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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**

17 CENTER FOR BIOLOGICAL DIVERSITY;
SIERRA CLUB; DESERT SURVIVORS;
18 CALIFORNIA NATIVE PLANT SOCIETY;
DEFENDERS OF WILDLIFE; and DESERT
19 TORTOISE COUNCIL,

20 Plaintiffs,

21 v.

22
23 UNITED STATES BUREAU OF LAND
MANAGEMENT; UNITED STATES FISH &
24 WILDLIFE SERVICE; U.S. DEPARTMENT
OF THE INTERIOR; DEB HAALAND,
25 acting in her official capacity as SECRETARY
OF THE DEPARTMENT OF THE
26 INTERIOR; NADA WOLFF CULVER,
27 acting in her official capacity as DEPUTY
DIRECTOR FOR POLICY AND
28 PROGRAMS and exercising the authority of

Case No. 3:21-cv-7171

**COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF**

1 DIRECTOR, U.S. BUREAU OF LAND
2 MANAGEMENT; and KAREN
3 MOURITSEN, acting in her official capacity
as STATE DIRECTOR, U.S. BUREAU OF
LAND MANAGEMENT–CALIFORNIA,

4 Defendants.

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I. INTRODUCTION

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2 1. This is an action for declaratory and injunctive relief challenging the failure of
3 agencies within the United States Department of the Interior to comply with the National
4 Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.*, the Federal Land Policy and
5 Management Act (“FLPMA”), 43 U.S.C. § 1701 *et seq.*, and the Endangered Species Act
6 (“ESA”), 16 U.S.C. § 1531 *et seq.*, in managing the public lands and the listed and special status
7 species of the California desert. Following on a long history of violations, Defendants again have
8 failed to comply with NEPA, FLPMA, and the ESA by refusing to take the actions necessary to
9 protect public lands from adverse impacts of off-highway vehicles (“OHVs”) or to preserve and
10 recover listed and special status species as part of their management of the West Mojave
11 (“WEMO”) Planning Area of the California Desert Conservation Area (“CDCA”).

12 2. Specifically, in this case, Plaintiffs challenge the United States Bureau of Land
13 Management’s (“BLM’s”) 2019 designation of OHV routes in the WEMO Planning Area of the
14 CDCA because BLM has once again (1) used its NEPA analysis to legitimize routes that OHV
15 users created illegally and that BLM had no authority to designate; (2) conducted an inadequate
16 and unlawful environmental review, which relied upon an insufficient range of alternatives and an
17 improper “no-action” baseline; and (3) failed to provide the public with the high-quality, up-to-
18 date information that NEPA requires. BLM also violated presidential executive orders, FLPMA,
19 and BLM’s own regulations, which all require that the agency minimize the effects of OHVs on
20 public lands and sensitive environmental resources.

21 3. In addition, Plaintiffs challenge actions that both BLM and the United States Fish
22 & Wildlife Service (“FWS”) have undertaken for their failure to (1) ensure the survival and
23 recovery of listed species; (2) avoid jeopardizing the continued existence of listed species; and (3)
24 avoid adversely modifying designated critical habitats in the WEMO Planning Area of the CDCA,
25 as required by Section 7 of the ESA. 16 U.S.C. § 1536. Defendant BLM’s approval and
26 implementation of the 2020 West Mojave Route Network Project (“WEMO Route Network
27 Project”) and its corollary amendment to the California Desert Conservation Area Plan, as
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1 amended (“CDCA Plan”), and Defendant FWS’s issuance of a Biological Opinion for this action,
2 violate the ESA’s procedural and substantive requirements.

3 4. This is not the first time that Defendants have attempted to alter their management
4 of the WEMO Planning Area to authorize significantly expanded OHV use, nor is it the first time
5 that Defendants have violated federal law in doing so. In 2009, this Court threw out major
6 portions of Defendants’ 2005 Final Environmental Impact Statements (“FEIS”) and 2006 Record
7 of Decision for a project very similar to the Record of Decision that Defendants adopted in
8 October 2019, on the grounds that Defendants had committed several violations of NEPA,
9 FLPMA, and various federal regulations in analyzing and implementing that proposal. This Court
10 ordered Defendants to return to the drawing board, and Defendants now claim that their latest
11 planning effort remedies all of the previous violations that this Court had identified. It does not.
12 Defendants have repeated many of the same basic errors and violations that they committed during
13 their first attempt, as well as several additional violations.

14 II. JURISDICTION AND VENUE

15 5. Jurisdiction over this action is conferred by 16 U.S.C. § 1540(g) (ESA); 28 U.S.C.
16 §§ 1331 (federal question), 1346 (United States as defendant), 2201 (declaratory judgment), and
17 2202 (injunctive relief); and 5 U.S.C. §§ 701 through 706 (APA).

18 6. On March 24, 2021, Plaintiffs, by email and certified mail, sent a notice of intent to
19 sue to the Secretary of the Interior, BLM, and FWS for violations of the ESA related to BLM’s
20 management of the CDCA pursuant to the CDCA Plan and various amendments. To date,
21 Plaintiffs have received no response to the notice. For all claims brought pursuant to the APA,
22 Plaintiffs have exhausted all administrative remedies available to them.

23 7. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(e) because
24 Plaintiff Sierra Club is incorporated and has its national headquarters in San Francisco, Plaintiff
25 Desert Survivors is incorporated and based in Oakland, and Plaintiff Center for Biological
26 Diversity maintains an office in Oakland.

1 **III. INTRADISTRICT ASSIGNMENT**

2 8. This action is properly assigned to the San Francisco Division of this Court because
3 Plaintiff Sierra Club has its national headquarters in San Francisco, Plaintiff Desert Survivors is
4 based in Oakland, and Plaintiff Center for Biological Diversity maintains an office in Oakland.

5 **IV. RELATED CASES**

6 9. This case is related to *Center for Biological Diversity v. BLM*, 746 F. Supp. 2d
7 1055 (N.D. Cal. 2009), *Center for Biological Diversity v. BLM*, 422 F. Supp. 2d 1115 (N.D. Cal.
8 2006), and *Center for Biological Diversity v. BLM*, Case No. C-00-0927 WHA-JCS (N.D. Cal.
9 2000) as defined by Local Rule 3-12(a). All three cases involved challenges by Plaintiff Center
10 for Biological Diversity and others to BLM’s compliance with NEPA, FLPMA, and the ESA as
11 part of BLM’s previous attempts to change its WEMO Planning Area management policies.

12 **V. PARTIES**

13 10. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (“Center”) is a national,
14 nonprofit organization with its main office in Tucson, Arizona, and a regional office in Oakland,
15 California. The Center’s mission is to protect endangered species and wild places through science,
16 policy, education, and environmental law. The Center has over 1.7 million members and online
17 activists, many of whom reside in California. The Center’s board, staff, and members regularly
18 use, and will continue to use, the lands within the WEMO Planning Area for research, aesthetic
19 enjoyment, and other recreational, scientific, and educational activities. The Center’s members
20 and staff have researched, studied, observed, and sought protections for the Mojave desert tortoise
21 (“Mojave desert tortoise,” “desert tortoise,” or “tortoise”), Parish’s daisy, Cushenbury milk-vetch,
22 Lane Mountain milk-vetch, and other listed and special status species in the WEMO Planning
23 Area, and continue those efforts today. The Center’s members and staff derive scientific,
24 recreational, conservation, and aesthetic benefits from these species’ existence in the wild.

25 11. Defendants’ violations of law are leading to the continued decline of Mojave desert
26 tortoise populations and degradation of the tortoise’s habitat, harming the Center’s and its
27 members’ interests in the tortoise and its habitat. Defendants’ violations of law are also leading to
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1 the decline of the listed and special status plant species and degradation of their habitats, and to the
2 continued decline of other listed species within the WEMO Planning Area and the degradation of
3 habitat these species occupy, harming the Center's and its members' interests in these species and
4 their habitats. The Center has participated in the WEMO Plan process both formally and
5 informally, and has submitted extensive comments on all NEPA documents. The Center brings
6 this action on behalf of itself and its adversely affected members and staff.

7 12. Plaintiff SIERRA CLUB is a national, non-profit membership organization with
8 over 700,000 members dedicated to exploring, enjoying, and protecting the wild places of the
9 Earth; to practicing and promoting the responsible use of the Earth's ecosystem and resources; to
10 educating and enlisting humanity to protect and restore the quality of the natural and human
11 environment; and to using all lawful means to carry out these objectives. The Sierra Club
12 frequently files citizen suits to stop activities that violate local, state, or federal environmental laws
13 and cause harm to the natural environment. Over 150,000 Sierra Club members reside in
14 California. The Sierra Club, incorporated under the laws of the State of California, maintains its
15 national headquarters in San Francisco, California. Many of the Sierra Club's members actively
16 use the WEMO Planning Area for recreational and aesthetic purposes such as hiking and nature
17 study. Many Sierra Club members also participate in group outings to the WEMO Planning Area
18 and will continue to do so on a regular basis.

19 13. The Sierra Club believes that Defendants' recent actions will cause the continued
20 decline of the Mojave desert tortoise and other endangered and threatened species within the
21 WEMO Planning Area. If these declines continue, the Sierra Club's members would be
22 personally harmed by losing the recreational, aesthetic, scientific, and conservation benefits they
23 enjoy from stable and healthy populations of these species. The Sierra Club has participated in the
24 WEMO Plan process both formally and informally, and has submitted extensive comments on all
25 NEPA documents. The Sierra Club brings this action on behalf of itself and its adversely affected
26 members.

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1 14. Plaintiff DESERT SURVIVORS is a California non-profit corporation based in
2 Oakland, California. Desert Survivors is a conservation organization with over 400 members
3 focused on the protection of desert plants, wildlife, and ecosystems. Desert Survivors also
4 engages in a vigorous program of public education about desert lands and their unique
5 character. Desert Survivors' primary goals are to protect fragile desert lands and to teach visitors
6 to those lands about their value. Desert Survivors' efforts and programs are primarily focused on
7 California deserts, including the deserts within the WEMO Planning Area. Desert Survivors
8 members place a high value on the continued existence and essential value of desert wildlife and
9 wilderness. Desert Survivors leads educational trips to desert lands and has led hundreds of such
10 trips in the past 25 years, more than half of these to places that are home to the Mojave desert
11 tortoise. Desert Survivors members value the desert as a natural ecosystem inhabited by special
12 plants and animals. Desert Survivors will continue to lead trips, including service trips, to the
13 desert areas of California as part of its ongoing program of monitoring desert wilderness. A major
14 goal of these trips is to study desert plant and animal species in their natural habitats and to
15 monitor their condition. The Mojave desert tortoise is among the most valuable of these species
16 because of its rarity and the fragility of its habitat. As part of its ongoing desert excursion
17 program, Desert Survivors has led several trips in recent years to the WEMO Planning Area and
18 surrounding regions. Desert Survivors' members value desert wildlife living in its wild and
19 natural condition, and enjoy the inspiration and educational benefits of observing wildlife in this
20 habitat. Desert Survivors members and directors have actively sought to protect desert wilderness
21 as a place where threatened and endangered wildlife may flourish, and where their habitat may
22 remain unimpaired by development and excessive human interference. Desert Survivors'
23 members and directors derive scientific, recreational, conservation, and aesthetic benefits from the
24 Mojave desert tortoise's and other listed and special status species' existence in the wild.

25 15. Desert Survivors believes that Defendants' actions will cause the continued decline
26 of the Mojave desert tortoise and other listed and special status species within the WEMO
27 Planning Area. If these declines continue, Desert Survivors' members will lose the recreational,
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1 aesthetic, scientific, and conservation benefits they enjoy from stable and healthy populations of
2 these species. Desert Survivors has participated in the WEMO Plan process both formally and
3 informally, and has submitted extensive comments on all NEPA documents. Desert Survivors
4 brings this action on behalf of itself and its adversely affected members and directors.

5 16. Plaintiff CALIFORNIA NATIVE PLANT SOCIETY is a non-profit group
6 dedicated to the conservation and protection of California's native plant life. The California
7 Native Plant Society is headquartered in Sacramento, California, and has over 10,000 members
8 across 35 regional chapters covering the entire state. The California Native Plant Society hosts
9 conferences and funds research regarding native plants, maps the location of and changes in rare-
10 plant communities, and since 1974 has maintained an exhaustive inventory of California's rare and
11 endangered plant species. The California Native Plant Society also successfully advocated for
12 recent California state legislation that strengthens the management of OHVs within ecologically
13 sensitive areas, including the desert habitats around the WEMO Planning Area. The California
14 Native Plant Society has participated in the WEMO Plan process both formally and informally,
15 and has submitted extensive comments on all NEPA documents. The California Native Plant
16 Society's members are directly harmed by the acts and omissions of the BLM and FWS, in
17 particular via the impacts on native plants of the illegal designations of OHV routes and excessive
18 grazing. The California Native Plant Society brings this action on behalf of itself and its adversely
19 affected members and staff.

20 17. Plaintiff DEFENDERS OF WILDLIFE ("Defenders") is a national, non-profit
21 conservation organization that is dedicated to the protection and restoration of imperiled species
22 and their habitats throughout North America. Defenders is headquartered in Washington, D.C.,
23 and maintains a regional office in Sacramento, California. For over 20 years, Defenders has
24 worked to protect and restore endangered and threatened desert species within and around the
25 WEMO Planning Area, including the desert tortoise. Defenders successfully campaigned for the
26 Mojave desert tortoise to be listed under the ESA and to have critical habitat designated for it.
27 Defenders has challenged many federal, state, and local government proposals that would allow
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1 excessive development and human activity in desert tortoise habitat, and has encouraged its
2 supporters to take similar efforts. In particular, Defenders has opposed excessive and improper
3 livestock grazing and unmanaged OHV use in desert tortoise habitat. Defenders' staff and
4 supporters derive scientific, aesthetic, and other benefits from the existence of the desert tortoise
5 and other listed and special status species within the WEMO Planning Area. Defenders believes
6 that Defendants' actions will cause the continued decline of the desert tortoise and other listed and
7 special status species, and Defenders will thus lose the benefits it attains from the continued stable
8 existence of these species. Defenders has participated in the WEMO Plan process both formally
9 and informally, and has submitted extensive comments on all NEPA documents. Defenders brings
10 this action on behalf of itself and its adversely affected members and staff.

11 18. Plaintiff DESERT TORTOISE COUNCIL ("Council") is a non-profit organization
12 comprised of hundreds of professionals and laypersons who share a common concern for wild
13 desert tortoises and a commitment to advancing the public's understanding of desert tortoise
14 species. Established in 1975 to promote conservation of tortoises in the deserts of the
15 southwestern United States and Mexico, the Council routinely provides information and other
16 forms of assistance to individuals, organizations, and regulatory agencies on matters potentially
17 affecting desert tortoises within their geographic ranges. The Council is located in Palmdale,
18 California, and has board members in California, Nevada, and Arizona.

