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12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 QUECHAN TRIBE OF THE FORT YUMA
15 INDIAN RESERVATION, a federally
recognized Indian Tribe,

16 Plaintiff,

17 v.

18
19 UNITED STATES DEPARTMENT OF THE
INTERIOR; United States Bureau of Land
20 Management; Ken Salazar, Secretary of the
Interior; Robert Abbey, Director, Bureau of
21 Land Management; Teri Raml, District
Manager, BLM California Desert District;
22 Margaret Goodro, Field Manager, BLM El
Centro Field Office
23

24 Defendants
25
26

Civil Action No. '12CV1167 WQHMD

COMPLAINT OF QUECHAN INDIAN
TRIBE FOR DECLARATORY AND
INJUNCTIVE RELIEF

I. INTRODUCTION

1
2 1. On May 11, 2012, the United States Department of the Interior executed a
3 *Record of Decision for the Ocotillo Wind Energy Facility and Amendment to the California*
4 *Desert Conservation Area Plan* (hereinafter, the “Ocotillo ROD”).

5 2. The Ocotillo ROD was signed on May 11, 2012 by the Secretary of the Interior
6 Ken Salazar and on May 9, 2012, by the Director of the Bureau of Land Management Robert
7 Abbey and by the BLM El Centro Field Office Manager Margaret L. Goodro.

8 3. The Ocotillo ROD approves issuance of a right-of-way to a private corporation
9 for the development of an industrial utility-scale wind power project (the “OWEF Project”) on
10 10,151 acres of federal public lands (the “OWEF Project Area”) that contain hundreds of
11 archaeological sites (containing tens of thousands of individual artifacts) eligible and
12 potentially eligible for inclusion in the National Register of Historic Places.

13 4. The OWEF Project Area is within the traditional territory of the Quechan Tribe
14 and contains cultural and biological resources of significance to the Tribe and its members.

15 5. In addition to the specific archaeological sites and artifacts that have been
16 identified to date, the public lands within the OWEF Project Area, in their entirety, are
17 themselves of cultural significance to the Quechan Tribe and its members. As stated in
18 correspondence to BLM State Director James Kenna from Quechan Vice-President Ronda
19 Aguerro, dated December 9, 2011:

20 “The Ocotillo Desert is part of the traditional Western Corridor for the Quechan Tribe
21 and it is also an area of transition between the Quechan, Cocopah, Kumeyaay and
22 Kamia/Desert Kumeyaay The area of the Ocotillo Desert holds tremendous
23 spiritual essence for the Quechan Tribe. The [OWEF Project Area] lies at the bottom
24 of the Coyote Mountain (Carrizo Mountain), which is an important cultural component
25 to the Quechan cosmology. The importance of that mountain is recounted and held
26 sacred in our Creation Story, songs, and other oral traditions. To allow a project of

1 such magnitude to be erected next to one of our sacred sites – which helps form our
2 identity as Quechan – would be a desecration of our culture and way of life.”

3 6. The lands within the OWEF Project Area and surrounding lands, as a whole,
4 constitute a Traditional Cultural Property, which is eligible for inclusion in the National
5 Register of Historic Places pursuant to the National Historic Preservation Act.

6 7. On February 13, 2012, the Quechan Tribe’s Historic Preservation Officer
7 informed BLM that:

8 “the remaining [112] turbines would still obstruct the viewshed to Coyote Mountain
9 from locations other than Spoked-Wheel Geoglyph, such as from the Indian Hills
10 location. Second, the [112-turbine] Alternative neglects the viewshed towards the East
11 to AVII’SHPA/WII’SHPA (Mount Signal) The Quechan Tribe assert that there is
12 a spiritual connection between Coyote Mountain and WII’SHPA, and the imposition of
13 any turbines between the two locations would not only interfere with this spiritual
14 connection but it would detrimentally impact the ability of the Quechan people to
15 spiritually interact and appreciate these sacred locations.”

16 8. The Department of the Interior and its agency, the Bureau of Land Management
17 (BLM), have known about the significance of the OWEF Project Area to Native American
18 culture, religion, and values for decades.

19 9. The public lands that are the subject of the Ocotillo ROD are located within the
20 California Desert Conservation Area (CDCA) and have been designated by Interior as Class L
21 “Limited Use” lands. Class L lands are designated to “protect sensitive, natural, scenic,
22 ecological, and cultural resource values” and are required to be “managed to provide for
23 generally lower-intensity, carefully controlled multiple use of resources, while ensuring that
24 sensitive values are not significantly diminished.” California Desert Conservation Area Plan
25 (CDCA Plan), at p. 13.

1 10. The proposed OWEF Project, if completed, would generate approximately 315
2 MW and would consist of 112 independent wind turbines, each of which stand approximately
3 450 feet tall. The diameter of the circle swept by each of the blades would be 371 feet. In
4 addition, 42 miles of new, permanent, access and maintenance roads (at least 20 feet in width)
5 would be constructed to access the towers. The OWEF Project would also include a
6 substation; administration, operations and maintenance buildings and facilities; transmission
7 lines; meteorological towers; temporary asphalt batch plant; parking areas; temporary
8 construction lay down areas; a switchyard; and other necessary infrastructure.

9 11. The OWEF Project is only one of many large utility-scale renewable energy
10 projects located on California desert lands that have recently been approved, or are under
11 consideration for approval, by Interior, and which threaten scenic, cultural, and biological
12 resources designated for protection under the CDCA Plan, especially on Class L lands.

13 12. Interior’s approval of the Ocotillo ROD, issuance of a right-of-way, and
14 amendment of the CDCA Plan, for the purpose of construction and operation of the OWEF
15 Project on these specific Class L lands, while permitting the destruction of culturally and
16 visually significant lands and resources, is unlawful.

17 13. The Tribe seeks a declaratory judgment that the United States Department of the
18 Interior, the Bureau of Land Management, and their officials, officers and agents (collectively
19 “Interior”) have violated and are violating federal laws, regulations, and policies including the
20 Federal Land Policy and Management Act (FLPMA); National Historic Preservation Act
21 (NHPA); National Environmental Policy Act (NEPA); Administrative Procedures Act (APA);
22 and the CDCA Plan by approving, executing, and implementing the Ocotillo ROD.

23 14. The Tribe seeks an order vacating the Ocotillo ROD including the Amendment
24 to the CDCA Plan; an order permanently enjoining issuance of a right-of-way and Notice to
25 Proceed for the OWEF Project on these Class L lands, and vacating such approvals or
26 authorizations already granted.

1 15. To avoid irreparable injury to the Quechan Indian Tribe, the OWEF Project
2 Area lands and the cultural and biological resources of concern pending completion of this
3 litigation, the Tribe seeks a temporary restraining order and preliminary injunctive relief to
4 enjoin any issuance of a right-of-way or Notice to Proceed, any ground-disturbing activities
5 authorized under a Notice to Proceed, and any implementation of the Ocotillo ROD.

