google Earth with EPA WATERS Program Data." ACOE-031435-36, Vigneto 2018 EA at 52-53. While virtually all blue-line streams constitute jurisdictional waters, there are many

jurisdictional waters that do not show up on Google Earth with EPA WATERS Program Data as blue-line streams. ACOE-031436, Vigneto 2018 EA at 53.

129. The Watershed Alliance provided a map, based on the EPA WATERS tool, to show the aquatic resources on the remaining 3,955 acres that likely would be impacted by the development, as demonstrated below:



ACOE-039609, Watershed Alliance May 2019 Comments at 3.

130. The Corps also has a water budget for the entire Vigneto development, including the other 3,955 acres. ACOE-039952, Vigneto Groundwater Use Memorandum at 3 tbl.2. Dr. Prucha used this budget to model the cumulative impacts of the entire development on groundwater. *See generally* ACOE-039025-62, Prucha (2016).

131. With the information in the record, FWS concluded that it is "reasonably certain" that constructing the remaining part of the development would result in "appreciable" threats on endangered species, including the jaguar, western-yellow billed cuckoo, northern Mexican gartersnake, and southwestern willow flycatcher. ACOE-003975, FWS Oct. 2016 Non-Concurrence at 3; ACOE048081-84, FWS July 2015 Letter at 2-5.

132. The Corps did not analyze the cumulative impacts of the remaining 3,955 acres of the development in the 2018 EA, claiming that these impacts were "uncertain" because development *was not* reasonably foreseeable. ACOE-031498, Vigneto 2018 EA at 115. In the revised 2019 EA, the Corps copied its cumulative impacts analysis from the 2018 EA. *Compare, e.g.*, ACOE-031503, Vigneto 2018 EA at 120 (claiming that "no large-scale development projects are planned" which would affect wildlife habitat), *with* ACOE-039786, Revised 2019 EA at 152 (same verbatim statement).

C. The Impacts of the Vigneto Development Are Highly Controversial.

133. For over a decade, FWS and EPA identified the unacceptable, adverse impacts of granting a 404 permit for the Vigneto development. ACOE-011092-123, EPA Dec. 4, 2017 Letter (incorporating prior letters to the Corps on Whetstone Ranch); ACOE-000449-50, FWS July 2004 Letter; ACOE048080-85, FWS July 2015 Letter; ACOE-003973-76, FWS Oct. 2016 Non-Concurrence.

134. The Watershed Alliance submitted extensive comments and scientific studies demonstrating the significant adverse environmental impacts of the Vigneto development. ACOE-011126-231, Watershed Alliance Dec. 2017 Comments; ACOE-018492-96, Watershed Alliance Jan. 2018 Comments; ACOE-020259-64, Watershed

Alliance March 2018 Comments; ACOE-030990-99, Watershed Alliances June 2018 Comments; ACOE046204-41, Watershed Alliance Notice of Intent to Sue; ACOE-032349-74, Watershed Alliance March 2019 Comments; ACOE045804-09, Watershed Alliance May 2019 Comments. Over 15,000 members of the public from across the nation also submitted comments identifying their concerns with the size, nature, and effects of the proposed development. ACOE-038837-9010, Earthjustice Public Comments. For example, one local resident from Saint David, Arizona, expressed concerns about the adverse impacts of the proposed development on her property:

> I live within 1 mile of this proposed development and I am quite concerned about my well and it being sustainable. I am also concerned regarding accelerated run off from the development which is up stream. This is too large a development to be sustainable in this desert area.

ACOE-038848, Earthjustice Public Comments.

135. A long-time resident of Benson, Arizona, expressed similar concerns about the impacts of the development on the San Pedro River and groundwater levels:

> My family has lived in Benson for 14 years . . . . We also love the beauty of the San Pedro River. I ask you to consider what this will do to our wildlife and also to our current water levels. Our water is in short supply already and this will make it much worse. We already have to redrill our well and that will cost us $26,000.00. We do not have the money to do this. More development will hurt our community.

ACOE-038854, Earthjustice Public Comments.

