

1 STEPHAN C. VOLKER (CSB #63093)
JOSHUA A.H. HARRIS (CSB #222886)
2 STEPHANIE L. ABRAHAMS (CSB #257961)
LAW OFFICES OF STEPHAN C. VOLKER
3 436 14th Street, Suite 1300
Oakland, CA 94612
4 Tel: 510.496.0600
Fax: 510.496.1366

5 Attorneys for Plaintiffs
6 BACKCOUNTRY AGAINST DUMPS, et al.

7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

10 BACKCOUNTRY AGAINST DUMPS, THE)
11 PROTECT OUR COMMUNITIES FOUNDATION,)
12 EAST COUNTY COMMUNITY ACTION)
13 COALITION, and DONNA TISDALE,)

14 Plaintiffs,)

15 v.)

16 JIM ABBOTT, in his official capacity as California)
17 State Director of the United States Bureau of Land)
18 Management, REN LOHOEFENER, in his official)
19 capacity as Pacific Southwest Regional Director of the)
20 United States Fish and Wildlife Service, KEN)
21 SALAZAR, in his official capacity as Secretary of the)
22 United States Department of the Interior, BOB)
23 ABBEY, in his official capacity as the Director of the)
24 Bureau of Land Management, MIKE POOL, in his)
25 official capacity as the Deputy Director of the Bureau)
26 of Land Management, SAM HAMILTON, in his)
27 official capacity as the Director of the Fish and Wildlife)
28 Service, UNITED STATES DEPARTMENT OF THE)
INTERIOR, BUREAU OF LAND MANAGEMENT,)
UNITED STATES DEPARTMENT OF THE)
INTERIOR, FISH AND WILDLIFE SERVICE,)

29 Defendants, and)

30 SAN DIEGO GAS & ELECTRIC CO.,)

31 Intervenor-Defendant.)

Civ. No. **3:10-CV-01222-MMA-BGS**

)
) **FIRST AMENDED COMPLAINT**
) **FOR DECLARATORY AND**
) **INJUNCTIVE RELIEF**

) **Court: 5**

) **Judge: Hon. Michael M. Anello**

1 **I. INTRODUCTION**

2 1. This action seeks to protect extraordinary public lands that provide outstanding
3 scenery, tranquility, wilderness recreation and wildlife habitat for endangered species including
4 the Peninsular bighorn sheep and the Quino checkerspot butterfly from needless destruction by a
5 hastily conceived, poorly studied, wildfire-inducing and completely unnecessary powerline
6 project. Plaintiffs Backcountry Against Dumps, *et al.* (“plaintiffs”) challenge five interrelated
7 agency actions by the United States Bureau of Land Management (“BLM”) and the United States
8 Fish and Wildlife Service (“FWS”):

9 (1) BLM’s amendment of its Resource Management Plan (“RMP” or “Plan”)
10 and approval of its related Final Environmental Impact Statement (“RMP FEIS”) for the
11 spectacular rugged mountains, deep verdant valleys and high pristine deserts of eastern San
12 Diego County;

13 (2) FWS’ approval of a Biological Opinion for the RMP;

14 (3) BLM’s summary dismissal of plaintiffs’ comprehensive protest to the RMP;

15 (4) BLM’s approval of two rights-of-way for the construction of the 500
16 Megawatt Sunrise Powerlink Transmission Line Project (“Powerlink Project”) through eastern
17 San Diego County and related Final Environmental Impact Statement (“Powerlink FEIS”); and

18 (5) FWS’ approval of a Biological Opinion for the Powerlink Project.

19 Plaintiffs sue the responsible BLM and FWS officials (“defendants”) pursuant to the
20 Administrative Procedure Act (“APA”) for violations of the National Environmental Policy Act,
21 42 U.S.C. section 4321 *et seq.* (“NEPA”), the Federal Land Policy Management Act, 43 U.S.C.
22 section 1701 *et seq.* (“FLPMA”), the Endangered Species Act, 16 U.S.C. section 1531 *et seq.*
23 (“ESA”), and the National Historic Preservation Act, 16 U.S.C. section 470 *et seq.* (“NHPA”).

24 2. There are four sequential agency actions culminating in this suit:

25 (1) BLM’s proposal for a new RMP for Eastern San Diego County in December
26 2007 (“2007 RMP”) based on an EIS prepared earlier that year;

27 (2) BLM’s abrupt amendment of its proposed 2007 RMP in October 2008
28 (“2008 RMP”) to rezone 12,185 acres of the highly scenic and sensitive McCain Valley National

1 Cooperative and Wildlife Management Area (“McCain Valley”) without further environmental
2 review as required under NEPA and without further consultation with FWS as required under
3 ESA;

4 (3) FWS’ hurried preparation of a Biological Opinion in November 2008 to
5 accommodate the Powerlink Project before its alignment was precisely identified, before
6 inventories of plants and wildlife in the alignment were conducted, before the Powerlink
7 Project’s impacts thereon were known, and before any site-specific mitigations of those unknown
8 impacts were even proposed, much less adopted;

9 (4) BLM’s abrupt amendment of its 2008 RMP just two months later in January
10 2009 (“2009 RMP”) and approval of powerline rights-of-way to allow construction of the
11 massive Powerlink Project and thousands of acres of wind farm and other industrial development
12 far outside the designated Southwest Powerlink (“SWPL”) utility corridor and instead within the
13 heart of the highly scenic and sensitive McCain Valley. This last RMP amendment was likewise
14 adopted without adequate environmental review as required by NEPA and based on a wholly
15 deficient Biological Opinion.

16 3. In February 2007, BLM released a Draft RMP and Draft EIS (“Draft RMP DEIS”)
17 for the Eastern San Diego County Planning Area (“Planning Area”). The RMP directs the future
18 land uses for approximately 102,869 acres of BLM-administered mountains, valleys, lakes, rivers
19 and high desert within the Planning Area. After receiving extensive public comments on the
20 Draft RMP, BLM produced a Proposed RMP and Final EIS (“Proposed RMP FEIS”) in
21 December 2007. But then BLM’s seemingly completed RMP process was abruptly hijacked to
22 accommodate a proposal by San Diego Gas & Electric Company (“SDG&E”) to build a
23 mammoth 500 MW powerline from Imperial County across San Diego County to the coast. On
24 July 28, 2008, BLM proposed fundamental changes to the RMP (hereinafter the “2008
25 Amendments”) that significantly altered the Proposed RMP’s resource valuation criteria, opening
26 up vast areas of previously undisturbed and protected lands to industrial-scale energy
27 development including the Powerlink Project. BLM declined to conduct a supplemental
28 environmental review of its new, development-intensive planning alternative; it claimed that the

1 impacts of the revisions were addressed within the spectrum of the original alternatives in its
2 December 2007 RMP FEIS. BLM's reliance on the 2007 FEIS's analysis, however, is not
3 supported by the record.

4 4. To the contrary, BLM's last-minute changes to the RMP constituted an unstudied,
5 wholesale revision of the land use plan for much of the remaining wildlands in eastern San Diego
6 County, including the highly valued McCain Valley. As such, BLM's action required the
7 preparation of a supplemental EIS. Nonetheless, on October 10, 2008, BLM approved its newly
8 revised RMP without any further environmental review.

9 5. Exacerbating BLM's failure to adequately analyze the RMP's impacts under NEPA,
10 FWS failed to conduct an adequate study of the RMP's effects on threatened and endangered
11 species under ESA. FWS's September 30, 2008 Biological Opinion ("RMP BiOp") failed to
12 include the best available scientific and commercial data, turned a blind eye to BLM's concurrent
13 approval of the Powerlink Project (discussed below), and failed to adequately address the 2008
14 Amendments to the RMP.

15 6. On November 17, 2008, plaintiff Backcountry Against Dumps ("BAD") filed a
16 lengthy and detailed administrative protest appealing BLM's approval of the RMP. On January
17 12, 2009, BLM summarily dismissed BAD's protest on the asserted grounds it "included
18 comments, opinions, or observations which were not substantiated with a concise statement of
19 why [BLM's] proposed decision is believed to be wrong; [and it included] issues not previously
20 raised in the planning process; and/or issues not germane to the planning process." To the
21 contrary, BAD's protest was extensively "substantiated" with a comprehensive discussion of the
22 factual and legal reasons why the 2008 RMP violated NEPA, ESA and other environmental laws.
23 BLM's perfunctory dismissal of BAD's protest was arbitrary and capricious because it ignored
24 the substance of BAD's protest and failed to explicate any reasoned basis for its summary
25 rejection of BAD's appeal. Revealing its apparent, inexplicable bias against BAD, BLM did not
26 dismiss other parties' appeals that presented issues similar to those raised in BAD's appeal;
27 rather, BLM considered and addressed those protests. BLM's dismissal of BAD's protest is
28 contrary to FLPMA and its regulations, which require BLM to follow and apply in a rational

1 manner applicable environmental laws in its adjudication of RMP protests.

2 7. Concurrent with, but ignored within, its RMP review process, BLM was also
3 considering the Powerlink Project. SDG&E asked BLM to grant to it two rights-of-way and the
4 above-mentioned, one-time RMP exemption (styled a “use permit”) to allow it to build a 500 kV
5 transmission line from the Imperial Valley Substation to a proposed 500/230 kV substation in San
6 Diego County near the western boundary of Cleveland National Forest. The approval also
7 included a 230 kV line from that same proposed substation to the existing Sycamore Canyon
8 substation located in San Diego. En route, the transmission line would connect with several
9 energy generation facilities, including proposed wind farms in McCain Valley and a geothermal
10 facility. The Powerlink, in its current alignment, requires an exemption from the RMP to allow
11 the project to cross the McCain Valley, which lies far outside of the RMP-designated utility
12 corridor.

13 8. Despite the fact that the Powerlink Project would require an immediate and
14 substantial amendment to the freshly minted RPM, BLM acted as though the RMP and Powerlink
15 approvals were unrelated. BLM approved the RPM without mentioning the Powerlink Project or
16 the special exemption necessary to allow the construction of the transmission line outside of the
17 utility corridor. Thus, BLM’s plan to allow rapid industrial development of the McCain Valley
18 was divided into two separate approvals – the first to allow the long-term development of wind
19 farms and other energy development projects, and the second to permit the construction of a
20 power line that would significantly increase the rate and intensity of that development. BLM
21 failed to consider the *de facto* Powerlink amendment to the RMP together with the 2008
22 Amendments, thereby denying the public and BLM decisionmakers an accurate understanding of
23 the timing and likely intensity of energy development in the McCain Valley and other sensitive
24 areas to be impacted. Consequently, the *combined* effects of the RMP revisions and the
25 transmission line exemption were never examined. The agency’s refusal to study the Powerlink
26 Project and the increased development allowed by the RMP in the same EIS violated NEPA.
27 This analytic failing is repeated in FWS’s RMP and Powerlink BiOps and in BLM’s ESA
28 decisions based thereon, wherein the effects of the RMP are considered independent of the

1 effects of the Powerlink Project, a violation of ESA.

2 9. BLM's approval of the rights-of-way for the Powerlink Project on January 20, 2009
3 was based on a completely inadequate NEPA review process. Most significantly, BLM
4 concentrated the majority of its efforts on analyzing the so-called proposed project, a route whose
5 western segments passed far to the north of the route ultimately selected. At the last minute,
6 BLM changed course and decided to approve a southern route that had not been adequately
7 defined and described, and was never thoroughly reviewed, in the EIS (hereinafter the "selected
8 route"). This abrupt substitution of a far different route stymied public participation in the NEPA
9 review and resulted in a fatally flawed EIS analysis of the selected route. The Powerlink EIS
10 failed to adequately or consistently describe the selected route or comprehensively address its
11 impacts; rather its description and analysis are incomplete, contradictory, and confusingly
12 scattered over many chapters of different volumes of the environmental review documents.
13 Accordingly, plaintiffs ask this Court to require BLM to produce a complete analysis of the
14 *selected* route – not just of the previously proposed, but now *rejected* route – before it reconsiders
15 its approval of the Powerlink Project along that new alignment.

16 10. In addition to BLM's significant NEPA violations, the agency also failed to comply
17 with FLPMA by siting the Powerlink Project through some of the most pristine natural resource
18 areas remaining in eastern San Diego County. BLM also violated NHPA by ignoring the impacts
19 of the Project on cultural and historic resources and by shutting the public out of the NHPA
20 review process. Additionally, FWS's analysis of the effects of the Project on listed species under
21 ESA was incomplete and inaccurate in substantial respects. As a result, the Powerlink BiOp and
22 BLM's reliance on the information and mitigation measures contained therein violated ESA.

23 11. For these reasons, as explicated more fully below, plaintiffs seek to set aside FWS's
24 BiOps for the 2008 RMP and the Powerlink Project, and to set aside BLM's approval of the
25 RMP, dismissal of plaintiffs' protest, and approval of the Powerlink rights-of-way and one-time
26 exemption from the 2008 RMP as arbitrary and capricious and in violation of NEPA, 42 U.S.C. §
27 4321 *et seq.*; FLPMA, 43 U.S.C. § 1710 *et seq.*; ESA, 16 U.S.C. § 1531 *et seq.*; NHPA, 16
28 U.S.C. § 1531 *et seq.*; their implementing regulations; and the APA, 5 U.S.C. § 701 *et seq.* If the

1 RMP BiOps and 2008 RMP are allowed to stand and construction of the Powerlink Project is
2 allowed to proceed, significant areas of untrammelled mountain and high desert wildlands in
3 eastern San Diego County will be degraded into massive construction sites and eventually into
4 permanent, industrial energy corridors.

5 **II. JURISDICTION AND VENUE**

6 12. This Court has jurisdiction in accordance with 28 U.S.C. § 1331 (action arising
7 under the laws of the United States); 28 U.S.C. § 1361 (action to compel officers of the United
8 States to perform their duties); 28 U.S.C. §§ 2201 (declaratory judgment) and 2202 (further
9 relief), and 5 U.S.C. §§ 701-706 (the APA).

10 13. Venue lies in the Eastern District Court of California, under 28 U.S.C. § 1391(e)
11 because the offices of defendants Jim Abbott, BLM's State Director for California, and of Ren
12 Lohofener, FWS' Regional Director for the Pacific Southwest Region, are located in
13 Sacramento, within this judicial district.