6 **II. JURISDICTION AND VENUE**

7 16. This action presents claims arising under federal laws including the
8 Administrative Procedures Act, 5 U.S.C. §§ 551 *et seq.*, the National Environmental Policy
9 Act, 42 U.S.C. § 4321 *et seq.*, the National Historic Preservation Act, 16 U.S.C. § 470 *et seq.*,
10 the Federal Land Policy and Management Act, 43 U.S.C. § 1701 *et seq.*, and the Declaratory
11 Judgment Act, 28 U.S.C. § 2201. The Court has jurisdiction over this action pursuant to
12 5 U.S.C. § 702, 28 U.S.C. § 1331, and 28 U.S.C. § 1362, as this matter is an action brought by
13 an Indian tribe with a governing body duly recognized by the Secretary of the Interior and
14 arising under the Constitution, laws, or treaties of the United States.

15 17. Pursuant to 28 U.S.C. § 1391(e), venue is proper in this Court, the United States
16 District Court for the Southern District of California, because this action relates to federal
17 lands located within this judicial district and a substantial part of the events giving rise to the
18 claims occurred in this judicial district.

19 **III. PARTIES**

20 18. Plaintiff Quechan Indian Tribe (herein, the “Tribe”) is a federally-recognized
21 Indian tribe with a governing body recognized by the Secretary of the Interior. The lands and
22 resources of the Fort Yuma Indian Reservation were reserved to the Tribe through the
23 Executive Order of January 9, 1884, as modified by Executive Order of December 19, 1900,
24 and confirmed by Secretarial Orders of December 20, 1978, and February 6, 1981. 46 Fed.
25 Reg. 11372, 11373 (1981).

1 19. By filing this action, the Tribe does not waive its sovereign immunity and does
2 not consent to suit as to any claim, demand, offset, or cause of action of the United States, its
3 agencies, officers, agents, or any other person or entity in this or any other court.

4 20. Defendants are the United States Department of the Interior; Bureau of Land
5 Management; Ken Salazar, Secretary of the Interior; Robert Abbey, Director, Bureau of Land
6 Management; Teri Raml, District Manager, BLM California Desert District; and Margaret
7 Goodro, BLM Field Manager, El Centro Field Office.

8 21. Defendant United States Department of the Interior is responsible for
9 administration and management of federal lands, including those lands under the jurisdiction
10 of the Bureau of Land Management.

11 22. Defendant Ken Salazar is Secretary of the United States Department of the
12 Interior and named herein in an official capacity.

13 23. Defendant Robert Abbey is Director of the United States Bureau of Land
14 Management and named herein in an official capacity.

15 24. Defendant Teri Raml is District Manager of the United States Bureau of Land
16 Management California Desert District Office and named herein in an official capacity.

17 25. Defendant Margaret Goodro is Field Manager of the United States Bureau of
18 Land Management El Centro Field Office and named herein in an official capacity.

19 **IV. GENERAL ALLEGATIONS**

20 **A. Interest of the Quechan Tribe**

21 26. For thousands of years, the Quechan Tribe and tribal ancestors traditionally
22 occupied, traveled, traded, and utilized resources within a broad geographical area located
23 within the desert lands of modern-day Arizona and Southern California.

24 27. By Executive Order of January 9, 1884, President Arthur set aside
25 approximately 45,000 acres of the Quechan's traditional land within the state of California as
26 the Fort Yuma Indian Reservation for the Quechan Indian Tribe (the "Reservation"). The

1 Reservation is located along the Colorado River adjacent to present-day Yuma, Arizona. As a
2 result of changes in the channel of the Colorado River, a portion of the Reservation now lies
3 within the state of Arizona. The Reservation borders Baja California, Mexico to the south.
4 There are approximately 3,500 members of the Quechan Tribe, many of whom live on the
5 Reservation or in the town of Winterhaven, California and the city of Yuma, Arizona, both of
6 which are contiguous to the Reservation boundaries.

7 28. The Tribe is unique because it is still located within a portion of its adjudicated
8 traditional territory. The Tribe was not moved or conquered by Spain, Mexico, early Yuma
9 settlers, or the United States, although the Tribe's original land base has been significantly
10 diminished.

11 29. The Tribe's traditional territory extends beyond the Reservation's exterior
12 boundaries, encompassing lands that are the subject of this action. The western traditional
13 territory of the Tribe extended to the area surrounding California's Cahuilla mountains and
14 encompasses the OWEF Project area.

15 30. Interior has acknowledged the traditional use of lands within and around the
16 OWEF Project Area by Quechan ancestors, and ethnographic studies have documented the
17 significance of the OWEF Project Area to Native Americans, including the Quechan Tribe.

18 31. Protection of the Tribe's cultural heritage is of significant importance to the
19 Tribe. The Quechan Tribal Council, the governing body of the Tribe, established the Quechan
20 Cultural Committee to promote, protect, and preserve Quechan culture, language, religion,
21 history, and ancient sites and artifacts, and to advise the Tribe on matters relating to such
22 things. The Committee includes tribal elders selected to protect Quechan history, identity, and
23 spiritual practices. The Committee works closely with the Tribe's Historic Preservation
24 Officer and the Tribal Council to ensure protection and preservation of cultural resources of
25 significance to the Tribe, whether located within or outside Reservation boundaries.

1 32. The Tribe’s cultural resources are historically and culturally interrelated and
2 interconnected over many miles of desert land within the Tribe’s traditional territory, within
3 and outside the exterior boundaries of the Reservation.

4 33. Destruction or damage to any one cultural resource, site, or landscape
5 contributes to destruction of the Tribe’s culture, history, and religion. Injury to the Tribe’s
6 cultural resources causes injury to the Tribe and its people.

7 34. Cultural resources of significance to the Tribe are located on the lands that are
8 the subject of this action and adjacent lands.

9 35. The cultural resources found in the OWEF Project Area reflect the repeated,
10 annual migration of the Quechan Tribe, as they exercised cultural, spiritual, religious, and
11 utilitarian practices on these lands.

12 36. In addition to the specific archaeological sites that have been identified to date,
13 the public lands within the OWEF Project Area are culturally and spiritually significant and
14 qualify, as a whole, as a Traditional Cultural Property of the Quechan Tribe under the NHPA.
15 36 C.F.R. § 800.16(l)(1) (defining “historic property” to include “properties of traditional
16 religious and cultural importance to an Indian tribe . . . and that meet the National Register
17 criteria”).

18 37. The Tribe has expressed its concern to Interior through oral and written
19 comments with regard to protection and preservation of the lands and resources located within
20 the OWEF Project Area.