19 19. There is a wealth of scientific literature showing that neither the U.S. Bureau of
20 Land Management nor the U.S. Fish & Wildlife Service has sufficiently considered the impacts of
21 OHVs on suitable and occupied habitats of the Mojave desert tortoise. In considering the latest
22 WEMO Route Network Project, the Desert Tortoise Council was dismayed that, rather than
23 further reduce the number of routes in tortoise habitats, and particularly designated critical habitat,
24 the Bureau of Land Management authorized unrestricted use of two dry lakes (Cuddeback and
25 Coyote Dry Lakes) surrounded by designated critical habitat, without acknowledging or mitigating
26 the introduction of OHV impacts into adjacent habitats deemed essential for desert tortoise
27 survival and recovery. The Bureau of Land Management also allowed competitive OHV events
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1 through critical habitats in the Ord-Rodman Critical Habitat Unit, which had been mitigated when
2 the Barstow-to-Vegas race through this area was eliminated several decades ago. Several years
3 ago, the Bureau of Land Management-designated El Mirage Open Area was expanded northwards
4 into the Fremont-Kramer Critical Habitat Unit without the benefit of public input. These are but a
5 few examples of recent actions by the Bureau of Land Management that fail to acknowledge or
6 proactively address the loss of more than 50% of adult tortoises in the West Mojave since 2004, in
7 the same region where these deleterious actions have been authorized. The Council believes that
8 Defendants' actions will cause the continued decline of the Mojave desert tortoise and other listed
9 and special status species, and the Council will thus lose the benefits it attains from the continued
10 stable existence of these species. The Council brings this action on behalf of itself and its
11 adversely affected members and staff.

12 20. Defendant UNITED STATES BUREAU OF LAND MANAGEMENT ("BLM") is
13 a federal agency within the Department of the Interior charged with the management of public
14 lands, including those within the WEMO Planning Area, and has legal responsibility for ensuring
15 that its actions comply with FLPMA, NEPA, and the ESA. BLM issued the Record of Decision
16 for the WEMO Route Network Project at issue in this case.

17 21. Defendant UNITED STATES FISH AND WILDLIFE SERVICE ("FWS") is an
18 agency of the United States government, and is an agency within and under the jurisdiction of the
19 Department of the Interior. Through delegation of authority from the Secretary of the Interior,
20 FWS administers and implements the ESA, and is legally responsible for protecting and managing
21 the fish, wildlife, and native plant resources of the United States by enforcing the ESA. FWS is
22 also charged with determining through the consultation process whether federal agency actions
23 that affect listed species or designated critical habitats comply with the ESA.

24 22. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR is ultimately
25 responsible for the administration and implementation of the ESA with regard to terrestrial
26 endangered and threatened species and for compliance with all other federal laws applicable to the
27 Interior.

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1 28. BLM is required to plan and manage public lands under BLM control—such as
2 those in the CDCA—in accordance with FLPMA and its implementing regulations. *See* 43 U.S.C.
3 §§ 1731, 1740. FLPMA further requires that BLM develop and implement a “comprehensive,
4 long-range plan for the management, use, development, and protection of the public lands within
5 the [CDCA].” 43 U.S.C. § 1781(d). Thus, because FLPMA requires the Secretary both to
6 develop such a plan and to put it into effect, failure to adhere to the CDCA Plan violates FLPMA.

7 29. In addition to FLPMA’s general mandate that public lands be managed to prevent
8 unnecessary or undue degradation, FLPMA further requires the Secretary to promulgate
9 regulations to “protect the scenic, scientific, and environmental values of the public lands of the
10 California Desert Conservation Area against undue impairment[.]” 43 U.S.C. §1781(f). FLPMA
11 therefore requires BLM to apply an even higher standard of protection—the “undue impairment”
12 standard—to CDCA lands than to public lands generally. FLPMA also requires BLM to manage
13 public lands in the CDCA in particular in a manner that will maintain environmental quality. 43
14 U.S.C. § 1781(b).

15 30. ***OHVs and Minimization Criteria.*** FLPMA mandates that public lands be managed
16 with an eye towards multiple uses, including conservation as well as recreational, livestock
17 grazing, and other uses. 43 U.S.C. § 1701(a)(7). This multiple use mandate must always be
18 considered relative to FLPMA’s resource-preservation goals. Consistent with these goals, a
19 number of executive orders and regulations have been promulgated to establish a framework for
20 managing the use of off-highway vehicles (OHVs) on public lands. OHVs include high-clearance
21 jeeps and trucks, dirt bikes, dune buggies, and all-terrain vehicles, often called four-wheelers.

22 31. Specifically, in 1972, President Nixon issued Executive Order 11644, entitled “Use
23 of Off- Road Vehicles on the Public Lands.” That Executive Order imposed a number of specific
24 and non-discretionary duties on the Secretary to control and minimize the effects of OHVs. These
25 duties include classifying all BLM lands as either “open,” “closed,” or “limited” to OHV travel;
26 designating trails for OHV use in limited areas; marking areas and trails and providing the public
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1 with maps depicting such classifications and designations; minimizing the effects of OHVs on
2 specifically identified natural resources; and monitoring OHV impacts throughout BLM lands.

3 32. In 1978, President Carter issued Executive Order 11989, which amended Executive
4 Order 11644 (collectively “the Executive Orders”) and gave federal agencies additional direction
5 and authority to control OHVs. Executive Order 11989 empowered federal agencies to adopt a
6 “closed, unless signed open” policy, and also to immediately close areas suffering from OHV
7 damage. The Executive Orders were enacted in furtherance of NEPA, 42 U.S.C. §§ 4321 et seq.,
8 and are found in the note following 42 U.S.C. § 4321.

9 33. In 1979, the BLM issued its off-road vehicle regulations, 43 C.F.R. §§ 8340-8342.
10 These regulations further implement, and largely restate, the planning, informational, and
11 monitoring requirements of the Executive Orders. The regulations require that all public lands be
12 designated open, limited, or closed to off-road vehicles, a determination which must be based on
13 protecting resources, promoting safety, and minimizing conflicts among the varying uses of the
14 land. 43 C.F.R. § 8342.1.

15 34. BLM officials must adhere to these “minimization criteria” in designating not only
16 areas as open, limited, or closed, but also individual routes. These minimization criteria require
17 officials to “minimize damage to soil, watershed, vegetation, air, or other resources” and “prevent
18 impairment of wilderness suitability,” 43 C.F.R. § 8342.1(a); “minimize harassment of wildlife or
19 significant disruption of wildlife habitats,” giving particular attention to the threatened or
20 endangered species, 43 C.F.R. § 8342.1(b); and “minimize conflicts between off-road vehicle use
21 and other existing or proposed recreational uses.” 43 C.F.R. § 8342.1(c). Areas and trails cannot
22 be located in “officially designated wilderness or other primitive areas,” and they should be
23 located in natural areas only where “off-road vehicle use in such locations will not adversely affect
24 their natural, esthetic, scenic, or other values for which such areas are established.” 43 C.F.R. §
25 8342.1(d).

26 35. The regulations also require BLM to close areas to OHVs where OHVs are causing
27 or will cause negative impacts to soil, vegetation, wildlife, wildlife habitat, cultural resources,
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1 wilderness suitability, or threatened and endangered species. 43 C.F.R. § 8341.2(a). An area
2 closed to OHVs under this provision may be reopened to such vehicles only where BLM
3 “determines that the adverse effects have been eliminated and measures implemented to prevent
4 recurrence.” *Id.*

5 36. **Data Collection and Use.** Both FLPMA and the CDCA Plan require BLM to use
6 the best available resource data in managing the public lands of the CDCA. Consistent with its
7 resource protection aims, FLPMA mandates that the Secretary “shall prepare and maintain on a
8 continuing basis an inventory of all public lands and their resource and other values,” prioritizing
9 areas of “critical environmental concern.” 43 U.S.C. §1711(a). This inventory must be kept
10 current to account for changes to resources. *Id.* In collecting inventory data, BLM is responsible
11 for arranging for “resource, environmental, social, economic and institutional data and information
12 to be collected.” 43 C.F.R. §1610.4-3. This data collection should “emphasize significant issues
13 and decisions with the greatest potential impact.” *Id.* FLPMA’s inventory requirements serve the
14 overall recognition by Congress that it is in the national interest to systematically survey resource
15 inventories and project future use of those resources through a land use planning process. 43
16 U.S.C. §1701(a)(2). Thus, the Secretary of the Interior must rely on these inventories of the public
17 lands and their resources in developing and revising land use plans. 43 U.S.C. §1712(c)(4).

18 37. The CDCA Plan itself recognizes that maintaining the “productive potential” of
19 critical resources “will determine the future of mankind and thus that this must be the heart and
20 foundation of any land-use plan.” CDCA Plan at 6. Consequently, the Plan itself uses “the best
21 available information about resources of the Desert, in particular its soil, vegetation, water, air,
22 and minerals-the basic and finite things upon which all life depends.” *Id.*

23 38. **Air Quality Requirements.** Finally, FLPMA mandates that, in developing and
24 revising land use plans, the Secretary must “provide for compliance with applicable pollution
25 control laws, including State and Federal air, water, noise, or other pollution standards or
26 implementation plans[.]” 43 U.S.C. § 1712(c)(8). This requirement extends to the Clean Air Act,
27 which specifies, among other things, that no federal agency may approve or support “any activity
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1 which does not conform to” an approved state plan for implementing National Ambient Air
2 Quality Standards. 42 U.S.C. § 7506(c)(1).

3 **B. National Environmental Policy Act and CEQ Regulations**

4 39. NEPA is intended to “promote efforts which will prevent or eliminate damage to
5 the environment.” 42 U.S.C. § 4321. NEPA’s fundamental purposes are to guarantee that: (1) the
6 agency takes a “hard look” at the environmental consequences of their proposed actions by
7 ensuring that the agency carefully considers detailed information concerning significant
8 environmental impacts; and (2) the agency makes the relevant information available to the public
9 so that the public may participate during decision making and implementation. *See, e.g.*, 42
10 U.S.C. § 4332(2); 40 C.F.R. § 1500.1.¹

11 40. The Council on Environmental Quality (“CEQ”) promulgates regulations that
12 implement NEPA and which are binding on all federal agencies. *See* 40 C.F.R. § 1500.1, *et seq.*

13 41. NEPA requires all federal agencies, including BLM, to prepare an environmental
14 impact statement (“EIS”) for all “major Federal actions significantly affecting the quality of the
15 human environment.” 42 U.S.C. § 4332(2)(C). An EIS must provide a detailed statement of: (1)
16 the environmental impact of the proposed action, (2) any adverse environmental effects that
17 cannot be avoided should the proposed action be implemented, (3) alternatives to the proposed
18 action, (4) the relationship between local short-term uses of the environment and the maintenance
19 and enhancement of long-term productivity, and (5) any irreversible and irretrievable
20 commitments of resources that would be involved in the proposed action should it be
21 implemented. 42 U.S.C. § 4332(2)(C).

22 42. NEPA is intended to ensure that an agency makes informed choices when federal
23 decisions are likely to have environmental consequences. To that end, an EIS must “inform
24 decision-makers and the public of the reasonable alternatives which would avoid or minimize

25 _____
26 ¹ Although CEQ updated these regulations in 2020, the 1978 CEQ regulations govern
27 BLM’s issuance of the Record of Decision in this case because the NEPA review process began
28 prior to September 14, 2020. *See* Update to the Regulations Implementing the Procedural
Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43,304 (July 16, 2020); 40
C.F.R. § 1506.13 (2020).

1 adverse impacts or enhance the quality of the human environment.” 40 C.F.R. § 1502.1. NEPA
2 also requires federal agencies to analyze the direct, indirect, and cumulative impacts of the
3 proposed action. 40 C.F.R. §§ 1508.7, 1508.8. One of the most important aspects of NEPA is that
4 the agency is required to consider the cumulative effects of its actions, which the CEQ regulations
5 describe as:

6 the impact on the environment which results from the incremental impact of the
7 action when added to other past, present, and reasonably foreseeable future actions
8 regardless of what agency (Federal or non-Federal) or person undertakes such other
9 actions. Cumulative impacts can result from individually minor but collectively
 significant actions taking place over a period of time.

10 40 C.F.R. § 1508.7. In the context of OHV route designations, NEPA requires that an agency
11 such as BLM consider and disclose to the public the cumulative impacts of the designations on
12 biological resources, vegetation, water quality, cultural resources, and other resources of the public
13 lands.

14 43. When preparing an EIS, an agency must ensure that high-quality information is
15 available to the agency and the public before the agency makes any decision or takes any action.
16 Accurate scientific analysis, expert agency comments, and public scrutiny are essential to
17 implementing NEPA. 40 C.F.R. § 1500.1(b). The agency is required to identify clearly all of its
18 assumptions, explain any inconsistencies, disclose all methodologies used, rebut all contradictory
19 evidence, eliminate guesswork, make explicit reference to sources relied upon for conclusions, and
20 record in an understandable manner the basis for those conclusions. 40 C.F.R. § 1502.24. In
21 responding to public and expert agency comments, the preparing agency is required to disclose
22 and address all “responsible opposing views.” 40 C.F.R. § 1502.9(b). Unless the preparing
23 agency substantively explains why a comment does not warrant further response, it must modify
24 or supplement the analysis in its EIS to account for the comment. 40 C.F.R. § 1503.4(a).

25 44. NEPA requires each federal agency to “study, develop, and describe appropriate
26 alternatives to recommended courses of action in any proposal which involves unresolved
27 conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(2)(E). This
28 analysis of alternatives is the “heart” of the environmental review process; the EIS must

1 “rigorously explore and objectively evaluate all reasonable alternatives” in order to “provid[e] a
2 clear basis for choice among options by the decisionmaker and the public.” 40 C.F.R.
3 § 1502.14(a). Within the alternatives analysis, the agency must assess: (1) a “no action”
4 alternative, (2) other reasonable courses of action not within the jurisdiction of the lead agency,
5 and (3) mitigation measures not already included in the proposed action or alternatives. 40 C.F.R.
6 §§ 1502.14(b)-(f). The agency must consider a reasonable range of alternatives, and the exclusion
7 of reasonable alternatives from review within an EIS renders the analysis invalid. The agency
8 must also explain why it decided not to study in detail any alternatives that were considered but
9 eliminated from further analysis. 40 C.F.R. § 1502.14(a).

10 45. In addition to alternatives and impacts, NEPA requires agencies to consider
11 mitigation measures to minimize the environmental impacts of the proposed action. 40 C.F.R.
12 § 1502.14 (alternatives and mitigation measures); 40 C.F.R. § 1502.16 (environmental
13 consequences and mitigation measures).

14 C. Endangered Species Act

15 46. *Listing of Species.* The ultimate goal of the ESA is to conserve and recover
16 endangered and threatened species so that they no longer require the ESA’s protections. 16 U.S.C.
17 §§ 1531(b), 1532(3). The ESA requires the Secretary of the Interior (“the Secretary”) to issue
18 regulations listing species as endangered or threatened based on the present or threatened
19 destruction, modification, or curtailment of a species’ habitat or range; overutilization for
20 commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy
21 of existing regulatory mechanisms; or other natural or manmade factors affecting the species’
22 continued existence. 16 U.S.C. § 1533(a)(1). An endangered species is one “in danger of
23 extinction throughout all or a significant portion of its range.” 16 U.S.C. § 1532(6). A threatened
24 species is one that will become endangered if current circumstances continue. 16 U.S.C.
25 § 1532(20). Species receive the full protections of the ESA only once officially listed. The ESA
26 requires that the Secretary make listing determinations “solely on the basis of the best scientific
27 and commercial data available.” 16 U.S.C. § 1533(b)(1)(A). The Secretary has delegated her
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1 authority under the ESA to FWS for terrestrial species, including the desert tortoise (Mojave
2 population), triple-ribbed milk-vetch, Cushenbury oxytheca, Parish's daisy, Cushenbury milk-
3 vetch, Cushenbury buckwheat, Lane Mountain milk-vetch, and other listed species found in the
4 WEMO Planning Area.