14 **III. PARTIES**

15 14. Plaintiff BAD is a community organization based in Boulevard, California,
16 comprising numerous individuals and families residing throughout Southern California.
17 Members of BAD are directly affected by BLM's land use planning and management of the
18 Planning Area because that is where they live and recreate. BAD and its members are interested
19 in the proper planning and management of BLM lands within the Planning Area in order to
20 maintain and enhance their ecological integrity, scenic beauty, wildlife, recreational amenities,
21 cultural resources, watershed values, and groundwater resources. Some members of BAD,
22 including Donna Tisdale, rely for their entire domestic, municipal and agricultural water supply
23 on the vulnerable aquifers of eastern San Diego County that are threatened with contamination
24 and overdrafting by ongoing and proposed land use development that the Powerlink Project
25 would induce. Further, BAD's members, including Donna Tisdale, Gary C. Hoyt, and F.W. (Bill)
26 Parsons, use BLM lands that will be directly and adversely affected by the construction of the
27 Powerlink Project and of windfarms and industrial-scale solar energy projects (collectively,
28 "RMP energy generation facilities") allowed under the amendments to the RMP challenged

1 herein. They use the lands that will be affected by the Project for aesthetic, scientific, historic,
2 cultural, recreational and spiritual enjoyment. Specifically, for example, F.W. (Bill) Parsons has
3 and will continue to visit areas within the McCain Valley, Cleveland National Forest, Mountain
4 Springs, Jacumba Wilderness Area, In-Ko-Pah County Park, Desert View Tower, Pepperwood
5 Trail, and other undeveloped areas that the Powerlink Project would cross. All of these areas will
6 be affected by the Powerlink Project and the RMP energy generation facilities. While visiting
7 those areas, Mr. Parsons engages in the following activities: nature photography of plants,
8 animals, and terrain, photography of people-in-nature, hiking, outings with friends, moon-
9 watching, star-gazing, sight-seeing, and solitary contemplation. Mr. Parsons plans to continue to
10 use these areas, but may not be able to do so if the Powerlink Project and the RMP energy
11 generation facilities are constructed as planned. For example, Mr. Parson's ability to photograph
12 natural scenery will be impaired by the presence of power lines and industrial-scale energy
13 projects. In sum, Mr. Parson's and the other BAD members' use and enjoyment of the pristine
14 desert and forest areas of Eastern San Diego County will be greatly diminished by construction of
15 the Powerlink Project and RMP energy generation facilities because such development will harm
16 the recreational and aesthetic value of the wildlands they frequent. Members of BAD submitted
17 comments throughout the RMP and Powerlink Project proceedings. Other members of BAD who
18 will be harmed by the Powerlink and RMP energy generation facilities include:

19 • Marie and Scott Morgan. The Morgans live on Ribbonwood Road in a valley
20 adjacent to McCain Valley in Boulevard, California. The Morgans' use and enjoyment of their
21 home will be directly harmed by the Powerlink Project and the Tule Wind Project, the approval of
22 which depends on both the Powerlink Project approval and the RMP amendments. Both projects
23 will be located on the ridge immediately to the east of and visible from the Morgans' residence.
24 The Morgans will suffer from these projects' adverse visual and noise impacts. The Tule Wind
25 Project's wind turbines will produce a continuous, low-pitched hum audible from the Morgans'
26 property. The transmission lines of both projects will produce a loud buzz when in operation,
27 likewise audible from the Morgans' property. In addition, the Morgans will be harmed by the
28 health hazards of living in close proximity to high voltage power lines and industrial scale wind

1 turbines and increased fire hazards due to the same, which will threaten loss of property and life
2 and likely increase homeowner fire insurance rates (or cancellation of fire insurance protection
3 altogether). All of these impacts will in turn harm the value of the Morgans' property.

4 ● Christopher A. Noland. Mr. Noland has been a resident of Boulevard for 3 years
5 and currently resides on Jewel Valley Court. His parents own a ranch on Cameron Truck Trail in
6 Campo, California, that Mr. Noland visits frequently. Mr. Noland's home and his parents' ranch
7 currently enjoy unencumbered views of desert wildlands that will be directly and adversely
8 affected by the Powerlink Project and the construction of RMP energy generation facilities. Mr.
9 Noland's property currently enjoys 360-degree views that will be substantially impaired by the
10 Powerlink Project, harming his use and enjoyment of his property and its value. Mr. Noland
11 frequently uses public lands that will be directly impacted by the Powerlink Project and related
12 development, including the McCain Valley Resource Conservation Area, Cameron Valley in the
13 Cleveland National Forest, Carrizo Wilderness Area, Jacumba Wilderness Area, Mountain
14 Springs, Coyote Mountains Wilderness Area, In-Ko-Pah County Park, Desert View Tower, Yuha
15 Desert, Hauser Wilderness Area and WSA, Pacific Crest Trail, and the Pepperwood Trail for the
16 following activities: hiking, family outings and recreation, wildlife and wildflower viewing,
17 sightseeing, photography, star gazing, quiet meditation, and camping. Mr. Noland plans to
18 continue to use these areas for these purposes, but if the Powerlink Project and RMP energy
19 generation facilities are constructed, his use and enjoyment of these areas will be substantially
20 impaired. Mr. Noland's aesthetic enjoyment of his surroundings will also be harmed by oak tree
21 removal resulting from the Powerlink Project and that Project's threatened destruction of
22 culturally significant areas in Cameron Valley.

23 ● Mark Ostrander. Mr. Ostrander is a California Department of Forestry and Fire
24 Protection ("CAL Fire") Battalion Chief and a resident of Jacumba, California. The proposed
25 Powerlink Project route is visible to the west of his property. Mr. Ostrander would be harmed by
26 the Powerlink Project due to the increase in fire dangers posed by the Powerlink Project and RMP
27 energy generation facilities. These projects not only would increase potential ignition sources,
28 but would also impede fire fighting efforts, leading to larger and more dangerous fires, which

1 would, in turn, harm Mr. Ostrander's property and life interests.

2 • Gerald R. Yops. Mr. Yops is a retired California Highway Patrol officer and a 35-
3 year resident of the rural back country of San Diego county. He currently resides in the
4 Boulevard area in part because he enjoys the area's unparalleled open space, unique rural
5 landscape, abundance of desert wildlife, dark skies, and quiet and tranquil rural atmosphere. Mr.
6 Yops' property is adjacent to the Powerlink Project and potential sites for RMP energy generation
7 facilities. Those projects would be visible from Yops' property, across the valley, to both the
8 northeast and southeast. His home will thus be directly impacted by these projects' visual and
9 noise impacts. In addition, Mr. Yops will experience a loss of property value to his home, a
10 likely rise in his utility and fire insurance rates (and the possibility that no fire insurance will be
11 available for his home, no matter how much he is willing to pay), and increased health risks due
12 to his living in close proximity to high-voltage transmission lines, and a dramatic increase in
13 commercial truck and helicopter traffic from construction-related activities in the area. Further,
14 Mr. Yops frequently uses public BLM lands that will be directly impaired by the Powerlink
15 Project and RMP energy generation facilities for hiking and communing with nature. Mr. Yops
16 has plans to continue these activities in areas that will be directly affected by Powerlink and the
17 RMP energy generation facilities, but his use and enjoyment of these areas will be significantly
18 diminished if defendants' approvals challenged herein are not overturned.

19 • Denis Trafecanty. Mr. Trafecanty has been a homeowner residing near Santa
20 Ysabel, California for nine years. Mr. Trafecanty frequently uses – and plans to use in the future
21 – public lands whose scenic, recreational and wildlife values will be directly harmed by the
22 Powerlink Project, including areas within the Cleveland National Forest, Hauser Wilderness
23 Area, and many sections of the Pacific Crest Trail for the following activities: running, hiking,
24 family outings and recreation, wildlife and wildflower viewing, sightseeing, quiet meditation, and
25 camping. Mr. Trafecanty is an ultra-marathoner who trains extensively on lands that provide
26 views of the proposed route and will be directly impacted aesthetically by the Powerlink Project
27 and the RMP energy generation facilities. Mr. Trafecanty' s use and enjoyment of these areas
28 and training for trail-based ultra-marathons will be substantially impaired if the Powerlink

1 Project and RMP energy generation facilities are constructed.

2 • Denis Berglund. Mr. Berglund owns a home and business that abuts the Cleveland
3 National Forest and the Powerlink Project route north of I-8 and west of La Posta Truck Trail.
4 Mr. Berglund's use and enjoyment of his home and business will be directly impaired by the
5 Powerlink Project. The transmission line will be located on a ridge directly adjacent to Mr.
6 Berglund's property line and just a few hundred feet from his residence. Consequently, the
7 Powerlink Project harms Mr. Berglund by harming the scenery he now enjoys and by introducing
8 a hazardous fire ignition source and a substantial impediment to aerial and ground fire
9 suppression activities, by decreasing his property value due to these impacts, by eliminating
10 access to portions of the Cleveland National Forest adjacent to his property, by threatening to
11 compromise his wells and water tanks which are located a few hundred feet away from the route
12 during construction, and by substantially impairing his ability to conduct his electronic noise
13 testing business on the same property, which requires a quiet electromagnetic noise area. These
14 harms to Mr. Berglund's interests are directly threatened by the Powerlink Project and would be
15 redressed by the Court's invalidation of defendants' approvals challenged herein.

16 • Cindy Buxton. Ms. Buxton would be directly harmed by construction of the
17 Powerlink Project. Ms. Buxton frequently uses – and plans to use in the future – public lands that
18 will be directly impacted by the Powerlink, including McAlmond Canyon, Jacumba, and the
19 Cleveland National Forest lands from Manzanita to Alpine. Ms. Buxton has relied on these
20 pristine lands for recreation and subsequent health benefits for nearly 20 years. The Powerlink
21 Project will adversely affect the views from many routes Ms. Buxton frequently hikes. Project
22 construction and operational noise in these areas will further disrupt her recreational use of them.
23 The Powerlink Project would also significantly harm the quality of her spiritual enjoyment in
24 these areas.

25 15. Plaintiff The Protect Our Communities Foundation (“POC”) is a community
26 organization formed in 2009 as the successor to The Protect Our Communities Fund, which
27 had been formed in 2006. POC is composed of numerous individuals and families residing in
28 eastern San Diego County who are directly affected by the approval of the Powerlink Project.

1 POC' s purpose is the promotion of a safe, reliable, economical, renewable and
2 environmentally responsible energy future. POC' s members use BLM lands for aesthetic,
3 scientific, historic, cultural, recreational and spiritual enjoyment. Specifically, for example,
4 Donna Tisdale frequently uses public lands that will be directly impacted by the Powerlink
5 Project and BLM' s RMP amendments, including the Yuha Desert Area of Critical
6 Environmental Concern (" ACEC"), the areas around Plaster City, Painted Gorge, Coyote
7 Wilderness, the southern end of Anza Borrego State Park, Jacumba Wilderness, Mountain
8 Springs, In-Ko-Pah, Desert View Tower, Valley of the Moon, Smugglers Cave, Table
9 Mountain and Mica Gem Road, Carrizo Wilderness and Carrizo Canyon Wilderness, In-Ko-
10 Pah ACEC, McCain Valley Resource Conservation Area, Cottonwood Campground and
11 Pepperwood Trail, Sacatone Overlook, Carrizo Overlook, La Posta/Thing Valley, Cameron
12 Valley, Campo, Hauser Wilderness, Cottonwood Creek, Potrero's Long Valley, Hauser
13 Canyon, Cleveland National Forest, Pine Creek Wilderness, and El Monte Valley. She uses
14 these lands for the following activities: hiking, family outings and recreation, wildlife and
15 wildflower viewing, sightseeing, photography, star gazing, quiet meditation, and camping. Mrs.
16 Tisdale plans on continuing her use of these areas in the future, but her use and enjoyment of the
17 lands that will be directly affected by BLM' s Powerlink Project and RMP approvals will be
18 drastically diminished if the projects allowed thereunder are constructed. For example, her plans
19 to continue to hike through these currently untrammeled desert wildlands will be sullied by the
20 unsightly, noisy and habitat-destroying Powerlink Project and the RMP energy generation
21 facilities. Ms. Tisdale also enjoys many of the visual resources that will be impaired by the
22 Powerlink Project and the RMP energy generation facilities when she takes frequent trips to
23 Imperial Valley and San Diego and scenic motorcycle rides with her husband. The views that
24 will be impaired include those from some of the most scenic highway corridors in Southern
25 California, including S-2, I-8, Historic Route 80, La Posta Truck Trail, Cameron Truck Trail,
26 Lake Morena Drive, Buckman Springs Road, Historic Route 94, Japatul Road, and Honey
27 Springs Road. Ms. Tisdale plans to continue her use of these highways and byways in the future,
28 but her use and enjoyment of them will be significantly diminished by the construction of the

1 Powerlink Project and the RMP energy generation facilities. BLM's RMP amendments and the
2 Powerlink Project thus threaten the use and enjoyment of these public resources by POC's
3 members, including Donna Tisdale. Members of POC submitted comments throughout the RMP
4 and Powerlink Project proceedings. Other members of POC who will be affected by the
5 Powerlink Project and RMP amendments include:

6 ● Vanessa Rusczyk. Ms. Rusczyk has been a resident of Alpine, California, for over
7 11 years and currently owns and resides at Rancho Soledad on Old Japatul Road in Japatul
8 Valley. The views from Ms. Rusczyk's home and from the roads on which she travels on a daily
9 basis, such as Japatul Road and Carveacre Road, will be severely degraded due to the
10 construction of the Powerlink Project, which will be visible from her property. Additionally, Ms.
11 Rusczyk frequently uses public lands that will be directly impacted by the construction of the
12 Powerlink Project, including areas of the Cleveland National Forest, the Pacific Crest Trail, and
13 the Carrizo Wilderness Area for the following activities: hiking, mountain biking, rock climbing,
14 photography, native plant identification, bird and wildlife watching, star gazing, and enjoying the
15 peace and quiet of undisturbed natural areas. Ms. Rusczyk is an artist who focuses on native
16 plants and uses areas that will be impaired by the Powerlink Project in pursuit of her chosen
17 avocation. Ms. Rusczyk plans to continue these activities in the future, but her use and
18 enjoyment of the lands that will be directly affected by the Powerlink Project will be greatly
19 diminished if the Project is allowed to proceed. Further, Ms. Rusczyk's home is located in an
20 area that San Diego County has identified as one of the two highest fire hazard areas in the
21 county because it has not burned in over 40 years. The Powerlink Project poses substantially
22 increased risks of wildfire ignition that threaten her property and life interests. Additionally, Ms.
23 Rusczyk's property is solely dependent on wells for its water supply. The construction of the
24 Powerlink Project may harm the only source of water for her property. Finally, Ms. Rusczyk
25 owns a business that operates in two office buildings on Alpine Boulevard in Alpine, California.
26 The construction of the Powerlink Project's powerline underground along the road directly in
27 front of her business will disrupt and reduce revenue from Ms. Rusczyk's business operations. In
28 addition, noise from its construction will disrupt the creative work environment Ms. Rusczyk's

1 company fosters, potentially causing employee job dissatisfaction and staffing problems.