21 38. The comments of the Quechan Tribe were not included or addressed by Interior
22 in the Final Environmental Impact Statement.

23 39. The Tribe, at the direction of the Tribal Council and support of the Cultural
24 Committee, has attempted to actively participate in the administrative process relating to the
25 OWEF Project to identify the importance of the OWEF Project Area and to advocate for
26 preservation of the OWEF Project Area in a manner consistent with FLPMA, the CDCA Plan,

1 the NHPA, and other federal cultural resource protection laws, regulations, and policies;
2 however, such participation has been impaired by Interior's failure to exchange and share
3 information with the Tribe, and Interior's failure to consider or incorporate the Tribe's
4 comments and concerns in the planning process.

5 40. The Tribe's interest in this action is not limited to cultural preservation. The
6 Tribe and its members also have an interest in preserving the quality of the land, water, air,
7 fauna, and flora within the Tribe's traditional territory, within and outside the Reservation.
8 For example, the Tribe is concerned with impacts to the habitat of the Flat Tailed Horned
9 Lizard on lands proposed for development, as the lizard is a central part of the Tribe's
10 Creation Story.

11 **B. Additional General Allegations**

12 41. On March 9, 2012, Interior published a Final Environmental Impact
13 Statement/Final Environmental Impact Report (FEIS) for the OWEF Project.

14 42. The FEIS confirms that the OWEF Project is proposed for development in an
15 area of high cultural sensitivity. The FEIS reports that 287 archaeological sites were identified
16 during surveys in the Area of Potential Effects for the OWEF Project. FEIS, at 4.4-9.

17 43. Each of the individual archaeological sites encompasses large areas of land; for
18 example, Site CA-IMP-008/H has dimensions of 4024 meters by 1610 meters; Site CA-IMP-
19 103/H measures 1170 meters by 1180 meters; Site CA-IMP-6988 measures 920 meters by 410
20 meters.

21 44. Each of the individual archaeological sites contains numerous individual
22 artifacts and it is estimated that thousands, potentially tens of thousands, of individual artifacts
23 are located within the OWEF Project Area.

24 45. The OWEF Project Area contains geoglyphs, petroglyphs, sleeping circles,
25 milling features, agave roasting pits, ceramics (including unusual painted and stucco) and rare
26 artifacts (such as anvil and crescentic).

1 46. Other resources of significance to Native American culture, religion and values
2 are located in the OWEF Project Area including 24 pre-historic trail segments and at least six
3 identified burial sites.

4 47. Recent field visits to the OWEF Project Area have discovered the existence of
5 additional sites and resources, including burial sites, that were not identified by BLM or the
6 applicant in their surveys, including resources in designated direct impact areas.

7 48. The likelihood for future discovery of additional resources, including additional
8 burial sites, is high.

9 49. Avoidance of the identified sites and artifacts is not required as a mitigation
10 measure in the Ocotillo ROD or related approvals, avoidance is only “preferred” and only
11 “where feasible.”

12 50. Construction of the current OWEF Project design without direct impact to sites
13 and artifacts will be impossible.

14 51. The FEIS reports that the OWEF Project Area, in its entirety, may be eligible for
15 inclusion in the National Register as a Traditional Cultural Property; however, to date no
16 evaluation for eligibility has been completed by Interior in conformance with the NHPA.

17 52. Construction of the OWEF Project will destroy the characteristics of the
18 Traditional Cultural Property, including viewsheds to sacred mountains.

19 53. The Ocotillo ROD confirms that “the Refined Project will, even after
20 implementation of the measures in the MOA, still have an unmitigated adverse effect on
21 resources that are spiritually and culturally significant to affected Tribes.” ROD, ES-3.

22 54. Interior published its Proposed Plan Amendment (PPA) on March 9, 2012.

23 55. In the PPA, Interior proposed to amend the CDCA Plan to designate the OWEF
24 Project lands as suitable for wind energy development.

25 56. In the PPA, FEIS, and Ocotillo ROD, Interior did not consider or evaluate
26 whether development of an industrial-scale power project, consisting of 112 wind turbines and

1 associated infrastructure (including 42 miles of roads) constitutes a “lower-intensity” use as
2 required by the Class L land use designation in the CDCA Plan.

3 57. In the PPA, FEIS, and Ocotillo ROD, Interior failed to analyze whether other
4 Class M or Class I lands within the CDCA could accommodate the applicant’s project.

5 58. In the PPA, FEIS, and Ocotillo ROD Interior failed to analyze whether the
6 OWEF Project and PPA would be consistent with state and local zoning and land use laws and
7 whether the PPA conformed to the Plan Amendment Criteria of the CDCA Plan.

8 59. On April 6, 2012, the Tribe filed a written protest of the PPA pursuant to 43
9 C.F.R. § 1501.5-2, objecting that the PPA, and the approval of the OWEF Project on these
10 Class L lands, would result in permanent damage and destruction to cultural and biological
11 resources in conflict with the applicable Class L land use designation, and other objections
12 relating to the underlying NEPA and NHPA administrative process.

13 60. On April 24, 2012, the California State Historic Preservation Officer informed
14 BLM State Director James G. Kenna via written correspondence that he was so “concerned
15 and troubled with the process being followed [by BLM] to approve renewable energy
16 undertakings in California,” that he would not execute any further agreement documents with
17 BLM until the issues of concern raised in his correspondence are addressed.

18 61. On April 24, 2012, the Advisory Council on Historic Preservation wrote BLM
19 State Director Kenna and identified a number of concerns with approval of the OWEF Project
20 and BLM’s process under the NHPA. The letter described BLM’s schedule for Section 106
21 consultation as “aggressive.”

22 62. Although the Ocotillo ROD states that BLM Director Robert Abbey has
23 “resolved all protests,” the Tribe has not yet received a copy of any final decision regarding its
24 protest. The Tribe assumes that its protest has been denied.

1 70. In 1976, Congress passed the Federal Land Policy and Management Act
2 (FLPMA), 43 U.S.C. § 1701 et seq., to direct management and administration of federally-
3 owned public lands in the United States.

4 71. In FLPMA, Congress identified one specific area for special management
5 prescriptions, the California Desert Conservation Area. 43 U.S.C. § 1781.

6 72. Congress demanded a plan for “the immediate and future protection and
7 administration of the public lands in the California desert within the framework of a program
8 of multiple use and sustained yield, and the maintenance of environmental quality.” 43 U.S.C.
9 § 1781(b).

10 73. Pursuant to Congressional mandate, the Department of the Interior prepared the
11 California Desert Conservation Area Plan in 1980. 43 U.S.C. § 1781(d).