5 47. *Critical Habitat.* Concurrently with listing a species as endangered or threatened,
6 the Secretary must also designate the species' "critical habitat." 16 U.S.C. § 1533(b)(2). "Critical
7 habitat" is the area that contains the physical or biological features essential to the "conservation"
8 of the species and which may require special protection or management considerations. 16 U.S.C.
9 § 1532(5)(A). The ESA requires the Secretary to designate critical habitat "on the basis of the best
10 scientific data available." 16 U.S.C. § 1533(b)(2). The ESA defines "conservation" to mean "the
11 use of all methods and procedures which are necessary to bring any endangered species or
12 threatened species to the point at which the measures provided pursuant to this Act are no longer
13 necessary." 16 U.S.C. § 1532(3). This definition of "conservation" is broader than mere survival;
14 it also includes the recovery of the species. *Id.*

15 48. *Recovery Plans.* Section 4(f) of the ESA requires the Secretary to "develop and
16 implement plans . . . for the conservation and survival of endangered species and threatened
17 species." 16 U.S.C. § 1533(f). Recovery plans must describe site-specific management actions
18 that may be necessary to achieve the conservation and survival of the species; provide objective,
19 measurable criteria that, when met, would result in a determination that the species be removed
20 from the list; and estimate both the time and cost required to carry out those measures needed to
21 achieve the plan's goal and any intermediate steps toward that goal. 16 U.S.C. § 1533(f)(1).

22 49. *Duty to Conserve.* Federal agencies have an affirmative duty to promote the
23 conservation of endangered and threatened species. Section 2(c) of the ESA provides that it is
24 "the policy of Congress that all Federal departments and agencies shall seek to conserve
25 endangered species and threatened species and shall utilize their authorities in furtherance of the
26 purposes of this Act." 16 U.S.C. § 1531(c)(1). Section 7(a)(1) also establishes an affirmative duty
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1 to conserve. 16 U.S.C. § 1536(a)(1). The duty to conserve applies equally to the Secretary of the
2 Interior and to other federal agencies.

3 50. *Duty to Ensure Survival and Recovery; Duty to Consult.* Pursuant to Section
4 7(a)(2) of the ESA, all federal agencies must “insure that any action authorized, funded or carried
5 out by such agency . . . is not likely to jeopardize the continued existence of any endangered or
6 threatened species or result in the destruction or adverse modification of habitat of such species”
7 that FWS has determined to be “critical.” 16 U.S.C. § 1536(a)(2). To fulfill this mandate, the
8 acting agency must prepare a biological assessment for the purposes of identifying all endangered
9 or threatened species that are likely to be affected by the action, 16 U.S.C. § 1536(c)(1), and must
10 consult with FWS whenever such actions “may affect” a listed species. 16 U.S.C. § 1536(a)(2);
11 50 C.F.R. § 402.14(a). Because BLM’s adoption and amendment of the CDCA Plan and the
12 WEMO Route Network Project are federal actions that affect the endangered and threatened
13 species in the WEMO Planning Area, BLM was required to consult with FWS regarding these
14 actions.

15 51. *Biological Opinion.* Consultation under Section 7(a)(2) results in FWS preparing a
16 biological opinion that determines if the proposed action is likely to jeopardize the continued
17 existence of a listed species or destroy or adversely modify a species’ critical habitat. The
18 biological opinion must include a summary of the information on which it is based and must
19 adequately detail and assess how the action affects listed species and their critical habitats. 16
20 U.S.C. § 1536(b)(3).

21 52. Additionally, a biological opinion that concludes that the agency action is not likely
22 to jeopardize a listed species or destroy or adversely modify its critical habitat must include an
23 Incidental Take Statement that specifies the impact of any incidental taking. 16 U.S.C.
24 § 1536(b)(4). The Incidental Take Statement must also list any reasonable and prudent measures
25 necessary to minimize such impacts and set forth terms and conditions that the acting agency must
26 follow. *Id.* Where an agency action may affect a listed species, the absence of a valid biological
27 opinion means that the agency has not fulfilled its duty to ensure through consultation that its
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1 actions will neither jeopardize a listed species nor destroy or adversely modify the species' critical
2 habitat.

3 53. Throughout its analysis, the biological opinion must utilize the "best scientific and
4 commercial data available." 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(d). FWS must consider
5 all possible relevant factors and articulate a rational connection between the facts and the ultimate
6 conclusions drawn in the biological opinion.

7 54. The biological opinion must evaluate the "cumulative effects" to the listed species.
8 50 C.F.R. § 402.14(g)(3). In addition to effects of other federal actions, "cumulative effects"
9 include the "effects of future State or private activities, not involving Federal activities, that are
10 reasonably certain to occur within the action area of the Federal action subject to consultation."
11 50 C.F.R. § 402.02.

12 55. *Prohibition on "Take."* Section 9 of the ESA and its implementing regulations
13 prohibit any person from "taking" a threatened or endangered species. 16 U.S.C. § 1538(a)(1); 50
14 C.F.R. § 17.31. A "person" includes private parties as well as local, state, and federal agencies.
15 16 U.S.C. § 1532(13). The ESA defines "take" broadly to include harming, harassing, trapping,
16 capturing, wounding, or killing a protected species either directly or by degrading its habitat
17 sufficiently to impair essential behavioral patterns. 16 U.S.C. § 1532(19). The ESA bans not only
18 the acts of parties directly causing a take, but also the acts of third parties whose acts bring about
19 the taking. A federal agency may take listed species *only* in accordance with an "Incidental Take
20 Statement." 16 U.S.C. § 1536(b)(4). If the terms and conditions of the Incidental Take Statement
21 are followed, the federal agency and any permittee are exempted from Section 9's take
22 prohibitions. 16 U.S.C. § 1536(o)(2).

23 VII. FACTUAL BACKGROUND

24 A. The California Desert Conservation Area and the Harmful Effects of OHVs

25 56. The California desert is a unique environment teeming with "historical, scenic,
26 archeological, environmental, biological, cultural, scientific, educational, recreational, and
27 economic resources." 43 U.S.C. § 1781(a)(2). Though vast, this desert and its resources are
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1 “extremely fragile, easily scarred, and slowly healed.” *Id.* Human activities can easily harm the
2 many rare and endangered species of animals and plants in this sensitive ecosystem. 43 U.S.C.
3 § 1781(a)(3).

4 57. To protect and conserve this desert and its resources, Congress designated 25
5 million acres of southern California as the CDCA—the California Desert *Conservation Area*. 43
6 U.S.C. § 1781(c). Currently over 10 million acres of the CDCA are public lands under BLM
7 management. *Id.* In establishing the CDCA in 1976, Congress mandated that the Secretary of the
8 Interior develop a “comprehensive, long-range plan for the management, use, development, and
9 protection” of the public lands within the CDCA. 43 U.S.C. § 1781(d). Congress also adopted
10 “undue impairment” and “maintenance of environmental quality” management standards for the
11 CDCA that are more environmentally protective than the general FLPMA standard applied to
12 other BLM-managed lands.

13 58. The West Mojave (“WEMO”) Planning Area is a sub-region of the CDCA that
14 encompasses over 9 million acres, of which over 3 million acres are public lands entrusted to
15 BLM.

16 59. In 1980, BLM—as the Secretary of the Interior’s designee—published and
17 implemented a long-term land management plan for the CDCA, called the CDCA Plan. The
18 CDCA Plan identified 12 Plan elements for detailed consideration—including wildlife, vegetation,
19 cultural resources, motorized vehicle access, recreation, and livestock grazing, among others—and
20 also established numerous special management areas, including Areas of Critical Environmental
21 Concern (“ACECs”) and 11 other types of special areas. The Desert Renewable Energy
22 Conservation Plan (“DRECP”) amendments to the CDCA Plan were adopted in September 2016
23 and designated ACECs, California Desert National Conservation Lands (“CD NCL”) and other
24 natural areas in the West Mojave. These include two Research Natural Areas (Desert Tortoise
25 Natural Research Area and Pisgah Natural Research Area) and ACECs that are coextensive with
26 nearly all of the Mojave Desert Tortoise Crucial Habitat are in the WEMO Planning Area.

1 60. Pursuant to the strong “undue impairment” standard that Congress applied to the
2 CDCA, the CDCA Plan explicitly seeks to “enhance wherever possible . . . the environmental,
3 cultural, and aesthetic values of the Desert” and endorses “erring on the side of conservation in
4 order to not risk today what we cannot replace tomorrow.” CDCA Plan at 5-6.

5 61. For decades, the CDCA and its surrounding areas have experienced widespread,
6 intensive OHV use. OHVs cause or contribute to a wide range of significant adverse impacts to
7 the sensitive environmental resources in the CDCA, which many scientific studies document. In
8 addition to the impacts to listed and special status species and their habitats, set out in detail
9 below, OHVs damage the CDCA’s soils, vegetation, springs, and riparian areas. The soil
10 compaction and shear forces associated with OHVs crush and uproot vegetation, inhibit future
11 vegetation growth, intensify erosion, and alter natural hydrologic patterns. Soils in the western
12 Mojave are highly heterogeneous which causes different responses to compaction and erosion
13 caused by ORV traffic. BLM arbitrarily chose to analyze route lengths with slope exceeding 10%
14 for soil impacts, without justifying use of the 10% gradient. Some soil types, at much less than
15 10% slopes, can still be negatively impacted by compaction or erosion. BLM failed to analyze the
16 length of each route by soil type or explain what the actual impacts are. It did not quantify the
17 amount erosion or compaction that would be caused by OHV use for any of the alternatives. The
18 use of OHVs around and within springs and riparian areas increases stream sedimentation and
19 decreases water quality. Soils compacted by OHVs have lower water infiltration rates, which
20 leads to increased runoff and more intense stormwater flows. By disturbing surface soils, OHVs
21 also help accelerate the spread of invasive plant species that can out-compete native vegetation.

22 62. The use of OHVs in the CDCA both emits significant quantities of greenhouse
23 gases and other pollutants and produces large amounts of airborne dust, each of which
24 significantly impairs regional air quality. OHVs also disturb soil crusts, desert pavements, and
25 other forms of stable soils, which allows larger amounts of windblown dust to be generated even
26 when OHV use is not actively occurring. This wind erosion is a “major issue in the [WEMO]
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1 planning area.” BLM, West Mohave (WEMO) Route Network Project Final Supplemental
2 Environmental Impact Statement, at 4-36 (April 26, 2019).

3 63. BLM itself has long acknowledged that the proliferation of roads and trails, and
4 thus OHVs, in the CDCA “has resulted in a serious problem” and represents “the most difficult
5 management issue for BLM.” CDCA Plan at 75.

6 64. Accordingly, BLM significantly amended the CDCA Plan in 1982 to more
7 effectively control its management of OHVs. The 1982 amendments required that all public lands
8 within the CDCA be designated as either “open,” “closed,” or “limited” with respect to OHV use,
9 and restricted OHV travel in “limited” areas to only those OHV routes that already existed when
10 the CDCA Plan was approved in 1980.

11 65. Although the 1982 amendment limited the OHV routes that BLM could designate
12 to those that existed in 1980 or earlier, BLM did not know in 1982—nor has it been able to discern
13 since—exactly which routes within the CDCA were in existence as of 1980.

14 66. Due largely to BLM’s own failures to accurately inventory the routes within its
15 jurisdiction or to curb the proliferation of unauthorized routes, BLM has not known until relatively
16 recently what full range of routes existed within the CDCA.

17 67. BLM made multiple attempts from the mid-1980s through the early 2000s to
18 catalogue the full OHV route network within the CDCA. None of these efforts to map the
19 contemporary routes were able to provide further clarity about which routes existed in or before
20 1980. BLM now acknowledges that the route network inventories produced during this period
21 were inaccurate and/or incomplete.

22 **B. Imperiled Animal and Plant Species within the CDCA**

23 68. The CDCA’s sensitive desert habitats serve as a home to many rare and unique
24 species of wildlife. Yet as a result of overexploitation of the CDCA and its surrounding areas,
25 several of those species have experienced such drastic declines in population that they are now
26 listed as threatened or endangered under the ESA.

1 69. Of particular importance is the Mojave desert tortoise (*Gopherus agassizii*). The
2 Mojave desert tortoise (*Gopherus agassizii*) is a large, herbivorous reptile native to southeastern
3 California, southern Nevada, southwestern Utah, and northwestern Arizona. The Mojave desert
4 tortoise is a keystone, indicator, umbrella, and flagship species. The tortoise, like many other
5 desert-adapted species, lives on the edge of physiological tolerances, and climate change
6 combined with other impacts are testing the outer limits of the tortoise's tolerance.

7 70. Within the CDCA, OHVs are harmful to imperiled species, including and
8 especially Mojave desert tortoises. OHVs can strike and kill the hard-to-see tortoises, disrupt the
9 tortoise's behavioral patterns, erode and compact soils (which reduces the native vegetation on
10 which the tortoise almost exclusively feeds), and introduce and spread non-native invasive plant
11 species that outcompete native vegetation. These non-native plants have lower nutritive value
12 than native plants and adversely affect tortoises' physiological water balance. Nitrogen oxides and
13 other airborne contaminants from OHV emissions settle onto plants or into soils and function as
14 fertilizers, thus causing changes in plant community composition (e.g., conversion from native
15 plants to non-native plants) and altering growth rates. OHVs crush and kill the woody shrubs that
16 protect tortoises from high temperatures and predators. And OHVs compact soils, which (a)
17 reduces the amount of water (from the very limited precipitation in the desert) that infiltrates into
18 soils and is necessary for woody shrubs and other plant growth, and (b) reduces these plants'
19 ability to propagate through seeds.

20 71. The life history strategy of the tortoise includes delayed sexual maturity and low
21 recruitment, which means that any impacts from OHVs are especially long-lasting. A recent
22 modeling effort by Peaden et al. (2021) regarding the effects of a road on the status and trend of
23 desert tortoise populations showed that, once a tortoise population has experienced a substantial
24 decline, it takes a long time for the population to increase its numbers, and this increase is very
25 slow. Specifically, the modeling showed that when the only source of mortality (vehicle use on a
26 road) was halted, it took several decades for the tortoise population to show an upward trend, and
27 that trend was slight.

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1 72. Within the CDCA, washes provide especially important habitat for the desert
2 tortoise. Wash banks (also called washes) are one of the tortoise’s preferred areas for burrowing,
3 and also provide the tortoise a means of transit between other suitable habitat types. Both OHVs
4 and livestock grazing damage wash banks and reduce their utility as desert tortoise habitat.

5 73. In 1990, FWS listed the Mojave population of the desert tortoise as “threatened”
6 under the ESA. 55 Fed. Reg. 12178.

7 74. In 1994, FWS designated critical habitat and adopted a recovery plan for the
8 Mojave population of the desert tortoise. Much of this critical habitat falls within the CDCA. The
9 recovery plan divided the population into six “recovery units” and recommended creating 14
10 “Desert Wildlife Management Area” (“DWMAs”), with at least one DWMA in each recovery
11 unit.

12 75. In 2011, FWS issued a Revised Recovery Plan for the Mojave desert tortoise. FWS
13 updated information on the tortoise, identified five recovery units, and adopted the recovery
14 strategy and actions of the 1994 Recovery Plan.

15 76. Both the recovery plan and the critical habitat rule emphasized the severe, adverse
16 impacts of OHVs and livestock grazing on desert tortoises and their critical habitat. The recovery
17 plan recommended outright prohibiting both of these activities in DWMAs, and the critical habitat
18 rule reiterated that the recovery plan represented the best available information on the conditions
19 and measures needed to recover the Mojave population of the desert tortoise. In addition, in
20 FWS’s 1994 designation of critical habitat for the Mojave desert tortoise, FWS stated: “The
21 Service expects that proposed actions that are inconsistent with land management
22 recommendations for DWMAs in the Draft Recovery Plan [for the desert tortoise] would likely be
23 considered to adversely modify critical habitat.”

24 77. Neither FWS nor BLM has ever fully implemented the recommendations listed in
25 the desert tortoise recovery plan. The measures that BLM has included in the CDCA Plan
26 represent the full extent of the protections that BLM has provided for all of the desert tortoise
27 habitat within its jurisdiction.