2 • David Hogan. Mr. Hogan routinely visits many areas where the Powerlink Project
3 would be constructed as part of his professional, recreational, and spiritual pursuits. He has firm
4 plans to visit these areas many times in the future and would be significantly harmed by the
5 Powerlink Project through loss of favored scenic views, impacts to his personal spiritual
6 experience with intact natural lands, loss and destruction of endangered animals and habitats with
7 which he has direct professional and personal experience, and increased risks of wildfire from the
8 Powerlink Project and from its interference with fire fighting activities. For example:

9 (1) Mr. Hogan regularly visits public lands in the McCain Valley that will be impacted by
10 the Powerlink Project and the connected Tule Wind project, an RMP energy generation facility.
11 The Powerlink Project would traverse the length and center of McCain Valley and the Tule Wind
12 project would be constructed over a large area of central McCain Valley. Both projects are
13 allowed by the RMP amendments. Mr. Hogan has spiritual and recreational interests in the
14 preservation of the McCain Valley as unadulterated wildlands. For example, while visiting the
15 areas of the McCain Valley that will be specifically affected by the Powerlink Project and the
16 RMP energy generation projects, Mr. Hogan enjoys camping, hiking, trail running, bouldering,
17 meditating, taking pictures, reading, identifying plants and birds, observing wildlife, stargazing,
18 and generally just slowing down and absorbing a sublime, natural, high desert landscape. One of
19 Mr. Hogan's professional pursuits and recreational hobbies is viewing or attempting to view
20 imperiled species. He has viewed Peninsular bighorn sheep, Golden eagles, and high quality
21 habitat for the Quino checkerspot butterfly within the areas of the McCain Valley that will be
22 impacted by noise, land disturbance and visual blight by the projects. Mr. Hogan has visited the
23 McCain Valley on several occasions in the past and intends to return in the winter of 2010-2011,
24 spring 2011, summer 2011, and at least twice annually thereafter. If built, the Powerlink Project
25 and the RMP energy generation facilities, including the Tule Wind project, would significantly
26 harm Mr. Hogan's recreational and spiritual activities and interests in these areas by introducing
27 significant construction noise, dust, and activity, bulldozing natural high desert habitat, adding a
28 tall and linear ugly industrial development to a largely natural landscape including blinking night

1 lighting and aerial marker balls, introducing buzzing power line operation noise, displacing
2 sensitive wildlife such as bighorn sheep, killing wildlife on roads, and providing new roads for
3 noisy and destructive motor vehicle activity, including especially habitat-destroying, off-road
4 vehicles.

5 (2) In addition to the McCain Valley, Mr. Hogan also frequents areas of the Yuha Desert
6 of Imperial County that will be directly impacted by the Powerlink Project and the Imperial
7 Valley Solar project, which will use energy from the Powerlink Project. The Powerlink Project
8 would cross the West Mesa, Yuha Wash, and Coyote Wash, and pass along the base of the
9 Coyote Mountains. The Imperial Valley Solar project is connected to the Powerlink Project and
10 would be constructed over a large area of the Yuha Desert near Interstate 8 and S80. Mr. Hogan
11 has visited these specific areas for scenic, scientific, recreational and spiritual enjoyment on
12 several occasions in the past and intends to return to enjoy these areas in the winter of 2010-2011
13 and most winter seasons thereafter. Mr. Hogan's interests in the Yuha Desert are the same as
14 those described above for McCain Valley. Mr. Hogan has enjoyed viewing flat-tailed horned
15 lizards and Peninsular bighorn sheep in the areas of the Yuha Desert that will be affected by
16 BLM's approvals. If built, the Powerlink Project and the dependent Imperial Valley Solar project
17 would significantly harm his recreational and spiritual activities and interests in this area in the
18 same manner as that described for McCain Valley.

19 (3) Mr. Hogan also regularly visits public lands in the Table Mountain area of eastern San
20 Diego County that will be directly affected by the Powerlink Project and the RMP energy
21 generation facilities. The Powerlink Project would cross the Table Mountain area south of
22 Interstate 8. Wind development testing has been ongoing in this area, would be connected to the
23 Powerlink Project, and would be constructed over a large area of the Table Mountain landscape.
24 Mr. Hogan has visited these specific areas on several occasions in the past and intends to return in
25 the winter of 2010-2011 and most winter seasons thereafter. Mr. Hogan's interests in the Table
26 Mountain area are the same as those described above for McCain Valley. Mr. Hogan has enjoyed
27 viewing Peninsular bighorn sheep and Golden eagles in this area. If built, the Powerlink Project
28 and the RMP energy generation facilities would significantly harm his recreational and spiritual

1 activities and interests in this area in the same manner as that described above for McCain Valley.

2 (4) Mr. Hogan also regularly visits public lands managed by the United States Forest
3 Service and BLM in the La Posta and Cameron Valleys and nearby Hauser Mountain and Hauser
4 Canyon areas of southern San Diego County that will be directly impacted by the Powerlink
5 Project. The Powerlink Project would traverse the length of La Posta Valley, cross Cameron
6 Valley, and bisect Hauser Mountain and Hauser Canyon. The Powerlink Project was facilitated
7 in these areas by BLM's RMP amendments and related amendments to the Cleveland National
8 Forest Land Management Plan. Mr. Hogan has visited these specific areas of La Posta and
9 Cameron Valleys and nearby Hauser Mountain and Hauser Canyon areas on several occasions in
10 the past and intends to return to them in the winter of 2010-2011, spring 2011, summer 2011, and
11 at least twice annually thereafter. Mr. Hogan's interests in these lands are the same as those
12 described above for McCain Valley. Mr. Hogan has enjoyed viewing arroyo toads, Golden
13 eagles, and high quality habitat for the Quino checkerspot butterfly in these areas. If built, the
14 Powerlink Project would significantly harm his recreational and spiritual activities and interests
15 in these areas in the same manner as that described above for McCain Valley.

16 (5) Mr. Hogan also visits the Sycamore Canyon/Goodan Ranch Preserve in the Poway
17 area of San Diego County, which will be directly impacted by the Powerlink Project. The
18 Powerlink Project would cross and pass immediately adjacent to the north and northwestern
19 edges of the preserve and would pass overhead of both of the main entrances to the preserve. Mr.
20 Hogan has visited the preserve on several occasions in the past and intends to return in the winter
21 of 2010-2011, spring 2011, and at least twice annually thereafter. Mr. Hogan has enjoyed
22 viewing California gnatcatchers, Golden eagles, and high quality habitat for the Quino
23 checkerspot butterfly in this area. Mr. Hogan's interests in these lands and his injuries if the
24 Powerlink Project is constructed are the same as those described above for McCain Valley.

25 (6) Mr. Hogan also regularly visits several areas designated as critical habitat for
26 endangered species in areas that will be directly impacted by the Powerlink Project, including
27 critical habitat for the arroyo toad, California gnatcatcher, Peninsular bighorn sheep, and Quino
28 checkerspot butterfly. As stated above, one of Mr. Hogan's favorite hobbies is to visit and

1 experience natural habitats occupied by endangered species and to view the species themselves.
2 Mr. Hogan enjoys viewing and learning about endangered species and the special habitats on
3 which they depend for their survival. The Powerlink Project will pass through designated or
4 proposed critical habitat for the arroyo toad in Potrero Valley and along Cottonwood Creek, for
5 Peninsular bighorn sheep in the Jacumba Mountains near the San Diego/Imperial County line, for
6 Quino checkerspot butterfly near the communities of Jacumba and Campo, and immediately
7 adjacent to critical habitat for the California gnatcatcher near Wildcat Canyon Road in the
8 community of Lakeside. Mr. Hogan visited critical habitat for each of these species in these areas
9 on or in close proximity to the Powerlink Project route on several occasions in the past and
10 intends to return in the winter of 2010-2011, spring 2011, autumn 2011, and at least twice
11 annually thereafter. If built, the Powerlink Project would significantly harm the quality of his
12 experience in viewing these species' natural habitat in a similar manner to that described above
13 for McCain Valley.

14 ● Michael Pinto. Mr. Pinto resides near Lake Henshaw and San Felipe Valleys. His
15 family moved to the area 22 years ago for the tranquility, natural scenery, and historical
16 significance that cannot be offered anywhere else. Mr. Pinto is significantly harmed by the
17 threatened expansion of Powerlink to Los Angeles through Lake Henshaw Valley. SDG&E has
18 already purchased a large parcel of property directly adjacent to and visible from Mr. Pinto's
19 ranch and proposed to construct thereon an extension of the Powerlink Project that would
20 severely and irreparably impact Mr. Pinto's view and the tranquility of the area. The Powerlink
21 Project also threatens to destroy the historical Butterfield Stage route that can still be seen on Mr.
22 Pinto's property after 150 years. The Powerlink Project's threatened expansion will adversely
23 impact that route through the gross footprint of electrical towers erected across the San Felipe and
24 Lake Henshaw Valleys, completely destroying the possibility of passing on this historical legacy
25 to Mr. Pinto's children and grandchildren. Furthermore, Mr. Pinto's property was near
26 destruction in the 2002 Pine Fires, which severely impacted his landscape. The increased risk of
27 fire caused by the adjacent Powerlink Project directly and significantly impacts Mr. Pinto. The
28 Powerlink Project approval substantially increases the risk that Mr. Pinto will be harmed in the

1 future by the proposed northern extension of the Powerlink Project. Finally, Mr. Pinto's efforts
2 as Board Chairman of the Volcan Mountain Preserve Foundation to limit development and
3 preserve Volcan Mountain in the Julian area will be undermined by construction of the Powerlink
4 Project. If built, the Powerlink Project will create a credible threat of future injury to Mr. Pinto
5 by making construction of the northern extension of the Project substantially more likely.

6 ● Laura Cyphert. Ms. Cyphert resides in El Monte Valley and will be directly and
7 significantly impacted by construction, operation and maintenance of the Powerlink Project. The
8 proposed Powerlink route is within one-half mile of, and visible from, Ms. Cyphert's property. In
9 2003, Ms. Cyphert lost her home and aviary of birds in the Cedar Fire. Her home is also close to
10 the location of the Monte Fire in August of this year. The increased risk of fire caused by the
11 Powerlink Project poses significant risks to Ms. Cyphert's safety and that of her family, her
12 property, and her pets.

13 ● Tim and Mona Petersen. The Petersens live and work on a vineyard in Alpine,
14 California. Construction of the Powerlink Project will directly harm their residence and their
15 business interests. Three towers will be visible from their property with one tower looming over
16 their property on a hill 150 feet from their property line. These adverse visual impacts will
17 decrease visitation to their winery causing significant loss of business. Further, construction and
18 operational noise will be audible from the Petersens' property and will disrupt the peace and quiet
19 currently enjoyed on the Petersens' property. The transmission line will also introduce a
20 significant new ignition source and fire suppression impediment adjacent to and affecting their
21 property. The Petersens' harms are directly attributable to construction of the Powerlink Project
22 and would be redressed by a court order invalidating BLM's approval of the Powerlink Project.

23 ● Marie and Scott Morgan. The Morgans' interests and harm from the Powerlink
24 Project are described above.

25 ● Mark Ostrander. Mr. Ostrander's interests and harm from the Powerlink Project are
26 described above.

27 ● Denis Trafecanty. Mr. Trafecanty's interests and harm from the Powerlink Project
28 are described above.

1 ● Denis Berglund. Mr. Berglund’s interests and harm from the Powerlink Project are
2 described above.

3 ● Cindy Buxton. Ms. Buxton’s interests and harm from the Powerlink Project are
4 described above.

5 16. Plaintiff East County Community Action Coalition (“ECCAC”) is a coalition of
6 community groups with the common goal of preserving the rural quality of life and the natural
7 resources of eastern San Diego County. ECCAC and its members seek to maintain the ecological
8 integrity, scenic beauty, wildlife, cultural resources, recreational amenities, watershed values and
9 groundwater resources in eastern San Diego County. ECCAC’s members use BLM and Forest
10 Service lands that the Powerlink Project and related energy development would harm for
11 aesthetic, scientific, historic, cultural, recreational and spiritual enjoyment. For example, ECCAC
12 member Gary C. Hoyt frequently uses the lands directly threatened by the Powerlink Project and
13 RMP energy generation facilities, including McCain Valley and Cleveland National Forest, for
14 the following activities: recreation, camping, star gazing, hiking, and enjoying solitude and
15 unspoiled wilderness. Mr. Hoyt plans to continue to frequently use these lands in the future, but
16 his enjoyment of them will be impaired if the Powerlink Project and the RMP energy generation
17 facilities are constructed. For example, Mr. Hoyt’s enjoyment of solitary walks on lands directly
18 affected by the Powerlink Project and RMP energy generation facilities will be greatly
19 diminished by the presence and noise of power lines and industrial-scale energy projects.
20 Accordingly, Mr. Hoyt’s and the other ECCAC members’ enjoyment of the pristine desert and
21 mountain areas of Eastern San Diego County will be substantially impaired by the presence of
22 power lines, windmills, and solar arrays because such development will harm the recreational and
23 aesthetic value of the wildlands used by plaintiffs. BLM’s RMP amendments and the subsequent
24 Powerlink Project thus threaten the use and enjoyment of these public resources by ECCAC’s
25 members. Members of ECCAC submitted comments throughout the RMP and Powerlink Project
26 proceedings. Other members of ECCAC who will be harmed by the Powerlink and RMP
27 amendments include:

28 ● Sharmin Self. Ms. Self lives in the community of Carveacre, California. Carveacre

1 is a close-knit community of people who love the surrounding rural area and its natural beauty. It
2 is surrounded on all sides by the Cleveland National Forest and will be significantly impacted by
3 the Powerlink Project's construction, operation, and maintenance. Construction of the Powerlink
4 Project will directly harm her residence and the surrounding lands, on which she relies for
5 relaxation, hiking, wildlife viewing, and other forms of recreation. The Powerlink Project will
6 directly undermine Ms. Self's significant efforts to maintain and protect her home and the
7 surrounding forest land from fire through brush clearing, road maintenance, monthly community
8 meetings, and the creation of a community Fire Safe Council. Construction and operation of the
9 Powerlink Project will increase the risk of fire ignition and inhibit firefighter access to her home
10 and surrounding lands, placing her and her community at risk. The Project is proposed to traverse
11 forest areas surrounding homes, frequented by hikers, bird watchers, nature groups, children
12 playing, school groups, and residents. The construction of the Powerlink Project on these lands
13 significantly increases the risk of fire ignition through potential contact with power lines by
14 Mylar balloons and kites, and through the increased usage of the area by unauthorized non-
15 residents. Furthermore, the Carveacre area often experiences high winds, which can reach more
16 than 70 miles per hour, increasing the risk of line sparking and of debris contact with the
17 Powerlink Project's power lines. For all of these reasons, and the limitations placed on aerial and
18 ground firefighting near power lines, the Powerlink Project poses a significant and irreparable
19 risk to Ms. Self and her property. Construction of the Powerlink Project will also impact Ms.
20 Self's views from her property and surrounding areas, and her ability to view and enjoy wildlife
21 in her community. These adverse visual and biological impacts will cause a significant loss of
22 enjoyment and relaxation for Ms. Self, and will drastically alter the land she has come to know,
23 love, and depend on. Further, construction and operational noise from the Powerlink Project will
24 disrupt the peace and quiet she currently enjoys on her property. Ms. Self's harms are directly
25 attributable to construction of the Powerlink Project and would be redressed by a court order
26 invalidating the defendants' approvals challenged herein.

- 27 ● Mark Ostrander. Mr. Ostrander's interests and harm from the Powerlink Project are
28 described above.

- 1 ● Denis Trafecanty. Mr. Trafecanty's interests and harm from the Powerlink Project
2 are described above.
- 3 ● Denis Berglund. Mr. Berglund's interests and harm from the Powerlink Project are
4 described above.
- 5 ● Cindy Buxton. Ms. Buxton's interests and harm from the Powerlink Project are
6 described above.
- 7 ● Vanessa Rusczyk. Ms. Rusczyk's interests and harm from the Powerlink Project
8 are described above.
- 9 ● Milton and Laura Cyphert. The Cypherts' interests and harm from the Powerlink
10 Project are described above.
- 11 ● Tim and Mona Petersen. The Petersens' interests and harm from the Powerlink
12 Project are described above.