12 74. The CDCA Plan divides the public lands within the CDCA into four “classes” –
13 Class C, Class L, Class M, and Class I. “Class L (Limited Use) protects sensitive, natural,
14 scenic, ecological, and cultural resource values. Public lands designated as Class L are
15 managed to provide for generally lower-intensity, carefully controlled multiple use of
16 resources, while ensuring that sensitive values are not significantly diminished.” CDCA Plan,
17 at p. 13. “Class M (Moderate Use) is based upon a controlled balance between higher
18 intensity use and protection of public lands . . . [providing] for a wide variety of present and
19 future uses such as mining, livestock grazing, recreation, energy, and utility development.” *Id.*
20 “Class I is an ‘Intensive use’ class. Its purpose is to provide for concentrated use of lands and
21 resources to meet human needs.” *Id.*

22 75. Nearly four million acres of land within the CDCA is designated for Moderate
23 or Intensive Uses under Class M or Class I, while nearly 6 million acres of land within the
24 CDCA is designated for Limited Use under Class L.

25 76. The CDCA Plan does not prohibit the use of Class L lands for wind energy, but
26 wind energy development is permissible on Class L lands only if it qualifies as a “lower-

1 intensity, carefully controlled multiple use of resources, while ensuring that sensitive values
2 are not significantly diminished.” CDCA Plan, p. 13.

3 77. The CDCA Plan further makes clear that consumptive uses on Class L lands are
4 allowed “only up to the point that sensitive natural and cultural values might be degraded.”
5 CDCA Plan, p. 21.

6 78. Within the CDCA, moderate or higher-intensity renewable energy
7 developments, and other projects where sensitive desert resources might be degraded, (like the
8 OWEF Project) are restricted to Class M or Class I lands.

9 79. There is substantial land available for renewable energy development on Class
10 M lands. Over the last eighteen months, Interior has approved, or is considering approval of,
11 numerous large-scale renewable energy projects on Class M lands including but not limited to
12 the Calico, Lucerne Valley, Genesis, Desert Sunlight, Palen, McCoy, and Desert Harvest
13 Projects. The renewable energy projects named in this paragraph would cover approximately
14 26,000 acres of BLM Class M lands.

15 80. The OWEF Project proposes to construct 112 wind turbines, in addition to 42
16 miles of roads, and other buildings and support infrastructure necessary to operate and
17 maintain the turbines over an area of 10,151 acres of Class L lands.

18 81. The OWEF Project is not a lower-intensity use of CDCA lands, and would
19 significantly diminish and degrade sensitive, scenic, natural, and cultural values, and is thus
20 prohibited on Class L lands in the CDCA.

21 82. The OWEF Project will necessarily result in the degradation of scenic and
22 culturally significant public lands designated as Class L under the CDCA Plan, and will
23 impact cultural resources eligible for listing under the NHPA, as well as habitat of sensitive
24 biological species including but not limited to the Flat Tailed Horned Lizard.

25 83. Maps of the OWEF Project Area, developed by Interior in 1980 as part of the
26 CDCA Plan, identifies the OWEF Project Area lands as “concentrated, sensitive areas of

1 traditional Native American secular and religious use” and as part of a “cultural resource
2 area[s] of known and predicted area[s] of sensitivity and significance which are most
3 vulnerable to negative impact.”

4 84. In the FEIS, Interior admits that approval of the OWEF Project and Plan
5 Amendment will result in impacts that will directly impair traditional and spiritual native
6 values. This is also confirmed and admitted in the Ocotillo ROD.

7 85. Interior also concedes that the OWEF Project will degrade the scenic values of
8 the Class L lands in the OWEF Project Area.

9 86. Interior’s decision to approve the Plan Amendment to the CDCA Plan, and its
10 decision to authorize development of the OWEF Project on these Class L lands, violates the
11 letter, spirit, and intent of the CDCA Plan, violates FLPMA, and constitutes arbitrary,
12 capricious action, an abuse of discretion, and unlawful conduct under the Administrative
13 Procedures Act (APA).

14 87. Interior’s decision to approve the Plan Amendment, and its decision in the
15 Ocotillo ROD to authorize development of the OWEF Project on these Class L lands, failed to
16 “give full consideration to Native American values in land use planning and management
17 decisions” as required by the CDCA Plan.

18 88. In a previous case, *Quechan Tribe of the Fort Yuma Indian Reservation v.*
19 *United States Department of the Interior*, 755 F. Supp. 2d 1104 (S.D. Cal. 2010), the Court
20 found that the Tribe’s FLPMA claim, which similarly challenged Interior’s fast-track approval
21 of a utility-scale solar project on sensitive Class L lands located nearby the OWEF Project
22 Area, raised “serious questions” for the purposes of injunctive relief. *Id.* at 1120.

23 89. The OWEF Project is not consistent with the state and local land use laws, plans,
24 and zoning requirements for Imperial County and the Ocotillo/Nomirage Area and thus the
25 OWEF Project is not permissible under the CDCA Plan Decision Criteria for Energy
26 Production.

1 90. The CDCA Plan Amendment fails to satisfy the Plan Amendment Criteria found
2 in the CDCA. Thus, the Plan Amendment violates both the CDCA Plan, FLPMA, and the
3 decision-making requirements of the APA.

4 91. Interior conducted its analysis of the Ocotillo ROD and Plan Amendment in an
5 arbitrary and capricious manner in violation of the APA, failed to engage in reasoned decision-
6 making, and failed to rationally analyze factors required for consideration by the CDCA Plan.

7 92. As a result of these violations, the Court should vacate the Ocotillo ROD,
8 including the right-of-way, notice to proceed, and the Amendment to the CDCA Plan, and
9 permanently enjoin development of the OWEF Project on these Class L lands.

10 **CLAIM TWO: The OWEF Project Will Result in Undue Impairment and**
11 **Unnecessary and Undue Degradation of the Public Lands**
12 **In Violation of FLPMA.**

13 93. The Tribe hereby incorporates, re-states, and re-alleges all preceding paragraphs.

14 94. The Secretary of the Interior is required to manage the public lands in a manner
15 that prevents “permanent impairment” of the lands and to “take any action necessary to
16 prevent unnecessary or undue degradation of the [public] lands.” 43 U.S.C. §§ 1702(c);
17 1732(b).

18 95. With specific regard to the lands in the CDCA, Congress also prohibits any
19 “undue impairment” of the CDCA lands. 43 U.S.C. § 1781(f).

20 96. Interior has defined “unnecessary and undue degradation” as conditions,
21 activities, or practices that: “fail to comply with . . . Federal and state laws related to
22 environmental protection and protection of cultural resources” and that “fail to attain a stated
23 level of protection . . . required by specific laws in areas such as the California Desert
24 Conservation Area.” 43 C.F.R. § 3809.5.