136. Another resident expressed concerns about the impacts of granting a 404 permit on the San Pedro River, as well as the detrimental impacts on downstream farmers:

> The San Pedro River is one of the very last points of refuge for migrating birds. A free flowing San Pedro also supports small scale agriculture downstream, which could be devastated by a large residential project. The economy of the region depends on ecotourism, which will dry up with the river if CWA Permit No. 2003-00826-SDM goes through. I have personally seen the slow deterioration of the San Pedro and [its] ecosystem over the years. Please do the right thing for the regional economy and the survival of

> a rare and special ecosystem by revoking CWA Permit No. 2003-00826-SDM.

ACOE-038840, Earthjustice Public Comments.

137. A local resident from Benson, Arizona, expressed concerns about the environmental impacts of the development, including the burden on the local community:

> I am a resident of the area and am deeply concerned about the environmental impact of this project, a[s] well as the burden [it] places on residents to absorb the massive population spike. It is also apparent that the tax structure does not benefit the local community. . . . Who will be holding the bag when the development fails, and there's no water for golf courses, etc?

ACOE-038845, Earthjustice Public Comments.

138. Another commenter underscored the adverse impacts of the development on the local economy, including birdwatching:

> Please do not give a permit to this huge development. Doing so would overload the available water supply, both surface and groundwater, hurting the San Pedro River and all the wildlife [that is] dependent on it. And thereby harming the local economy, which benefits significantly from wildlife-watching tourists. It is unwise to over-build in this desert environment; doing so would cause major future problems.

ACOE-038858, Earthjustice Public Comments.

139. Another commenter emphasized the biological importance of the San Pedro River, urging the Corps to undertake a thorough analysis:

> [T]his watershed is the single most biodiverse of any in the 7 southwestern states, including the middle Rio Grande. It is the last free flowing river in the arid desert southwest and provides habitat for hundreds of migrating birds, bats and other pollinators essential to our nation's crop productivity and food security. It is one of the rarest habitat types in the arid west and essential to the majority of species who either reside in or visit the region at some point in their life cycle . . . .

ACOE-038837, Earthjustice Public Comments.

140. Even though the public sent in over 15,000 comments, the Corps claimed that it received only 4,467 comments on the 404 permit. ACOE-039651, Revised 2019 EA at 17.

141. Investigative reporters wrote dozens of stories documenting the controversy surrounding the development's impacts on the San Pedro River, including the following:

a. Dana Cole, *Villages at Vigneto Expresses Frustration With Media*, WILCOX RANGE NEWS (July 18, 2015). FWS002967-69 (attaching article to email).

b. Tony Davis, *Army Corps' Position on Big Benson Development Remains Uncertain*, ARIZONA DAILY STAR (Oct. 16, 2015). FWS003068 (attaching article to email).

c. Tony Davis, *Ex-Federal Official: 'I Got Rolled' by Trump Administration to Ease Way for Vigneto Housing Development*, ARIZONA DAILY STAR (April 29, 2019). ACOE045810-18.

d. Tony Davis, *Rep. Raul Grijalva to Investigate Whistleblower's Claims About Vigneto Project*, ARIZONA DAILY STAR (May 13, 2019). FWS010326-31.

e. Ian James, *High-level Trump Appointee Sought Reversal on Arizona Development Near San Pedro River, Ex-Official Says*, ARIZONA REPUBLIC (May 3, 2019). FWS010316-24.

142. Congressional representatives also raised concerns about the significant impacts of the development and the need for a comprehensive EIS. ACOE-001967-70, Oct. 2015 Letter From Rep. Grijalva. In 2015, Representative Raul M. Grijalva wrote a letter to the Corps expressing his concern about the agency's failure to prepare a full EIS to evaluate the impacts of the development on the San Pedro River Valley, "perhaps one of the most environmentally sensitive landscapes in all of Arizona." *Id.* He urged the Corps "to come into legal compliance by conducting a full EIS and by initiating formal consultation with the FWS" before El Dorado could commence construction of the Vigneto development. ACOE-001969, Oct. 2015 Letter From Rep. Grijalva at 3. In 2019, as Chairman of the House Natural Resources Committee, Representative Grijalva again underscored the "substantial and unacceptable impacts" of the Vigneto development on the San Pedro River and cited two recent hydrological studies demonstrating that "groundwater pumping for the Vigneto development could deplete the surface water of SPRNCA, including the Saint David Cienega." ACOE-039622-24, July 2019 Letter From Rep. Grijalva.