13 17. Plaintiff Donna Tisdale lives on Morningstar Ranch, located two miles west of
14 Tierra Del Sol Road in Boulevard, California. Her residence and business rely exclusively on
15 well water. She is an active member of multiple community groups, including co-plaintiffs BAD,
16 POC, and ECCAC, and is a sitting member of the County of San Diego's Boulevard Planning
17 Group. Mrs. Tisdale advocates for the preservation of rural areas of Southern California and was
18 featured on the front page of the *Washington Post* as a voice of the rural community against the
19 Powerlink Project. Mrs. Tisdale uses BLM and Forest Service lands that will be affected by the
20 Powerlink Project for recreational and spiritual activities. The RMP amendments and the
21 Powerlink Project will adversely affect Mrs. Tisdale's interests by introducing industrial
22 development into the McCain Valley and surrounding areas, thereby harming her use and
23 enjoyment of the public natural resources of these areas. As stated above, Mrs. Tisdale
24 frequently uses public lands that will be directly and specifically affected by the Powerlink
25 Project's proposed rights of way and BLM's RMP amendments, including the BLM's McCain
26 Valley Resource Conservation Area, the Cleveland National Forest, Carrizo Wilderness Area,
27 Jacumba Wilderness Area, Mountain Springs, Coyote Mountains Wilderness Area, In-Ko-Pah
28 County Park, Desert View Tower, Yuha Desert ACEC, Hauser Wilderness Area and Wilderness

1 Study Area (“WSA”), Pacific Crest Trail, Pepperwood Trail, for the following activities: hiking,
2 family outings and recreation, wildlife and wildflower viewing, sightseeing, photography, star
3 gazing, quiet meditation, and camping. Mrs. Tisdale plans to continue her use of these areas in
4 the future, but will not be able to enjoy these areas if the Powerlink Project approval and RMP
5 amendments are not overturned. Mrs. Tisdale’s use and enjoyment of these lands will be
6 substantially impaired because, for example, she will be unable to hike through untrammeled
7 desert wildlands directly affected by the Powerlink Project and large-scale energy development
8 projects made possible by the RMP amendments. She has spoken at public meetings related to
9 the Powerlink Project and authored multiple letters to BLM and other agencies opposing the
10 Project on behalf of community groups and herself.

11 18. Defendant JIM ABBOTT is BLM’s California State Director. His predecessor in
12 office, Mike Pool, approved the RMP and the Powerlink Project rights-of-way across BLM lands
13 challenged in this action on January 20, 2009. Defendant JIM ABBOTT is sued in his official
14 capacity as BLM’s California State Director.

15 19. Defendant REN LOHOEFENER is the Director of the Pacific Southwest Region of
16 FWS, and is responsible for the actions of FWS in approving the two Biological Opinions
17 challenged in this action. Defendant Lohofener is sued in his official capacity.

18 20. Defendant KEN SALAZAR is the Secretary of the United States Department of the
19 Interior. Defendant Salazar is the federal official charged with the responsibility for the proper
20 management of BLM and FWS and is responsible for the actions of BLM and FWS challenged
21 herein. Defendant Salazar is sued in his official capacity.

22 21. Defendant BOB ABBEY is the Director of BLM and is responsible for the actions
23 of BLM in approving the RMP and the Powerlink Project challenged in this action. Defendant
24 Abbey is sued in his official capacity.

25 22. Defendant MIKE POOL is the former California Director of BLM. He approved
26 the RMP and the Powerlink rights-of-way on January 20, 2009. He is now the Deputy Director
27 of BLM. In that capacity, he is generally responsible for overall activities of BLM nationwide,
28 including the supervision of the official acts of those BLM employees who are named as co-

1 defendants. Defendant Pool is sued in his official capacity.

2 23. Defendant SAM HAMILTON is the Director of the FWS and is, in that capacity,
3 responsible for the overall activities of FWS nationwide, including the preparation of the
4 Biological Opinions at issue in this case. Defendant Hamilton is sued in his official capacity.

5 24. Defendant UNITED STATES DEPARTMENT OF INTERIOR (“DOI”) is the
6 federal agency charged with managing most of the nation’s federally owned lands, including the
7 public lands managed by BLM in eastern San Diego County at issue here, and with administering
8 both ESA and FLPMA on a nationwide basis.

9 25. Defendant UNITED STATES BUREAU OF LAND MANAGEMENT (“BLM”) is
10 an agency within DOI. Pursuant to federal law, BLM is charged with the management of over
11 100,000 acres of land owned by the federal government in eastern San Diego County for the
12 benefit of the public consistent with the requirements of NEPA, FLPMA, ESA, NHPA and the
13 APA.

14 26. Defendant UNITED STATES FISH AND WILDLIFE SERVICE (“FWS”) is also
15 an agency within DOI. Pursuant to federal law, FWS is charged with the preservation of
16 endangered and threatened species under ESA, and was required to comply with ESA’s
17 requirements when it prepared the Biological Opinions for the RMP and the Powerlink Project
18 challenged in this action.

19 **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

20 **A. RMP**

21 27. On March 2, 2007, BLM issued a Notice of Availability of the Draft RMP Draft
22 Environmental Impact Statement (“DEIS”) for the new RMP. On May 31, 2007, plaintiff BAD
23 submitted a comment letter critiquing BLM’s selection of Alternative E, pointing out the
24 inadequacies of the Draft RMP DEIS, and highlighting the Draft RMP’s failure to protect
25 endangered species, wildlife habitat, and recreational, cultural, watershed and visual resources.
26 On December 7, 2007, BLM published a Notice of Availability of the Proposed RMP FEIS.
27 BAD timely protested this decision on January 7, 2008. Without ruling on BAD’s protest or
28 completing adoption of its Draft RMP, on July 28, 2008, BLM abruptly issued a substantially

1 revised proposed RMP that allowed industrial development of the McCain Valley and other
2 sensitive lands. On August 27, 2008, BAD submitted a comment letter on the proposed RMP
3 amendments, pointing out that the impacts of the substantial additional development were
4 potentially considerable, but had not been addressed as required by NEPA and other
5 environmental laws. Notwithstanding BAD's comment and without conducting any additional
6 environmental review, on October 10, 2008, BLM approved the proposed RMP. BAD submitted
7 a timely protest challenging BLM's approval of the 2008 RMP on November 17, 2008. BAD's
8 protest was summarily dismissed by BLM's then State Director Mike Pool on January 12, 2009.
9 Plaintiffs had no further administrative remedy such as an appeal to the Interior Board of Land
10 Appeals ("IBLA") because an RMP approval is not an implementation-level decision. *See*, RMP
11 ROD, p. 20, *citing* 43 CFR Part 4.

12 28. Plaintiffs have adequately exhausted their administrative remedies with respect to
13 the RMP approval because BAD commented throughout the RMP amendment process and
14 protested BLM's approval of the 2008 RMP. Furthermore, because the RMP amendment was a
15 prerequisite to BLM's right-of-way grants to SDG&E, BAD's participation in the RMP
16 amendment process also constitutes participation in the Powerlink Project approval proceeding
17 for exhaustion purposes.

18 **B. Powerlink Project**

19 29. On August 31, 2006, BLM and CPUC published a Notice of Intent to Prepare a
20 joint Environmental Impact Statement/Environmental Impact Report ("EIS/EIR") addressing the
21 impacts of the Powerlink Project. In response, Donna Tisdale, who is a member of all
22 organizational plaintiffs, and Denis Trafecanty, who is co-founder and President of POC,
23 submitted numerous written and oral scoping comments. For example, Denis Trafecanty, on
24 behalf of the Protect Our Communities Fund (now the Protect Our Communities Foundation, or
25 POC), submitted written comments on February 5, 2007. Donna Tisdale also submitted written
26 comments, on behalf of herself, on February 25 and June 11, 2007. Both Donna Tisdale and
27 Denis Trafecanty also made numerous oral comments at scoping hearings for this EIS/EIR. On
28 behalf of himself and the Protect Our Communities Fund, Denis Trafecanty made oral comments

1 at the February 5, 2007 hearings in El Centro and San Diego, as well as the February 6, 2007
2 hearings in Wynola and Ramona, the February 7, 2007 hearing in Alpine, and the February 8,
3 2007 hearing in Borrego. And on her own behalf, Donna Tisdale made oral comments at the
4 February 7, 2007 scoping hearing in Boulevard.

5 30. On January 3, 2008, BLM published the Draft EIS/EIR for the Powerlink Project
6 (“Powerlink DEIS”). On February 25 and April 10, 2008, Donna Tisdale, personally and on
7 behalf of Boulevard Planning Group, submitted comments on the Powerlink DEIS. In addition,
8 Donna Tisdale made comments on the Powerlink DEIS at the February 25, 2008 public hearing at
9 Pine Valley. As stated above, Donna Tisdale is a member of all organizational plaintiffs. Many
10 other individual members of BAD, POC, and ECCAC submitted comments on the Powerlink
11 DEIS as well, including Denis Trafecanty (co-founder and President of POC and member of
12 ECCAC), Michael Pinto (co-founder and Treasurer of POC), Gary Hoyt (member of both BAD
13 and ECCAC), Denis Berglund (member of BAD, POC and ECCAC), Tim and Mona Petersen
14 (members of POC and ECCAC), Cindy Buxton (member of POC) and F.W. (Bill) Parsons
15 (member of BAD). On July 11, 2008, BLM published a Supplemental Powerlink DEIS
16 (“Powerlink SDEIS”). In response to this Powerlink SDEIS, Donna Tisdale submitted a
17 comment letter on August 25, 2008. This letter stated objections to the chosen alternative and
18 raised issues of new, significant, and previously undisclosed impacts that required further
19 environmental review. Denis Trafecanty, Gary Hoyt, Tim and Mona Petersen, Denis Berglund
20 and Cindy Buxton all also commented on the SDEIS. On October 13, 2008, BLM issued a Final
21 EIS/EIR (“Powerlink FEIS”).¹

22 31. On January 20, 2009, BLM issued the Record of Decision (“ROD”) approving the
23 Powerlink Project. On March 26, 2009, plaintiffs filed a Notice of Appeal of the approval with
24

25
26 ¹BLM issued three environmental review documents, pursuant to NEPA, in order to
27 review the impacts of the Powerlink Project. These documents, the Powerlink DEIS,
28 Powerlink SDEIS, and Powerlink FEIS, suffer many of the same inadequacies and are
referenced collectively as the “Powerlink EIS.”

1 the Interior Board of Land Appeals (“IBLA”). Plaintiffs subsequently filed a Request for Stay
2 and an extensive Statement of Reasons with the IBLA. The IBLA denied plaintiffs’ request for a
3 stay and, after losing jurisdiction following plaintiffs’ filing of this action, purported to deny
4 plaintiffs’ appeal.

5 32. Plaintiffs have adequately exhausted their administrative remedies by commenting
6 extensively throughout the Powerlink Project and RMP environmental review processes and
7 seeking review of BLM’s approval of the Powerlink Project in the IBLA. And because the IBLA
8 failed to timely respond to plaintiff’s petition for stay and eventually denied it, plaintiffs properly
9 sue for relief in this Court without awaiting IBLA’s ruling on the merits of plaintiffs’ appeal.
10 The IBLA was required to act on plaintiffs’ petition for stay within 45 days after the end of the
11 administrative appeal period on March 23, 2009. 43 C.F.R. § 4.21(a)(3). When IBLA failed to
12 do so, BLM’s Powerlink ROD became effective as a final agency action. *National Parks &*
13 *Conservation Ass’n v. Bureau of Land Management*, 606 F.3d 1058, 1064 (9th Cir. 2002) (“If an
14 Appeals Board fails to act upon a petition for a stay or denies such a petition, the decision
15 becomes effective immediately”); *Center for Biological Diversity v. U.S. Department of Interior*,
16 255 F.Supp.2d 1030 (D.Ariz. 2003) (holding that BLM’s decision became final once the IBLA
17 failed to grant a stay within the prescribed time period, even though the IBLA later issued a stay).
18 The finality of the ROD was further confirmed when the IBLA denied plaintiffs’ stay request on
19 July 14, 2009. *National Parks & Conservation Ass’n, supra*, 606 F.3d at 1064; *see also Desert*
20 *Citizens Against Air Pollution v. Bisson*, 231 F.3d 1172 (9th Cir. 2000) (court reviewed BLM’s
21 Record of Decision as the final agency action because the IBLA had denied a petition for a stay).
22 Thus, plaintiffs have adequately exhausted their administrative remedies and are entitled to sue
23 for relief in this Court on BLM’s ROD.

24 V. STATEMENT OF FACTS

25 **Bureau of Land Management’s Eastern San Diego County Resource Management Plan**

26 33. On July 14, 2004, BLM published a Notice of Intent to Prepare an RMP and the
27 associated DEIS for the Eastern San Diego County Planning Area. The preliminary scoping
28 period commenced on July 14, 2004 and continued through October 12, 2004.

1 34. On March 2, 2007, BLM issued a notice of availability of the Draft RMP DEIS. In
2 it, BLM disclosed that FWS had identified ten federally listed species as occurring within the
3 Planning Area, four of which were known to occur on BLM-administered lands: Peninsular
4 bighorn sheep, Least Bell’s vireo, the Arroyo toad, and Quino checkerspot butterfly. BLM had
5 not, at that time, prepared a biological assessment but informed the public that a “Biological
6 Assessment will be prepared” to address the effects of the RMP.

7 35. The Draft RMP DEIS analyzed five alternatives for the RMP: the no-action
8 alternative, the visitor experience-focused alternative, the natural preservation-focused
9 alternative, the development-intensive alternative, and the balanced alternative (“Alternative E”).
10 Alternative E downgraded 9,304 acres from visual resource management (“VRM”) Class II to a
11 management class that would permit industrial development in those areas. The majority of the
12 downgraded acreage was concentrated in McCain Valley West, a public recreation area of
13 immense scenic, scientific, cultural and wildlife value. BAD submitted a comment letter on May
14 31, 2007 (“2007 Comment”), critiquing BLM’s preferred Alternative E and the analysis thereof
15 insofar as it allowed industrial development in McCain Valley. Other comments raised similar
16 issues. BLM’s response to BAD’s and the public’s concerns regarding the gaps in the agency’s
17 environmental analysis and related resource allocation decisions stressed the agency’s intent to
18 promote industrial energy projects above all other considerations.

19 36. On November 20, 2007, approximately two weeks before issuance of the Proposed
20 RMP FEIS, BLM requested formal ESA section 7 consultation with FWS with regard to the
21 likely impacts of Alternative E on listed species and sent FWS a Biological Assessment (“BA”).

22 37. On December 7, 2007, BLM published a Notice of Availability of the Proposed
23 RMP FEIS. 72 Fed. Reg. 69, 226 (Dec. 7, 2007). The Proposed RMP selected Alternative E as
24 the proposed action.

25 38. On January 7, 2008, BAD filed a timely protest of the Proposed RMP FEIS,
26 pursuant to 43 C.F.R. 1610.5-2 (1983). BLM received eight other protests during the thirty day
27 protest period. Additionally, on December 20, 2007, a renewable energy company, PPM Energy,
28 sent a memorandum to the Secretary of the DOI, informing the Secretary that BLM’s RMP

1 conflicted with the company's proposed 200 megawatt windpower project in McCain Valley.
2 The memorandum requested the Secretary to "direct" the BLM Director to review the Proposed
3 RMP FEIS and make the appropriate changes. The Office of the Secretary contacted BLM that
4 same day.