25 97. The OWEF Project will result in undue impairment, and undue and unnecessary
26 degradation, of lands that are designated for heightened resource protection as Class L lands in

1 the CDCA Plan and which are governed by, at minimum, Class III Visual Resource
2 Management standards.

3 98. Approval of the OWEF Project will permanently degrade and destroy culturally
4 significant lands that qualify as a Traditional Cultural Property, will destroy a significant
5 scenic viewshed, and will destroy habitat for sensitive biological species on lands that have
6 been affirmatively designated and set aside for only low-intensity uses. Once the desert
7 surface is damaged, such damage will be permanent and rehabilitation of the lands and
8 sensitive resources will not be possible. Approval of the OWEF Project constitutes
9 unnecessary and undue degradation in violation of FLPMA.

10 **CLAIM THREE: Interior Violated NEPA By Failing to Conduct an Adequate**
11 **Analysis of Cumulative and Indirect Effects.**

12 99. The Tribe hereby incorporates, re-states, and re-alleges all preceding paragraphs.

13 100. Pursuant to NEPA, an Environmental Impact Statement must thoroughly
14 analyze the “cumulative impact” of the federal agency’s proposed action. 40 C.F.R. § 1508.7;
15 40 C.F.R. § 1508.25(a)(2).

16 101. An Environmental Impact Statement must also thoroughly analyze indirect
17 effects, which are caused by the action and are later in time or farther removed in distance, but
18 are still reasonably foreseeable. Such indirect effects may include growth inducing and other
19 effects related to induced changes in the pattern of land use. 40 C.F.R. § 1508.8.

20 102. A cumulative impact analysis must give a sufficiently detailed catalogue of past,
21 present, and future projects, and provide adequate analysis about how these projects, and
22 differences between the projects, are thought to have impacted the environment. General
23 statements in the FEIS about “possible effects” and “some risk” do not constitute a thorough
24 analysis. Quantified, detailed information analyzing the cumulative impacts is required.

25 103. Interior has recently reported that approximately one million acres of land are
26 proposed for foreseeable solar and wind energy utility development on California desert lands.

1 104. Interior has approved, and is considering for approval, numerous utility-scale
2 solar and wind energy projects for development on Class L lands in the CDCA; however, the
3 legality of such approvals has not been directly ruled on by any court to date.

4 105. Interior's "fast-track" approvals of utility-scale renewable energy projects on
5 Class L lands, including but not limited to the Blythe and Ivanpah Solar Projects located on
6 CDCA Class L lands are already having a devastating impact on the cultural values intended to
7 be protected on such lands.

8 106. The FEIS lists dozens of projects that are currently proposed for development
9 within and around the CDCA that will impact resources within that management unit.

10 107. The FEIS lacks substantive analysis of the cumulative impact that will occur to
11 Class L lands in the CDCA, and the sensitive, natural, scenic, ecological, and cultural resource
12 values intended to be protected on Class L lands, as a result of extensive current and future
13 development of renewable energy and other projects on Class L lands in the CDCA.

14 108. The FEIS fails to provide substantive analysis about how the development of the
15 OWEF Project, in conjunction with the numerous other existing and foreseeable projects, will
16 impact cultural, biological, or scenic resources on desert lands within the California Desert
17 Conservation Area, especially on those lands designated as Class L.

18 109. In violation of NEPA, the FEIS provides only conclusory statements about
19 cumulative impacts, without providing substantive analysis of how the numerous proposed
20 energy developments, and associated transmission lines, roads, and support facilities, will
21 affect cultural, biological, and scenic resources on desert lands within the CDCA.

22 110. The scope of the cumulative impacts review, as it relates to cultural, biological,
23 and visual resources, is limited to an arbitrary and unreasonably narrow geographic area.

24 111. The FEIS also fails to disclose or discuss the likelihood that approval of the
25 OWEF Project may lead to the cumulative and/or indirect effect of additional development of
26 the surrounding area by wind or other renewable energy projects.

1 112. Due to the inadequate analysis of cumulative and indirect effects, the FEIS and
2 the Ocotillo ROD are unlawful and must be vacated, and the FEIS remanded back to Interior
3 for further analysis required by NEPA.

4 **CLAIM FOUR: Interior's Approvals and Analysis Relating to Visual**
5 **Resources Management Violated FLPMA, NEPA, and the**
6 **APA.**

7 113. The Tribe hereby incorporates, re-states, and re-alleges all preceding paragraphs.

8 114. The Federal Land Policy and Management Act, 43 U.S.C. § 1701(a)(8) provides
9 that “. . . the public lands be managed in a manner that will protect the quality of the . . .
10 scenic . . . values . . .” *See also* 43 U.S.C. § 1702(c) (identifying “scenic values” as one of the
11 resources for which public lands shall be managed); 43 U.S.C. § 1711(a) (requiring the
12 Secretary to prepare and maintain an inventory of all public lands and their resource and other
13 values (including scenic values)); 43 U.S.C. § 1765(a) (requiring that each right-of-way shall
14 contain terms and conditions which will minimize damage to scenic values).

15 115. Preservation of the viewshed between Coyote Mountain, Sugarloaf Mountain,
16 Mt. Signal, and the archaeological site “Indian Hills” is extremely important to the Quechan
17 Tribe. This viewshed is a critical component of the Traditional Cultural Property.

18 116. Developing the OWEF Project, and its 112 turbines, in this viewshed would
19 detrimentally impact the ability of the Quechan people to spiritually interact and appreciate
20 these sacred locations.

21 117. Interior protects the scenic values of public lands through development of Visual
22 Resource Management (VRM) classifications.

23 118. The Visual Resources Management Program is incorporated into the CDCA
24 Plan.

25 119. Once Interior establishes a VRM class for an area, all future agency
26 management decisions must meet the objectives for the VRM classes in the area.

1 120. In the FEIS, p. 3.19-2, Interior states: “VRM Class designations set the level of
2 visual change to the landscape that may be permitted for any surface-disturbing activity.”

3 121. When a project is proposed and there are no Resource Management Plan-
4 approved VRM objectives, Interim VRM Classes must be established. FEIS, Appendix E-2-2.

5 122. The FEIS provides that: “the land area encompassing the OWEF project area is
6 to be managed in accordance with Interim VRM Class III objectives.” FEIS Table 3.19-1, p.
7 3.19-8.

8 123. Appendix E-2 of the FEIS states: “For the Proposed Project, the Interim VRM
9 Classes was determined to be VRM Class II and VRM Class III.”

10 124. The VRM Class II Management Objective requires that a project or action
11 “retain the character of the existing landscape. The level of change to the characteristic
12 landscape should be low. Management activities may be seen but should not attract the
13 attention of the casual observer. Any changes must repeat the basic elements of form, line,
14 color, and texture found in the predominant natural features of the characteristic landscape.”
15 FEIS, Appendix E-2.