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1 78. The status of the desert tortoise has not improved since its listing under the ESA.
2 In fact, all reliable data and analysis prepared since its listing indicate its population has continued
3 to decrease. A 2018 study prepared by a FWS biologist found that the total number and density of
4 adult desert tortoises within the CDCA had significantly declined between 2004 and 2014, with
5 similar declines in the number of juveniles observed annually since 2007. The study concluded
6 that the recovery measures enacted to date had been less effective than predicted, and that the
7 population remains headed toward extinction unless more aggressive protective measures are
8 adopted quickly. *See* Allison & McLuckie (2018) at 433. This aligned with earlier FWS and
9 other reports that had also concluded that desert tortoise populations in the CDCA were declining.
10 In 2000, a report prepared by a panel of desert tortoise experts and released by BLM had found
11 that there were “substantially fewer” tortoises in the West Mojave Recovery Unit than were
12 estimated to occur in 1994, and that the population in this recovery unit was “more appropriately
13 characterized as ‘endangered’ than ‘threatened.’” In 2004, a status report on the desert tortoise
14 recovery plan determined that the population was continuing to decline in spite of the limited
15 protective measures that had been implemented. DTRPAC Report at 58.

16 79. The many listed plant species within the CDCA—including the triple-ribbed milk-
17 vetch (*Astragalus tricarinatus*), Cushenbury oxytheca (*Acanthoscyphus parishii* var.
18 *goodmaniana*), Parish’s daisy (*Erigeron parishii*), Cushenbury milk-vetch (*Astragalus albens*),
19 Cushenbury buckwheat (*Eriogonum ovalifolium* var. *vineum*), and Lane Mountain milk-vetch
20 (*Astragalus jaegerianus*)—also remain at risk of extinction due to habitat loss in, and
21 overexploitation of, the CDCA. All but the triple-ribbed milk-vetch have designated critical
22 habitat within the CDCA; all are negatively impacted by the same OHV use, livestock grazing,
23 and other disturbances that also threaten the Mojave desert tortoise; and there is no indication that
24 any species is moving toward recovery under the current management regime. BLM’s Record of
25 Decision for the WEMO Route Network Project does not adopt the measures necessary to sustain
26 or restore these species, including sufficient enforcement of OHV rules and regulations.

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1 **C. Previous Successful Challenges to BLM’s CDCA Plan Amendments**

2 80. By the late 1990s, BLM had formally designated approximately 3,000 miles of
3 routes within the WEMO Planning Area for some level of OHV use.

4 81. BLM undertook a more intensive route surveying effort from 2001 to 2002 that
5 ultimately “inventoried” (i.e., identified the existence of) approximately 7,000 miles of routes
6 within the WEMO Planning Area, including both the routes that BLM had previously designated
7 and several thousands of miles of routes that were unknown to and/or unauthorized by BLM.

8 82. In 2003, based largely on this 2001-2002 inventory and after issuing an
9 Environmental Assessment (“EA”) and Record of Decision, BLM formally designated 5,098 total
10 miles of routes within the WEMO Planning Area. All 5,098 miles were opened to OHV traffic to
11 some extent under the 2003 Record of Decision; the remaining approximately 2,000 miles of
12 “inventoried” but not “designated” routes were closed to OHV use. These 2003 route designations
13 were never actually put into effect due to an agreement stemming from related litigation about
14 other planning efforts in the CDCA.

15 83. In 2005, BLM issued a Final EIS (“FEIS”) for the WEMO Plan amendment, which
16 proposed to designate an expanded OHV route network within the WEMO Planning Area that was
17 very similar to the network that BLM had approved in 2003.

18 84. All alternatives analyzed in the 2005 FEIS involved the same 5,098-mile route
19 network; alternatives differed only with respect to how many miles of routes were designated as
20 “open” versus “limited.” The 2003 route designations served as the “No Action Alternative”
21 within this 2005 FEIS. All FEIS alternatives allowed some level of OHV use on every mile of the
22 designated route network, and each would have resulted in more miles of routes being designated
23 compared to a no-action scenario. Although BLM conceded that many of the routes in the 5,098-
24 mile network were created after 1980, none of the alternatives involved revising the CDCA Plan to
25 remove the 1980 route cap.

26 85. Whether a route segment was designated as “open” or “limited” under any
27 particular alternative in the 2003 EA or 2005 FEIS depended almost entirely on the 2001-2002
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1 inventory. As part of that inventory, BLM contracted with private consultants to develop
2 recommendations about which route segments would be most appropriately designated as “open,”
3 “limited,” or closed to all OHV traffic, depending on the management objective. Routes within
4 certain special “redesign” areas were designated via a complex “decision tree” methodology that
5 purported to apply FLPMA’s “minimization criteria.” *See* 43 C.F.R. §§ 8342.1(a)-(d). Neither
6 the 2003 EA nor the 2005 FEIS described in detail the process by which BLM designated route
7 segments falling outside of the redesign areas, and it remains unclear if any single, comprehensive
8 methodology was applied to all such decisions. Nor is it clear why only a few limited areas were
9 subject to the decision tree process.

10 86. In 2006, FWS issued a biological opinion for the WEMO Plan Amendment that
11 concluded the project would not jeopardize any listed species or adversely modify or destroy their
12 critical habitat (2006 WEMO Biological Opinion). In November 2007, FWS issued a new
13 Incidental Take Statement that modified the 2006 WEMO Biological Opinion.

14 87. BLM issued a Record of Decision for the WEMO Plan Amendment project in
15 March 2006. The alternative BLM approved in that Record of Decision designated all 5,098 miles
16 of the WEMO Planning Area route network as “open,” and none as “limited.”

17 88. In August 2006, Plaintiffs Center for Biological Diversity, the Sierra Club, Desert
18 Survivors, the California Native Plant Society, and seven other environmental organizations filed
19 suit in this Court against BLM, FWS, and several individuals acting in their official capacities
20 regarding the FEIS and Biological Opinion issued for the 2006 WEMO Project (“Project”). The
21 complaint alleged that these entities had violated FLPMA, NEPA, the ESA, and/or their
22 implementing regulations in issuing the FEIS and Biological Opinion for the Project. Plaintiffs
23 also challenged the 2003 EA and 2003 Record of Decision to the extent those documents and
24 actions were implicated.

25 89. In January 2007, this Court permitted various counties, local government
26 organizations, and OHV groups to intervene as parties on behalf of Defendants. Plaintiffs then
27 filed a second amended complaint in February 2008. Parties filed cross-motions for summary
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1 judgment, and this Court held a hearing on the motions in May 2008. Parties then filed revised
2 cross-motions at the request of the Court in August 2008.

3 90. This Court granted partial summary judgment in favor of Plaintiffs on September
4 28, 2009. *CBD v. BLM*, 746 F. Supp. 2d 1055. In its September 2009 Order, this Court agreed
5 that BLM committed several violations of FLPMA and NEPA in issuing the FEIS and Record of
6 Decision for the 2006 WEMO Project. *Id.*

7 91. Regarding Plaintiffs' FLPMA claims, the Court held:

8 a. The "decision tree" process that BLM used to designate routes within the
9 "redesign" areas did not lawfully apply the minimization criteria in 43 C.F.R.

10 §§ 8342.1(a)-(c). The decision tree for any given route segment asked only about adverse
11 impacts to sensitive species or their habitats; it made no direct inquiries about damage to
12 "soil, watershed, vegetation, air, or other resources of public land," even though FLPMA
13 explicitly requires minimizing impacts to those resources. To the extent that the decision
14 tree *did* inquire about impacts to sensitive species or their habitats, it did not actually
15 ensure that routes were designated in a way that minimized those impacts. The design of
16 the decision tree also led to routes being designated as "open" even when BLM determined
17 that opening the route to OHV use would adversely impact sensitive species and habitats.
18 746 F. Supp. 2d 1071-81;

19 b. BLM did not adequately explain how it designated routes outside of the
20 "redesign" areas, and did not demonstrate that it had applied FLPMA's minimization
21 criteria in making those designations. *Id.* at 1081-83; and

22 c. BLM violated the plain language of the CDCA Plan by incorporating post-
23 1980 routes into each FEIS alternative, including its selected alternative, without also
24 amending the language of the CDCA Plan to remove the 1980 route limitation. *Id.* at
25 1083-87. The Court did not conclude that BLM was indefinitely bound by the 1980 route
26 cap, but held that any future amendment of the CDCA Plan to remove that limit must (1)
27 "satisfy NEPA, FLPMA, and all other applicable statutes and regulations," and (2) include
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1 a “reasoned explanation based on information and data in the record why post-1980 routes
2 should be designated.” *Id.* at 1086.

3 92. The Court also sided with Plaintiffs on many of their NEPA claims, concluding:

4 a. The FEIS failed to comply with NEPA because it did not analyze a “truly
5 meaningful range of alternatives.” *Id.* at 1089. Specifically, every alternative was based
6 on the same 5,098-mile OHV route network, despite several smaller, potentially feasible
7 networks having been proposed to—and rejected by—BLM. *Id.* Furthermore, every
8 alternative “resulted in an increase in the amount of miles formally designated as open to
9 OHV use.” *Id.* at 1088;

10 b. The “No Action Alternative” that BLM used as an analytical baseline in the
11 EA and FEIS was impermissible for two reasons. First, the No Action Alternative’s route
12 network included post-1980 routes, but BLM failed to adequately disclose either that this
13 network was thus larger than the 1980 route network *or* that BLM could not actually
14 designate these post-1980 routes without first amending the CDCA Plan. *Id.* at 1090 (“ . . .
15 BLM must recognize that limitation either by amending the CDCA Plan to eliminate that
16 limitation . . . or by prospectively ensuring that only those routes that are ‘designated’ are
17 the routes that existed in 1980.”). Second, BLM did not maintain a clear or consistent
18 baseline throughout its analysis: For some resource areas the FEIS seemed to compare the
19 alternatives’ impacts to those of the 2003 route designations, while for others it appeared to
20 use an earlier route network as the baseline. *Id.* at 1091-92; and

21 c. BLM’s analyses of direct, indirect, and/or cumulative impacts to several
22 resource areas were inadequate under NEPA. *Id.* at 1093-99. Specifically, the impacts
23 analysis: (1) lacked a sufficiently particularized discussion of how the proposed OHV
24 route network would impact soils within the WEMO Planning Area, *id.* at 1094; (2) did not
25 assess any specific impacts to cultural resources, *id.* at 1094-96; (3) failed to provide
26 information or analysis about impacts to unusual plant assemblages, riparian and water
27 resources, and certain sensitive species that would be sufficient to support the FEIS’s
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1 conclusions, *id.* at 1096-98; and (4) omitted any analysis of air quality impacts from OHV
2 emissions in “open” areas. *Id.* at 1098.

3 93. Based on these violations, this Court issued a Remedy Order in January 2011
4 (“Remedy Order”). The Remedy Order noted that all parties agreed that BLM would need to (1)
5 prepare a revised OHV route network that complied with the minimization criteria, (2) either
6 return to the 1980 OHV route network or modify the CDCA Plan to lift the route cap, and (3)
7 conduct supplemental NEPA analysis for these changes. Remedy Order at 2.

8 94. The Remedy Order also:

9 a. Set a deadline for BLM to complete the revised and additional analysis
10 required by the 2009 Order (including preparing a supplemental NEPA analysis that
11 “reconsiders the ‘no action alternative’” and considers “at least one alternative that
12 analyzes a less extensive route network”). *Id.* at 3-4;

13 b. Partially vacated aspects of the 2006 Record of Decision relating to the
14 OHV route network. *Id.* at 6-7; and

15 c. Ordered BLM to immediately begin implementing certain specific
16 mitigation measures in the WEMO Plan amendment, including signing, mapping, and
17 enforcing “open” and “closed” routes, as well as gathering new data about impacts to
18 certain sensitive resource areas. *Id.* at 13-15.

19 95. The Remedy Order required BLM to provide the Court and the parties with
20 quarterly reports regarding its progress in implementing the mitigation measures specified by the
21 Court. *Id.* at 15. BLM submitted its final quarterly report in September 2019.

22 **D. The Deficient Supplemental NEPA and ESA Processes for the West Mojave Route**
23 **Network Project**

24 96. Before preparing its supplemental NEPA analysis as required by the Remedy
25 Order, BLM conducted another inventory of the OHV routes within the WEMO Planning Area.
26 This latest inventory, carried out between 2012 and 2013, identified 15,000 miles of routes, rather
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1 than the 8,000 miles of previously known routes—that is, 7,000 new miles of OHV routes.² This
2 finding suggests that either the 2001-2002 inventory failed to accurately assess the miles of routes
3 or that illegal route proliferation in the intervening eleven to twelve years had almost doubled the
4 number of miles of routes. FSEIS at 1-3. Additionally, many of the routes identified prior to the
5 2012-2013 effort were not actually located where BLM’s prior mapping had indicated. *Id.* at 1-4.
6 BLM now contends that most of these 7,000 miles of additional routes were already in existence
7 when the 2001-2002 inventory was carried out but were not recorded at that time or during other
8 earlier inventories due to mapping errors, inadequate survey coverage, or inaccurate route-specific
9 inventorying decisions. *Id.* BLM’s ability to accurately inventory routes on the landscape is
10 compromised and opaque.

11 97. In March 2015, BLM issued a Draft Supplemental EIS (“DSEIS”) and Proposed
12 Land Use Plan Amendment for what it called the West Mojave Route Network Project (“WEMO
13 Route Network Project”). A second DSEIS was published in 2018. BLM issued the Final
14 Supplemental EIS (“FSEIS”) in April 2019.

15 98. These NEPA documents incorporated the new 2012-2013 inventory and purported
16 to cure all the procedural and substantive defects this Court had identified in its 2009 and 2011
17 orders and new CDCA plan amendments adopted in 2016 in the Desert Renewable Energy
18 Conservation Plan. BLM again proposed to significantly expand the route network within the
19 WEMO Planning Area. Under the No Action Alternative in the 2019 FSEIS, the pre-1980 route
20 cap would remain in place, and the route network implemented would be a “modified,” expanded
21 version of the 5,098-mile 2006 route network. Under each of the four action alternatives, the Plan
22 would be amended to remove the pre-1980 cap and would not contain a replacement cap on
23 routes; instead, the amendment would add language indicating that OHV use will be “restricted to

24 ² The FSEIS contains multiple different assessments of how many miles of routes had been
25 inventoried at the time of the 2006 WEMO Project. At one point the FSEIS indicates that “an
26 additional approximately 8,000 miles of routes” were recorded as part of the 2012-2013 inventory.
27 FSEIS at 2-28. At another point, it states that the 2012-2013 inventory was “approximately 7,235
28 miles more” than the known inventory in 2006. FSEIS at 2-9. The second claim appears to be
accurate, meaning approximately 8,000 miles of routes were inventoried at the time of the 2006
WEMO Project.

1 designated routes of travel.” FSEIS 2-5; 2-54 (Table 2.3-1). One of these action alternatives
2 (Alternative 2) allegedly incorporated a route network smaller than the “no action” scenario.

3 99. On October 3, 2019, BLM issued both a Protest Resolution Report for the FSEIS
4 and a Record of Decision approving the WEMO Route Network Project (“2019 Record of
5 Decision”). The approved Project, a slightly modified version of Alternative 5 from the FSEIS,
6 designated approximately 5,997 miles of “open” and “limited” OHV routes—a route network
7 almost 1,000 miles longer than the one BLM tried to adopt in 2006. The approved Project also
8 eliminated the 1980 route cap and did not replace it with an alternative route cap. Additionally,
9 the Project eliminated a permit requirement for OHV use in the Rand Mountains-Fremont Valley
10 Management Area a heavily used OHV area. And the Project opened Cuddeback and Coyote Dry
11 Lakes, both in critical habitat, to unrestricted vehicle use, and allows for competitive OHV events
12 through the Ord-Rodman CHU, which had been prohibited prior to the 2019 Record of Decision.