5 39. On July 28, 2008, BLM published a Notice to Provide Opportunity to Comment on
6 Changes to the RMP, i.e. the 2008 Amendments. The notice was purportedly a response to the
7 protest letters submitted by BAD and other parties with regard to the Proposed RMP FEIS. 73
8 Fed.Reg. 43,779 (July 28, 2008). However, BLM did not respond to the concerns raised in
9 BAD's protest. Instead, the notice only responded to purported concerns that the agency was
10 being "overly-restrictive" in not allowing more wind energy development. *Id.*

11 40. The 2008 Amendments included two very significant changes to the RMP. First,
12 instead of Alternative E, BLM elected to pursue a development-intensive alternative. The 2008
13 Amendments downgraded both McCain Valley East and McCain Valley West from VRM Class
14 II and III, respectively, to Class IV, the category allowing maximum, including industrial,
15 development. *Id.* The amendments also caused additional acreage to be withdrawn from
16 recreational use and allocated instead to industrial energy development. Out of the 40,954 acres
17 that had been previously managed in accordance with VRM Class II objectives, now only 12,824
18 would retain such management classification. This change in VRM classifications opened the
19 door to wide-spread industrial energy development in previously protected areas, without
20 required environmental reviews.

21 41. The 2008 Amendments included a second change, which revised the allowed uses
22 within VRM Class II areas. This change allows for mineral leasing and industrial development of
23 the remaining 12,824 acres of VRM Class II lands. These two changes to the RMP increased
24 lands available for development by 31,623 acres – a three-fold increase from the originally
25 Proposed RMP.

26 42. On August 27, 2008, BAD submitted a comment on the 2008 Amendments,
27 informing BLM that a supplemental EIS was required under NEPA to address the significant
28 impacts of the announced changes and also restating its prior grounds for protest under ESA,

1 FLPMA, and NEPA. In addition to BAD’s comment, BLM received approximately fifty other
2 comments, identifying the need for a supplemental EIS and asking for further discussion of
3 impacts on visual and recreational resources, threatened and endangered species, and
4 groundwater as a result of renewable energy and geothermal development. BLM responded that
5 a supplemental EIS was not necessary because the two changes proposed by the 2008
6 Amendments were “within the spectrum of alternatives analyzed in the Draft RMP DEIS, made
7 available by BLM in March of 2007.” BLM did not prepare a supplemental EIS, nor did it
8 produce any further ESA documentation related to the increased effects of the RMP on listed
9 species.

10 43. On September 30, 2008, FWS issued its BiOp on the RMP. It revealed that BLM
11 had requested formal consultations only as to the Quino checkerspot butterfly. FWS determined,
12 based on its analysis of the proposed action, that the RMP would also result in adverse effects on
13 the Least Bell’s vireo and the Peninsular bighorn sheep. *Id.* FWS also noted in its RMP BiOp
14 that “survey efforts throughout the Planning Area have *not* been sufficient to determine the actual
15 extent of use across the area.” (Emphasis added.) FWS failed to request a new or updated
16 Biological Assessment (“BA”) from BLM to address the impacts of the 2008 Amendments and
17 based its RMP BiOp on the obsolete BA for the Proposed (but rejected) RMP – rather than on the
18 Final RMP as modified by the 2008 Amendments, which allowed three times more industrial
19 development.

20 44. Nowhere in any of their environmental reviews did either BLM or FWS mention
21 the pending approval of the Powerlink Project or attempt to address the combined impacts of that
22 project with the development-intensive RMP.

23 45. On October 10, 2008, BLM’s then California State Director Mike Pool signed the
24 RMP Record of Decision (“ROD”). The ROD constitutes BLM’s final agency action and was
25 effective immediately.

26 **BLM’s Dismissal of Plaintiffs’ Protest**

27 46. On November 17, 2008, BAD submitted a protest letter, appealing BLM’s adoption
28 of the 2008 RMP ROD and the associated RMP FEIS. BAD’s November 17, 2008 protest raised

1 the same grounds of objection as those raised by BAD’s comment on the 2008 Amendment, and
2 incorporated by reference a protest submitted by plaintiff Donna Tisdale and the Boulevard
3 Planning Group in the parallel Powerlink proceeding. The State Director summarily dismissed
4 BAD’s protest on January 12, 2009 on the asserted grounds that the protest “included comments,
5 opinions, or observations which were not substantiated with a concise statement of why [BLM’s]
6 proposed decision is believed to be wrong; issues not previously raised in the planning process;
7 and/or issues not germane to the planning process.” There is no further administrative appeal by
8 which plaintiffs could seek review of BLM’s 2008 RMP.

9 The Sunrise Powerlink Transmission Line Project

10 47. On August 31, 2006, BLM and the California Public Utilities Commission
11 (“CPUC”) published a notice of intent to prepare a joint EIS/EIR for the Powerlink Project. The
12 agencies published the Powerlink DEIS on January 3, 2008, which initiated a 90-day public
13 review period, ending on April 11, 2008. The Powerlink DEIS contained more than 7,500 pages,
14 focusing on SDG&E’s proposed Northern Anza-Borrego Alternative.

15 48. On July 11, 2008, BLM issued the Powerlink SDEIS, which purportedly analyzed
16 two connected actions: (1) a proposed windfarm in La Rumorosa, Mexico; and (2) additional
17 transmission and substation upgrades. The Powerlink SDEIS also included and analyzed several
18 route revisions to each of the alternatives in the Powerlink DEIS. The Powerlink SDEIS was
19 followed by a 45-day public review period that ended on August 25, 2008.

20 49. On October 13, 2008, BLM issued the Powerlink FEIS along with four volumes of
21 agency responses to public comments. Notably, the FEIS for the Powerlink Project was
22 published three days *after* BLM had already – and prematurely – approved the RMP.

23 50. In the Powerlink FEIS Executive Summary, BLM indicated its selection of the
24 “Final Environmentally Superior Southern Route (SWPL) Alternative,” or the selected route.
25 This route will run approximately 125 miles across the width of California from the Imperial
26 Valley to San Diego. The Project will cross lands under the control of BLM, United States Forest
27 Service, United States Marine Corps Air Station Miramar, California State Parks, San Diego
28 County and City, and privately owned lands.

1 51. Confusingly, the Powerlink FEIS contained an extensive description of the
2 proposed (but ultimately rejected) project. The selected route, however, was *not* described in its
3 entirety within any of the Powerlink FEIS documents, making a thorough understanding of the
4 project very difficult. The selected route was made up of multiple sections: the I-8 Alternative,
5 the BCD Alternative, and the Modified Route D Alternative, as well as multiple smaller scale
6 route alternative and reroute alternates. Information about each piece of the selected route was
7 scattered throughout the Powerlink EIS and the responses to comments. Further, the precise
8 alignment of the project within these wide corridor segments was never identified, preventing
9 site-specific assessment of the project’s environmental impacts.

10 52. In addition to these fundamental NEPA defects, the Powerlink FEIS also failed to
11 adequately address, *inter alia*: (1) the need for the project’s additional transmission capacity; (2)
12 the specific impacts of the project, including growth-inducing, fire, biological, climate change,
13 viewshed, rural character and quality of life, wilderness and recreational resources, cultural
14 resources, increased public access, and groundwater impacts; (3) the cumulative impacts of the
15 project along with other foreseeable projects; (4) a reasonable range of alternatives; and (5) the
16 impacts of the project on the Cleveland National Forest, including the need for multiple
17 amendments to the applicable Cleveland National Forest Plan. The Powerlink FEIS also
18 improperly segmented environmental review of the project’s many connected actions.

19 53. On November 5, 2008, BLM requested formal ESA section 7 consultation with
20 FWS in connection with the Powerlink Project. On that same day, BLM transmitted its BA and
21 requested that FWS complete its Powerlink BiOp on an expedited schedule. The BA identified
22 ten federally listed species that were likely to be adversely impacted by the Powerlink Project,
23 including eight federally endangered species, and two federally threatened species. BLM had not
24 yet received approval of this species list from FWS, as required by ESA. Furthermore, at the time
25 of both BLM’s completion of its BA and FWS’s issuance of its Powerlink BiOp, BLM had not
26 yet surveyed substantial portions of the selected route for the existence of threatened and
27 endangered species, or their suitable habitats. In fact, no scientifically reliable surveys had been
28 conducted for these species prior to BLM’s approval of the Powerlink Project’s rights of way.

1 FWS issued its Powerlink BiOp on January 16, 2009, meeting BLM’s request to expedite the
2 review. Just four days later, and hours before the Obama Administration was sworn into office,
3 on January 20, 2009, BLM approved the Powerlink Project’s rights of way and temporary use
4 permit.

5 54. In its Powerlink BiOp, FWS determined that the information it gained through
6 consultation with BLM and through the Powerlink NEPA process was sufficient to render an
7 opinion with regard to the effects of the project on listed species. The BiOp concludes that six of
8 the ten species identified by BLM and SDG&E would be affected by the Powerlink Project.
9 These include the Peninsular bighorn sheep, the Quino checkerspot butterfly, the threatened San
10 Diego thornmint, the Coastal California gnatcatcher, the endangered Least Bell’s vireo, and the
11 Arroyo toad, as well as portions of their critical habitats. FWS concluded that *if* SDG&E
12 complied with the mitigation measures proposed in the Powerlink BiOp – specifically the survey-
13 as-you-build requirement – the Powerlink Project could proceed as planned.

14 55. FWS’s no jeopardy/adverse modification determination hinged on SDG&E’s
15 commitment to conduct additional surveys prior to initiating construction, and to replace through
16 purchase of new habitat, permanently destroyed designated critical habitat within the project area.
17 However, the Powerlink BiOp failed to: (1) identify any suitable habitat available for purchase,
18 (2) evaluate whether this unidentified substitute habitat would adequately replace existing habitat
19 without harm to the species, and (3) reconcile its assumption that this substitute habitat exists
20 with BLM’s admission that the approximately 600 acres of permanently lost habitat due to the
21 Powerlink “may not be available for replacement in the quantities and specific types that are
22 affected.”

23 56. FWS provided an incidental take statement for the above six species and their
24 critical habitat, purportedly immunizing SDG&E and BLM from liability under the ESA.
25 Notably, the Powerlink BiOp failed to specify as ESA requires the precise number, extent,
26 location or timing of such incidental takings, stating instead that such specifications will be made
27 following site-specific surveys prior to the construction of the Powerlink Project.

28 57. Despite multiple ESA requirements to do so, the Powerlink BiOp failed to address

1 the effects of the following interrelated projects: (1) SDG&E’s plans for future expansion of the
2 Powerlink Project, consisting of four more 230 kV lines and two more 500kV lines that would
3 connect to one of the substations of the Powerlink Project; (2) the La Rumorosa wind farm,
4 proposed to be constructed by SDG&E’s parent, Sempra Energy, in northern Mexico; (3) a solar
5 facility, proposed by Stirling Energy Systems, to be located in the Imperial Valley; (4) the Tule
6 Wind Project, proposed for the McCain Valley; and (5) the Esmeralda-San Felipe Geothermal
7 Project, to be located in Truckhaven, California. The geothermal and solar projects alone would
8 result in the permanent loss of 2,500 additional acres of habitat.

9 58. In addition, the final selection of the selected route ignored FPLMA requirements
10 that BLM condition approval of transmission lines in ways that minimize damage to the
11 environment and that lines must be co-located to the extent possible.

12 59. Finally, BLM ignored NHPA provisions that require complete investigation of the
13 cultural resources in the area and also require public access and input to the NHPA review
14 process, as explicated below.

15 VI. CLAIMS FOR RELIEF

16 FIRST CLAIM FOR RELIEF

17 BLM’S RMP VIOLATED NEPA

18 (For declaratory and injunctive relief under 28 U.S.C. §§ 2202-2201,
19 and for violations of the National Environmental Policy Act,
20 42 U.S.C. § 4321 et seq. and Administrative Procedure Act, 5 U.S.C. § 706)

21 (ALLEGED BY ALL PLAINTIFFS AGAINST BLM DEFENDANTS)

22 60. The paragraphs set forth above are realleged and incorporated herein by reference.

23 61. NEPA requires all federal agencies to prepare an EIS for all major projects
24 significantly affecting the quality of the human environment. 42 U.S.C. § 4331(2)(c). An EIS
25 must describe the impacts of the proposed action, and alternatives to that action in order to allow
26 federal agencies and the public to make an informed decision on how to best “create and maintain
27 conditions under which man and nature can exist in productive harmony.” 42 U.S.C. §§ 4331(1),
28 4332(2)(c); 40 C.F.R. §§ 1500.1(b), 1508.11 (1978). BLM’s Proposed RMP FEIS’s discussion

1 of impacts, alternatives, and mitigation measures was wholly inadequate, as outlined below.

2 ///

3 **The Project Description in the Proposed RMP FEIS Is Inadequate**

4 62. The Proposed RMP FEIS did not contain a description of the alternative RMP
5 selected in the ROD. Alternative D in the FEIS significantly differed from the Final RMP and
6 thus did not accurately describe the chosen land use plan.

7 **The Proposed RMP FEIS Fails in Its Discussion of the Impacts of the Proposed Action**

8 63. The discussion of impacts in the Proposed RMP FEIS was inadequate in the
9 following ways, among others: (1) although the Proposed RMP FEIS admitted that the Planning
10 Area was highly susceptible to fire, it ignored the increased fire risks associated with the RMP;
11 (2) the Proposed RMP FEIS failed to disclose and address the substantial adverse impacts on
12 wildlife habitat and other environmental resources that will result from the RMP's reduction in
13 the acreage of protected Areas of Critical Environmental Concern ("ACEC") from 26,479 to just
14 14,956 acres; (3) the Proposed RMP FEIS did not clearly describe how industrial development
15 would impact listed species or analyze the extent of those impacts; (4) the Proposed RMP FEIS
16 failed to adequately analyze the impacts of the RMP and its amendments on the cultural resources
17 of the area; (5) the RMP designated 34,933 acres of land for geothermal leasing, yet provided no
18 meaningful discussion of the significant adverse impacts of such development; (6) the Proposed
19 RMP FEIS did not adequately analyze the visual and other scenic impacts of the changes to the
20 VRM classification; (7) the impacts to groundwater quantity are ignored in the Proposed RMP
21 FEIS, despite the potential for groundwater use associated with the RMP Amendment's
22 additional energy development; (8) the Proposed RMP FEIS failed to adequately address the
23 impact to lands formerly designated within ACEC; (9) the Proposed RMP FEIS failed to
24 adequately evaluate the mineral resources of the area that would be depleted by the Final RMP's
25 additional energy development; (10) the Proposed RMP FEIS failed to adequately evaluate the
26 recreational and other impacts of the changes to the RMP; and (11) the Proposed RMP FEIS did
27 not discuss the impacts of the changes to VRM Class II areas described in the ROD.

28 **The Proposed RMP FEIS Fails to Adequately Analyze**

1 **and Compare the Impacts Caused by the Evaluated Alternatives**

2 64. BLM’s discussion and comparison of the alternatives analyzed in the Proposed
3 RMP FEIS were not sufficient because the description of each alternative did not provide enough
4 detail to support an informed decision and because BLM failed to fully discuss the environmental
5 impacts of renewable energy development and mineral leasing in reference to each alternative.
6 Furthermore, the Proposed RMP FEIS failed to analyze the foreseeable impacts of the
7 contemplated wind farms, solar facilities, and geothermal energy production facilities.

8 **The Discussion of Mitigation Measures in the Proposed RMP FEIS**
9 **and the RMP Record of Decision Are Inadequate**

10 65. NEPA requires that mitigation measures be discussed in the EIS and the ROD with
11 “enough definition to allow for a meaningful review and evaluation of the plan to ensure that is
12 would be successful.” 40 C.F.R. §§ 1502.14(f), 1502.16(h), 1505.2(c); 42 U.S.C. §
13 4332(2)(C)(ii). A mere listing of mitigation measures is not enough. *League of Wilderness*
14 *Defenders/Blue Mountains Biodiversity Project v. Forsgren*, 309 F.3d 1181 (9th Cir. 2002). Both
15 the Proposed RMP FEIS and the ROD simply provided lists of mitigation measures, rather than a
16 “meaningful” description of the measures as NEPA requires.

17 **BLM’s Statement of Irreversible and Irretrievable Commitments is Inadequate**

18 66. Every recommendation or final agency action resulting in significant effects to the
19 human environment must be accompanied by a detailed statement by the responsible agency on
20 “any irreversible and irretrievable commitments of resources which would be involved in the
21 proposed action should it be implemented.” 42 U.S.C. § 4332(c)(v).

22 67. The RMP represents an irreversible and irretrievable commitment of resources,
23 because it opens habitat, critical to the survival of threatened and endangered species, to future
24 development. BLM’s NEPA analysis, however, was limited to the following notably
25 uninformative sentence: “Any lands disposed of would reduce the wildlife habitat on BLM
26 administered lands in the Planning Area, depending on the use of that land once it leaves federal
27 ownership.” This statement failed to provide a “detailed statement” of potential losses because it
28 provided no information as to which habitat of which species would be harmed, and where, how,

1 why and to what degree such habitat would be harmed. BLM's analysis appears as a mere
2 formality, leaving the public and the agency in the dark as to the nature and extent of the habitat
3 impacts.

4 **BLM's Failure to Prepare a Supplemental EIS To Address Changes**
5 **to the Draft RMP DEIS and the Proposed RMP FEIS Violates NEPA**

6 68. BLM failed to prepare a supplemental EIS to address the impacts of the 2008 RMP
7 Amendments. Under NEPA, a supplemental EIS must be prepared if there are significant new
8 circumstances or information relevant to environmental concerns, and the new circumstances or
9 information will affect the environment in a significant manner or to a significant extent, and
10 those effects have not already been considered by the agency.

11 69. The 2008 RMP Amendments have significant environmental impacts because they
12 redefined VRM Class II management criteria to permit leasable mineral entry and renewable
13 energy development, allowing developed uses on all Class II designated lands in the Planning
14 Area. This change, taken together with the visual resource management classifications outlined
15 in the ROD, effectively opened about 40 percent of the Planning Area to energy development.
16 Had BLM maintained the VRM definitions and allocations as they appeared in both the Draft
17 RMP DEIS and the Proposed RMP FEIS, close to 90 percent of the Planning Area would be
18 protected from such development. This change altered the environmental impact of the RMP
19 significantly beyond that which was envisioned by the Draft RMP DEIS and Proposed RMP
20 FEIS. Therefore, a supplemental EIS was required under NEPA to address the impacts of this
21 substantial revision on the affected environment.

22 **The Proposed RMP FEIS Fails to Consider the Powerlink Project's Exemption from the**
23 **RMP and the Effects of that Exemption on the Eastern San Diego County Environment**

24 70. The Proposed RMP FEIS failed to describe or analyze BLM's concurrent
25 deliberations on a major exemption to the RMP that would allow the Powerlink Project's
26 transmission line to cut through the Planning Area in areas outside of the RMP designated utility
27 corridor. BLM was aware of the contemplated exemption and should have prepared a
28 supplemental EIS to address the impacts of the increased level of energy development allowed

1 under the new development-intensive RMP along with the Powerlink Project.

2 71. For the foregoing reasons, BLM’s aforesaid actions violated NEPA. Accordingly,
3 under the APA, 5 U.S.C. § 706(a), this Court should hold unlawful and set aside defendants’
4 October 10, 2008 approval of the RMP as violative of NEPA.

5 **SECOND CLAIM FOR RELIEF**

6 **FWS’S RMP BIOLOGICAL OPINION VIOLATED ESA**
7 **(For declaratory and injunctive relief under 28 U.S.C. §§ 2202-2201,**
8 **and for violations of the Endangered Species Act, 16 U.S.C. § 1531 et seq.**
9 **and Administrative Procedure Act, 5 U.S.C. § 706)**

10 **(ALLEGED BY ALL PLAINTIFFS AGAINST ALL FISH AND WILDLIFE SERVICE**
11 **DEFENDANTS)**

12 72. The paragraphs set forth above are realleged and incorporated herein by reference.

13 73. The Endangered Species Act establishes a three-step consultation procedure to
14 assure that federal agencies undertaking or approving an action (“action agencies”), such as BLM
15 here, adequately confer with the FWS regarding the potential adverse impacts of proposed
16 projects on federally-listed threatened and endangered species. 16 U.S.C. § 1536(a)(2); 50 C.F.R.
17 § 402.12; *Pacific Coast Federation of Fishermen’s Associations v. U.S. Bureau of Reclamation*,
18 138 F.Supp.2d 1228, 1240-47 (N.D. Cal. 2001) (“*PCFFA*”). These three steps require the action
19 agency to: (1) advise FWS of the area in which the plan activities are proposed (and in response,
20 FWS must provide the federal agency with a list of the endangered and threatened species in the
21 plan area); (2) “prepare a ‘[biological assessment]’ to determine whether such species ‘[are]’
22 likely to be affected’ by the action” (*PCFFA, supra*, 138 F.Supp.2d at 1240, quoting from *Pacific*
23 *Rivers Council v. Thomas*, 753 F.2d 754, 763 (9th Cir.1985); 50 C.F.R. § 402.12(i)); and (3) not
24 proceed with the project until FWS has prepared a formal BiOp evaluating the project’s potential
25 to adversely affect any species or potentially affected critical habitat. 16 U.S.C. § 1536(b); 50
26 C.F.R. § 402.14. Thereafter, the action agency must independently ensure that any action that it
27 takes will not jeopardize the survival of any listed species or adversely modify its habitat. 16
28 U.S.C. § 1536(a)(2).

The RMP BiOp Does Not Adequately Address Effects of the 2008 Revisions to the RMP

1 74. The RMP BiOp does not adequately address the effects of the 2008 RMP
2 Amendments on listed species. The RMP BiOp acknowledges the changes in the RMP, but fails
3 to fully address the increased effects of the RMP on listed species.

4 **The RMP BiOp Fails to Address the Impacts of the Sunrise Exemption on the RMP**

5 75. FWS’s RMP BiOp does not comply with ESA because it fails to account for the
6 effects of the development of the Powerlink Project outside of the RMP’s designated utility
7 corridor. At the time that BLM was considering the RMP, it was also deliberating on the
8 Powerlink Project, the effects of which change the RMP analysis by allowing, through a
9 purported one-time exemption from the Plan, construction of the Powerlink Project outside of the
10 utility corridor, thereby inducing development of substantial new energy production facilities
11 along the Powerlink route. By turning a blind eye to the critical impacts of this known project,
12 the RMP analysis de-emphasized the impacts of the downgrading of the VRMs and ignored the
13 increased likelihood that renewable energy projects would be built within the McCain Valley and
14 other sensitive areas in the near future.

15 **The RMP BiOp Fails to Use the Best Scientific and Commercial Information Available**

16 76. FWS’s lack of surveys for imperiled species of the Planning Area prevented the
17 preparation of an accurate analysis of the effects of the RMP amendments on listed species.
18 Consequently, FWS’s RMP BiOp was inaccurate and incomplete and therefore violated ESA.
19 The RMP BiOp did not base its conclusions on actual surveys; rather it deferred a complete
20 analysis of the RMP’s effects until surveys later become available. FWS’s failure to timely
21 procure species surveys severely inhibited its ability to accurately assess the effects of the RMP
22 on listed species. Further, the RMP BiOp failed to address the information contained in BAD’s
23 November 17, 2008 protest and therefore did not utilize the best scientific and commercial data
24 available.

25 ///

26 ///

27 ///

28

1
2 **THIRD CLAIM FOR RELIEF**

3 **THE RMP VIOLATED FLPMA**

4 **(For injunctive and declaratory relief under 28 U.S.C. §§ 2201-2022 and for violations of**
5 **the Federal Land Policy Management Act, 43 U.S.C. § 1701 et seq., and Administrative**
6 **Procedure Act, 5 U.S.C. § 706)**

7 **(ALLEGED BY ALL PLAINTIFFS AGAINST THE BLM DEFENDANTS)**

8 77. The paragraphs set forth above are realleged and incorporated herein by reference.

9 78. FLPMA establishes minimum standards for resource management plans. 43 U.S.C.
10 § 1712(c); 43 CFR § 1610.4-6. When developing and revising land use plans, BLM must:
11 employ “the principles of multiple use and sustainable yield;” use a “systematic interdisciplinary
12 approach to achieve integrated consideration of physical, biological and other sciences;” give
13 “priority to protection of areas of critical environmental concern;” consider “present and potential
14 uses of public lands” and “the relative scarcity of [their] values;” and weigh “long-term benefits
15 to the public against short-term benefits.” *Id.* BLM’s implementing regulations also require that
16 it “estimate and display the . . . effects of implementing each alternative considered in detail,”
17 guided by NEPA. 43 C.F.R. § 1610.4-6.

18 79. BLM violated FLPMA and its implementing regulations by:

19 (1) committing substantial areas to industrial development without first
20 conducting an adequate review of the adverse impacts of this development on the affected plant,
21 wildlife, scenic, scientific, historic, recreational and cultural resources;

22 (2) failing to conduct adequate surveys on listed species (and failing to
23 commence formal consultation under ESA section 7 until three years into the planning process),
24 in violation of its duty to integrate consideration of biological resources into the RMP;

25 (3) failing to give priority to the designation and protection of ACECs and
26 critical habitat of listed species, and instead subordinating wildlife protection to energy
27 development without first conducting adequate environmental reviews, in violation of the
28 requirement that BLM prioritize protection of areas of critical environmental concern;

1 (4) failing to fully consider the effects of present and future potential land uses
2 on wildlife resources and listed species within the Planning Area, in violation of the requirement
3 to carefully weight those benefits; and

4 (5) failing to conduct a reasoned analysis of the relative need for industrial
5 development and the commensurate loss of areas of high visual value and critical environmental
6 concern and recreation, as well as critical habitat, in violation of its duties to “consider [the]
7 relative scarcity of the values involved and the availability of alternative means . . . for the
8 realization of those values,” and “[to] weigh the long-term benefits to the public against the short-
9 term benefits.”

10 80. For the foregoing reasons, BLM’s approvals of the RMP and the Powerlink Project
11 violated FLPMA. Accordingly, this Court should set aside those approvals as contrary to
12 FLPMA and the APA.

13 **FOURTH CLAIM FOR RELIEF**

14 **BLM’S DISMISSAL OF BAD’S PROTEST VIOLATED FLPMA**
15 **(For declaratory and injunctive relief under 28 U.S.C. §§ 2201 -2202,**
16 **and for violations of the Federal Land Policy Management Act,**
17 **43 U.S.C. § 1711 et seq., 43 C.F.R. 1610.5-2, and**
18 **the Administrative Procedure Act, 5 U.S.C. § 706)**

19 **(ALLEGED BY BAD AND DONNA TISDALE AGAINST DOI AND BLM**
20 **DEFENDANTS)**

21 81. The paragraphs set forth above are realleged and incorporated herein by reference.

22 82. Pursuant to FLPMA, 43 U.S.C. § 1711(a), BLM promulgated 43 C.F.R. 1610.5-2,
23 to provide for a one-stage protest process for review of public objections to its resource
24 management plans. 43 C.F.R. 1610.5-2. BLM’s regulations for protests to its land planning
25 decisions provide that a protest letter must set forth, among other requirements, “[a] concise
26 statement explaining why the State Director’s decision is believed to be wrong.” 43 C.F.R.
27 1610.5-2 (1983).

28 83. On November 17, 2008, BAD submitted a protest letter, appealing the adoption of
the RMP, pursuant to 43 C.F.R. section 1610.5-2 (1983). BAD’s November 17, 2008 protest

1 raised objections to the RMP on the grounds that the 2008 Amendments, and the RMP in its
2 entirety, were based on deficient environmental reviews that violate NEPA, ESA, and FLPMA.
3 Then California State BLM Director Mike Pool issued a decision summarily dismissing
4 plaintiffs' protest on January 12, 2009. The primary reason given by BLM was that plaintiffs'
5 letter allegedly failed to contain a short statement "explaining why the State Director's decision is
6 believed to be wrong." Yet, plaintiffs' letter clearly contains such a statement. Defendants'
7 dismissal of plaintiffs' protest was arbitrary and capricious because (1) the dismissal fails to
8 provide an adequate explanation of BLM's reasons for dismissing the protest and (2) BAD's
9 protest clearly did satisfy the requirements of the applicable regulation. Accordingly, BLM
10 lacked grounds for dismissing BAD's protest for failing to fulfill that requirement. Its dismissal
11 of BAD's protest was therefore arbitrary and capricious and contrary to the governing regulation,
12 in violation of FLPMA and the APA.

13 84. For the foregoing reasons, BLM's dismissal of BAD's protest was contrary to
14 FLPMA and the APA. Accordingly, this Court should set aside BLM's dismissal of BAD's
15 protest and BLM's subsequent approval of the RMP and the Powerlink Project.

16 **FIFTH CLAIM FOR RELIEF**

17 **BLM FAILED TO COMPLY WITH NEPA IN GRANTING RIGHTS OF WAY 18 AND TEMPORARY USE PERMIT FOR THE POWERLINK PROJECT 19 (For declaratory and injunctive relief under 28 U.S.C. §§ 2202-2201, and for violations of 20 the National Environmental Policy Act, 42 U.S.C. § 4321 et seq. and Administrative 21 Procedure Act, 5 U.S.C. § 706)**

22 **(ALLEGED BY ALL PLAINTIFFS AGAINST DOI AND BLM DEFENDANTS)**

23 **The Powerlink EIS Fails to Clearly and Concisely Describe and Analyze the Selected Route**

24 85. The paragraphs set forth above are realleged and incorporated herein by reference.

25 86. NEPA regulations require an EIS to be "concise, clear, and to the point." 40 C.F.R.
26 § 1502.1. More specifically, the regulations demand that the EIS "[d]evote substantial treatment
27 to each alternative considered in detail including the proposed action so that reviewers may
28 evaluate their comparative merits." 40 C.F.R. § 1502.14(b). Furthermore, the EIS must provide
"a clear basis for choice among the options." 40 C.F.R. § 1502.14.

1 87. Contrary to these requirements, the Powerlink EIS documents² were muddled and
2 confusing and did not reveal to the reader the impacts of the selected project in a clear or concise
3 manner. For example, the Powerlink EIS contained extensive discussions of the impacts of the
4 “*proposed* [but later *rejected*] project,” but did not provide such information about the *selected*,
5 Southern Route. The Powerlink EIS documents were plagued by a myriad of constantly changing
6 alternatives that evaded clear communication of the impacts of each alternative. These
7 deficiencies prevented the public from conducting informed review of and providing informed
8 comment on, all of the different routes proposed in the Powerlink EIS. Hidden among the
9 shifting routes was the final selected project; the scant analysis of the final route was presented in
10 vague, confusing and obscure sections of the Powerlink FEIS buried among the many other
11 revisions to alternative route options.

12 88. In addition to lacking a clear and consistent description of the selected route, the
13 Powerlink EIS documents were inherently confusing because they failed to analyze the
14 environmental impacts of the route as a whole. Instead, the fragmented and minimal descriptions
15 of the impacts of the selected route were scattered throughout the Powerlink EIS. Without a
16 consistent route description, the analysis in the Powerlink EIS was fundamentally and fatally
17 flawed.

18 89. The disjointed presentation of the environmental impact analyses for the selected
19 route was compounded by the fact that the Powerlink EIS provided unclear and differing
20 depictions of the route. Even if a reader were able to sift through, collect and distill the variously
21 located individual segment analyses, she would still be unable to obtain a comprehensive
22 understanding of the selected route’s impacts because the Powerlink EIS never provided a clear
23 and unchanging description of the route.

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28 ²As discussed previously, “Powerlink EIS” refers to the Powerlink DEIS, Powerlink
SDEIS, and Powerlink FEIS.

1 **The Powerlink FEIS Fails to Establish the Need for the Project’s Additional Capacity**

2 90. NEPA regulations require that an EIS provide a clear statement of “the underlying
3 purpose and need to which the agency is responding in proposing the alternatives including the
4 proposed action.” 40 C.F.R. § 1502.13. An EIS must “be supported by evidence that the agency
5 has made the necessary environmental analyses.” 40 C.F.R. §1502.1.

6 91. Contrary to these requirements, a true need for the Powerlink Project was not
7 independently established in the Powerlink FEIS. For example, the Powerlink FEIS failed to
8 explain why the existing and foreseeable transmission capacity already in the planning pipeline
9 will not foster renewable energy development even without the Powerlink Project. Had BLM
10 independently analyzed and attempted to verify SDG&E’s assertions of need for the project, it
11 would have realized that they are misleading, contrary to fact, and ultimately do not establish any
12 need for the project at all.

13 92. In an attempt to establish a need for the Project, the Powerlink FEIS relied on
14 SDG&E’s projection of an electricity shortage and reliability deficiency in the San Diego area by
15 2010 or 2011 if a major new transmission project were not built. *See* Powerlink FEIS, A-6, 8.
16 However, not only did the Powerlink FEIS fail to substantiate the forecasted shortage, the
17 projection was wrong. Moreover, SDG&E had plenty of options for increasing local generation
18 to meet future energy demand. Similarly, SDG&E could achieve its state-mandated renewable
19 energy portfolio targets without having to construct either the Powerlink Project or any other new
20 large-scale transmission project aimed at increasing energy imports. For these reasons, the
21 Powerlink FEIS violated NEPA by failing to establish a need for the Project.

22 **The Powerlink FEIS’s Discussion of Affected Environment Is Inadequate**

23 93. NEPA regulations require that the EIS “succinctly describe the environment of the
24 area(s) to be affected.” 40 C.F.R. § 1502.15. In order to evaluate the environmental
25 consequences of the project, an accurate understanding of its current environmental setting must
26 be developed. Detailed and specific surveys must be completed to inform the decision maker of
27 the current biologic, cultural, geographic, scenic, hydrologic, and historical settings. These
28 necessary surveys had not been completed prior to BLM’s January 2009 decision to approve the

1 Powerlink Project. Therefore, the decision to approve the Powerlink Project was based on an
2 inaccurate description of the environmental setting and subsequently, an inaccurate understanding
3 of the environmental consequences of the Project.

4 **The Powerlink FEIS's Analysis of the Powerlink Project's Environmental Impacts Fails**

5 94. NEPA requires federal agencies to take a "hard look" at the environmental impacts
6 of proposed major actions and "provide a full and fair discussion of significant environmental
7 impacts" for the public's review. 40 C.F.R. § 1502.1. Contrary to this mandate, the Powerlink
8 FEIS failed to adequately address the following impacts of the Powerlink Project:

9 95. The Powerlink FEIS failed to adequately analyze the growth inducing impacts that
10 excess transmission capacity will create by encouraging the development of additional energy
11 production facilities (renewable and fossil fuel-based) in the rural and open space areas of eastern
12 San Diego and western Imperial counties. Relatedly, the Powerlink FEIS failed to accurately
13 portray the benefits of alternatives that would not cause such growth inducing impacts by
14 encouraging energy production closer to and integrated into San Diego and its environs.

15 96. The Powerlink FEIS failed to adequately analyze the impacts of the new
16 transmission line on the increased risk of wildfires. Powerlink FEIS, Ch. 2, section 7. The FEIS
17 failed to demonstrate that fire suppression experts and providers had been consulted, and that
18 BLM had considered (1) the transmission line's role as a new ignition source, (2) the increased
19 danger of fire due to the construction of wind farms, and (3) the fact that the transmission lines
20 will traverse many remote areas that pose significant challenges to firefighting.

21 97. The Powerlink FEIS failed to provide adequate information on the Project's
22 biological impacts by failing to include necessary surveys of the sensitive species that would be
23 affected by the Powerlink Project, and instead relied on vague and superficial pre-construction
24 surveys. The Powerlink FEIS failed to adequately analyze the impacts of the selected route on
25 Peninsular bighorn sheep, the Quino checkerspot butterfly or the Arroyo toad. *See* Powerlink
26 FEIS, Ch. D.2 at 271-537. The Powerlink FEIS failed to address the impacts of the proposed
27 development of massive wind farms in the McCain Valley on sensitive species in the area. *See*
28 Powerlink FEIS, Ch. D.5 at 1-102. This development will pose significant threats to the future

1 viability of species in the area, especially the avian species and the Peninsular bighorn sheep, and
2 accordingly should have been discussed and analyzed in the FEIS.

3 98. The Powerlink FEIS failed to adequately discuss the impacts of the Project on
4 climate change. It should have estimated the quantity of greenhouse gas emissions that the
5 project will cause, either directly or indirectly, and compared them with the greenhouse gas
6 emissions of alternatives to the project. The Powerlink FEIS presumed that a substantial portion
7 of the electricity it would transmit would come from renewable sources, but it provided no
8 analysis of the contrary likelihood that much of the energy would in fact come from non-
9 renewable sources, including SDG&E's own natural gas infrastructure and supplies a short
10 distance south in Mexico. Additionally, while the Powerlink FEIS summarily concluded that the
11 overall climate change impacts of the selected and proposed routes would be identical, this
12 conclusion was not supported by any evidence or analysis and did not constitute the "hard look"
13 required by NEPA.

14 99. The Powerlink FEIS's discussion of viewsheds was inadequate because it focused
15 on the impacts of the proposed route, not the route that was ultimately selected. Powerlink FEIS
16 section D.31. Its failure to address the visual impacts of the *selected* route violated NEPA. The
17 Powerlink FEIS also failed to adequately compare the visual impacts of the chosen route with the
18 other route options discussed in the Powerlink FEIS and ignored entirely the impact of the
19 development of wind farms in the McCain Valley on its highly scenic viewsheds.

20 100. The Powerlink FEIS did not adequately discuss the effects of the Powerlink Project
21 and its attendant industrial development on the rural character and quality of life of backcounty
22 communities. Powerlink FEIS Ch. D.4 at 1-112. The industrialization of affected areas of
23 eastern San Diego County will adversely affect the lives of the residents who have chosen to live
24 in those rural communities in part because of their close connection to nature.

25 101. The Powerlink FEIS failed to adequately analyze the impacts of the new
26 transmission line on the cultural and historic resources in the area, despite the fact that the
27 transmission line will cut through areas with high historic and cultural value. Large segments of
28 the project area have not been field surveyed for the presence of cultural resources. Despite

1 acknowledging potentially significant impacts on cultural resources, the Powerlink FEIS
2 improperly deferred determination of the cultural resource impacts until an unknown future date.
3 Further, the Powerlink FEIS neglected to disclose and analyze impacts to several known existing
4 cultural sites in violation of NEPA.

5 102. The Powerlink FEIS failed to adequately address the impacts of the Project on the
6 wilderness experience of hikers, campers, other visitors and residents. Powerlink FEIS, Ch. D.5
7 at 1-102. It did not analyze the direct, adverse effect of the presence of industrial development,
8 and the foreseeable development of wind farms in the McCain Valley, on what are presently
9 natural landscapes.

10 103. Because the development of the Powerlink Project will involve the cutting of new
11 roads into previously inaccessible areas, public use of these areas, whether authorized or
12 unauthorized, will increase substantially. This increase in use is likely to result in increased fire
13 danger, the spread of invasive species, vandalism, and disruption of habitat in remote, currently
14 unaltered natural resource areas. These impacts were not adequately addressed in the Powerlink
15 FEIS.

16 104. The Powerlink FEIS failed to adequately address the impact of surface and
17 groundwater use associated with the Project and its inducement of additional energy development
18 along the selected route. Boulevard and surrounding homes and ranches have no access to
19 imported water, and must rely on their groundwater basins to provide all of their municipal,
20 domestic, fire suppression and agricultural needs. A substantial section of the Powerlink route is
21 within the federally-designated Campo/Cottonwood Creek Sole Source Aquifer. The Powerlink
22 FEIS did not address the cumulative impact of other developments that may draw water from
23 these basins. The Powerlink FEIS also failed to adequately study the Project's impacts to surface
24 water resources that may be affected by pumping, erosion and sedimentation.

25 **The Powerlink FEIS Segmented Environmental Review of Connected Actions**

26 105. NEPA requires that all connected actions be considered in the same document.
27 Segmenting projects that are interrelated improperly understates their combined impacts. BLM
28 segmented environmental review by failing to analyze in the Powerlink FEIS foreseeable

1 development: (1) in McCain Valley, (2) resulting from the 2008 amendment to BLM’s RMP, and
2 (3) resulting from future development of power sources, including fossil fuel based energy
3 sources, that the Powerlink Project will induce.

4 **The Powerlink FEIS Fails to Consider the Cumulative Impacts**
5 **of the Project Along with Other Foreseeable Projects**

6 106. The Powerlink FEIS failed to analyze many foreseeable projects that will contribute
7 to significant cumulative impacts including impacts resulting from the project in combination
8 with the development that is now allowed in the McCain Valley under the amendment to BLM’s
9 RMP. These projects combined with the Powerlink Project could cause widespread cumulative
10 impacts to the natural resources of San Diego and Imperial Counties, including the foreseeable
11 industrialization of areas that have survived up until now as undisturbed habitat and open space.

12 **The Powerlink FEIS Fails to Consider a Reasonable Range of Alternatives**

13 107. NEPA requires federal agencies to study, develop and describe a reasonable range
14 of alternatives that might avoid or mitigate a project’s adverse environmental impacts. 42 U.S.C.
15 § 4332(2)(C)(iii), (E). Contrary to this duty, BLM dismissed feasible alternatives as infeasible
16 and failed to consider other viable alternatives completely. For example, it was feasible to
17 require consideration of an alternative that required the Powerlink Project’s transmission capacity
18 to be dedicated in whole or in part to renewable energy. Although requested by many
19 commenters, no such alternative was included in the FEIS. Similarly, the Powerlink FEIS failed
20 to adequately consider another environmentally beneficial option – undergrounding of the project
21 lines. *See* Powerlink FEIS, ES 34-36. This alternative was feasible and would avoid many of the
22 Project’s significant impacts. Yet it was not addressed in the FEIS.

23 108. The Powerlink FEIS’s failure to include adequate, accurate, and up-to-date
24 information stymied any comparison of the alternatives that were presented. The lack of key
25 information on the various routes’ impacts precluded informed public review.

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1 **The Powerlink FEIS Fails to Adequately Address the Impact of the Project**
2 **on the Cleveland National Forest, Including the Need for Multiple Amendments**
3 **to the Applicable Forest Plan**

4 109. NEPA requires an EIS to address the impacts of the project's compliance (or not)
5 with state and federal environmental regulations and standards. *Sierra Club v. Forest Service*,
6 843 F.2d 1190, 1195 (9th Cir. 1988), *citing* 40 C.F.R. § 1508.27(b)(10). Contrary to this
7 mandate, the Powerlink FEIS failed to disclose that the selected route would require major
8 amendments to the Forest Plan for the Cleveland National Forest (CNF). Nor did the Powerlink
9 FEIS adequately analyze or mitigate the impacts resulting from such an amendment.
10 Furthermore, the Powerlink FEIS failed to adequately address the many inconsistencies of the
11 Powerlink Project with the current Forest Plan's environmental protections.

12 110. First, the discussion of the CNF Forest Plan in the Powerlink FEIS was inconsistent
13 and confusingly scattered throughout the document. Powerlink FEIS, E.2.2-22; E.3.1-3;
14 Appendix 14; F0003-1 to F0003-10 at 4-20 to 4-26. Second, the Powerlink FEIS failed to
15 adequately address the Powerlink Project's conflicts with the Forest Plan's Fire Prevention
16 Standards, which protect the public and forest resources from wildfire, by "[r]educ[ing] the
17 number of human-caused wildland fires and associated human and environmental impacts. . . ."
18 Forest Plan at p. 116. Third, the Powerlink FEIS did not address the cumulative impacts of the
19 Project's impacts along with the master special use permit currently under review for all SDG&E
20 power lines that cross Forest Service lands. Fourth, the Powerlink FEIS failed to adequately
21 address the Project's conflicts with several Forest Plan land-use zones, such as its Back Country
22 Motorized Use Restricted Zone. Forest Plan at 7. The Powerlink FEIS contained misleading
23 information with regard to the Project's consistency with those land-use zones, providing
24 contradictory information and failing to disclose that power lines are inconsistent with those
25 zones. Fifth, the Powerlink FEIS failed to adequately address the Powerlink Project's conflicts
26 with the Forest Plan's riparian area conservation standards, which call for the preservation of
27 riparian areas. Forest Plan, Part 3, page 66; Part 1, page 41; Part 3, page 65; Part 2, page 95. The
28 Powerlink FEIS neither identified the riparian areas that will be affected, nor adequately
mitigated the Project's impacts on them. Sixth, even though the selected route is likely to impact

1 suitable habitat for the Laguna Mountain skipper and San Diego thornmint, thorough surveys for
2 these two species were not conducted along the selected route prior to approval of the Project.
3 Powerlink FEIS, E.2.2. Seventh, the Powerlink FEIS did not adequately identify activities with
4 the potential to harm heritage resources or develop suitable mitigation measures for the same
5 reason. *Id.*, E.2.4. These impacts thus were left unaddressed, a violation of NEPA.

6 111. For each of these reasons, BLM’s Powerlink FEIS violates NEPA. Accordingly,
7 this Court should set aside BLM’s Powerlink FEIS and BLM’s approval of the rights-of-way and
8 use permit for the Powerlink Project as contrary to NEPA and the APA.

9 **SIXTH CLAIM FOR RELIEF**

10 **THE PROJECT APPROVAL VIOLATES FLPMA**
11 **(For declaratory and injunctive relief under 28 U.S.C. §§ 2202-2201, and for violations of**
12 **the Federal Land Policy Management Act, 43 U.S.C. §1701 et seq. and Administrative**
13 **Procedure Act, 5 U.S.C. § 706)**

14 **(ALLEGED BY ALL PLAINTIFFS AGAINST DOI AND BLM DEFENDANTS)**

15 112. The paragraphs set forth above are realleged and incorporated herein by reference.

16 113. The Federal Land Policy Management Act directs that:

17 the public lands be managed in a manner that will protect the quality of scientific,
18 scenic, historical, ecological, environmental, air and atmospheric, water resource,
19 and archeological values; that, where appropriate, will preserve and protect certain
20 public lands in their natural condition; that will provide food and habitat for fish
21 and wildlife and domestic animals; and that will provide for outdoor recreation and
22 human occupancy and use.

23 43 U.S.C. § 1701(a)(8).

24 114. FLMPPA further requires agencies that are considering applications for rights-of-
25 way to limit to the extent feasible the natural resource damage of the proposed project. 43
26 U.S.C. § 1765. FLPMA mandates that “[e]ach right-of-way shall be limited to the ground which
27 the Secretary concerned determines [. . .] will do no unnecessary damage to the environment.” 43
28 U.S.C. § 1764. FLPMA also requires that “[e]ach right-of-way shall contain . . . terms and
conditions which will . . . minimize damage to scenic and esthetic values and fish and wildlife

1 habitat and otherwise protect the environment.” 43 U.S.C. § 1765. These requirements are
2 strictly enforced and cannot be easily counterbalanced by project proponents’ claims of
3 inconvenience or cost. *Trout Unlimited v. U.S. Dept. of Agriculture*, 320 F.Supp.2d 1090, 1108
4 (D. Colo. 2004).

5 115. Contrary to these mandates, BLM failed to consider terms and conditions that
6 would avoid or reduce the Powerlink Project’s impacts, such as (1) requiring SDG&E to commit
7 a certain percentage of its capacity to renewable energy transmission; (2) including terms and
8 conditions in the rights-of-way (“ROW”) that would require undergrounding of the line in, at a
9 minimum, the most sensitive areas; (3) selecting a “non-wire” alternative such as relying on
10 distributed power generated in or near the urban demand centers; and finally, (4) providing terms
11 and conditions in the ROW that address McCain Valley’s outstanding scenic and habitat
12 resources.

13 116. Further, FLPMA requires that rights-of-way be co-located to the extent feasible. 43
14 U.S.C. § 1763. Contrary to this mandate, BLM failed to require co-location of the Powerlink
15 Project along side the existing Southwest Powerlink transmission line “to minimize adverse
16 environmental impacts and the proliferation of separate rights-of-way” (*id.*) and to “minimize
17 damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the
18 environment” (43 U.S.C. § 1765).

19 117. For the foregoing reasons, BLM’s approval of the Powerlink Project’s rights-of-
20 way violated FLPMA. Accordingly, this Court should set aside BLM’s approval as contrary to
21 FLPMA and the APA.

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1 **SEVENTH CLAIM FOR RELIEF**

2 **FWS’S POWERLINK BIOLOGICAL OPINION VIOLATED ESA**
3 **(For declaratory and injunctive relief under 28 U.S.C. §§ 2202-2201, and for violations**
4 **of the Endangered Species Act, 16 U.S.C. § 1531 et seq. and Administrative Procedure Act,**
5 **5 U.S.C. § 706)**

6 **(ALLEGED BY ALL PLAINTIFFS AGAINST FISH AND WILDLIFE SERVICE**
7 **DEFENDANTS)**

8 **FWS Failed to Follow the Proper Section 7 Consultation Procedures Under ESA**

9 118. The paragraphs set forth above are realleged and incorporated herein by reference.

10 119. Under section 7 of ESA, any agency that authorizes, funds, or carries out an action
11 must “insure that [such action] is not likely to jeopardize the continued existence of any
12 endangered species or threatened species or result in the destruction or adverse modification of
13 habitat.” 16 U.S.C. § 1536(a)(2). In order to achieve this goal, before approving a project that
14 might affect listed species, the action agency must consult with FWS to determine which species
15 may be affected, the extent of those adverse impacts, and how they can be mitigated. These
16 consultation requirements are met through the preparation of a biological assessment (“BA”) by
17 the action agency, potentially a biological opinion (“BiOp”) by FWS, and potentially an
18 incidental take statement (“ITS”) by both.

19 120. Defendants violated these consultation requirements. The entirety of the ESA
20 process for the Powerlink Project took place in just over one month, even though its impacts
21 extend across nearly 125 miles of highly varied habitats. This rushed and incomplete
22 consultation was not sufficient to accomplish adequate, thorough, and meaningful analysis of the
23 effects of the Project on listed species. Without adequate consultation these species will not be
24 sufficiently protected as required by ESA.

25 **FWS Failed to Use the Best Available Science in Making Determinations Under the ESA**

26 121. ESA mandates that “each agency shall use the best scientific and commercial data
27 available.” 15 U.S.C. § 1536(a)(2). In order to fulfill this requirement, the action agency must
28 provide FWS with data “which can be obtained during the consultation for an adequate review of
the effects that an action may have upon listed species or critical habitat.” 50 C.F.R. § 402.14(d).

1 If an agency fails to provide such information, as BLM has failed to do here, the best available
2 data requirement has not been met and ESA review must be deemed inadequate. *Roosevelt*
3 *Campobello Intern. Park Com 'n v. U.S. E.P.A.*, 684 F.2d 1041, 1055 (1st Cir. 1982).

4 122. The best available data rule requires that the information relied upon is accurate and
5 accepted as the best available information that currently exists. However, BLM's BA reveals that
6 surveys were initiated on the proposed route but *not on the selected route*, and therefore the data
7 used is not pertinent or accurate. Additionally, FWS's no jeopardy determination is based in its
8 entirety on SDG&E's commitment to conduct future surveys prior to commencing construction.
9 FWS failed to comply with the best available data requirement when it rendered an opinion in the
10 absence of surveys of the entirety of the affected Project area and relied on future, unverified
11 information.

12 123. Finally, the short time given to review the effects of the Powerlink Project on
13 endangered and threatened species also violated the best available data requirement under ESA.
14 A mere one month and eight days cannot provide enough time for BLM and FWS to consult,
15 perform scientific studies, review those studies, and make a meaningful determination about the
16 impacts on listed species of a project that extends nearly 125 miles across deserts, mountains,
17 rivers, valleys and many rural communities.

18 **The Powerlink BiOp Failed to Address the Entire Project**

19 124. The Powerlink BiOp did not consider SDG&E's plans for future expansion of the
20 Powerlink facilities, nor does it include the effects of the multiple renewable energy projects
21 proposed to be located in McCain Valley and along the Powerlink route that would be dependent
22 on the construction of the transmission line. Some of these projects were deemed "connected
23 actions" for the purposes of NEPA, but ignored in the Powerlink BiOp. The effects should have
24 been considered as indirect effects, cumulative effects, interconnected project effects, or growth-
25 inducing effects under ESA. These energy development projects will have destructive impacts on
26 the desert and mountain ecosystems in the Imperial Valley, and eastern San Diego County,
27 harming federally listed endangered species on both sides of the U.S.-Mexican border. Therefore
28 the Powerlink BiOp should have included information about the impacts of these related projects.

1 the Least Bell’s vireo, the Arroyo toad, the Quino checkerspot butterfly, and the Peninsular
2 bighorn sheep, in clear violation of ESA.

3 **EIGHTH CLAIM FOR RELIEF**

4 **FAILURE TO SURVEY FOR HISTORIC PROPERTIES AND PROVIDE PUBLIC**
5 **NOTICE OF A PROGRAMMATIC AGREEMENT VIOLATED THE NHPA**
6 **(For declaratory and injunctive relief under 28 U.S.C. §§ 2202-2201 and for violations of**
7 **the National Historic Preservation Act, 16 U.S.C. § 470 *et seq.* and Administrative**
8 **Procedure Act, 5 U.S.C. § 706(2))**

9 **(ALLEGED BY ALL PLAINTIFFS AGAINST BLM DEFENDANTS)**

10 128. The paragraphs set forth above are realleged and incorporated herein by reference.

11 129. Congress enacted the NHPA, 16 U.S.C. § 470 *et seq.*, to “accelerate federal historic
12 preservation programs” and to foster cooperation between federal, state, and local authorities. 16
13 U.S.C. § 470. The NHPA requires federal agencies to consider the effects of an “undertaking” on
14 a site or object included, or eligible for inclusion, in the National Register, and requires that the
15 Advisory Council on Historic Preservation administering the Act be given an opportunity to
16 comment upon the proposed undertaking. 16 U.S.C. § 470. “The goal of consultation is to
17 identify historic properties potentially affected by the undertaking, assess its effects and seek
18 ways to avoid, minimize or mitigate any adverse effects on historic properties.” 36 C.F.R. §
19 800.1(a).

20 **BLM’s Failure to Survey for Historic Properties Violates NHPA**

21 130. Where, as here, alternatives being considered consist of large corridors, “the agency
22 official may use a phased process to conduct identification and evaluation efforts.” 36 C.F.R. §
23 800.4(b). “The agency official may also defer final identification and evaluation of historic
24 properties if it is specifically provided for in a . . . programmatic agreement executed pursuant to
25 § 800.14(b) . . .” *Id.* The process, however, must still:

26 establish the likely presence of historic properties within the area of potential
27 effects for each alternative or inaccessible area through background research,
28 consultation and an appropriate level of field investigation, taking into account the
number of alternatives under consideration, the magnitude of the undertaking and
its likely effects, and the views of the SHPO/THPO and any other consulting
parties.

1 *Id.* Contrary to this mandate, before approving the RMP and the Powerlink Project, BLM failed
2 to survey for and establish the likely presence of historic properties “within the area of potential
3 effects” for the Project and each alternative. BLM therefore violated the NHPA.

4 **BLM Failed to Provide Public Notice and Gather Public Input**

5 131. Under the NHPA, public input is “essential to informed Federal decision-making in
6 the [NHPA section]106 process.” 36 C.F.R. 800.2(d). The NHPA regulations direct that “[t]he
7 agency official shall seek and consider the views of the public in a manner that reflects the nature
8 and complexity of the undertaking and its effects on historic properties” *Id.* BLM may
9 satisfy the public involvement requirement by using “the agency’s procedures for public
10 involvement under the NEPA or other program requirements in lieu of public involvement
11 requirements in subpart B of this part, *if they provide adequate opportunities for public*
12 *involvement consistent with this subpart.*” 36 C.F.R. § 800.2(d)(3), emphasis added.

13 132. Contrary to this mandate, in fashioning a programmatic agreement (“PA”) under 36
14 C.F.R. 800.14(b)(3), BLM failed to provide adequate opportunities for public involvement. First,
15 BLM provided barely over one page of cryptic text in the Powerlink DEIS that discusses its intent
16 to create and adopt a PA, leaving the public without an adequate opportunity to comment on this
17 complex topic. Second, BLM published the Powerlink FEIS in October 2008, two months *before*
18 *the PA was created*, leaving no realistic way for the public to be involved in the decision-making
19 process.

20 133. For the foregoing reasons, BLM’s approval of the RMP and the Powerlink Project
21 violated the NHPA. Accordingly, BLM’s approvals of the RMP and the Powerlink Project
22 should be set aside as contrary to the NHPA and the APA.

23 **XIII. RELIEF REQUESTED**

24 WHEREFORE, plaintiffs pray for judgment against the defendants as follows:

25 1. For declaratory judgment that BLM’s dismissal of plaintiffs’ November 17, 2008
26 protest to the RMP was arbitrary and capricious and in violation of the Federal Land Policy
27 Management Act, 43 U.S.C. § 1711 *et seq.*, and the Administrative Procedure Act, 5 U.S.C. §
28 701 *et seq.*;

1 2. For declaratory judgment that the RMP violates the Federal Land Policy
2 Management Act, 43 U.S.C. § 1716, the National Environmental Policy Act, 42 U.S.C. § 4321 *et*
3 *seq.*, the National Historic Preservation Act, 16 U.S.C. § 4321, their implementing regulations,
4 and the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*;

5 3. For declaratory judgment that FWS's Biological Opinions for the RMP and the
6 Powerlink Project violate the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*, and the
7 Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*;

8 4. For preliminary and permanent injunctive relief enjoining BLM's implementation
9 of the RMP on the grounds that it is arbitrary and capricious and a violation of the above listed
10 federal environmental laws;

11 5. For declaratory judgment that BLM's January 20, 2009 approvals of two rights of
12 way and a temporary use permit for the Powerlink Project violate the National Environmental
13 Policy Act, 42 U.S.C. § 4321 *et seq.*, the Federal Land Policy Management Act, 43 U.S.C. §
14 1716, the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*, the National Historic Preservation
15 Act, 16 U.S.C. § 4321, their implementing regulations, and the Administrative Procedure Act, 5
16 U.S.C. § 701 *et seq.*;

17 6. For preliminary and permanent injunctive relief enjoining BLM from approving any
18 ongoing and future construction activities pursuant to BLM's approvals of two rights of way and
19 a temporary use permit for the Powerlink Project;

20 7. For an order awarding plaintiffs their costs of litigation, including attorney's fees,
21 pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 or as otherwise provided by law;
22 and

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1 8. For such other relief as the Court may deem necessary and appropriate.

2 Dated: November 5, 2010

3 Respectfully submitted,

4 /s/ STEPHAN C. VOLKER

5 STEPHAN C. VOLKER

6 Attorneys for Plaintiffs, BACKCOUNTRY AGAINST
7 DUMPS, THE PROTECT OUR COMMUNITIES
8 FOUNDATION, EAST COUNTY COMMUNITY
9 ACTION COALITION and DONNA TISDALE

1 **CERTIFICATE OF SERVICE**

2 I, Teddy Ann Fuss, am a citizen of the United States. I am over the age of 18 years and
3 not a party to this action. My business address is the Law Offices of Stephan C. Volker, 436 14th
4 Street, Suite 1300, Oakland, California 94612.

5 On November 5, 2010 I served the First Amended Complaint for Declaratory and
6 Injunctive Relief by electronic filing of the First Amended Complaint for Declaratory and
7 Injunctive Relief with the Clerk of the Court using the CM/ECF system, which sends notification
8 of such filing to the email addresses registered in the above entitled action. As indicated on the
9 CM/ECF electronic mail list, parties to this action are registered to receive such notice via the
10 CM/ECF system.

11 I declare that the foregoing is true and correct and that this Certificate of Service was
12 executed on November 5, 2010 at Oakland, California.

13 /s/ Teddy Ann Fuss