16 125. The VRM Class III Management Objective requires that a project or action
17 “partially retain the existing character of the landscape. The level of change to the
18 characteristic landscape should be moderate or lower. Management activities may attract
19 attention but should not dominate the view of the casual observer. Changes should repeat the
20 basic elements found in the predominant natural features of the characteristic landscape.”
21 FEIS, at 3.19-2.

22 126. The Visual Resources Analysis, found in Appendix E-1 of the FEIS, states that
23 the applicable VRM for the OWEF Project Area is Class III Management, that the level of
24 change from the Key Observation Points resulting from development of the OWEF Project
25 would be “Moderate” to “High”, and that the proposed OWEF Project (FEIS Alternatives 1
26

1 through 3) is not consistent with the VRM Class III Management designation. The analysis
2 describes the impact of the OWEF Project as “significant.”

3 127. The Visual Resources Analysis, in Appendix E-1, states:

4 “The Proposed Project would result in the introduction of visually prominent built
5 structures into a landscape generally lacking similar built features of industrial or
6 technological character. . . . The [Proposed Project’s] high level of change would not meet the
7 VRM Class III objective of a moderate (or lower) degree of visual change.” A Project that
8 fails to meet Class III VRM objectives would also fail to meet the more restrictive VRM Class
9 II objectives.

10 128. Scenic values are required to be protected and preserved on Class L lands. In
11 managing Class L lands, Interior must ensure that protected scenic values are not significantly
12 diminished.

13 129. In a Draft EIS published by Interior in April 2012 for the Ocotillo Solar Project,
14 proposed for development on Class L lands in the vicinity of the proposed OWEF Project,
15 Interior states: “For Multiple Use Class L visual management prescriptions, the VRM Class
16 with closely corresponding visual management objective is Class III.” Ocotillo Solar DEIS,
17 April 2012, p. 3-88. In this Draft EIS document, Interior confirmed that the appropriate VRM
18 Class designation for this area is Class III.

19 130. Approving a Proposed Project that is not consistent with binding VRM
20 objectives violates FLPMA and is prohibited.

21 131. Although the Project Area is to be managed in accordance with, at minimum,
22 VRM Class III objectives, Interior’s discussion of the visual resources impacts in the
23 Environmental Consequences section of the FEIS erroneously or arbitrarily contends that the
24 Project is subject to a Class IV Management objective, which would allow greater disturbance
25 than Class II or III.

1 132. Interior concedes in the FEIS, p. 4.18-2, that “this level of wind development
2 [the OWEF Project] can only conform with interim class IV objectives.”

3 133. Interior’s failure to evaluate the environmental consequences of approving the
4 OWEF Project in a Class III VRM area violates NEPA, because it fails to take the required
5 “hard look” at the impacts of the project on the applicable VRM objectives and fails to provide
6 the decision makers and the public with accurate information about the impacts on the
7 applicable VRM designations.

8 134. To the extent that Interior determined the OWEF Project would be consistent
9 with the applicable Interim Class III VRM designation, that determination is arbitrary,
10 capricious, an abuse of discretion, and not in compliance with law, in violation of the APA.

11 135. The FEIS also confirms that the Proposed Project would violate and not be
12 consistent with the visual management guidelines and objectives of the Anza-Borrego Desert
13 State Park and the Imperial County General Plan. FEIS, at 3.19-9.

14 **CLAIM FIVE: Interior Violated NEPA, FLPMA, and the APA by Failing to**
15 **Take a “Hard Look” At Whether the OWEF Project and**
16 **CDCA Plan Amendment Are Consistent with the**
17 **Requirements of the CDCA Plan, and State and Local Land**
18 **Use and Environmental Laws.**

19 136. The Tribe hereby incorporates, re-states, and re-alleges all preceding paragraphs.

20 137. The CDCA Plan Decision Criteria for Energy Production requires that projects
21 “conform to local plans wherever possible.” CDCA Plan, p. 93.

22 138. The CDCA Plan Decision Criteria for evaluation of a proposed plan amendment
23 requires BLM to determine that the CDCA Plan Amendment is in accordance with applicable
24 laws and regulations.

25 139. Interior’s Right-of-Way Regulations, enacted pursuant to FLPMA, require
26 BLM, before issuing a grant of right-of-way to determine whether the proposed use of lands
will comply with applicable Federal and state laws. 43 C.F.R. § 2804.25(d)(2). Any right-of-

1 way must be conditioned upon full compliance with applicable federal and state laws and
2 regulations, including facility siting standards. 43 C.F.R. § 2805.12(a), (i)(2), (6).

3 140. The OWEF Project is not compliant with CEQA, nor is it compliant with the
4 Imperial County General Plan, zoning laws of Imperial County, and the Ocotillo/Nomirage
5 Community Area Plan.

6 141. 40 CFR § 1506.2(d) requires evaluation in the FEIS of any inconsistency that a
7 Federal action will have with local land use plans and laws and where an inconsistency exists,
8 the FEIS must describe the extent to which the agency would reconcile the proposed project
9 with local law. The FEIS here fails to comply with this regulation.

10 142. Where a federal agency proposes to approve a project that is inconsistent with
11 local zoning laws, additional scrutiny must be given to the project in the FEIS under NEPA.

12 143. In the FEIS, BLM fails to acknowledge or consider the fact that the OWEF
13 Project is not consistent with CEQA, state and local land use law, the Imperial County General
14 Plan, the applicable Imperial County zoning requirements/designations, or the
15 Ocotillo/Nomirage Community Area Plan.

16 144. The failure to consider whether the Plan Amendment and proposed OWEF
17 Project are consistent with state and local law renders the FEIS, Right-of-Way and Plan
18 Amendment invalid.

19 145. The FEIS also fails to evaluate whether the CDCA Plan Amendment is
20 consistent with the Plan Amendment Criteria found in the CDCA Plan. In this case, the Plan
21 Amendment is not consistent with the CDCA Plan Amendment Criteria and the failure to
22 analyze the criteria renders the FEIS and Plan Amendment invalid. Failure to ensure that the
23 Plan Amendment comports with the CDCA Plan Amendment criteria also violates FLPMA.

24 **CLAIM SIX: Interior Violated NEPA by Failing to Adequately Study,**
25 **Identify, and Evaluate the Significance of the Affected**
26 **Cultural Environment and the Impacts Thereto.**

146. The Tribe hereby incorporates, re-states, and re-alleges all preceding paragraphs.

1 147. NEPA requires Interior to identify the affected environment and take a “hard
2 look” at the direct and indirect environmental consequences of its proposed action, in advance
3 of approving the action.