13 100. BLM initiated ESA consultation with FWS regarding the WEMO Route Network
14 Project in April 2019, and FWS issued its Biological Opinion for the Project in September 2019.
15 (FWS, Biological Opinion for the West Mojave Route Network Project, San Bernardino, Inyo,
16 Kern, Riverside, and Los Angeles Counties, California (6840 (P) LLCAD00000) (Sept. 30,
17 2019).) The 2019 Biological Opinion concluded that the Project would not jeopardize any listed
18 plant or animal species or destroy or adversely modify their critical habitat. The Biological
19 Opinion did not identify any reasonable and prudent measures or terms and conditions by which
20 the Project’s impacts to desert tortoise or other listed species would be minimized. BLM relied on
21 this Biological Opinion in its 2019 Record of Decision.

22 101. On March 24, 2021, Plaintiffs filed a Notice of Intent to sue FWS regarding its
23 consultation and Biological Opinion for the WEMO Route Network Project.

24 **1. FLPMA Violations**

25 102. Notwithstanding the pre-1980 OHV route cap instituted in 1982, in the ensuing
26 years, BLM continued to enact route networks that designated for OHV use new, post-1980
27 routes. In its 2009 Order, the Court found that designating new OHV routes not in existence in
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1 1980 violated the CDCA Plan by contravening the limitation imposed in 1982. The Court
2 explained that BLM was free to amend the Plan to remove the pre-1980 cap, “so long as those
3 amendments satisfy NEPA, FLPMA, and all other applicable statutes and regulations,” and that
4 “presumably any such amendment would require a reasoned explanation based on information and
5 data in the record why post-1980 routes should be designated.” *CBD v. BLM*, 746 F. Supp. 2d at
6 1086.

7 103. Under the No Action Alternative in the 2019 FSEIS, the pre-1980 route cap would
8 remain in place; under each of the four action alternatives, the Plan would be amended to remove
9 the pre-1980 cap and would not contain a replacement cap on routes. FSEIS 2-5; 2-54 (Table 2.3-
10 1). With regard to how BLM will identify, evaluate, or limit new routes given the removal of the
11 cap, the FSEIS states that “routes that are discovered or developed after adoption of this
12 amendment will be evaluated for addition, exclusion, limitation, development, or reclamation,
13 based on the parameters of the adopted LUP amendment and travel management plan,” and points
14 out that routes considered for inclusion in the route network in the future must be consistent with
15 applicable regulations, policies, and laws. FSEIS 2-10. The number of new routes that BLM
16 could designate given the removal of the route cap is, therefore, potentially limitless.

17 104. BLM did not consider any action alternative that did not remove the pre-1980 cap.
18 BLM also did not explain how removing the cap, and allowing potentially limitless route
19 proliferation, serves BLM’s legal obligations to prevent unnecessary or undue degradation of the
20 lands; protect the scenic, scientific, and environmental values of the CDCA against undue
21 impairment; avoid adverse resource impacts to the degree possible; and maintain environmental
22 quality.

23 105. BLM, gesturing at FLPMA’s inventory requirements with regard to the desert
24 tortoise, relied primarily on a 2008 FWS report on the status of the species. The report indicated
25 that studies suggested “‘appreciable declines’ at the local level in many areas and that the
26 identified downward trend of the species in the western portion of the range at the time of the
27 federal listing as threatened in 1990 was valid and is ongoing.” FSEIS 3-60 (citing FWS 2008).

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1 The FSEIS includes just a single reference to a 2014 FWS status report, noting that West Mojave
2 Recovery Unit population of desert tortoise “shows a downward trend.” FSEIS 3-60; FWS 2014.

3 106. In 2018, *Herpetological Conservation and Biology* issued an updated status report
4 on the desert tortoise (Allison & McLuckie 2018) affirming that this downward trend was ongoing
5 and indicating that the trajectory of the species was trending towards extinction. Linda Allison,
6 the article’s co-author, is the desert tortoise monitoring coordinator for FWS at the Desert Tortoise
7 Recovery Office. BLM did not account for this 2018 study in its analysis in the FSEIS. BLM
8 contended that the information contained in the report would not have meaningfully changed the
9 analysis of effects to the tortoise in the SEIS. Protest Resolution Report at 15.

10 107. BLM also updated its inventory of the routes in existence in the Planning Area
11 outside of OHV Open Areas. The updated inventory used data from BLM’s 2012 and 2013 route
12 inventory efforts. This process consisted of “tracing features from United States Department of
13 Agriculture’s (USDA) one meter resolution National Agriculture Imagery Program (NAIP) aerial
14 photography into the Ground Transportation Linear Features (GTLF) geospatial database.” FSEIS
15 2-8. BLM then made designation determinations for each of the linear features identified in the
16 inventory. BLM determined whether and how to designate certain linear disturbances as
17 *transportation* linear disturbances based on aerial photography of the area. FSEIS 2-9.
18 Designation as a transportation linear disturbance signifies that the disturbance is “an unauthorized
19 route for which the authorization has expired, or route that is no longer needed,” BLM Manual
20 1626 Sect. 4.3—that is, BLM treats transportation linear disturbance as a closed vehicle route.

21 108. After designating a number of newly identified features as transportation linear
22 disturbances, BLM then added routes identified through this updated inventory process to the
23 route map from the then-existing WEMO Plan network, as corrected, to produce the final route
24 inventory relied upon in the 2019 FSEIS. FSEIS 2-9. The updated route inventory thus
25 incorporates “features that existed in 1980 or were developed after 1980 through BLM
26 authorization” as well as “features which resulted from unauthorized routes.” FSEIS 2-9. This
27 process led BLM to identify approximately 8,000 miles of routes that BLM had not identified in
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1 the previous 2001 route inventory, bringing the total route network for the 2019 FSEIS to 15,235
2 miles. FSEIS 1-3.

3 109. Relying on the 2012-2013 inventory led BLM to be over-inclusive in identifying
4 existing transportation routes. BLM designated as transportation linear disturbances—i.e., as “an
5 unauthorized route, route for which the authorization has expired, or route that is no longer
6 needed,” BLM Manual 1626, Sect. 4.3—a number of washes, treating these natural features
7 instead as closed transportation routes. Washes are essential features of the landscape of the
8 CDCA, forming unique ecosystems upon which plants and wildlife rely. But because BLM did
9 not identify these features as natural resources when designating the route network, BLM did not
10 treat these washes as being subject to FLPMA’s inventory requirements. The FSEIS states that,
11 pursuant to FLPMA, BLM generally evaluated transportation routes with an eye towards
12 minimizing the impact of those routes on natural features; but because some washes were *not*
13 identified as natural features, BLM did not consider impacts to these washes when applying the
14 minimization criteria.

15 110. Washes are important habitat features for the Mojave desert tortoise, which relies
16 on washes for transportation, foraging, and constructing burrows. Adverse impacts to washes may
17 therefore also constitute adverse impacts to desert tortoise habitat. By designating washes as
18 transportation disturbances, BLM avoided assessing adverse impacts to key features of desert
19 tortoise habitat.

20 111. The FSEIS further does not contain a full, up-to-date inventory of certain resources,
21 including soils, sensitive plants, sensitive wildlife species (including Mojave fringe-toed lizards
22 and Lane Mountain milk-vetch), water resources, and other biological resources (including BLM
23 designated Unusual Plant Assemblages).

24 112. The Court’s 2009 Order outlined BLM’s failure to sufficiently consider
25 minimization criteria in designating individual routes in the network in the 2005 FEIS. *See CBD*
26 *v. BLM*, 746 F. Supp. 2d at 1060. In particular, the Court stated that simply pointing to the fact
27 that the minimization criteria are incorporated in the stated goals for a route designation process
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1 “is not tantamount to showing that the BLM actually applied the minimization criteria,” *id.* at
2 1078, and further found that there was “nothing in the record to show that the minimization
3 criteria were in fact applied when OHV routes were designated.” *Id.* at 1079.

4 113. In the 2019 FSEIS, BLM asserts that it applied the 43 C.F.R. § 8342.1
5 minimization criteria to every route within the 15,235 miles of routes designated in the Planning
6 Area, considered these criteria alongside the goals established under each action alternative,
7 FSEIS 2-11, and determined minimization measures based on identified minimization triggers.
8 FSEIS 2-52; Table 2.2-4, pp. 2-19 & 2-20. With regard to designation of routes, BLM policy
9 recognizes that “[i]t is essential that the decision[-]making process be thoroughly documented in
10 the administrative record.” BLM Policy Manual 1626, Sect. 4.3.

11 114. Appendix G to the FSEIS contains route tables for all routes within each of the
12 designated Travel Management Areas identified in the selected alternative, but contrary to the
13 stated BLM policy requiring thorough documentation of route designations, the tables provide
14 only perfunctory explanations of route status decisions. In justifying the route determinations—
15 designating tens of thousands of individual routes in total—BLM offered two different
16 explanations for its decisions. For routes that it designated as transportation linear disturbances,
17 BLM stated that “[i]mpacts to the aforementioned resources have been minimized by classification
18 of the segment as a Transportation Linear Disturbance, eliminating potential impacts created by
19 use of the segment.” *See* FSEIS Appendix G Route Tables TMA 1-9. For all other routes—those
20 designated as open to some degree of motorized vehicle use—BLM stated:

21 This segment has been determined to be appropriate for motorized use consistent
22 with FLPMA Section 302a, Section 501 and Section 601 (4), after review of
23 relevant factors. Impacts to the aforementioned resources have been minimized by
24 implementation of the components of the associated travel management plan,
imposing restrictions on the stopping, parking and camping distance, limiting the
extent of potential disturbance created by use of the segment.

25 *See* FSEIS Appendix G Route Tables TMA 1-9. This justification is reproduced verbatim for each
26 of the routes designated open or limited, citing several broadly applicable provisions of FLPMA
27 rather than providing any route-specific reasoning.

1 115. Tables TMA 1-9 also identify for each route which combination of the four
2 minimization criteria specified in 43 C.F.R. § 8342.1 is implicated, listing only the letter
3 signifying the sub-section of the regulation ((a), (b), (c), and/or (d)). Beyond that, the individual
4 route designations do not explain how the minimization criteria were implicated, how they were
5 considered, or why the route should be designated a transportation linear disturbance or open to
6 some degree of motorized vehicle use.

7 116. The BLM did not adequately address the minimization criteria for any of the
8 natural areas, including ACECs and CD NCL designated in the West Mojave Plan area, as
9 required in the regulations. Specifically, BLM did not provide evidence to support a
10 determination for each ACEC and CD NCL that “off-road vehicle use in such locations will not
11 adversely affect their natural, esthetic, scenic, or other values for which such areas are
12 established.” 43 C.F.R. § 8342.1(d). The Center submitted comments on the DSEIS in 2018 that
13 raised this issue, but BLM did not address it.

14 117. The Center’s comments on the DSEIS in 2018 included a thorough analysis of the
15 routes in the Mojave fringe-toed lizard Area of Critical Environmental Concern (ACEC) based on
16 the Designation Minimization Criteria of 43 C.F.R. § 8342.1 to demonstrate as a case study
17 applying those criteria. This review provided detailed justifications for suggested route closures,
18 identifying the location of each individual route relative to specified natural features and private
19 lands and indicating the reason for the suggested closure with regard to the ACEC designated for
20 lizard, which is a BLM Sensitive Species. The Center therefore conducted, for certain routes,
21 precisely the level of detailed analysis that BLM itself was required to conduct for *all* routes
22 pursuant to FLPMA and the minimization criteria. (The Center lacked adequate resources to
23 conduct this analysis—BLM’s analysis—for other areas and other species.) Indeed, because BLM
24 was already required to conduct an inventory of resources in the CDCA and rely on this inventory
25 in making planning determinations, BLM should have been uniquely well positioned to carry out
26 this level of analysis with regard to route determinations in designated ACECs and CD NCLs
27 throughout the West Mojave Plan area.

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1 118. Based on the FSEIS, it appears that BLM adhered to many of the Center’s
2 suggestions, ultimately designating as closed the majority of routes the Center identified as posing
3 threats to the lizard. But the FSEIS does not indicate that BLM considered this level of detail in
4 making route designations *beyond* those routes in Mojave fringe-toed lizard ACECs for which
5 BLM appears to have relied on the Center’s analysis. Rather, BLM simply describes general
6 mitigation measures taken under each alternative with regard to newly identified routes, newly
7 developed routes, and previously closed routes, FSEIS 2-12 (Table 2.2-1), in addition to
8 describing the relevant features of each Travel Management Area. FSEIS Appendix D at D-52 to
9 D-86. As noted above, BLM alternately uses two generic explanations for route status
10 determinations rather than including the detailed, route-specific reasoning required under FLPMA
11 and the minimization criteria.

12 119. BLM also made changes to network and route determinations in the Rand
13 Mountains-Fremont Valley Area. Under the 2006 WEMO Plan, vehicle users were required to
14 obtain a permit, after completing a user education orientation program, in order to access the Rand
15 Mountains-Fremont Valley Area. FSEIS 2-6; 2005 FEIS. This permit system was part of a
16 strategy “adopted as a trial measure to assess its effectiveness to minimize resource impacts in the
17 area.” FSEIS 2-6. FWS, in assessing the impacts of the 2006 WEMO Plan on the desert tortoise,
18 found that education programs for visitors to the WEMO Planning Area would “promote recovery
19 of the species” and that “[a] permitting and education program for use of vehicles in the Rand
20 Mountains may be particularly beneficial, given the difficulty that the Bureau has had in enforcing
21 compliance with the route network in this area.” *CBD v. BLM*, 746 F. Supp. 2d at 1101-02.

22 120. The 2019 FSEIS states that, in the ensuing years, “use of this strategy has come
23 under review.” FSEIS 2-6. The Proposed Action Alternative amends the Plan to remove the
24 permitting requirement for motor vehicle access in the area and replace it with “an intensively
25 managed route network with an OHV Limited use designation.” FSEIS 2-7. BLM acknowledged
26 that there may be impacts to resources if OHV use were to continue by permit, and also that there
27 may be impacts to resources if the permitting requirement were removed. FSEIS 4-66. The FSEIS
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1 does not explain how adopting this amendment under the Proposed Action Alternative would
2 serve minimization criteria, the undue impairment standard, or the unnecessary and undue
3 degradation standard as well as or better than the No Action Alternative preserving the permit
4 system.

5 121. The Proposed Action Alternative also designates as open two routes—R-5 and R-
6 50—which are located in the Rand Mountain Management Area and which were previously closed
7 at the time of issuance of the Court’s 2011 Remedy Order. 2011 Order at 11-12. On October 28,
8 2008, BLM issued a decision rescinding the closed status of these two routes and issuing an
9 Environmental Assessment and Finding of No Significant Impact for this decision. *Id.* The
10 Interior Board of Land Appeals ultimately set aside this action, leaving the two routes closed.

11 122. In the 2019 WMRNP process, BLM again saw fit to designate as open R-5 and R-
12 50—while simultaneously eliminating the permitting requirement for the Rand Mountain Area—
13 rendering the two routes *more* accessible to OHV use than the challenged 2008 determination
14 would have. *See* Appendix G TMA 7 Route Table at 11, 415, 432-34. The FSEIS does not
15 explain how this determination best serves the minimization criteria, the undue degradation
16 standard, or the unnecessary and undue impairment or maintenance of environmental quality
17 standards. The FSEIS also does not explain how adverse resource impacts initially leading the
18 routes to be designated as closed have been eliminated or how BLM will prevent the recurrence of
19 such adverse impacts.

20 123. The 2019 FSEIS fails to account for or remedy BLM’s failure to adequately
21 enforce OHV rules, particularly in light of the Remedy Order’s specific instruction to enforce
22 them. The FSEIS provides no data that BLM has engaged or will engage in adequate
23 enforcement. Indeed, BLM’s enforcement expenditures and OHV grant requests to the California
24 Department of Parks and Recreation indicate that BLM lacks adequate funding to enforce its OHV
25 rules.

26 124. FLPMA also requires BLM to assess a proposed Plan amendment’s impacts to air
27 quality. Pursuant to this requirement, BLM assessed air quality impacts in adopting the 2006
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1 WEMO Plan. As part of its analysis, as presented in the 2006 FEIS, BLM contended that
2 emissions of PM₁₀—particulate matter with particles having a diameter of ten micrometers or
3 less—would be reduced. However, in its 2009 Order, the Court found that although BLM
4 analyzed air quality impacts due to changes in the designation of *routes* as open to OHV use,
5 BLM failed to assess the impacts of vehicle emissions in open *areas*. *CBD v. BLM*, 746 F. Supp.
6 2d at 1098. The Court stated that “the discussion of impacts on air quality is incomplete without
7 consideration of emissions in open areas.” *Id.* The insufficient consideration of air quality
8 impacts in the 2005 FEIS violated NEPA.

9 125. With this background in mind, in the 2019 FSEIS, BLM acknowledged the need to
10 assess impacts from emissions in open areas. FSEIS 4-8.

11 126. The Clean Air Act requires federal agencies to assess whether their activities
12 conform to the relevant state’s plans for implementing National Ambient Air Quality Standards,
13 an assessment known as a Conformity Determination. In conducting a conformity analysis for the
14 present action, BLM utilized an Air Quality Analysis Report prepared by Aspen Environmental
15 and produced in Appendix E to the FSEIS. The Report includes assessments of total emissions
16 impacts under each considered alternative, impacts to specific types of emissions—like PM₁₀—
17 and some conclusions regarding conformity with state implementation plans. *See* Air Quality
18 Analysis Report, Appendix E at 195. BLM relied on the Report in making a conformity
19 determination and analysis of impacts to air quality.

20 127. The Report assesses open areas only to the extent that it incorporates these areas
21 into the 2017 baseline used as the comparison point for alternatives. *Id.* at 199. Beyond that, the
22 Report does not meaningfully consider open areas in assessing compliance with State
23 Implementation Plans as required by the Clean Air Act, focusing instead and once again on the
24 route network.

25 128. The Report assumes there will be no increase in route usage in the period under
26 review (2017-2035) but fails to provide support for that significant assumption, especially in the
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1 face of substantial evidence showing continued growth in OHV use. The Report simply states that
2 “any growth of use in the route network is not considered reasonably foreseeable.” *Id.* at 226-27.

3 129. The Report concludes that Alternative 5 has “an assumed emissions increase that
4 exceeds one or more of the PM₁₀ nonattainment/maintenance area General Conformity emissions
5 applicability thresholds.” *Id.* at 227. BLM noted in its assessment of the impact that each
6 alternative will have on nonattainment that “Alternative 3 will have the greatest negative impact
7 on nonattainment for the PM₁₀ [California Ambient Air Quality Standards] and Alternative 2 will
8 have the least negative impact.” FSEIS 4-24. BLM did not meaningfully contend with the
9 Report’s conclusion that Alternative 5, like Alternative 3, will have an emissions increase
10 exceeding several General Conformity emissions applicability thresholds.

11 130. The Report also includes emissions estimates for PM_{2.5}—particulate matter with a
12 diameter less than 2.5 micrometers—finding that Alternative 5 will have an emissions increase
13 compared to the baseline. *Id.* at 229. The Report does not use this determination to inform the
14 conformity analysis and indeed does not indicate whether the emissions changes under each
15 alternative exceed applicability thresholds. *Id.* The FSEIS declines to address or meaningfully
16 consider the significance of this finding, stating that “avoidance and mitigation methods will
17 reduce adverse impacts on nonattainment of the PM_{2.5} CAAQS.” FSEIS 4-24.

18 2. NEPA Violations

19 131. Like the 2005 FEIS, the 2019 FSEIS analyzes only a limited range of alternatives.

20 132. The 1980 CDCA Plan addressed route inventory as part of the overall designation
21 process by stating, “In Multiple-Use Class I areas not open to vehicle play, Class M and L areas,
22 and proposed Class C areas, the existing route network will be recorded on 7 1/2 or 15 minute
23 USGS maps. The inventory will make use of aerial photos, State and Federal agency maps, and
24 other sources. As many routes will be identified a practical. These maps will then be used to
25 monitor vehicle use impacts and to produce maps for public use.” BLM obtained complete aerial
26 photographic coverage of the CDCA in about 1977-1979 for the purpose of performing the route
27 inventory.

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1 133. Every action alternative in the 2019 FSEIS proposes eliminating the CDCA Plan’s
2 1980 route cap provision. None of the action alternatives proposes adopting a substitute means of
3 limiting the maximum number of routes within the WEMO Planning Area. Neither the 2019
4 FSEIS nor the Record of Decision provides the text of the CDCA Plan amendment that would be
5 substituted for the eliminated route cap provision language under each of the action alternatives.

6 134. BLM includes one alternative in the FSEIS—Alternative 2—that has an initial
7 route network with a lower total mileage than that of the No Action Alternative. Like the other
8 action alternatives, Alternative 2 proposes eliminating the CDCA Plan’s 1980 route cap, while the
9 No Action Alternative does not.

10 135. BLM concedes in the FSEIS that removing the route cap will allow BLM to
11 designate *additional* post-1980 routes in the future, beyond those designated in the FSEIS and
12 Record of Decision. *See* FSEIS at 4-12. The WEMO Route Network Project therefore removes
13 the existing limit on the number and length of OHV routes that BLM can designate in the WEMO
14 Planning Area but does not replace it with an alternative upper limit.

15 136. BLM does not explain in the FSEIS or Record of Decision why it is necessary to
16 eliminate any upper limit on routes within the WEMO Planning Area instead of adopting some
17 alternative limit that does not rely upon the year in which routes were created.

18 137. The FSEIS also does not provide consistent information about how BLM proposes
19 to designate new routes or how many new routes BLM expects to designate once the 1980 route
20 cap is eliminated. In places the FSEIS suggests that new routes would be assessed under their
21 own specific NEPA and FLPMA processes, *see id.*; *id.* at 2-10; in others that “no new routes will
22 be established” at all, *see id.* at 4-57; and in still others that any future changes relative to the
23 current route network would be “minimal.” *See id.* at 4-40.

24 138. BLM describes the No Action Alternative in the FSEIS as a “modified” version of
25 the “network adopted in the 2006 WEMO Plan.” FSEIS at 2-27. In fact, the 2019 No Action
26 Alternative’s route network (5,677 miles) is much *larger* than the route network approved in the
27 2006 Record of Decision (5,098 miles). BLM alleges that this discrepancy is the result of
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1 “adjust[ments] by certain decisions of the court” and the inclusion of “valid existing rights . . . and
2 street-legal only routes.” *Id.* at 1-5.

3 139. Compared to the route network adopted in the 2006 Record of Decision, this
4 Court’s 2009 Order substantially limited the number and total mileage of routes that BLM could
5 legally designate without first eliminating the CDCA Plan’s 1980 route cap.

6 140. The FSEIS provides no route-specific details about the hundreds to thousands of
7 miles of additional “valid existing rights” and “street-legal only routes” that make up the
8 difference between the mileage of the 2019 FSEIS No Action Alternative’s route network and the
9 mileage of the 2006 Record of Decision route network as modified downward by the 2009 Order.

10 141. Additionally, the No Action Alternative does not appear to remain consistent across
11 different areas of analysis in the FSEIS. For example, the air quality analysis uses the year 2017
12 as its no-action baseline for pollutant emissions, rather than the 2006 year on which BLM
13 otherwise based the route network.

14 142. The FSEIS also claims that OHV use was allowed in “all washes” under the 2005
15 FEIS and 2006 Record of Decision, and therefore would also be allowed under the 2019 No
16 Action Alternative. *Id.* at 4-51. The 2005 FEIS did not permit OHV use in “all washes”; it stated
17 that washes that BLM had not designated as open “would not be available for vehicle use.” *Id.* at
18 4-27.

19 143. The resource-specific information and analysis that BLM provides in the FSEIS is
20 also inadequate or incomplete. Among other issues, the FSEIS designates all washes within the
21 WEMO Planning Area as “transportation linear disturbances”—the same designation given to
22 closed OHV routes—despite washes being natural features that provide critical habitat for
23 sensitive species. *See* FSEIS at 1-11.

24 144. The FSEIS fails to identify route-specific impacts to springs, seeps, and riparian
25 areas; fails to adequately assess how livestock grazing will affect these features; and appears not to
26 have considered impacts to some of those features at all. *See id.* at 4-46 through 4-57.

1 145. The FSEIS does not address how the proposed OHV route network would affect
2 cryptobiotic soil crusts, desert pavements, or other stable soil resources.

3 146. The FSEIS's air quality analysis appears to subsume all emissions from OHV use
4 in "open" areas into the air quality analysis *baseline*, and does not include them in the analysis of
5 the effects of the various action alternatives, including the cumulative effects analysis. This
6 approach precludes evaluating how open-area emissions that result from the project alternatives
7 would affect the existing environment. *See* FSEIS Appendix E-2.

8 147. The FSEIS also provides a general overview of which minimization criteria BLM
9 purportedly considered in designating routes, but it does not explain how BLM actually applied
10 the minimization criteria on a route-by-route basis to determine whether a given route should be
11 designated as "open," "limited," or "closed." *See* FSEIS at 2-19 through 2-20.

12 148. The general public and expert agencies filed thousands of comments during the
13 scoping and public comment periods for the 2015 DSEIS, 2018 DSEIS, and 2019 FSEIS. Several
14 public comments called BLM's attention to specific and reputable scientific studies that provided
15 more specific and/or updated information about hydrology, air quality, listed or special status
16 species, and other resource areas within the WEMO Planning Area than the information on which
17 BLM had relied in the DSEIS and FSEIS. BLM's responses to these comments either did not
18 directly address or entirely ignored these studies. *See* FSEIS Appendix I-59; *id.* at I-60 through I-
19 61; CBD 2019 Protest at 23.

20 149. Several public comments explained in detail the existence of reasonable
21 alternatives to eliminating any upper limit on routes within the WEMO Planning Area, including
22 the use of route density caps which are based on the same rationales that were used by BLM in the
23 DRECP to adopt disturbance caps to protect conservation values. *See, e.g.*, CBD 2019 Protest at
24 12-13; CBD 2018 Comment Letter at 39-40. BLM summarily rejected all comments proposing
25 feasible alternatives, stating only that "Comments opposed to the Plan Amendments generally did
26 not provide additional information regarding the analysis; therefore, no changes were made to the
27 [FSEIS]." FSEIS Appendix I-9; *see also* Protest Resolution Report at 22-23.

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1 150. In a June 2018 comment letter, Plaintiff Center for Biological Diversity alleged that
2 BLM had not applied the minimization criteria in FLPMA, Executive Orders, and/or BLM's
3 FLPMA regulations to the route designation process in the manner required by law. CBD 2018
4 Comment Letter at 34. The Center provided a narrowly tailored, region-specific example of how
5 the criteria *should be* used to minimize the routes' impacts to sensitive resources, re-designating as
6 "closed" certain route segments that the DSEIS had designated as "open" in order to avoid impacts
7 to known listed species habitat and other resources in the area. *Id.* at Appendix 1. The Center also
8 explained that this example was purely illustrative, and that it did not have the time or resources to
9 apply this labor-intensive methodology to all designated route segments within the WEMO
10 Planning Area. *Id.* at 34.

11 151. BLM directly integrated the Center's segment-specific recommendation within the
12 FSEIS. *See* CBD 2019 Protest at 24. But BLM did not make any further revisions to the route
13 network to reflect the Center's proposed methodology for applying the minimization criteria, and
14 BLM subsequently rejected virtually all other comments about the route network as insufficiently
15 detailed to warrant further response. *See id.*; FSEIS Appendix I-9.

16 **3. ESA Violations**

17 152. BLM has violated the ESA by failing to protect and conserve listed species and
18 their habitats in its management of lands within the CDCA pursuant to the Plan Amendments and
19 management actions adopted in the 2019 Record of Decision, in reliance on FWS's 2019
20 Biological Opinion and the accompanying Incidental Take Statement ("ITS").

21 153. The 2019 Record of Decision adopted the Route Network Project and seven plan
22 amendments including approval of continued livestock grazing within Desert Tortoise critical
23 habitat on allotments in the CDCA Plan for the WEMO planning area. As a result of BLM's
24 management of the CDCA, and of the 2019 Record of Decision in particular, the desert tortoise
25 and other threatened and endangered species are at risk of continued decline and loss of essential
26 and critical habitat on public lands within the CDCA. The reasons, and the effects of OHVs in
27 particular, are discussed above and reincorporated by reference here.

28

1 154. BLM prepared and submitted to FWS in 2015 a Biological Assessment (“2015
2 Biological Assessment”). It is unclear whether BLM prepared a subsequent Biological
3 Assessment, and whether FWS relied on the 2015 Biological Assessment in preparing the 2019
4 Biological Opinion.

5 155. In the event that FWS did rely on the 2015 Biological Assessment, that document is
6 flawed. Among other things, it:

7 a. Failed to adequately identify the action area by disregarding impacts on
8 adjacent non-BLM managed land.

9 b. Failed to discuss the status of the listed species or details from prior
10 consultations. The 2015 BA referenced only one section of the draft SEIS, and the
11 referenced section discusses only air quality;

12 c. Failed to discuss the major decline in the desert tortoise population, as well
13 as other best scientific and commercial data regarding direct and indirect impacts of ORV
14 use (see below);

15 d. Wrongly grouped analyses of critical habitat together with listed plant and
16 animal species despite the need to separately analyze impacts on critical habitat and listed
17 species;

18 e. Reached a determination of “No Effect” for the Arroyo Toad, California
19 Red-legged Frog, Mohave Tui Chub, Least Bell’s Vireo, Southwestern Willow Flycatcher,
20 Yellowbilled Cuckoo, and Inyo California Towhee and their critical habitat solely on the
21 basis that there was no overlap between the route network and these species’ ranges or
22 critical habitat (with the exception of 0.5 miles of overlap with the Least Bell’s Vireo’s
23 habitat.) This analysis failed to consider indirect impacts on these species and their
24 habitats from the route network, such as non-compliance with route closures, changes in
25 air quality, introduction of invasive species, or fire;

26 f. Incompletely assessed cumulative effects, especially disregarding the
27 impacts of climate change;

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1 g. Did not evaluate how BLM will monitor for compliance or take limits.
2 Instead, the 2015 Biological Assessment referenced Appendix G of the Draft SEIS
3 provided to FWS, which included only general assurances that BLM will monitor the area
4 to implement the Plan. The few specific features that the monitoring plan “may include,”
5 such as using aerial photography to check for use of closed routes every three years, are
6 inadequate;

7 h. Proposed to incorporate the ITS limit for the take of desert tortoise from the
8 amended 2007 Biological Opinion—19 tortoises taken annually including 8 as a result of
9 vehicle use without considering the accuracy of the earlier ITS limit. The Biological
10 Assessment rationalized using the same anticipated take estimate because the draft SEIS
11 concluded that any change in route extent would not increase the number of users. The
12 referenced Draft SEIS section, however, explained that this assumption was based only on
13 anecdotal observations and visitor use data. No information about visitor use data was
14 shared. The anticipated take estimate and its effect on the species also failed to account for
15 the documented decline in the desert tortoise population since 2007; and

16 i. The 2015 Biological Assessment (and the 2015 FEIS and Errata on which it
17 relied) did not rely on the best scientific and commercial data (including scientific studies,
18 survey data, and status reports) regarding the effects of habitat fragmentation, increased
19 spread of invasive plants, and fire due to roads and ORV use on desert tortoise and its
20 habitat.

21 156. The 2019 Biological Opinion, upon which BLM relied to issue the 2019 Record of
22 Decision, is equally flawed. The Biological Opinion provides authorization for incidental take of
23 Cushenbury milk-vetch (*Astragalus albens*), Cushenbury buckwheat (*Eriogonum ovalifolium var.*
24 *vineum*), Cushenbury oxytheca (*Acanthoscyphus parishii*, *Oxytheca pi var. goodmaniana*),
25 Parish’s daisy (*Erigeron parishii*), triple-ribbed milk-vetch (*Astragalus tricarinatus*), Lane
26 Mountain milk-vetch (*Astragalus jaegerianus*), and the Mojave desert tortoise (*Gopherus*
27 *agassizii*) without properly identifying and analyzing the impacts of the Plan Amendments,
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1 including livestock grazing, the OHV route network, and travel management plans, on the survival
2 and recovery of these listed species and the impacts to critical habitats affected by the activities
3 authorized in the 2019 Record of Decision, and without requiring appropriate monitoring to
4 determine the actual project effects on listed species (50 C.F.R. § 402.14(i)(3)).

5 157. Among other things, the 2019 Biological Opinion suffers from the following
6 defects:

7 a. Failure to provide an accurate and detailed discussion of the effects of the
8 action on listed species or critical habitat based on the best scientific and commercial data
9 available. For example, for the desert tortoise the data and information omitted includes,
10 but is not limited, to: FWS's failure to utilize its own decision support tool for assessing
11 impacts to the desert tortoise; ignoring published scientific studies regarding impacts
12 attributable to ORV use including spread of invasive plants and risk of fire (see below) and
13 regarding recovery within habitat closed to OHVs (Berry et al. 2014); and ignoring
14 increased Arsenic dust mobilization and other air quality impacts due to opening lakebeds
15 (PA-IV) and potential impacts to tortoises;

16 b. Failure to analyze impacts of grazing approved by the 2019 Record of
17 Decision in the Ord Rodman Critical Habitat Unit beyond incorporating the previous
18 biological opinion;

19 c. Failure to rely on the best scientific and commercial data available in
20 formulating its biological opinion (see below);

21 d. Failure to accurately assess whether the action, taken together with
22 cumulative effects (including climate change), is likely to jeopardize the continued
23 existence of listed species or result in the destruction or adverse modification of critical
24 habitat including the failure to undertake a tipping point analysis;

25 e. Failure to utilize the best available scientific and commercial data to assess
26 the current status and trend of the species in the face of climate change. For example, the
27 impacts of persistent drought, increased temperatures, and climate change to desert tortoise
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1 and its habitat and the changing baseline were not adequately addressed in the 2015
2 Biological Assessment, FEIS, or 2019 Biological Opinion;

3 f. Reliance on BLM’s route designations and enforcement of limitations that
4 BLM’s own monitoring show are ineffective throughout the WEMO area renders the 2019
5 Biological Opinion’s conclusions unsupported. For example, FWS concludes that that
6 allowing “limited” ORV use in areas occupied by listed species will not jeopardize the
7 species and that allowing “limited” ORV use in critical habitat will not destroy or
8 adversely modify critical habitat but BLM’s own monitoring shows significant and
9 widespread noncompliance with route closures and limitations across the WEMO both
10 within critical habitat and outside of critical habitat;

11 g. Issuance of incidental take authorization for the desert tortoise based on
12 inadequate review of impacts to the species survival and recovery;

13 h. Issuance of incidental take authorization for the desert tortoise without
14 including any reasonable and prudent measures needed to protect the tortoise from harm,
15 despite the fact that the need measures to minimize impacts to the species and its habitat is
16 clear. Such reasonable measures could have included, for example, speed limits, seasonal
17 closures, limits on number of ORV users in critical habitat, and systematic monitoring.
18 Indeed, FWS specifically acknowledges the need for conservation measures to minimize
19 impacts to the desert tortoise and its habitat throughout the Biological Opinion and that the
20 minimization measures in some of the alternatives in the FSEIS would be more protective
21 of desert tortoise than those in the adopted alternative;

22 i. Failure to address several riparian-obligate listed species that will be
23 affected by the CDCA Plan amendments and route designations including arroyo toad,
24 least Bell’s vireo, southwestern willow flycatcher, and yellow-billed cuckoo;

25 j. Failure to include adequate monitoring as required by 50 C.F.R.
26 §402.14(i)(3) and FWS policy (Consultation Handbook); and

1 k. Failure to rely on the most relevant and recent science and data. These data
2 are either publicly available in peer-reviewed journal articles or data sets from desert
3 tortoise researchers working at the U.S. Geological Survey, Biological Resources Division,
4 and would have been readily available to and known to FWS at the time that it was
5 preparing the 2019 Biological Opinion.

6 158. In FWS's 1994 designation of critical habitat for the Mojave desert tortoise, FWS
7 stated that "[t]he Service expects that proposed actions that are inconsistent with land management
8 recommendations for DWMAs in the Draft Recovery Plan [for the desert tortoise] would likely be
9 considered to adversely modify critical habitat." The land management recommendations between
10 the Draft and Final Recovery Plans were similar. Because the status of the MDT has *declined*
11 substantially since 1994, FWS's "expect[ation]" applies with greater force today, suggesting the
12 need for more, not less, stringent management recommendations for the tortoise's critical habitat.
13 The 2019 Biological Opinion and ITS do not reflect such recommendations.

14 159. FWS's 2011 Recovery Plan for the Mojave desert tortoise identifies five "recovery
15 units." Preserving viable populations of desert tortoises within each recovery unit is essential to
16 the long-term recovery, viability, and genetic diversity of the species (USFWS 1994), and each of
17 the five recovery units is "individually necessary to conserve the genetic, behavioral,
18 morphological, and ecological diversity necessary for long-term sustainability of the entire listed
19 population" (USFWS 2011). In other words, if the Mojave desert tortoise in the West Mojave
20 Recovery Unit is jeopardized, the entire listed entity is jeopardized. The 2019 Biological Opinion
21 overlooks this critical fact.

22 160. The 2019 Biological Opinion and ITS completely fail to address at least four listed
23 species (endangered arroyo toad (*Anaxyrus californicus*) and designated critical habitat,
24 endangered least Bell's vireo (*Vireo bellii pusillus*), endangered southwestern willow flycatcher
25 (*Empidonax traillii extimus*) and designated critical habitat, threatened Inyo California towhee
26 (*Pipilo crissalis eremophilus*) and designated critical habitat, and the threatened yellow-billed
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1 cuckoo (*Coccyzus americanus*) found in the West Mojave area of the CDCA that may be affected
2 by the Plan Amendments and activities authorized by BLM in the 2019 Record of Decision.

3 161. The 2019 Biological Opinion completely ignores impacts to listed species and
4 critical habitats outside of the West Mojave area that may be affected by Plan Amendment–I
5 (“PA-I”) which is a CDCA-wide plan amendment that eliminates the limit on routes that has been
6 part of the CDCA Plan since its inception.

7 162. The environmental organizations, their members, and staff, actively participated in
8 the administrative processes for the BLM plan amendments and the route network project
9 including, but not limited to, attending public meetings, providing written comments on scoping
10 documents, providing written comments on draft plan documents and environmental documents,
11 and filing protests regarding final plan documents and environmental documents. The
12 environmental organizations, their members, and staff, have exhausted all available administrative
13 remedies provided by BLM, nonetheless, violations of the ESA continue.

14 **VIII. CLAIMS FOR RELIEF**

15 163. For each of the Claims in this Complaint, Plaintiffs incorporate by reference each
16 and every allegation set forth in this Complaint as if set out in full below.

17 **First Claim for Relief**

18 **(Against BLM for violating FLPMA, its implementing regulations, 19 and relevant Executive Orders)**

20 164. For each of the reasons set forth below, BLM has violated FLPMA and its
21 implementing regulations by issuing a Record of Decision for the WEMO Route Network Project
22 and by approving a FSEIS for the WEMO Route Network Project that fail to meet the
23 requirements of FLPMA. 43 U.S.C. §§ 1701-1785; 43 C.F.R. §§ 8200.0-1 through 8365.2-5. The
24 FSEIS and Record of Decision for the WEMO Route Network Project—dated April 2019 and
25 October 2019, respectively—are arbitrary, capricious, and otherwise not in accordance with the
26 law in violation of 5 U.S.C. § 706.

1 165. FLPMA requires BLM to “take any action necessary to prevent unnecessary and
2 undue degradation of the lands.” 43 U.S.C. §1732(b). FLPMA further requires BLM to prevent
3 “undue impairment” of the “scenic, scientific, and environmental values of the public lands” of the
4 CDCA in particular, 43 U.S.C. § 1781(f), and to maintain environmental quality in managing
5 CDCA lands, 43 U.S.C. § 1781(b). The CDCA Plan itself requires BLM to “avoid adverse
6 impacts” to resources “to the degree possible.” CDCA Plan at 75. BLM has failed to consider or
7 evaluate an action alternative that does not permit unlimited OHV route expansion, allowing for
8 the possibility of unconstrained proliferation of OHV routes. Due to the well-documented harmful
9 effects of OHVs on resources, habitat, and species in the CDCA—effects that BLM
10 acknowledges—allowing substantial expansion of the route network will not just fail to prevent
11 degradation and maintain environmental quality of the lands but indeed may *hasten* such
12 degradation. Accelerating the degradation of the public lands of the CDCA when BLM was in
13 fact legally required to do the opposite violates FLPMA.

14 166. FLPMA’s implementing regulations and related executive orders require BLM to
15 meaningfully assess resource impacts of each route in the network and rigorously apply
16 “minimization criteria” when designating routes as open, limited, or closed to OHV use. 43
17 C.F.R. § 8342.1(a)-(d); 42 U.S.C. § 4321 note. The FSEIS failed to include a detailed, route-by-
18 route analysis that adequately applied these minimization criteria to each and every route in the
19 network. BLM relied on generic statements and general mitigation measures in describing route
20 designation determinations—indeed, the only portion of the route network for which BLM *does*
21 appear to adequately apply minimization criteria is the small fraction of routes in the network that
22 the Center evaluated in its 2018 Comment Letter. By failing to fully assess resource impacts and
23 apply minimization criteria in designating the routes in the network, BLM contravened FLPMA’s
24 implementing regulations and relevant executive orders.

25 167. Recognizing the inherent value of resources like the CDCA’s “rare and endangered
26 species of wildlife, plants, and fishes, and numerous archeological and historic sites,” 43 U.S.C. §
27 1781(a)(3), FLPMA and relevant regulations require BLM to collect and maintain a current
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1 inventory of resources in public lands, compiling or assembling relevant new data to complete that
2 effort, 43 U.S.C. § 1711(a); 43 C.F.R. § 1610.4-3. With regard to the WEMO Planning Area,
3 BLM has failed to do so. In the 2019 FSEIS, BLM has relied on outdated data on the desert
4 tortoise and otherwise failed to take full inventory of water resources, soils, sensitive wildlife and
5 plant species, and other biological resources. By failing to provide for a resource inventory that is
6 both complete and current before approving the WEMO Plan amendment, BLM violated its
7 inventory obligations under FLPMA and failed to adhere to the regulatory requirements specifying
8 that current inventory data and information must be used to inform the planning process and assist
9 in formulating subsequent monitoring requirements. 43 C.F.R. § 1610.4-3; 43 U.S.C. §
10 1712(c)(4); CDCA Plan at 5-6.

11 168. In addition to being incomplete and outdated, the FSEIS’s resource inventory is
12 also inaccurate: The FSEIS designates certain natural features, such as washes, instead as
13 transportation-related disturbances. By failing to fully and accurately account for the washes in
14 the WEMO Planning Area as part of its natural features inventory, BLM has violated FLPMA’s
15 inventory provisions. 43 U.S.C. §§ 1701(a)(2), 1711(a). And because BLM did not maintain a
16 complete and accurate inventory of natural features, it could not have adequately applied
17 minimization criteria in designating routes—indeed, BLM could not determine how best to
18 minimize impacts to natural features if it never identified those natural features as such. BLM
19 therefore also violated the minimization criteria with regard to washes. Executive Order 11644;
20 Executive Order 11989; 43 C.F.R. § 8342.1. By failing to prevent avoidable harms to these
21 natural features, BLM has also violated FLPMA’s “unnecessary or undue degradation” standard,
22 43 U.S.C. § 1732(b); FLPMA’s requirement that public lands be managed for “multiple use and
23 sustained yield,” 43 U.S.C. § 1732(a); and the CDCA Plan’s more stringent “undue impairment”
24 and environmental-quality maintenance standards, 43 U.S.C. § 1781(f) and § 1781(b).

25 169. Pursuant to the Clean Air Act, 42 U.S.C. § 7506(c)(1), the FSEIS includes a section
26 titled “Conformity Determination.” However, the Report BLM relied upon in assessing
27 conformity is inadequate. The Report fails to consider emissions from open areas despite BLM’s
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1 recognition that the 2009 Order required it to do so. 746 F. Supp. 2d at 1098. Further, the Report
2 relies on unsupported assumptions—like the assumption that there will be no increase in use of the
3 route network—and neglects to meaningfully consider data indicating that the selected plan
4 alternative will have a greater adverse impact on emissions than either the baseline or other action
5 alternatives. BLM centers its Conformity Determination entirely on this flawed Report. Because
6 FLPMA requires BLM to comply with applicable pollution control laws and therefore requires it
7 to make a complete and accurate Conformity Determination, 43 U.S.C. § 1712(c), the FSEIS’s
8 failure to include an adequate Conformity Determination violates FLPMA.

9 170. In amending the Plan, BLM eliminated the permitting requirement for OHV use in
10 the Rand Mountains-Fremont Valley Area and designated as open to OHV use two previously
11 closed routes in the area—R5 and R50. BLM violated FLPMA and applicable regulations by
12 adopting this amendment without demonstrating that doing so would minimize impacts of OHV
13 use—and in spite of the fact that doing so may in fact hasten degradation due to OHV use. 43
14 C.F.R. § 8342.1(a)-(d). In making this change BLM also failed to prevent “unnecessary and
15 undue degradation” of the lands, 43 U.S.C. § 1732(b), and advance FLPMA’s CDCA-specific
16 “undue impairment” requirements, 43 U.S.C. § 1781(f). BLM also violated its own regulations
17 requiring that, when lands have been closed because “off-road vehicles are causing or will cause
18 considerable adverse effects upon soil, vegetation, wildlife, wildlife habitat, cultural resources,
19 historical resources, threatened or endangered species, wilderness suitability, other authorized
20 uses, or other resources,” those lands shall not be reopened to those vehicles “unless the
21 authorized officer determines that the adverse effects have been eliminated and measures
22 implemented to prevent recurrence.” 43 C.F.R. § 8341.2(a). BLM has failed to show that the
23 adverse effects that led the two routes to be designated as closed previously have been eliminated
24 or that measures have been implemented that are sufficient to prevent recurrence.

25 171. BLM fails to show that it will or can adequately enforce the FSEIS’s OHV rules,
26 which are necessary to prevent further undue impairment and maintain environmental quality.

1 175. The Record of Decision and FSEIS that BLM prepared for the WEMO Route
2 Network Project failed to comply with each of these requirements. BLM failed to analyze “all
3 reasonable alternatives” to the proposed action because BLM did not analyze a single action
4 alternative in its FSEIS that does not involve eliminating the 1980 route limitation, and thus did
5 not analyze any of the numerous feasible alternatives that would have imposed a meaningful limit
6 on the number or length of routes that can be designated in the WEMO Planning Area. 40 C.F.R.
7 § 1502.14(a); *see also* 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.1.

8 176. Because the FSEIS’s alleged most environmentally protective alternative
9 (Alternative 2) involves eliminating the CDCA Plan’s route-capping language but the No Action
10 Alternative does not, BLM has also violated NEPA and this Court’s 2011 Remedy Order by
11 failing to include a less environmentally impactful action alternative than the No Action
12 Alternative among its range of alternatives. Remedy Order at 4; *see also* 746 F. Supp. 2d at 1088-
13 89.

14 177. BLM’s use of a “modified” 2006 status quo as the “No Action Alternative” in its
15 2019 FSEIS violates NEPA, since this alternative is effectively the same management option that
16 this Court already held invalid in its 2009 Order. Among other things, the 2019 FSEIS’s No
17 Action Alternative designates as “open” or “limited” certain post-1980 routes without also
18 amending the CDCA Plan’s 1980 route-capping language *and* authorizes routes without adequate
19 reliance on the CDCA Plan’s minimization criteria, both of which this Court found impermissible.
20 *See id.* BLM’s failure to include a valid no-action alternative in its FSEIS expressly violates
21 NEPA. 40 C.F.R. § 1502.14.

22 178. The No Action Alternative violates NEPA because it is factually inaccurate. The
23 No Action Alternative incorporates BLM’s facially erroneous assertion that OHV use is currently
24 permitted in *all* washes, when in fact the 2005 FEIS and 2006 Record of Decision make clear that
25 OHV use is not allowed in any particular wash unless it has been explicitly opened to OHV use.
26 40 C.F.R. §§ 1502.14, 1502.24.

1 179. BLM has violated NEPA and this Court’s 2009 Order by failing to maintain a
2 *consistent* no action baseline throughout its FSEIS, in that the FSEIS shifts both the analytical year
3 and the exact route network of the No Action Alternative depending on the resource area being
4 analyzed. *See* 746 F. Supp. 2d at 1091. These methodological and factual errors render the 2019
5 No Action Alternative useless as an analytical baseline, necessarily causing the FSEIS and Record
6 of Decision to fail to comply with NEPA. 40 C.F.R. §§ 1502.14, 1502.16, 1502.24.

7 180. BLM violated NEPA, its implementing regulations, and the 2009 Order by failing
8 to adequately identify or analyze in its FSEIS both the process by which new routes can be
9 designated and opened for use, as well as the reasonably foreseeable adverse environmental
10 impacts that would result from BLM’s new authority to designate additional future routes beyond
11 those identified in the Record of Decision. 42 U.S.C. § 4332(C); 40 C.F.R. §§ 1502.1, 1508.7-
12 1508.8.

13 181. BLM continues to violate NEPA and the 2009 Order by failing to adequately
14 explain how—if at all—it used the minimization criteria required by FLPMA and the CDCA Plan
15 to develop the specific route network alternatives analyzed in the 2019 FSEIS. BLM has also
16 violated NEPA to the extent that it intends to defer this specific route-by-route analysis to later
17 NEPA processes. 42 U.S.C. § 4332(C); 40 C.F.R. §§ 1502.1, 1502.24.

18 182. BLM’s analysis of specific resource areas in its 2019 FSEIS and Record of
19 Decision—including, but not limited to, the analysis of listed species and their critical habitat, soil
20 and riparian resources, and air quality—was inadequate and/or incomplete, including its analysis
21 of indirect or cumulative impacts to these and other resource areas, in violation of 40 C.F.R.
22 §§ 1508.7-1508.8. BLM compounded these violations by erroneously designating certain entirely
23 natural features (e.g., washes) as transportation-related disturbances within its route inventory,
24 which precluded any accurate assessment of the impacts to these features. *Id.*; 40 C.F.R. §
25 1502.24.

26 183. BLM ignored or provided inadequate responses to responsible opposing viewpoints
27 expressed in public comments, in direct violation of NEPA and its implementing regulations. In
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1 particular, BLM: (1) ignored or did not adequately address feasible alternatives to removing all
2 route-capping language from the CDCA Plan entirely; (2) refused to modify or supplement its EIS
3 to account for reasonable, specific, and credible opposing public viewpoints regarding BLM's
4 analysis of specific resource areas; and (3) inaccurately and summarily labeled virtually all public
5 comments challenging the propriety of its specific route designations as generalized comments not
6 warranting further response. 40 C.F.R. §§ 1502.9(b), 1502.14, 1503.4(a).

7 184. BLM's 2019 FSEIS and Record of Decision violated NEPA and its implementing
8 regulations because they each failed to utilize the best available, most up-to-date scientific
9 information, especially with respect to the Mojave desert tortoise and other listed and special
10 status species, riparian and soil resources, and air quality. 40 C.F.R. §§ 1500.1(b), 1502.24.

11 185. For each of the above reasons, and others, BLM's adoption of the Record of
12 Decision and FSEIS for the WEMO Route Network Project is arbitrary, capricious, and not in
13 accordance with law as required by NEPA, its implementing regulations, and the APA, and is
14 subject to judicial review under the APA. 5 U.S.C. §§ 701-706, 706(2).

15 **Third Claim for Relief**

16 **(Against FWS for violating the Endangered Species Act by** 17 **issuing an unlawful Biological Opinion)**

18 186. FWS has violated the law by issuing a Biological Opinion that is inconsistent with
19 the requirements of the ESA. FWS's issuance of the 2019 WEMO Route Network Project
20 Biological Opinion, *Biological Opinion for the West Mojave Route Network Project, San*
21 *Bernardino, Inyo, Kern, Riverside, and Los Angeles Counties, California (6840 (P)*
22 *LLCAD00000)*, was arbitrary, capricious, and otherwise not in accordance with law in violation of
23 5 U.S.C. § 706.

24 187. The ESA required BLM to consult with FWS regarding the WEMO Route Network
25 Project's potential impacts on listed species, including the desert tortoise and others. 16 U.S.C.
26 § 1536(a)(2). Consequently, the ESA required FWS to prepare a Biological Opinion assessing the
27 impacts of the Project on listed species. 16 U.S.C. 1536(b)(3). Because FWS determined that the
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1 project was not likely to jeopardize the continued existence of any listed species or destroy or
2 adversely modify its critical habitat, FWS was required to include in the Biological Opinion an
3 Incidental Take Statement, reasonable and prudent measures for minimizing impacts of any
4 incidental taking, and terms and conditions that must be followed in implementing the reasonable
5 and prudent measures. 16 U.S.C. § 1536(b)(4). In addition to these specific requirements, a
6 Biological Opinion must utilize the “best scientific and commercial data available.” 16 U.S.C.
7 § 1536(a)(2).

8 188. FWS’s issuance of the 2019 WEMO Route Network Project Biological Opinion
9 violated the ESA because FWS issued an Incidental Take Statement that failed to adequately
10 specify the impact of the incidental taking on the desert tortoise. Further, the Biological Opinion
11 failed to specify any reasonable and prudent measures necessary to minimize such impacts and
12 failed to include any terms and conditions implementing reasonable and prudent measures, even
13 though inclusion of these provisions in the Biological Opinion was clearly required under the
14 ESA. Biological Opinion at 65; 16 U.S.C. § 1536(b)(4). Due to these shortcomings, the
15 Biological Opinion fails to aid BLM in minimizing impacts to listed species.

16 189. FWS’s issuance of the 2019 WEMO Route Network Project Biological Opinion
17 was in violation of the ESA because the Biological Opinion failed to rely on the best available
18 data in assessing the effects of the proposed actions on the desert tortoise, neglecting to fully
19 account for the decline of the species in recent years in the WEMO Planning Area. The Biological
20 Opinion also failed to address the cumulative effects of changes to the OHV route network on the
21 desert tortoise and other listed species and their critical habitats. This failure renders the analysis
22 inadequate to account for and prevent the significant potential harms of OHV use to listed species.
23 The Biological Opinion therefore violates the ESA and its implementing regulations. 16 U.S.C.
24 § 1536(a)(2); 50 C.F.R. § 402.14.

25 190. For each of the above reasons, and others, FWS’s issuance of the 2019 WEMO
26 Route Network Project Biological Opinion was arbitrary, capricious, and inconsistent with the law
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1 as required by the ESA, its implementing regulations, and the APA, and is subject to judicial
2 review under the APA. 5 U.S.C. §§ 701-706, 706(2).

3 **Fourth Claim for Relief**

4 **(Against BLM and FWS for violating the ESA by failing to ensure against jeopardy and**
5 **destruction or adverse modification of critical habitat of listed species)**

6 191. FWS and BLM violated the ESA by failing to ensure that the WEMO Route
7 Network Project was not likely to jeopardize the continued existence of the Mojave desert tortoise
8 and other listed species or result in the destruction or adverse modification of such species'
9 habitat. FWS's issuance of, and BLM's reliance on, the 2019 WEMO Route Network Project
10 Biological Opinion, *Biological Opinion for the West Mojave Route Network Project, San*
11 *Bernardino, Inyo, Kern, Riverside, and Los Angeles Counties, California (6840 (P) LLCAD00000)*
12 was arbitrary, capricious, and otherwise not in accordance with law in violation of 5 U.S.C. § 706.

13 192. The ESA required BLM, in consultation with FWS, to ensure that its actions in
14 implementing the WEMO Route Network Project were "not likely to jeopardize the continued
15 existence of any endangered species or threatened species or result in the destruction or adverse
16 modification of habitat of such species." 16 U.S.C. § 1536(a)(2); 50 C.F.R. §§ 402.10-402.17.

17 193. BLM and FWS have failed to ensure through consultation that BLM's
18 implementation of the WEMO Route Network Project does not jeopardize the desert tortoise or
19 destroy or adversely modify its critical habitat. BLM and FWS have also failed to ensure that the
20 WEMO Route Network Project does not jeopardize the triple-ribbed milk-vetch, Cushenbury
21 oxytheca, Parish's daisy, Cushenbury milk-vetch, Cushenbury buckwheat, and Lane Mountain
22 milk-vetch or destroy or adversely modify the critical habitat of the Cushenbury oxytheca,
23 Parish's daisy, Cushenbury milk-vetch, Cushenbury buckwheat, and Lane Mountain milk-vetch.
24 By implementing the WEMO Route Network Project in reliance on the 2019 Biological Opinion,
25 even though the conclusions in the Biological Opinion suffer from the flaws identified above and
26 are unsupported by the most accurate, up-to-date data, BLM has violated the ESA. 16 U.S.C.
27 § 1536(a)(2); 50 C.F.R. §§ 402.10-402.17.

28

1 194. Relatedly, FWS has violated the ESA by authorizing BLM to take federal actions
2 that, on the basis of the unlawful 2019 Biological Opinion, will either jeopardize the desert
3 tortoise or destroy or adversely modify its critical habitat, and will either jeopardize the triple-
4 ribbed milk-vetch, Cushenbury oxytheca, Parish's daisy, Cushenbury milk-vetch, Cushenbury
5 buckwheat, and Lane Mountain milk-vetch or destroy or adversely modify the critical habitat of
6 the Cushenbury oxytheca, Parish's daisy, Cushenbury milk-vetch, Cushenbury buckwheat, and
7 Lane Mountain milk-vetch. These violations are subject to judicial review under the ESA. 16
8 U.S.C. § 1540(g).

9 195. For each of the above reasons, and others, FWS's issuance of and BLM's reliance
10 on the 2019 WEMO Route Network Project Biological Opinion was arbitrary, capricious, and
11 inconsistent with the law as required by the ESA, its implementing regulations, and the APA, and
12 is subject to judicial review under the APA. 5 U.S.C. §§ 701-706, 706(2).

13 **IX. PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs respectfully request that this Court:

15 (1) Adjudge and declare that Defendant BLM's implementation of the CDCA Plan
16 through the approval of the Record of Decision for the WEMO Route Network Project violates
17 FLPMA, its implementing regulations, and relevant Executive Orders;

18 (2) Adjudge and declare that Defendant BLM's implementation of the CDCA Plan
19 through the approval of the Record of Decision for the WEMO Route Network Project violates
20 NEPA and its implementing regulations;

21 (3) Adjudge and declare that Defendant FWS's issuance of the 2019 Biological
22 Opinion, *Biological Opinion for the West Mojave Route Network Project, San Bernardino, Inyo,*
23 *Kern, Riverside, and Los Angeles Counties, California (6840 (P) LLCAD00000)*, for the WEMO
24 Route Network Project violates the ESA;

25 (4) Adjudge and declare that Defendant FWS's issuance of the 2019 Biological
26 Opinion, *Biological Opinion for the West Mojave Route Network Project, San Bernardino, Inyo,*
27
28

1 *Kern, Riverside, and Los Angeles Counties, California (6840 (P) LLCAD00000)*, violates section
2 7(a)(2) of the ESA;

3 (5) Order Defendant FWS to vacate and set aside the 2019 Biological Opinion,
4 *Biological Opinion for the West Mojave Route Network Project, San Bernardino, Inyo, Kern,*
5 *Riverside, and Los Angeles Counties, California (6840 (P) LLCAD00000)*, for the WEMO Route
6 Network Project;

7 (6) Adjudge and declare that Defendant BLM's implementation of the CDCA Plan in
8 the West Mojave Plan area violates section 7(a)(2) of the ESA;

9 (7) Pending the completion of adequate biological opinions for listed species within the
10 WEMO Planning Area of the CDCA Plan, enjoin Defendants FWS and BLM from issuing any
11 permit, approval, or other action within the WEMO Planning Area for any action that may
12 adversely affect the desert tortoise, triple-ribbed milk-vetch, Parish's daisy, Cushenbury milk-
13 vetch, Cushenbury buckwheat, and Lane Mountain milk-vetch;

14 (8) Pending the completion of adequate biological opinions for the desert tortoise,
15 triple-ribbed milk-vetch, Parish's daisy, Cushenbury milk-vetch, Cushenbury buckwheat, and
16 Lane Mountain milk-vetch within the WEMO Planning Area, require Defendants to submit
17 quarterly status reports to Plaintiffs and the Court describing their progress in complying with the
18 Court's order;

19 (9) Order Defendant BLM to vacate and set aside the FSEIS and Record of Decision
20 for the WEMO Route Network Project;

21 (10) Pending the completion of an adequate Environmental Impact Statement and
22 Record of Decision for the WEMO Route Network Project, enjoin Defendant BLM from
23 authorizing off-road vehicle use in any areas in which they are currently prohibited;

24 (11) Pending the completion of an adequate Record of Decision and Environmental
25 Impact Statement for the WEMO Route Network Project, order Defendant BLM to impose such
26 other restrictions on OHV use as may be necessary to protect the resources of these public lands,
27 including but not limited to adequate enforcement of OHV rules and regulations, impact
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1 monitoring, and consistent use of science-based, statistically valid methodology with adaptive
2 management;

3 (12) Award Plaintiffs their fees, costs, expenses, and disbursements, including
4 reasonable attorneys' fees as provided by the ESA, 16 U.S.C. § 1540(g)(4), and/or the Equal
5 Access to Justice Act, 28 U.S.C. § 2412; and

6 (13) Grant Plaintiffs such additional and further relief as the Court deems just and
7 proper.

8
9 DATED: September 16, 2021

Respectfully submitted,

10
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13 

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