D. The Vigneto Development Would Adversely Affect Listed Species And Critical Habitat.

143. FWS determined that it is "reasonably certain" that the Villages at Vigneto development would have significant impacts on listed species and critical habitat in the area. ACOE048081, FWS July 2015 Letter at 2.

144. FWS noted that increased runoff from the development could have significant adverse impacts by causing degraded water quality from sediment and pollutant transport, erosion and alternation of stream channels, habitat destruction, decreased biological diversity, and increased flooding. ACOE048082, FWS July 2015 Letter at 3 (citing Levick et al. (2006)). For example, the western yellow-billed cuckoo, southwestern willow flycatcher, and northern Mexican gartersnake all have designated and proposed critical habitat along the San Pedro River east of the development site. ACOE048081-82, FWS July 2015 Letter at 2-3; 78 Fed. Reg. 344, 376-77 (Jan. 3, 2013). Additionally, the development site is located between two areas of occupied yellow-billed cuckoo critical habitat (the San Pedro River and Guindani Canyon), ACOE048077-78, Holmes BE Comments at 2-3, and contains suitable nesting and foraging habitat for the cuckoo, ACOE048081, FWS July 2015 Letter at 2. Thus, development on the project site, and resulting increase in sedimentation, would adversely impact these species. ACOE048081-82, FWS July 2015 Letter at 2-3.

145. FWS further determined that dramatic increases in groundwater pumping to support the Vigento development would have severe impacts on listed species and critical habitat. ACOE048082-83, FWS July 2015 Letter at 3-4; ACOE-003975, FWS Oct. 2016 Non-Concurrence at 3; *see also* FWS002892, Jean Calhoun June 2015 Email (FWS biologist stating that, if the Vigneto development is constructed, "we can kiss the San Pedro goodbye"); ACOE049228-41, Nguyen et al. (2014) (documenting impacts of regional groundwater pumping on riparian habitat along the San Pedro River). FWS reasoned that the anticipated displacement of water in the aquifer caused by pumping at

the Vigneto development "is likely to reduce flows in the San Pedro River, in reaches designated as critical habitat for the southwestern willow flycatcher and proposed as critical habitat for the yellow-billed cuckoo and northern Mexican gartersnake." ACOE-003975, Oct. 2016 Non-Concurrence at 3; *see also* ACOE048083, FWS July 2015 Letter at 4.

146. A retired FWS employee observed a ten-meter long and approximately 0.5-meter wide patch of endangered Huachuca water umbel in May of 2017 next to St. David Monastery along the St. David Cienega. ACOE049263-64, Email from Jim Rorabaugh; ACOE-032235, Watershed Alliance Notice of Intent to Sue at 16. The St. David Cienega relies on groundwater discharges from the underlying aquifer. ACOE-011269, Stevens et al. (2012) at 3; ACOE046368, Eastoe (2018) at 12; ACOE-039053-54, ACOE-039061, Prucha (2016) at 29-30, 37. Thus, significant increases in groundwater pumping to support the Vigneto development would have severe impacts on the Huachuca umbel by reducing the groundwater discharges that sustain the Cienega. ACOE046368, Eastoe (2018) at 12; ACOE-039053-54, ACOE-039061, Prucha (2016) at 29-30, 37.

147. The development would also have severe adverse impacts on the endangered jaguar. The 8,212-acre permit area for the development is adjacent to designated critical jaguar habitat. ACOE048084, FWS July 2015 Letter at 5. As a result, development on the 8,212-acre area could result in indirect effects to the species due to increased recreation, noise, and olfactory and light pollution. *Id.*; ACOE048277-78, Tucson Audubon Soc'y May 2015 Comments at 23-24. Furthermore, construction on the remaining 3,955 acres of the Vigneto development would directly overlap with, and destroy, 650 acres of designated jaguar habitat. ACOE048277-78, Tucson Audubon Soc'y May 2015 Comments at 23-24.

148. Consequently, FWS concluded that the Vigneto development would have "appreciable direct and indirect effects to endangered and threatened species, including

proposed and final critical habitat." ACOE-003975, FWS Oct. 2016 Non-Concurrence at 3.

VIII. The Corps Fails to Demonstrate that Granting a 404 Permit is the Least Environmentally Damaging Practicable Alternative.

149. EPA concluded that the Corps failed to demonstrate that granting a 404 permit was the least environmentally damaging practicable alternative (LEDPA). ACOE-011114-16, EPA May 25, 2006 Letter at 2-4. As explained by EPA, "[i]f a development similar enough to the proposed project which meets the applicant's goals is practicable without a permit, no permit may be issued pursuant to the regulations." ACOE-011116, EPA May 25, 2006 Letter at 4 (citing 40 C.F.R. § 230.10(a)).

150. EPA also explained that "if the Corps truly believes the 'no federal action' (100% avoidance) alternative would realistically result in similar development of the site, it follows that avoidance beyond that which is currently proposed is practicable." ACOE-011118, EPA May 25, 2006 Letter at 6. Additional avoidance measures include the construction of spanned crossings over jurisdictional waters to avoid discharging any fill material. ACOE-039941, No Federal Action Alternative Memorandum at 5.

151. The Corps stated that, although the no-action alternative was practicable and would avoid filling jurisdictional waters, it was not the LEDPA because it "would result in substantially more adverse environmental consequences." ACOE-039828, Vigneto Revised 404(b)(1) Alternatives Analysis at 19; ACOE-039691, Revised 2019 EA at 57. To avoid formal consultation with FWS, however, the Corps previously represented to FWS that the no-action alternative would be "a similar development (resulting in *similar effects*)." ACOE-005841, FWS Oct. 2017 Letter of Concurrence at 3 (emphasis added).

152. The Corps also asserted that the no-action alternative would have greater impacts because it would involve 3,000 acres of traditional agriculture (e.g., nut orchards and vineyards). ACOE-039688, ACOE-039695, Revised 2019 EA at 54, 61; ACOE-

039940, No Federal Action Alternative Memorandum at 4 (discussing transitional agricultural land use under the no-action alternative). These agricultural activities would occur outside of the 1,919-acre scope of analysis area used by the Corps to evaluate the proposed development. ACOE-039646, Revised 2019 EA at 12 (limiting scope of analysis to just 1,775 acres on the development site). At any rate, El Dorado does not have a groundwater permit from the ADWR to pump groundwater for transitional agricultural use. ACOE-039695, Revised 2019 EA at 61.

153. The Corps stated that the no-action alternative would have greater impacts because it would not include the "compensatory mitigation program" required by the 404 permit. ACOE-039828, Vigneto Revised 404(b)(1) Alternatives Analysis at 19. As such, it would not include restrictive covenants to protect 1,624 acres of open space on the project site or restoration of the offsite parcel. *Id.*; ACOE039688, Revised 2019 EA at 54. EPA, however, objected to the Corps' use of compensatory mitigation to make it appear as if granting a 404 permit was the LEDPA. ACOE-011119, EPA May 25, 2006 Letter at 7 n.18. "If the onsite-preserves are intended to be *compensatory* acreage, they cannot be used to make the project proposal appear 'less damaging' than the other alternatives." *Id.*

IX. The 404 Permit Would Cause Significant Adverse Impacts on the Aquatic Ecosystem That the Corps Has Failed to Mitigate.

154. EPA concluded that granting a 404 permit to fill 51 acres of jurisdictional waters for the Vigneto development would result in "substantial and unacceptable" impacts on the aquatic ecosystem, including the San Pedro River. ACOE-011105-07, EPA July 1, 2004 Letter at 4-6.

155. The Corps also determined that permitted fill activities on the project site would result in adverse impacts that could not be avoided. ACOE-039775-76, Revised 2019 EA at 141-42. Consequently, the Corps conditioned the grant of the 2019 modified

permit on El Dorado's compliance with its HMMP. ACOE-040059, 2019 Modified 404 Permit at 1; *see also* ACOE-039871-900, 2018 HMMP.

156. In the HMMP, El Dorado purports to provide for compensatory mitigation "in perpetuity" for the unavoidable impacts of the permitted activity, i.e., the filling of 51 acres of jurisdictional waters on the development site. ACOE-039875, ACOE-039878, 2018 HMMP at 2, 5.

157. The HMMP includes activities on the development site, such as avoidance of 424 acres of jurisdictional waters and preservation of 1,200 acres of primary and secondary buffers within the associated upland habitat of those waters. ACOE-039877, 2018 HMMP at 4. The onsite mitigation lands would be preserved as natural open space through restrictive covenants and no rehabilitative or enhancement work would be done on those lands. ACOE-039877-78, ACOE-039886, 2018 HMMP at 4-5, 13.

158. The HMMP also includes activities on a 144-acre offsite parcel located just northeast and downstream of the development site along the San Pedro River. ACOE-039877, 2018 HMMP at 4. The offsite parcel encompasses the active San Pedro River channel and associated riparian habitat, adjacent active and abandoned floodplains, an artesian well and associated wetland habitat, and fallowed agricultural fields. *Id.* El Dorado proposes to undertake habitat restoration and erosion control activities on the offsite parcel, including (1) stabilizing and grading active gully head cut erosion by installing rock chutes and rip raps; (2) planting native trees and shrubs, and seeding with a native seed mix around reclamation and gully areas, the artesian well, and the active floodplain along the San Pedro River; and (3) revegetating the fallowed agricultural fields. ACOE-039887-90, 2018 HMMP at 14-17.

159. The Corps and El Dorado presume the mitigation activities on the offsite parcel would provide mitigation in perpetuity because "the basic natural process" on the offsite parcel "would remain in place (*e.g.*, depth to groundwater, hydrology, and soils)." ACOE-039887, 2018 HMMP at 14.

160. El Dorado would plant 400 cottonwoods on the offsite parcel. ACOE-039890, 2018 HMMP at 17. Cottonwoods require persistent stream flows and shallow (high) groundwater depths to survive. ACOE048808, Rosemont Amended BiOp at 62; *see also* ACOE046372-74, Meixner (2017) at 1-3. The HMMP identifies the depth to alluvial groundwater on the offsite parcel as approximately 44 to 53 inches. ACOE-039882, 2018 HMMP at 9. Thus, El Dorado proposes to plant the cottonwoods with the rootball at least 48 inches (or four feet) below the ground surface. ACOE-039890, 2018 HMMP at 17. No supplemental watering is proposed for cottonwood plants in the HMMP. ACOE-039890, 2018 HMMP at 17.

161. El Dorado also presumes that the preservation, maintenance, and enhancement of the artesian well-wetland complex will successfully provide a perennial water source to wildlife in an area where surface water is limited. ACOE-039892, 2018 HMMP at 19. These wetlands expand and contract depending on fluctuations in groundwater discharge from this system. ACOE-039879, 2018 HMMP at 6.

162. Groundwater pumping for the Vigneto development would draw down surface and subsurface flows at the offsite parcel by up to five meters, eliminating or reducing the groundwater-fed artesian well. ACOE-039055, Prucha (2016) at 31 fig.17. El Dorado recognizes in the HMMP that, "[a]bsent this source of water, the wetland area within the mitigation site would no longer support wetland hydrology and the wetland soils and vegetation would cease to exist at the site over time." ACOE-039877, 2018 HMMP 4 n.1.

163. The Corps did not analyze the impacts of groundwater pumping for the Vigneto development on the offsite parcel or the cumulative impacts of climate change on El Dorado's proposed mitigation activities. *See generally* ACOE-039775-78, Revised EA at 141-44; ACOE-039871-900, 2018 HMMP.

164. In the HMMP, El Dorado acknowledges that active head cut erosion is an on-going problem contributing to habitat degradation and water quality concerns on the

offsite parcel. ACOE-039882, ACOE-039886, 2018 HMMP at 9, 13. El Dorado thus proposes the construction of a rock chute at the head cut and installation of rip rap in the channel immediately downgradient of the new chute to stabilize the advancing head cut. ACOE-039880, ACOE-039886, 2018 HMMP at 7, 13. El Dorado claims these measures would prevent habitat degradation and protect the artesian well-wetland complex from future degradation. *Id.* However, El Dorado noted that the proposed Vigneto development would increase runoff and erosion. ACOE-039875, 2018 HMMP at 2.

165. El Dorado provides for a five-year monitoring period in the HMMP once mitigation activities are complete. ACOE-039898, 2018 HMMP at 25. But El Dorado plans to construct the Vigneto development over a 20-year period with "impacts to jurisdictional waters . . . occur[ing] incrementally over" that build-out period. ACOE-039879, 2018 HMMP at 6. By the time the monitoring period would end, El Dorado would have constructed less than one-fourth of the Vigneto development. *See* ACOE047335, RD Application at pdf. 145 Ex.G (showing construction of 25% of total development five years after start of build-out).

166. El Dorado's five-year monitoring period also would not capture the delayed effects of groundwater pumping and surface runoff on surface and subsurface flows, as there is a time lag between when groundwater pumping occurs and when those affects would reach surface waters, like the San Pedro River. ACOE-001723-24, ACOE-011750-53, Barlow & Leake (2012) at 42-43, 69-72; ACOE-011784-85, Leake et al. (2014) at 10-11.

167. The Corps relied on the same activities El Dorado proposed as onsite compensatory mitigation in the HMMP—*i.e.* preservation of 1,624 acres of open space as avoided jurisdictional waters and upland buffers around the waters—to reject the no-action alternative as the LEDPA. ACOE-039646, ACOE-039687-88, ACOE-039694-95, Revised 2019 EA at 12, 53-54, 60-61; *see supra* ¶153. The Corps similarly relied on El Dorado's proposed offsite compensatory mitigation activities to reject the no-action

alternative as the LEDPA. ACOE-039646, ACOE-039687-88, ACOE-039694-95, Revised 2019 EA at 12, 53-54, 60-61; ACOE-039828, Vigneto Revised 404(b)(1) Alternatives Analysis at 19 (stating that, under the no-action alternative, "the compensatory mitigation program would not be undertaken"); *see supra* ¶153.

X. The Corps Fails to Determine Whether Granting a 404 Permit for the Vigneto Development is in the Public Interest.

168. The Corps limited its public interest review to the 1,919-acre scope of analysis area used in the revised 2019 EA. ACOE-039729-74, Revised 2019 EA at 95-140. The Corps' public interest review did not encompass the 12,167-acre Vigneto development proposed by El Dorado. *Id.*

169. The Corps claimed that groundwater pumping within its narrow scope of analysis would have a "negligible effect" on the San Pedro River and SPRNCA, making this public interest factor neutral. ACOE-039731, ACOE-039746; Revised 2019 EA at 97, 112. The Corps' analysis only considered the impacts of pumping 159,100 gallons per day (178 acre-feet per year). ACOE-039952, Vigneto Groundwater Use Memorandum at 3, tbl.2. But the Vigneto development would pump 7.5 million gallons of groundwater per day (8,427 acre-feet per year). *Id.* Hydrological modeling shows that this exponentially greater level of pumping would draw down the aquifer below the San Pedro River by five meters and up to 0.45 meters at St. David Cienega within SPRNCA. ACOE-039053-55, ACOE-039061, Prucha (2016) at 29-31, 37. Such degradation of the San Pedro River "would be contrary to the goals of the CWA—protecting the physical, chemical, and biological integrity of the Nation's waters." ACOE-011100, EPA June 14, 2004 Letter at 7. The degradation of St. David Cienega and SPRNCA would also be contrary to Congress' purpose of protecting "the riparian area and the aquatic, wildlife, archeological, paleontological, scientific, cultural, educational, and recreational resources of the public lands surrounding the San Pedro River." 16 U.S.C. § 460xx(a).

170. The Corps claimed that any effects on wildlife within its narrow scope of analysis would be "insignificant," making this public interest factor "neutral." ACOE-039733, Revised 2019 EA at 99. But the Vigneto development would adversely affect thousands of acres of desert habitat, including 650 acres of designated jaguar habitat. ACOE-003975, FWS Oct. 2016 Non-Concurrence at 3; ACOE048080-85, FWS July 2015 Letter; ACOE048277-78, Tucson Audubon Soc'y May 2015 Comments at 23-24. The Vigneto development would also exponentially increase surface water runoff and sedimentation, adversely impacting downstream critical habitat for species such as the western yellow-billed cuckoo, southwestern willow flycatcher, and northern Mexican gartersnake. ACOE048082, FWS July 2015 Letter at 3 (citing Levick et al. (2006)). Vigneto's groundwater pumping would further draw down groundwater levels along the San Pedro River by multiple meters, impacting critical habitat for these species. ACOE048082-83, FWS July 2015 Letter at 3-4; ACOE-003975, FWS Oct. 2016 Non-Concurrence at 3; ACOE-039055, Prucha (2016) at 31 fig.17.

171. The Corps claimed that there would be negligible impacts on water supply because ADWR issued a certificate of groundwater adequacy. ACOE-039738, Revised 2019 EA at 104. ADWR's certificate does not analyze the impacts of the proposed groundwater pumping for the Vigneto development on adjacent property owners who depend on residential wells. *See generally* ACOE048431-35, ADWR Water Designation. Nor does it analyze the impacts of the proposed groundwater pumping on the San Pedro River or St. David Cienega. *Id.* Groundwater pumping at the Vigneto development would draw down the regional aquifer on adjacent residential properties to the east of the development by up to 100 meters, impacting residential wells. ACOE-039037, ACOE-039055, Prucha (2016) at 13 fig.5, 31 fig.17; *see also* ACOE-039610, Watershed Alliance May 2019 Comments at 4. Furthermore, drawdown in the aquifer could reach up to five meters along the San Pedro River and up to 0.45 meters at the St. David

Cienega, depriving these critical areas of crucial baseflows. ACOE-039053-55, ACOE-039061, Prucha (2016) at 29-31, 37.

172. The Corps claimed that the proposed activities within its narrow scope of analysis would have "minor" impacts on surface hydrology because the drainage patterns would exhibit only minor changes from the 151 acres of upland development that are within the scope of analysis area. ACOE-039768, Revised 2019 EA at 134; ACOE-039952, Vigneto Groundwater Use Memorandum at 3 tbl.2. But the 12,167-acre Vigneto development would result in major alterations of the hydrologic regime both within and downstream of the impacted watersheds where they empty into the San Pedro River. ACOE048422-23, Levick et al. (2006) at 19-20.

173. The Corps claimed that any impacts to conservation within its narrow scope of analysis was "neutral." ACOE-039729, Revised 2019 EA at 95. But the Vigneto development would degrade the San Pedro River and SPRNCA by destroying jurisdictional waters that feed the River, depleting the regional aquifer that sustains the River, and substantially altering surface hydrology and runoff patterns into the River. ACOE-011106, EPA July 1, 2004 Letter at 5; ACOE-039053-55, ACOE-039061, Prucha (2016) at 29-31, 37; ACOE048422-23, Levick et al. (2006) at 19-20.

174. The Corps claimed that there would be a "negligible" impact on aesthetics, despite the fact that views "would be altered as compared to current conditions," because its scope of analysis only encompasses "approximately 151 acres of land development." ACOE-039731, Revised 2019 EA at 97. But Vigneto would destroy 8,266.5 acres of xeroriparian and upland vegetation by transforming the area into commercial and residential development. ACOE-039952, Vigneto Groundwater Use Memorandum at 3 tbl.2.

175. The Corps claimed that there would be a "negligible" impact on land use within its narrow scope of analysis. ACOE-039735-36, Revised 2019 EA at 101-02. But the Vigneto development would convert thousands of acres of undisturbed desert habitat

into suburban development, destroying wildlife habitat (including critical habitat for the jaguar) and causing unacceptable impacts to the aquatic ecosystem (including the San Pedro River and SPRNCA). ACOE-011094, EPA June 14, 2004 Letter; ACOE048080-84, FWS July 2015 Letter at 1-5; ACOE-003975, FWS Oct. 2016 Non-Concurrence at 3; ACOE048277-78, Tucson Audubon Soc'y May 2015 Comments at 23-24; ACOE-039053-55, ACOE-039061, Prucha (2016) at 29-31, 37; ACOE048422-23, Levick et al. (2006) at 19-20.

176. The Corps reserved the right to re-evaluate the Section 404 permit to consider information it did not consider in reaching its decision in the revised 2019 EA. ACOE-039773, Revised 2019 EA at 139.

XI. The Corps' Decision to Grant the 404 Permit Harms the Watershed Alliance Members' Interests.

177. With the 404 permit in hand, El Dorado plans to develop the property on an accelerated schedule. ACOE047335, RD Application at pdf. 145 Ex.G.

178. The Corps' decision to grant the 404 permit for Vigneto harms the Watershed Alliance members' educational, aesthetic, recreational, and spiritual interest in the jurisdictional waters that crisscross the Vigneto site and sustain the San Pedro River watershed. *See generally* Mattson Decl. (attached as Exhibit 1); Sinclair Decl. (attached as Exhibit 2); Silver Decl. (attached as Exhibit 3); Gerrodette Decl. (attached as Exhibit 4); Lands Decl. (attached as Exhibit 5).

179. The Watershed Alliance's members live in close proximity to the proposed Vigneto development, including in the alluvial fan—a triangle-shaped deposit of sediment—immediately downstream from the proposed development. Mattson Decl. ¶3; Sinclair Decl. ¶1; Lands Decl. ¶2. They rely on the ephemeral streams that weave across the Vigneto site to convey stormwater down to the San Pedro River, where it sustains the physical, chemical, and biological integrity of the River. Mattson Decl. ¶3; Sinclair Decl.

¶¶10-11. They also rely on these jurisdictional waters to provide habitat for numerous species of wildlife and birds. Mattson Decl. ¶5; Sinclair Decl. ¶¶3, 10.

180. The Watershed Alliance's members also enjoy the peace and solitude of the San Pedro River near the proposed Vigneto development, including opportunities to birdwatch during the day, enjoy unspoiled vistas of the Whetstone Mountains in the evening, and stargaze at night. Mattson Decl. ¶¶3-6; Sinclair Decl. ¶¶3-8; Silver Decl. ¶¶15-16; Gerrodette Decl. ¶¶5-9, 11; Lands Decl. ¶¶1, 3-4. The Watershed Alliance's members routinely visit the San Pedro River near the proposed Vigneto development, including St. David Cienega, to hike, recreate, and photograph the rich array of species in this area. Mattson Decl. ¶5; Sinclair Decl. ¶¶5-8, 10-12; Silver Decl. ¶¶12-15; Gerrodette Decl. ¶¶5-7, 10-11; Lands Decl. ¶¶3-13. They have concrete plans to return to these places to view, study, photograph, and enjoy the birds, wildlife, and habitat in this area. Mattson Decl. ¶5; Sinclair Decl. ¶¶8-13; Silver Decl. ¶¶9, 15; Gerrodette Decl. ¶¶7, 10, 17; Lands Decl. ¶¶3, 10, 12.

181. The Corps' decision to grant the 404 permit for the Vigneto development threatens these members' recreational interests and enjoyment of the San Pedro River watershed. Mattson Decl. ¶¶8-12; Sinclair Decl. ¶¶6-15; Silver Decl. ¶¶16-21; Gerrodette Decl. ¶¶12-17; Lands Decl. ¶¶3, 8-13. With the 404 permit, El Dorado would irreversibly alter the natural tributaries that sustain the San Pedro River. Mattson Decl. ¶¶8-9; Sinclair Decl. ¶¶10-15; Silver Decl. ¶¶16-17; Gerrodette Decl. ¶¶9, 12-13; Lands Decl. ¶¶8, 12. The Vigneto development would also destroy thousands of acres of upland habitat, exponentially increasing runoff and erosion in jurisdictional waters, including the downstream San Pedro River. Mattson Decl. ¶¶8-9; Sinclair Decl. ¶¶10-15; Silver Decl. ¶¶16-17; Gerrodette Decl. ¶¶12-13, 16; Lands Decl. ¶¶8, 12. Moreover, groundwater pumping at the Vigneto development would lower the groundwater table, impairing riparian habitat along the San Pedro River and adversely affecting the Watershed Alliance members' enjoyment of species that depend on this habitat. Mattson Decl. ¶¶4,

10; Sinclair Decl. ¶¶13-15; Silver Decl. ¶¶18-19; Gerrodette Decl. ¶¶14-15; Lands Decl. ¶¶9-10. In addition, the Vigneto development would increase light pollution, while also degrading scenic vistas of the Whetstone Mountains. Mattson Decl. ¶11; Sinclair Decl. ¶8; Silver Decl. ¶17; Gerrodette Decl. ¶13; Lands Decl. ¶10.

182. An order by the Court vacating the permit and remanding the proposed action to the Corps for a comprehensive EIS would redress these injuries. Mattson Decl. ¶12; Sinclair Decl. ¶¶9-10; Silver Decl. ¶¶20-21; Gerrodette Decl. ¶17; Lands Decl. ¶14.

Respectfully submitted this 21st day of December 2020,

/s/ Stuart Gillespie
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CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2020, I electronically transmitted the foregoing and all exhibits to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants.

/s/ *Stuart Gillespie*