4 148. Interior prepared its Draft and Final EIS, and made its approval decision without
5 adequately identifying, evaluating, or consulting about, the significance of the cultural
6 resources that exist within the OWEF Project Area in terms of eligibility for inclusion in the
7 National Register and in terms of cultural significance to the Quechan Tribe and other affected
8 Indian tribes. Interior also failed to adequately evaluate whether resources would be subject to
9 project impacts.

10 149. Resource surveys and site identification efforts were arbitrarily limited by
11 Interior or the project applicant.

12 150. Despite repeated requests, Interior failed to conduct ethnography, prehistoric
13 trails, and regional synthesis studies that would have provided critical information to the
14 decision-makers about the cultural significance of the OWEF Project Area.

15 151. Other critical studies addressing the significance of the OWEF Project Area to
16 the Quechan Tribe and other Indian nations were not prepared until after release of the FEIS
17 and were not subject to comment or consultation by the Quechan Tribe.

18 152. Interior also approved the OWEF Project prior to completing an evaluation of
19 whether the Project lands as a whole are eligible for listing and protection as a Traditional
20 Cultural Property.

21 153. Interior’s approval of the OWEF Project prior to identifying and evaluating the
22 cultural significance of the affected resources, and without providing that information to the
23 decision-makers and affected public in advance of a decision, violates NEPA.

24 154. Interior also failed to adequately evaluate the impact of noise and visual
25 pollution on cultural resources and Native American values.

1 **CLAIM EIGHT: Interior Violated the NHPA By Executing the Ocotillo ROD**
2 **Prior to Completion of the Section 106 Process.**

3 162. The Tribe hereby incorporates, re-states, and re-alleges all preceding paragraphs.

4 163. Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f,
5 requires that agencies of the United States “shall, prior to approval of the expenditure of any
6 Federal funds on the undertaking or prior to the issuance of the license, as the case may be, take
7 into account the effect of the undertaking on any district, site, building, structure, or object that
8 is included in or eligible for inclusion in the National Register.”

9 164. Like NEPA, the NHPA is designed to ensure that federal decision-makers
10 thoroughly evaluate and address the impacts of their proposed actions on NHPA-eligible
11 resources prior to taking final action.

12 165. Prior to approval of a federal undertaking, the agency must: (a) identify the
13 “historic properties” within the area of potential effects; (b) evaluate the potential effects that
14 the undertaking may have on historic properties; and (c) resolve the adverse effects through the
15 development of mitigation measures. 36 C.F.R. §§ 800.4; 800.5; 800.6. Throughout all of
16 these processes, the agency must consult at each stage with Indian tribes that attach religious
17 and cultural significance to properties within the affected area. 36 C.F.R. § 800.3(f)(2);
18 800.4(a)(4); 800.5(c)(2)(iii); 800.6(a); 800.6(b)(2).

19 166. Interior did not complete the steps of the Section 106 process or the necessary
20 consultations, as described in the preceding paragraph, prior to executing the Ocotillo ROD.
21 For example, Interior has deferred final evaluation of the significance of identified resources,
22 and their eligibility for inclusion in the National Register, until after Project approval.
23 Development of plans relating to management and avoidance of impacts has also been deferred
24 to post-Project approval.

25 167. Interior did not consult the Quechan Tribe with regard to determining the
26 NHPA-eligibility of cultural sites, with regard to evaluating the potential impacts, and with

1 regard to resolving adverse effects. Thus, Interior has violated the NHPA, and the Ocotillo
2 ROD must be vacated and remanded to Interior pending completion of the Section 106 process.

3 168. The failure to complete the required steps of the Section 106 process prior to
4 issuing the Ocotillo ROD warrants preliminary injunctive relief. *Quechan Tribe of the Fort*
5 *Yuma Indian Reservation v. United States Department of the Interior*, 755 F. Supp. 2d 1104
6 (S.D. Cal. 2010).

7 169. Interior has failed to fulfill its obligation to meaningfully consult with the Tribe
8 in the Section 106 process. The agency must recognize the government-to-government
9 relationship between the Federal Government and Indian tribes, and consultation with tribes is
10 to be conducted in a manner sensitive to the concerns and needs of the Indian tribe. 36 C.F.R.
11 § 800.2(c)(2)(ii)(C).

12 170. Interior also failed to consult with the Tribe in compliance with the Department
13 of the Interior's Policy on Consultation with Indian Tribes (December 1, 2011), which, like the
14 Section 106 regulations, requires consultation to commence early and continue throughout the
15 administrative process, requires sharing of information, and requires consultation with the
16 actual decision-maker, here, the Secretary of the Interior and the BLM Director. Interior has
17 rejected or ignored Quechan requests for meetings with the decision-makers.

18 171. Interior repeatedly failed to timely provide the Tribe with information critical to
19 the consultation process precluding the Tribe from engaging in meaningful consultation.

20 172. Interior declined tribal requests for extensions in comment periods, despite
21 waiting until the very end of the administrative process to provide critical documents to the
22 Tribe, including the Revised Draft MOA relating to cultural resources, the Historic Properties
23 Treatment Plan, the NAGPRA Plan of Action, the Long Term Management Plan, and the
24 Archeological Monitoring Post-Review Discovery Plan. These extensive and important
25 documents were also provided at the same time that Interior requested comments on the
26 Revised Archeological Reports and the FEIS. Interior failed to timely provide these

1 documents to the Tribe and failed to allow a meaningful opportunity for the Tribe to comment,
2 consult, and participate in the preparation of such documents.

3 173. Rather than allowing adequate time for consultation and completion of the
4 Section 106 process, Interior aggressively pushed for completion of the administrative process
5 and project approval by its arbitrary completion date of May 2012.

6 174. Interior's unlawful failure to complete the Section 106 process prior to
7 execution of the Ocotillo ROD violates the NHPA and requires that the Ocotillo ROD and
8 related authorizations be vacated and remanded for completion of the Section 106 process.

9 **CLAIM NINE: Interior Violated the APA Through Its Arbitrary,
10 Capricious, and Unlawful Actions.**

11 175. The Tribe hereby incorporates, re-states, and re-alleges all preceding paragraphs.

12 176. The Administrative Procedures Act ("APA"), 5 U.S.C. § 706, requires a
13 reviewing court to hold unlawful and set aside agency actions, findings, and conclusions, which
14 are arbitrary, capricious, an abuse of discretion, or not in accordance with law.

15 177. Interior's actions and omissions identified in this Complaint constitute arbitrary,
16 capricious, and unlawful decisions in violation of the APA.

17 178. Interior's approvals of the Ocotillo ROD are arbitrary, capricious, an abuse of
18 discretion and not in accordance with law, because the decisions authorize an industrial, utility-
19 scale, high-intensity energy project on scenic and culturally-sensitive Class L lands that permit
20 only lower-intensity uses. Interior failed to evaluate or consider whether the OWEF Project is a
21 "lower-intensity" use permissible on Class L lands.

22 179. Interior's determination that the OWEF Project is permissible on Class L lands,
23 despite confirmation through its own analysis that the Project would significantly diminish and
24 degrade sensitive natural, scenic, cultural and biological resources is arbitrary and capricious.

1 180. Interior's analysis and approvals relating to applicable Visual Resource
2 Management requirements and objectives are arbitrary, capricious, an abuse of discretion and
3 not in accordance with law.

4 181. Interior arbitrarily and unlawfully applied factors, guidelines, and decision-
5 criteria in the CDCA Plan; for example, Interior failed to evaluate whether any alternative
6 locations in the CDCA (e.g., locations on Class M or Class I lands) are available. Interior also
7 ignored decision-criteria that mandate "avoidance of sensitive resources wherever possible"
8 and "conformance to local land use plans wherever possible." See CDCA Plan, pages 93
9 (decision criteria) and 121 (analysis of proposed amendments and decision-criteria).

10 182. Interior's denial of the Tribe's April 6, 2012 protest was arbitrary, capricious, an
11 abuse of discretion and not in accordance with law.

12 183. Interior's execution of the Ocotillo ROD without completing a valid impacts
13 analysis in accordance with NEPA is arbitrary, capricious, an abuse of discretion and not in
14 accordance with law.

15 184. Interior's execution of the Ocotillo ROD prior to completing a Programmatic
16 Environmental Impact Statement on the impacts of Interior's concerted and systemic program
17 of renewable energy development in the CDCA is arbitrary, capricious, an abuse of discretion
18 and not in accordance with law.

19 185. Interior's execution of the Ocotillo ROD without completing a valid evaluation
20 of the significance of the affected cultural resources and of the impacts on NHPA-eligible
21 resources in compliance with the requirements of NEPA and Section 106 of the NHPA is
22 arbitrary, capricious, an abuse of discretion and not in accordance with law.

23 186. Interior's approval of the Ocotillo ROD and Amendment to the CDCA Plan are
24 also agency actions undertaken without compliance with procedures required by law.

25 187. The Tribe has no plain, speedy, and adequate remedy in the course of law and,
26 absent immediate judicial intervention, the Tribe will suffer irreparable injury.

VI. PRAYER FOR RELIEF

WHEREFORE, incorporating, re-stating, and re-alleging all preceding paragraphs, the Plaintiff Quechan Indian Tribe prays for judgment as hereinafter set forth:

188. For a judgment declaring that Interior violated FLPMA, the APA, NEPA, the NHPA, and the CDCA Plan by approving the Amendment to the California Desert Conservation Area Plan;

189. For a judgment declaring that Interior violated FLPMA, the APA, NEPA, the NHPA, and the CDCA Plan by executing the Ocotillo ROD and authorizing development of the OWEF Project on these Class L lands;

190. For a judgment declaring that Interior violated FLPMA and the APA by authorizing conduct that constitutes undue impairment of CDCA lands, and unnecessary and undue degradation of public lands;

191. For a judgment declaring that Interior violated FLPMA, NEPA, and the APA by authorizing development of the OWEF Project in a Class III Visual Resource Management Area;

192. For a judgment declaring that Interior violated NEPA and the APA by failing to prepare an adequate analysis of cumulative and indirect effects in its FEIS prior to execution of the Ocotillo ROD, by failing to consider whether the OWEF Project and CDCA Plan Amendment are consistent with the requirements of the CDCA Plan, by failing to prepare a Programmatic EIS relating to renewable energy development within the CDCA; and by failing to take a “hard look” at the impacts of the OWEF Project on affected cultural and scenic resources;

193. For a judgment declaring that Interior violated the NHPA and the APA by failing to complete the Section 106 process, and by failing to meaningfully consult with the Quechan Tribe, prior to execution of the Ocotillo ROD;

1 194. For a judgment that Interior engaged in conduct that is arbitrary, capricious, an
2 abuse of discretion, and unlawful, and failed to engage in reasoned decision-making, in
3 violation of the APA;

4 195. For an order vacating the Ocotillo ROD and the Amendment to the California
5 Desert Conservation Area Plan and any related authorizations;

6 196. For a temporary, preliminary, and permanent injunction prohibiting any
7 development of the OWEF Project on the Class L lands that are the subject of this action;

8 197. For a temporary, preliminary, and permanent injunction prohibiting any
9 development of the OWEF Project on the lands subject to a Class II or III Visual Resources
10 Management designation;

11 198. Alternatively, for a temporary, preliminary, and permanent injunction
12 prohibiting any implementation of the OWEF Project of any kind, including any ground-
13 disturbing activities, or any issuance of Notices to Proceed, until Interior completes a valid
14 analysis of direct, indirect, and cumulative impacts pursuant to NEPA;

15 199. Alternatively, for a temporary, preliminary, and permanent injunction
16 prohibiting any implementation of the OWEF Project of any kind, including any ground-
17 disturbing activities, or any issuance of Notices to Proceed, until Interior completes a
18 Programmatic EIS on the impacts of Interior's concerted and systemic program of renewable
19 energy development in the California desert;

20 200. Alternatively, for a temporary, preliminary, and permanent injunction
21 prohibiting any implementation of the OWEF Project of any kind, including any ground-
22 disturbing activities, or any issuance of Notices to Proceed, until Interior completes the Section
23 106 process pursuant to NHPA, including its government-to-government consultation duties;

24 201. For costs of suit, including reasonable attorneys' fees pursuant to the Equal
25 Access to Justice Act, 28 U.S.C. § 2412; and
26

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Quechan Tribe of the Fort Yuma Indian Reservation

(b) County of Residence of First Listed Plaintiff Imperial (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) Thane D. Somerville, Frank R. Jozwiak Morisset, Schlosser, Jozwiak & Somerville 801 2nd Ave., Ste. 1115, Seattle, WA 98104 Tel: 206-386-5200

DEFENDANTS

U.S. Department of the Interior; U.S. Bureau of Land Management; et al.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'12CV1167 WQHMD

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- Plaintiff: 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)
Defendant: 2 U.S. Government (skh)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity): 5 U.S.C. 551, et seq.; 43 U.S.C. 4332, et seq.; 16 U.S.C. 470, et seq.; 43 U.S.C. 1701 et seq.; 28 U.S.C. 2201
Request for injunctive relief; violation of APA, NEPA, FLPMA

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE HON. LARRY ALAN BURNS DOCKET NUMBER 10CV2241 LAB CAB

DATE

May 14, 2012

SIGNATURE OF ATTORNEY OF RECORD

s/Thane D. Somerville

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE