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Attorneys for Plaintiffs

10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 _____)
BURNING MAN PROJECT, FRIENDS OF)
13 BLACK ROCK/HIGH ROCK, INC., FRIENDS OF)
NEVADA WILDERNESS, SUMMIT LAKE)
14 PAIUTE TRIBE OF NEVADA, GERLACH)
PRESERVATION SOCIETY, and DAVID)
15 JAMIESON, ANDY MOORE, WILL ROGER)
PETERSON, NANCI PETERSON, JASON)
16 WALTERS, DAVE COOPER, MARGIE)
REYNOLDS, and STACEY BLACK, as individuals,)

17 Plaintiffs,)

18 v.)

19 The UNITED STATES DEPARTMENT OF THE)
20 INTERIOR, BUREAU OF LAND)
MANAGEMENT, BLACK ROCK FIELD OFFICE,)
21 and DEBRA HAALAND in her official capacity as)
Secretary of the Interior,)

22 Defendants.
23 _____

Case Number: 3:23-cv-13

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

24 Plaintiffs Burning Man Project, Friends of Black Rock/High Rock, Inc., Friends of Nevada
25 Wilderness, the Summit Lake Paiute Tribe of Nevada, Gerlach Preservation Society, David
26 Jamieson, Andy Moore, Will Roger Peterson, Nanci Peterson, Jason Walters, Dave Cooper, Margie
27 Reynolds, and Stacey Black, by and through their attorneys of record, hereby complain and allege
28

1 as follows:

2 **INTRODUCTION**

3
4 1. Plaintiffs challenge Defendants’ failure to comply with the National Environmental
5 Policy Act (“NEPA”), the Federal Land Policy and Management Act (“FLPMA”), the National
6 Historic Preservation Act (“NHPA”), and the Administrative Procedure Act (“APA”), in issuing a
7 Final Environmental Assessment¹, Finding of No Significant Impact, and Decision Record
8 approving the Gerlach Geothermal Exploration Project (“Exploration Project”).

9 2. The Exploration Project is a proposed geothermal resource confirmation drilling
10 project Operations Plan (“OP”) approved under 43 C.F.R. § 3261.12 for Ormat Nevada Inc., 26
11 LLC (“Ormat”). The approved action would allow Ormat to construct and maintain a geothermal
12 resource confirmation project in the Gerlach Geothermal Unit, which includes various leases held
13 by Ormat. The leased area totals 5,704 acres of Bureau of Land Management (“BLM”)-administered
14 public lands and private lands surrounding the town of Gerlach in Washoe County, Nevada.

15 3. The Exploration Project includes construction of 19 geothermal resource
16 confirmation drilling wells and well pads, approximately 2.8 miles of improved and new access
17 roads, and associated facilities. The Exploration Project, however, is only the first portion of a much
18 larger proposed geothermal *development* project, which Defendants failed and refused to consider
19 in approving the Exploration Project.

20 4. Defendants’ environmental review of this Exploration Project under NEPA ignored
21 multiple potential harms related to the approved OP activities and the future but inevitable large
22 scale geothermal production project. Foremost, the proposed wells are located directly adjacent to
23 a number of inimitable hot springs and will utilize the same geothermal fluid that heats the springs.
24 These hot springs are unique environmental resources that are relied upon by the local community
25 for tourism, have religious significance to the Tribe and serve as a fundamental water source in an
26 area that otherwise does not have water abundance. The hot springs are also ecologically important

27 ¹ See Environmental Assessment, Gerlach Geothermal Exploration Project (DOI-BLM-NV-W030-2022-
28 0001-EA) August 2022.

1 because they are interconnected with each other, the ecosystem, and the pristine landscape of the
2 region. The springs run directly under the homes of many Gerlach residents. The Exploration
3 Project and subsequent development of a large-scale geothermal energy project threatens the
4 continued existence of the hot springs, their use and enjoyment by Plaintiffs, and Plaintiffs' property
5 interests.

6 5. Ormat has attempted to evade analysis of such impacts by segmenting the Project to
7 limit BLM's review to only the first stage of its plans, *i.e.* the exploration stage. However, this first
8 stage merely confirms where the resources are located to inform future industrial scale geothermal
9 energy development. Granting the right to confirm the location of geothermal resources in this area
10 via exploration drilling means that an industrial scale geothermal power plant and power lines are
11 inevitable, and once the confirmatory Exploration Project begins, it will be impossible to stop the
12 effects of the entire geothermal production project. Moreover, the EA concedes that there is the
13 potential for a time lag between detectable and maximum effects in surface expression of the
14 geothermal resource. EA at 3-41. Hence, "monitoring and mitigation measures would minimize, but
15 could not completely avoid, long-term effects on the water quantity and quality." *Id.*

16 6. Ormat seeks to develop an industrial scale geothermal plant less than one-half mile
17 from a community and adjacent to nationally important resources, including but not limited to the
18 Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area (the "Black
19 Rock NCA"), the Fox Range and Selenite Mountains Wilderness Study Areas, and the proposed
20 Granite Banjo Wilderness Area. Ormat's Exploration Project will lay the foundation for turning a
21 unique, virtually pristine ecosystem of environmental, historical, and cultural significance into an
22 industrial zone, and permanently alter the landscape. This will directly impact Plaintiffs' property
23 interests as well as their members' use and enjoyment of the area.

24 7. In sum, the NEPA review for Ormat's Exploration Project was inadequate because,
25 among other things, it impermissibly segmented the exploration activities from the reasonably
26 foreseeable geothermal plant development and operation, failed to take a hard look at Exploration
27 Project alternatives, failed to meaningfully consider direct, indirect and cumulative impacts of the

1 Exploration Project, and does not require Ormat to comply with any robust mitigation measures to
2 ensure these ecological, historical, and cultural resources are not permanently altered or destroyed.

3 8. BLM's ultimate conclusion that more detailed NEPA review is not warranted is
4 based on a mitigation plan that has yet to be fully developed. Without robust mitigation requirements
5 in place or meaningful consideration of Project alternatives, impacts, and connected actions as
6 required under NEPA, the Project could permanently degrade the hot springs and therefore
7 permanently impact a valuable resource for the local community, the ecosystem, and the pristine
8 landscape of the area. There is also a risk of subsidence of properties in Gerlach. At a minimum, a
9 full Environmental Impact Statement should have been prepared, as opposed to merely an
10 Environmental Assessment.

11 9. The approval of the Project is also inconsistent with the Resource Management Plans
12 for the Black Rock NCA and the Winnemucca District.

13 10. BLM violated Section 106 of the National Historic Preservation Act ("NHPA"), 54
14 U.S.C § 306108, by failing to undertake an adequate consultation with the native American Tribes.
15 The NHPA is a procedural statute requiring government agencies to "stop, look, and listen" before
16 proceeding when their action will affect national historical assets." The NHPA is designed to ensure
17 that federal decision-makers thoroughly evaluate the impacts of their proposed actions on NHPA-
18 eligible resources prior to taking action. This includes the requirement to conduct a "government-
19 to-government" consultation with any tribe that may be impacted by the proposed agency
20 undertaking, which is also a goal set forth in the Resource Management Plan for the Winnemucca
21 District. BLM's failure to follow the requirements of the NHPA resulted in an inadequate and
22 incomplete consultation process with the Summit Lake Paiute Tribe under the NHPA, and
23 foreclosed any steps BLM might have taken to avoid or minimize injury to Plaintiffs' cultural
24 interests in the land surrounding the Project.

25 11. Because the underlying statutes do not provide an independent basis for judicial
26 review of agency actions, an aggrieved party must pursue its remedy under the APA. BLM's
27 actions were arbitrary and capricious, an abuse of discretion, otherwise not in accordance with law,
28 and without observance of procedures required by law within the meaning of the APA.

1 the Burning Man Event on public lands since 1993, and is therefore the annual Special Recreation
2 Permit (“SRP”) permittee for the Burning Man Events. Burning Man Project retains no profits, and
3 all earnings are dedicated to furthering its charitable activities.

4 17. BMP and its predecessors, are now, and have been at all relevant times since 1993,
5 permittees of Department-administered public lands located within the Black Rock NCA, for the
6 purposes of conducting the iconic annual Burning Man Event. BMP was instrumental in the creation
7 of the Black Rock NCA which includes an express provision that large-scale, permitted recreational
8 activities, such as the Burning Man Event, are expected to continue on the site. The Event was
9 specifically made a part of the Resource Management Plan for the Black Rock NCA.

10 18. The Burning Man Event currently attracts more than 70,000 individuals who, over
11 the course of eight days, camp and participate in a unique experimental community on the Black
12 Rock NCA. The ethos and culture of the Event are rooted in the Ten Principles of Burning Man:
13 Radical Inclusion, Gifting, Decommodification, Radical Self-reliance, Radical Self-expression,
14 Communal Effort, Civic Responsibility, Leaving No Trace, Participation, and Immediacy. These
15 concepts are central to the participants’ experience at Burning Man, and they are also reflected in
16 the Event’s commitment to and record of health, safety, and environmental compliance. Consistent
17 with Burning Man’s Ten Principles, BLM has developed and refined a “Leave No Trace” standard
18 for the Event.

19 19. Moreover, economic development of the community of Gerlach has blossomed, in
20 large part due to significant investments by BMP. This economic development includes BMP’s
21 purchase and development of several commercial properties in Gerlach, an RV campground, and a
22 vintage hotel, as well as the numerous proposals by local stakeholders for recreational and art trails
23 throughout the community, including within the Proposed Area of Interest (“AOI”) described in the
24 NEPA Decision Documents. People travel to Gerlach to experience the solitude of the vast open
25 spaces and undeveloped vistas present in the Black Rock Desert, as well as to attend numerous

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for the Burning Man Event. Burning Man Project assumed full responsibility as the SRP permittee for the Burning Man
Events in 2019.

1 events and to pursue a variety of recreation experiences in the undeveloped desert. The Exploration
2 Project and the inevitable large scale geothermal production project threatens the viability of such
3 experiences, and the investments made in them by BMP (including the Burning Man Event), by
4 industrializing a portion of the Black Rock NCA with the introduction of noise, traffic, light, and
5 presence of the drilling infrastructure, all of which are wholly inconsistent with BMP's and others
6 use and enjoyment of the area.

7 20. BMP also owns real property in Gerlach known as "the 360 Property", which
8 straddles State Route 34. This 360-acre parcel of land is being developed by BMP into a space for
9 artists, theme camp organizers, and mutant vehicle owners, plus storage space for containers and
10 potential green energy use. The 360 Property is important to BMP's future plans and will also boost
11 the local economy through tourism revenue.

12 21. The Proposed AOI surrounds the 360 Property and includes hot springs that BMP is
13 in the process of developing for safe and responsible recreational use. BLM's approved action
14 would allow for the drilling of well pads that abut the 360 Property to the north, and lie closely to
15 the south, both of which are in close proximity to the Ditch Spring and other natural hot springs that
16 fall within this private property. BMP has expressed concerns of severe, and possibly permanent,
17 adverse impacts to springs caused by the Exploration Project and inevitable subsequent geothermal
18 plant development and operations.

19 22. Plaintiff FRIENDS OF BLACK ROCK/HIGH ROCK, INC. ("Friends of Black
20 Rock/High Rock") is a Nevada nonprofit public benefit corporation, recognized as exempt under
21 section 501(c)(3) of the Internal Revenue Code, that was formed in 1999 in support of various
22 groups of people who came together with the common goal of preserving the region and promoting
23 appreciation for its historical, ecological, agricultural, recreational and scenic resources. Friends of
24 Black Rock/High Rock consists of neighbors, visitors, and concerned citizens who share a
25 commitment to the wild, remote, and priceless Black Rock NCA, created by the Black Rock Desert-
26 High Rock Canyon Emigrant Trails National Conservation Area Act of 2000, which early members
27 of Friends of Black Rock/High Rock helped advocate for.

1 23. Friends of Black Rock/High Rock have a local office in Gerlach, Nevada to help
2 support and promote tourism within the Black Rock NCA. Gerlach, with just under 200 residents,
3 is the closest town and is considered to be the gateway to the Black Rock NCA.

4 24. Members of Friends of Black Rock/High Rock frequently recreate in and around the
5 lands of the Black Rock NCA and provide critical support, volunteers and expertise to the BLM in
6 management of the Black Rock NCA. Projects undertaken by Friends of Black Rock/High Rock
7 include education and outreach, youth stewardship programming, field expeditions, invasive species
8 mitigation, spring assessments, drought and wildlife monitoring, site clean-ups, and trail work.

9 25. Congress created the Black Rock NCA specifically to protect 180 miles of historic
10 emigrant trails used by pioneers to travel from the Eastern States to Oregon and California in the
11 mid-1800s. Also protected is the surrounding landscape of rugged mountains and high desert that is
12 largely unchanged since those early days of national expansion. Recreation, hunting, trapping,
13 livestock grazing, commercial events, activities requiring special permits, and previously existing,
14 valid mining, all continue in the Black Rock NCA. Education and stewardship of the Black Rock
15 NCA are the core tenets of Friends of Black Rock/High Rock's work.

16 26. Friends of Black Rock/High Rock recently applied for financial assistance from the
17 National Parks Service, Rivers, Trails and Conservation Assistance Program ("RTCA"). This grant
18 would assist with priority projects and strategic planning, such as historic walking tours and
19 interpretative guidance. Friends of Black Rock/High Rock already have several grants that are being
20 used for a new interpretive guide program to provide additional recreational opportunities, which is
21 consistent with the State of Nevada's strategic priority of promoting and developing statewide
22 tourism. Friends of Black Rock/High Rock bring this suit on behalf of itself and its members in
23 order to ensure protection of these unique natural resources from which they derive aesthetic,
24 recreational, and spiritual benefits.

25 27. Plaintiff FRIENDS OF NEVADA WILDERNESS is a Nevada nonprofit public
26 benefit corporation, recognized as exempt under section 501(c)(3) of the Internal Revenue Code,
27 dedicated to preserving all qualified Nevada public lands as wilderness, protecting all present and
28 potential wilderness from ongoing threats, educating the public about the values of and need for

1 wilderness, and improving the management and restoration of wild lands. Friends of Nevada
2 Wilderness and its members regularly volunteer in and enjoy Nevada's wilderness areas, while also
3 helping to monitor and restore these special wild places. To further protect our wild places, Friends
4 of Nevada Wilderness reviews agency land use plans, travel management plans, and other proposals
5 that could affect wilderness and also conducts on-the-ground inventories to determine remaining
6 wild areas on Nevada's public lands that may have wilderness characteristics.

7 28. Friends of Nevada Wilderness has been working on protecting the Black Rock Desert
8 region for many decades and was instrumental in the legislation that created the Black Rock NCA
9 and the Wilderness areas within it. Many of their supporters and volunteers recreate in and around
10 Gerlach. Friends of Nevada Wilderness brings this suit on behalf of itself and its members who
11 derive direct benefits from the Black Rock NCA and also support and partner with BLM for its
12 protection.

13 29. Plaintiff SUMMIT LAKE PAIUTE TRIBE OF NEVADA is a federally recognized
14 tribe of Northern Paiute Indians in northwest Nevada. Their autonym in their language is Agai
15 Panina Ticutta, meaning "Fish Lake Eaters." The Tribe's reservation is 12,573 acres, with 10,098
16 acres of trust land that is surrounded by Humboldt County in Northwest, Nevada just to the north of
17 the Black Rock Desert High Rock NCA. However, historically Paiute homeland spanned more than
18 thirty million acres of present-day California, Nevada, Utah, and Arizona. Therefore, members of
19 the Summit Lake Paiute Tribe continue to have cultural, religious, scientific, recreational,
20 conservation, and aesthetic interests in the land outside of their Reservation, including the land to
21 be impacted by the Project. Members of the Summit Lake Paiute Tribe regularly visit this area for
22 traditional purposes of prayer and other cultural reasons. They attach particular significance to the
23 hot springs of the area, which they use for spiritual cleansing.

24 30. Plaintiff the GERLACH PRESERVATION SOCIETY is an ad hoc group of
25 residents, property owners, and community members of the town of Gerlach in Washoe County,
26 Nevada, which is the proposed location of the Exploration Project and the inevitable industrial scale
27 geothermal production project. The Gerlach Preservation Society consists of concerned citizens who
28 share a common interest in their commitment to preserving the unique and irreplaceable historical,

1 cultural, archaeological, environmental, recreational, and natural resources of the Gerlach region,
2 all of which are threatened by the Exploration Project. As raised in various comments submitted to
3 BLM during NEPA review, members of the Gerlach Preservation Society are also concerned about
4 impacts to their homes, properties, and the overall character of the Gerlach community as a result
5 of the Exploration Project, particularly given the Exploration Project's close proximity to the local
6 community within Gerlach.

7 31. Plaintiffs DAVID JAMIESON, ANDY MOORE, WILL ROGER PETERSON,
8 NANCI PETERSON, JASON WALTERS, DAVE COOPER, MARGIE REYNOLDS, and
9 STACEY BLACK (collectively, the "Individual Plaintiffs") are residents and property owners
10 within the town of Gerlach in Washoe County, Nevada, which is the proposed location of the
11 Exploration Project and the inevitable industrial scale geothermal production project. The Individual
12 Plaintiffs frequently visit and enjoy the Black Rock NCA and local hot springs, and recreate in the
13 area where the Exploration Project is proposed. The springs beneath their own property are
14 interconnected to the springs that Ormat seeks to exploit.

15 32. Plaintiff Mr. Moore is a member of the Gerlach/Empire Citizen Advisory Board,
16 which is a Commissioner-appointed position that advises the Washoe County Board of County
17 Commissioners on issues of relevance to Gerlach/Empire citizens.

18 33. Plaintiff Mr. Jamieson owns real property known as the Great Boiling Springs in
19 Gerlach, Nevada and has valid state-issued water rights to the underground water resources located
20 therein.

21 34. The Great Boiling Springs are a unique network of natural pools and mud volcanoes
22 with water that ranges in temperature from about 95 degrees Fahrenheit to 207 degrees. The Great
23 Boiling Springs was first described by white explorers in 1844 when explorer John C. Fremont
24 passed through the region shortly before arriving at Pyramid Lake. The water in the springs is
25 thousands of years old and has microbes that are likely found nowhere else. There are not many
26 other examples of such fossilized water in such pristine condition anywhere else in the United States.
27 The Great Boiling Springs is recognized in the EA as a prehistorically important spring eligible for
28 listing on the National Register of Historic Places under criterion A.

1 35. Over 22 organizations have conducted research at Great Boiling Springs, and many
2 more have collaborated on this research. Since 2004, University of Nevada, Las Vegas researchers
3 have visited and studied the Great Boiling Springs for microbes that could help unlock the secrets
4 of the origin of life. To date, NASA has issued more than \$900,000 in grants to fund this research.
5 Multiple other organizations, including the Desert Research Institute, Stanford University,
6 Lawrence Berkeley National Laboratory, and Dow DuPont, have visited the Great Boiling Springs
7 to study its uniqueness and pristine water quality.

8 36. One of the proposed wells of the Exploration Project is adjacent to the Great Boiling
9 Springs property. The noise, traffic, light, and presence of the drilling infrastructure directly impacts
10 Mr. Jamieson's property interests. In turn, any changes to the volume, temperature or chemistry of
11 the water due to Ormat's activities would forever change the Great Boiling Springs, thereby harming
12 Mr. Jamieson. No amount of artificial mitigation could replace these natural conditions.

13 37. Defendants' violations of law, including NEPA, FLPMA, the NHPA and the APA
14 cause procedural and substantive harm to Plaintiffs and their members. Overall, construction and
15 operation of the Exploration Project and the inevitable industrial scale geothermal production
16 project would harm the Plaintiffs and their members' property interests, and interests in enjoyment
17 of the Black Rock NCA and surroundings by changing a nearly pristine desert environment into an
18 industrial setting with substantial noise, traffic and light from round-the-clock drilling. The proposed
19 infrastructure, noise, traffic, and light will have a permanent impact on the surrounding ecosystem
20 and landscape. Moreover, drilling of the exploratory wells threatens to negatively impact Plaintiffs'
21 interests by altering various springs' water quantity, flow, temperature, and overall quality. Future
22 exploitation of the geothermal resources is inevitable following Ormat's confirmation of the location
23 of the geothermal resources in this area via the Exploration Project, and indeed will likely utilize
24 the same well pads created by Ormat in the exploration phase, but the extent of the negative impacts
25 from such exploitation is unknown because of BLM's failure to comply with NEPA, FLPMA and
26 the APA.

27 38. The interests of the Summit Lake Paiute Tribe and the other Plaintiffs are harmed by
28 BLM's failure to take into account the effects of the activities authorized, permitted, or enabled by

1 its approval of the Project on traditional cultural resources for purposes of avoiding or mitigating
2 the adverse effects of these activities on such resources as required by the NHPA.

3 39. The Service's failure to adequately take into account the impacts of its actions on the
4 Tribe's interests and on other cultural resources has precluded BLM from taking action required by
5 the NHPA to avoid or mitigate these adverse effects in connection with BLM's approval of the
6 Project and will result in avoidable adverse effects on members of the Summit Lake Paiute Tribe.

7 40. These adverse effects on the Tribe will occur as a result of BLM's failure to comply
8 with the requirements of the NHPA, and will injure and impair Plaintiffs' ability to pursue their
9 cultural, religious, scientific, recreational, conservation, and aesthetic interests. Such adverse
10 effects on traditional cultural resources can be avoided or minimized, and Plaintiffs' injuries can be
11 redressed, only if BLM complies with the requirements of the NHPA. The Project will have both
12 direct (*e.g.* impacts on springs) and indirect effects (*e.g.* visual and light pollution impacts from the
13 drilling rigs and eventual plant and transmission towers) on cultural resources. Accordingly,
14 Plaintiffs and their members have been, are being, and unless the requested relief is granted, will
15 continue to be injured by BLM's failure to comply with the NHPA.

16 41. Plaintiffs and their members have also suffered injury to their cultural, religious,
17 scientific, recreational, conservation, and aesthetic interests in Traditional Cultural Properties as a
18 result of BLM's failure to comply with the NHPA. Plaintiffs and their members rely on BLM to
19 make an informed decision regarding the Project based on, among other things, consideration of
20 information obtained through the NHPA consultation process. BLM is required to consult with
21 Tribes regarding eligibility of properties of religious and cultural significance and the manner that
22 such properties could potentially be affected by the undertaking. The agency's failure to comply
23 with the NHPA precluded informed decision-making regarding the Project's effects on properties
24 of religious and cultural significance. As a result, Plaintiffs, their members, and the public at large
25 are denied essential information regarding the management and preservation of properties of
26 religious and cultural significance. These procedural and informational injuries can only be
27 remedied if BLM is made to comply with the NHPA.

1 42. These are actual and concrete injuries that the BLM has been made aware of during
2 the various scoping and public comment periods related to this Exploration Project. BLM has
3 ignored such comments, which is itself a procedural violation of NEPA as well as the NHPA's
4 requirements to consult, and is inconsistent with the Winnemucca District RMP. The relief sought
5 is necessary to redress these injuries.

6 43. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR
7 (“Department”) is a federal executive department of the United States government charged by law
8 with administering public lands, including the public lands involved in this case.

9 44. Defendant DEBRA HAALAND (“Secretary”) is the Secretary of the United States
10 Department of the Interior and is sued in her official capacity.

11 45. Defendant BUREAU OF LAND MANAGEMENT (“BLM”) is the administrative
12 body to which the Department has delegated management of these public lands. The challenged
13 approvals were issued by the Winnemucca District, Black Rock Field Office of the BLM.

14 46. Defendant MARK HALL was the Field Manager of the Black Rock Field Office of
15 the Winnemucca District of the BLM who led BLM's NEPA review of the Exploration Project.
16 Defendant Hall is the signatory of the Decision Record for the Exploration Project's EA.

17 **LEGAL FRAMEWORK**

18 ***The National Environmental Policy Act***

19 47. NEPA, 16 U.S.C. §§ 4321 *et seq.*, is our “basic national charter for protection of the
20 environment.” 40 C.F.R. § 1500.1(a). It serves twin goals. First, it aims to ensure that federal
21 agencies carefully consider detailed information regarding the environmental impact of a proposed
22 action before reaching a decision on the action. Second, it ensures that information about a
23 proposal's environmental impact is made available to members of the public so that they may play
24 a role in the decision-making process. NEPA ensures that important effects will not be overlooked
25 or underestimated, only to be discovered after resources have been committed or the die otherwise
26 cast.

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1 48. Under NEPA, federal agencies must take a hard look at the environmental impacts
2 of a proposed agency action through analysis and disclosure of the effects of the proposed action
3 and its alternatives.

4 49. The Council on Environmental Quality within the Executive Office of the President
5 (“CEQ”) is responsible for promulgating regulations to assist federal agencies in implementing
6 NEPA, 40 C.F.R. Part 1500 *et seq.* According to the Draft EA, NEPA review of the Exploration
7 Project was performed in accordance with the CEQ revised regulations effective September 14,
8 2020, and BLM regulations for implementing NEPA. However, the Final EA itself cites to the pre-
9 2000 regulations at various times.

10 50. Federal agencies may also promulgate their own NEPA regulations and issue
11 agency-specific NEPA guidance. The Department of Interior has promulgated NEPA regulations,
12 43 C.F.R. Part 46, and has issued a number of Department Manuals (“DMs”) to facilitate NEPA
13 implementation, including DMs 1, 2, and 3, which cover general NEPA compliance, expectations,
14 and management of the NEPA process by Department administrative bodies such as BLM, and DM
15 11, which specifically pertains to BLM’s NEPA implementation.⁴

16 51. Furthermore, BLM has a NEPA Handbook, H-1790-1, dated January 2008 (“NEPA
17 Handbook”), which provides detailed guidance for BLM’s review of agency actions under NEPA.⁵

18 52. NEPA review is conducted through preparation of an Environmental Assessment
19 (“EA”) or an Environmental Impact Statement (“EIS”), depending on the likelihood of significant
20 effects due to the proposed action. An EA is appropriate if it is not likely that a proposed action will
21 have significant effects. Otherwise, an EIS must be prepared to satisfy NEPA requirements. 40
22 C.F.R. § 1501.3(a); 516 DM 11.7I, 11.8.

23 53. NEPA requires federal agencies to prepare an EIS for all “major Federal actions
24 significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(C)(i); 40 C.F.R. §
25 1501.4. A federal agency action may be “significant,” depending on the potentially affected
26

27 ⁴ The Department Manuals are available on the Department of the Interior’s [webpage for NEPA Requirements](#).

28 ⁵ BLM’s [National Environmental Policy Act Handbook H-1790-1](#) (January 2008).

1 environment and degree of the effects of the action. 40 C.F.R. § 1501.3(b). “Significance varies
2 with the setting of the proposed action.” *Id.*⁶ To fulfill its purpose, the agency’s environmental
3 analysis must “provide full and fair discussion of significant environmental impacts and . . . inform
4 decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse
5 impacts or enhance the quality of the human environment.” 40 C.F.R. § 1502.1.

6 54. When determining the scope of the proposed action for purposes of NEPA review,
7 agencies must consider connected actions, which are closely related to the proposed action and either
8 automatically trigger other actions that may require an EIS; will not proceed unless other actions
9 are taken previously or simultaneously; or are interdependent parts of a larger action and depend on
10 the larger action for justification. 40 C.F.R. § 1501.9(e)(1).

11 55. In considering the affected environment, agencies must obtain information relevant
12 to reasonably foreseeable significant adverse impacts. 40 C.F.R. § 1502.22. To comply with
13 NEPA’s requirements, the agency must set an appropriate environmental baseline detailing the
14 nature and extent of the resources in the affected area. The effects are measured against the baseline.
15 Absent information concerning baseline conditions, the agency cannot reasonably determine the full
16 scope of effects.

17 56. Agencies must also consider cumulative effects of past, present, and reasonably
18 foreseeable future actions taken together with the proposed action and each alternative. NEPA
19 Handbook at 6.8.3.

20 57. The CEQ defines cumulative effects as “the impact on the environment that results
21 from the incremental impact of the action when added to other past, present, and reasonably
22 foreseeable future actions regardless of what agency (federal and non-federal) or person undertakes
23

24
25 ⁶ Under the pre-2020 regulations, an action may be “significant” if it affects unique environmental
26 characteristics such as wetlands or ecologically critical areas, 40 C.F.R. §1508.27(3); the effects are highly controversial,
27 40 C.F.R. §1508.27(4), or are uncertain or involve unique or unknown risks, 40 C.F.R. §1508.27(5); the action may
28 establish a precedent for future actions with significant effects or represents a decision in principle about a future
consideration, 40 C.F.R. §1508.27(6); the action is related to other actions with individually insignificant but
cumulatively significant impacts, 40 C.F.R. §1508.27(7); or the action may adversely affect sites listed in or eligible for
listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or
historical resources, 40 C.F.R. §1508.27(8).

1 such other actions.” 40 C.F.R. § 1508.7. If the cumulative effects of the proposed action and
2 connected action(s), when taken together, would be significant, then an EIS must be prepared. 516
3 DM 11, 11.8(A)(2).

4 58. Connected actions cannot be segmented in order to reduce the level of NEPA review.
5 516 DM 1, 1.5(A)(3); NEPA Handbook at 6.5.2.

6 59. Agencies are required to consider a range of reasonable alternatives that are
7 technically and economically practical or feasible to meet the purpose and need of the proposed
8 action, which must include all reasonable alternatives, or if there are a very large number of
9 alternatives, at least a reasonable number that covers the full spectrum of alternatives. 40 C.F.R. §
10 1502.14; 46 C.F.R. § 46.240.

11 60. Alternatives must be rigorously explored and objectively evaluated, 46 C.F.R. §
12 46.240(c), and BLM is required to include such alternatives analysis in the EA. 516 DM 11,
13 11.7(B)(2), (3); NEPA Handbook at 6.6. The alternatives review is the “heart” of the NEPA process
14 because it gives the decision-maker the basis for choice among actions. Alternatives may be
15 eliminated from further review and not detailed in the EA under certain circumstances, but such
16 eliminated alternatives must be identified and the reasons for eliminating them must be briefly
17 explained in the EA. NEPA Handbook at 6.6.3; 40 C.F.R. § 1502.14(a).

18 61. Agencies may rely on mitigation measures to reduce or avoid adverse impacts, 40
19 C.F.R. § 1508.20, but if an agency relies on a mitigated Finding of No Significant Impact (“FONSI”)
20 to conclude that preparation of an EIS is not necessary, then such measures must be described in the
21 NEPA decision documentation and monitoring must be provided to ensure implementation. 46
22 C.F.R. § 46.130; NEPA Handbook at 6.8.4, 7.1. The monitoring measures must be delineated in
23 sufficient detail to constitute an enforceable commitment. A mere listing of mitigation measures is
24 insufficient to qualify as the reasoned discussion required by NEPA. Agencies may not avoid
25 gathering the information needed to assess a proposed project’s environmental impact by
26 committing to “mitigation measures” that take the form of information-gathering efforts to be taken
27 after the project commences. BLM is not permitted to simply to have a plan to make a plan.

1 62. BLM's NEPA review must also consider all relevant regulations that affect public
2 lands, including but not limited to FLPMA land use plans and resource management planning under
3 43 C.F.R. Part 1610. 516 DM 11, 11.3(B). A proposed action must be in conformance with any
4 applicable BLM land use plan. 516 DM 11, 11.5; NEPA Handbook at 1.5.

5 63. The Department is required to consult, coordinate, and cooperate with other agencies
6 and government bodies, including tribal governments, regarding the impacts of a proposed agency
7 action within the jurisdiction of that body or related to its interests. 40 C.F.R. § 46.155.

8 64. Public involvement is a required and critical component of NEPA. Throughout the
9 NEPA process, agencies are expected to engage in public outreach, solicit comments from interested
10 or affected parties, meaningfully consider public comments, and address such comments where
11 appropriate in its review of the proposed action. 40 C.F.R. § 1506.6(a); NEPA Handbook at 6.9.

12 65. The Department is required to utilize consensus-based management wherever
13 practicable in the NEPA process, which involves outreach to potentially interested or affected
14 parties "with an assurance that their input will be given consideration" by the agency when
15 reviewing a proposed action. 40 C.F.R. § 46.110(a). It is not enough to simply gather up comments
16 from stakeholders.

17 ***The Federal Land Policy and Management Act***

18 66. FLPMA, 43 U.S.C. § 1701 *et seq.*, gives the Secretary the authority to manage public
19 lands and regulate the use of public lands, including the drafting and approval of land use plans and
20 permits, licenses, and other approvals that are in conformance with such plans. 43 U.S.C. § 1732(b).
21 FLPMA requires BLM to "take any action necessary to prevent unnecessary or undue degradation
22 of the lands." 43 U.S.C. § 1732(b).

23 67. If a proposed action is not in conformance with an applicable land use plan, then
24 BLM must rescind the proposed action or amend the plan.

25 68. BLM has previously approved two Resource Management Plans ("RMPs") relevant
26 to the Project AOI.

27 69. First, BLM approved an RMP in July 2004 for 1.2 million acres of public lands in
28 northwest Nevada, which includes the Black Rock NCA and associated wilderness areas and other

1 contiguous lands (collectively, the “Black Rock-High Rock Lands”) (the “Black Rock RMP”).
2 Portions of the Project location is in or otherwise adjacent to the Black Rock-High Rock Lands
3 subject to the Black Rock RMP, which is therefore applicable to the Project.

4 70. BLM approved another RMP in May 2015 that includes approximately 8.4 million
5 acres of public lands administered by BLM within and adjacent to the Winnemucca District, which
6 includes the entirety of Gerlach and its surrounds (the “Winnemucca District RMP”). Portions of
7 the Project location is in or otherwise adjacent to the lands subject to the Winnemucca District RMP,
8 which is therefore applicable to the Project.

9 71. The entirety of the Project AOI falls in either the Black Rock RMP or Winnemucca
10 District RMP administrative areas. Thus, the entire Project is subject to respective RMP
11 requirements.

12 72. The Black Rock RMP identifies the Black Rock-High Rock Lands as a “very special
13 piece of the American landscape” and seeks to fulfill Congress’s intent to “preserve this exceptional
14 area and by doing so to ensure that the extraordinary experiences it provides today will still be
15 available to future generations.” Black Rock RMP at 1-1.

16 73. Goals of the Black Rock RMP include, among other things, providing unique
17 opportunities to experience emigrant migration; protecting a large part of the Northern Great Basin
18 in its current, predominantly natural state; supporting visitor services; managing plant and animal
19 species to support the healthy ecological system; managing wilderness areas for visitor use and
20 enjoyment in a manner that will leave them unimpaired for future use and enjoyment as wilderness;
21 allowing for social and economic uses that benefit local communities; providing for protection of
22 cultural, religious, and archaeological values; and cooperating with other agencies and tribal
23 governments to ensure consistency with these goals.

24 74. Goals of the Winnemucca District RMP include, among other things, maintaining
25 wildlife habitats and vegetative communities, and limiting habitat fragmentation, to protect
26 important species such as the greater sage-grouse and wild horses and burros; protecting priority
27 watersheds and drinking water supplies; preserving and protecting significant cultural resources and
28 ensuring availability of those resources for current and future generations; appropriate consideration

1 of tribal matters through tribal consultation; protecting visual values and scenic qualities of existing
2 landscapes; protecting unique geologic resources including cave and karst resources; and protection
3 of wilderness characteristics.

4 75. The Black Rock RMP specifies that one portion of the Black Rock-High Rock Lands
5 known as the South Playa is open to new geothermal leasing, in addition to other goals and
6 objectives relating to the preservation of cultural, historical, visual, environmental, archaeological,
7 and water resources within the Black Rock-High Rock Lands.

8 76. The Winnemucca District RMP specifies that certain lands within the Winnemucca
9 District will be open to geothermal leasing except where incompatible with important resource
10 values and in a manner consistent with stipulations to protect other resources. Such stipulations
11 include but are not limited to “no surface occupancy” stipulations in certain locations, such as within
12 one mile of the National Historic Trail, within an identified Traditional Cultural Property, or within
13 a priority water supply area.

14 77. The Black Rock RMP specifies that there are “significant cultural resources [] found
15 throughout the planning area, including the Applegate-Lassen Emigrant Trail, designated as a
16 national historic trail . . . the Nobles Trail, the route of the old Western Pacific Railroad (now Union
17 Pacific), sites associated with seven historic mining districts, military sites, and traces of an early
18 motion picture location and past ranching activity. Prehistoric resources are also well represented,
19 with quarrying sites, lithic scatters, rock shelters and caves, campsites, and rock art.” Black Rock
20 RMP at 1-3.

21 78. The Black Rock RMP contains several goals and objectives relating to preservation
22 of such cultural resources, including to “protect the setting and physical traces of emigrant trails for
23 the benefit of current and future generations.”

24 79. The Black Rock RMP also contains several goals and objectives relating to
25 preservation of visual resources “to provide a primitive and natural visual setting for visitors” and
26 “protect the visual integrity of the emigrant trail corridor.” The Black Rock RMP specifies that
27 “[a]ny changes must repeat the basic elements of form, line, color, and texture found in the
28 predominant natural features of the characteristic landscape.”

1 80. Similarly, the Black Rock RMP recognizes the importance of water resources within
2 the Black Rock-High Rock Lands, including the presence of thermal springs that “are of
3 considerable significance in the natural and cultural history of the Black Rock Desert.”

4 81. In addition to several goals and objectives relating to cultural, visual, and water
5 resources, the Winnemucca District RMP expressly acknowledges the importance of actively
6 engaging in a good faith effort to consult with federally recognized tribes, and compliance with
7 Native American consultation requirements.

8 *The National Historic Preservation Act*

9 82. Congress enacted the NHPA, former 16 U.S.C. § 470 et seq., in 1966 with the express
10 intent that “the historical and cultural foundations of the Nation should be preserved as a living part
11 of our community life and development in order to give a sense of orientation to the American
12 people.” Former 16 U.S.C. § 470(b)(2).

13 83. The NHPA requires federal agencies approving an “undertaking” to “take into
14 account the effect of the undertaking on any historic property” prior to the approval of the
15 expenditure of any Federal funds on the undertaking. 54 U.S.C. § 306108.

16 84. A “historic property” is “any prehistoric or historic district, site, building, structure,
17 or object included on, or eligible for inclusion on, the National Register [of Historic Places],
18 including artifacts, records, and material remains relating to the district, site, building, structure, or
19 object.” 54 U.S.C. § 300308. Within the broader category of “historic properties” are Traditional
20 Cultural Properties (“TCPs”). A TCP is an historic property associated with cultural practices or
21 beliefs of a living community that (a) are rooted in that community’s history, and (b) are important
22 in maintaining the continuing cultural identity of the community. National Register Bulletin 38,
23 Guidelines for Evaluating and Documenting Traditional Cultural Properties.

24 85. The NHPA is designed to ensure that federal decision-makers thoroughly evaluate
25 and address the impacts of their proposed actions on historic properties prior to taking final action.
26 This includes consulting with various parties, including any Indian Tribe that “attaches religious
27 and cultural significance” to the identified properties. Executive Order 13175 stipulates that, during
28

1 the NEPA process, federal agencies must consult tribes identified as being directly and substantially
2 affected by the agency action.

3 86. Under the NHPA, a federal agency must make a reasonable and good faith effort to
4 identify historic properties, 36 C.F.R. § 800.4(b); determine whether identified properties are
5 eligible for listing on the National Register based on criteria in 36 C.F.R. § 60.4; assess the effects
6 of the undertaking on any eligible historic properties found, 36 C.F.R. §§ 800.4(c), 800.5, 800.9(a);
7 determine whether the effect will be adverse, 36 C.F.R. §§ 800.5(c), 800.9(b); avoid or mitigate any
8 adverse effects, 36 C.F.R. §§ 800.8(e), 800.9(c) and (6) ensure its determinations and findings are
9 supported by sufficient documentation, 36 C.F.R. § 800.11.

10 87. Throughout all stages of the Section 106 process, the applicable federal agency must
11 consult with federally recognized Indian tribes that attach religious and cultural significance to
12 historic properties that may be affected by an undertaking. See 36 C.F.R. § 800.4. Such tribes “shall
13 be a consulting party.” 36 C.F.R. § 800.2(c)(2)(ii). “Consultation with an Indian tribe must
14 recognize the government-to-government relationship between the Federal Government and Indian
15 Tribes.” 36 C.F.R. § 800.2(c)(2)(I)(C). “The agency official shall consult with representatives
16 designated or identified by the tribal government.” *Id.*

17 88. The federal agency may consult with other tribes, organizations, and persons with an
18 interest in the undertaking “due to the nature of their legal or economic relation to the undertaking
19 or affected properties, or their concern with the undertaking’s effects on historic properties.” 36
20 C.F.R. §§ 800.2 (c)(2)(ii), 800.2(c)(5), 800.3(f)(2), 800.4(a), 800.5(c). The entities consulted with
21 are “consulting parties.” *Id.* at § 800.2(c). The Section 106 process also requires the acting agency
22 to seek and consider the views of the public regarding the undertaking and its effects on historic
23 properties. *Id.* at § 800.2(d).

24 89. In 2022, the Department of the Interior released new guidance to improve federal
25 stewardship of public lands, waters, and wildlife by strengthening the role of Tribal governments in
26 federal land management. Joint Secretarial Order No. 3403. This order – signed by the Secretaries
27 of the Interior and Agriculture during the 2021 White House Tribal Nations Summit – establishes
28 how the Departments will fulfill their obligations to Federally recognized Indian Tribes, by directing the

1 Bureaus and Agencies within each Department to undertake certain actions. Guidance from BLM,
2 (Permanent Instruction Memorandum No. 2022-011) provides direction for implementing
3 provisions of Order 3403. Among other requirements, the Order directs BLM to ensure that Tribal
4 governments play an integral role in decision-making related to the management of Federal lands
5 and waters through consultation, and to engage affected Indian Tribes in meaningful consultation at
6 the earliest phases of planning and decision-making relating to the management of Federal lands to
7 ensure that Tribes can shape the direction of management.

8 *The Administrative Procedure Act*

9 90. The APA, 5 U.S.C. §§ 701–706, authorizes courts to review final agency actions and
10 hold unlawful and set aside final agency actions, findings, and conclusions that are arbitrary and
11 capricious, an abuse of discretion or otherwise not in accordance with law; contrary to constitutional
12 right, power, privilege, or immunity; which are in excess of statutory jurisdiction, authority, or
13 limitation; or without observance of procedure required by law. 5 U.S.C. § 706(2)(A)-(D). The APA
14 provides a cause of action to challenge any final agency action taken pursuant to any statute where
15 the action is made reviewable by that statute, or where there is no other adequate remedy in a court.
16 5 U.S.C. § 704.

17 **FACTUAL ALLEGATIONS**

18 91. On October 1, 2020, the BLM issued a press release initiating a 60-day NEPA pre-
19 scoping period with the goal of soliciting early public input on Ormat’s proposed project. At the
20 time, Ormat was proposing a geothermal development project, which included two geothermal
21 power plants and a power line. Ormat had submitted to BLM a geothermal utilization plan and plan
22 of development for the proposed power line. The press release described the proposed development
23 project and requested the public’s input.

24 92. A total of 30 comment submissions were received during the 60-day pre-scoping
25 period, which ran from October 1, 2020, through December 1, 2020. Many comments, including
26 those of Plaintiffs, objected to the notion of a geothermal plant at this location.

27 93. According to the January 2021 Draft Public Pre-Scoping Report, during the 60-day
28 pre-scoping period, Ormat withdrew its utilization plan and plan of development, and submitted to

1 the BLM an operations plan for geothermal resource confirmation project only. Thus, after the
2 BLM solicited public scoping comments on its full geothermal development plan and initially
3 received negative comments, Ormat did not abandon its plan to develop geothermal resources in
4 Gerlach; rather, Ormat decided to apply for only the first phase of the project (confirmation of the
5 resources through the Exploration Project). However, the confirmation of the resources and the
6 development of the geothermal plant and construction of power lines are connected actions with an
7 inevitable outcome. The geothermal resources are clearly present in the area given the abundance
8 of geothermal springs. The purpose of the confirmation wells is merely to determine *where* to put
9 the permanent geothermal production wells, plant, and related structures. Moreover, the future
10 location of permanent geothermal production wells will likely be pre-determined in the confirmation
11 phase of the Exploration Project, as the confirmatory exploration well pads can be transitioned to
12 permanent use for permanent production wells. This amounts to unlawful segmentation of
13 reasonably foreseeable phases of the same Project.

14 94. On December 10, 2021, the Black Rock Field Office issued a News Release soliciting
15 public comment on an Operations Plan proposed by Ormat. The News Release stated the following:
16 “The field office is analyzing the environmental effects of the proposal to construct, operate, and
17 maintain the Gerlach Geothermal Exploration Project in the Gerlach Geothermal Lease Unit located
18 in Washoe County, less than one-mile northwest of Gerlach on the western edge of the Black Rock
19 Playa. Ormat has proposed further exploration of the Gerlach geothermal resource based on results
20 of previous geothermal exploration including the drilling and testing of geothermal wells and access
21 road construction.”

22 95. On August 19, 2022, BLM released the Draft EA and eight additional supporting
23 documents to the public. These documents include a 74-page public scoping report dated five
24 months earlier — March 2022 — wherein BLM lists 283 substantive comments without discussion.

25 96. According to BLM, during the 30-day draft EA comment period, the BLM received
26 32 comment submissions, including from Friends of Black Rock/High Rock, Friends of Nevada
27
28

1 Wilderness,⁷ the Burning Man Project, and residents of Gerlach. While there were over 165
2 substantive comments, BLM did not make any changes in response to comments other than those
3 requested by Ormat.

4 97. As discussed in the October 21, 2022 Decision Record, changes were made to the
5 alternatives in Chapter 2 (moving three proposed wells), there were adjustments to the road
6 improvements, and minor changes were made to the future monitoring plan (as outlined in the
7 revised Table 3-11). But, the future monitoring plan contains no discernable or enforceable
8 mitigation measures. “If water quality or quantity effects were detected, appropriate measures to
9 mitigate the effects, as determined by Ormat in coordination with the BLM Authorized Officer,
10 would be implemented.” It is merely a plan to monitor and figure out how to prevent further harm
11 after harm has already occurred. Moreover, it gives the applicant, Ormat, the authority to self-
12 monitor for such harm with no third-party oversight.

13 98. The October 21, 2022 Finding Of No Significant Impacts (“FONSI”) concludes that:
14 “Based on the issue-based analysis presented in the EA, no significant impacts were identified—
15 either specific to the project or cumulatively when combined with the reasonably foreseeable future
16 actions.” While noting that interested parties have expressed concerns related to the potential
17 impacts on nearby hydrologic resources, especially hot springs and groundwater, the FONSI
18 concludes that “[m]itigation measures have been developed to reduce or offset potential adverse
19 impacts and minimize overall impacts.” The FONSI also concedes that the commenters “expressed
20 concerns about potential impacts on noise, night skies, cultural resources, socioeconomics,
21 environmental justice, and recreation.” However, such comments did not change the agency’s
22 conclusions.

23 99. Moreover, the FONSI concedes that the Exploration Project is part of a larger action,
24 consistent with the pre-scoping plans disclosed by Ormat. “The action may establish a precedent
25 for future actions with significant effects. This is because geothermal resource confirmation
26

27
28 ⁷ Friends of Nevada Wilderness submitted comments during the draft EA comment period jointly with the
Center for Biological Diversity, which is not a party to this Complaint.

1 activities have been proposed to determine if the geothermal resource in the Gerlach area is viable
2 for the development of commercial power production facilities. A Plan of Development for a
3 transmission line right-of-way could also be expected as a future action.” FONSI at 3.

4 ***The Environmental Assessment is inadequate.***

5 100. An Environmental Assessment must include (1) a description of alternatives to the
6 proposed action; (2) any adverse environmental effects that cannot be avoided should the proposal
7 be implemented; and (3) any irreversible and irretrievable commitment of resources that would be
8 involved in the proposed action should it be implemented. The Ormat EA is legally deficient in all
9 three areas.

10 101. The proposed action considered under the EA includes construction of 19 geothermal
11 resource confirmation wells and well pads, 2.8 miles of improved and new access roads, temporary
12 ancillary support facilities, and applicant-committed environmental protection measures. The
13 proposed Exploration Project area is 2,724 acres and the total surface disturbance within the
14 Exploration Project area, after interim reclamation, would be 29.4 acres on public lands
15 administered by the BLM. The life of the Exploration Project is expected to be five years.

16 102. Ormat made a conscious decision to prevent public comment on construction of the
17 inevitable geothermal plant and power lines by narrowly defining the purpose and need for the action
18 to only the initial confirmation phase of the Project. The adoption of the purpose and need statement
19 is one of the most consequential decisions that the lead agencies make in the NEPA process, because
20 the purpose and need provides the foundation for determining which alternatives will be considered
21 and for selecting the preferred alternative. As described in the BLM’s NEPA Handbook, “[i]t is the
22 BLM purpose and need for action that will dictate the range of alternatives and provide a basis for
23 the rationale for eventual selection of an alternative in a decision.” NEPA Handbook at 35. Even
24 under an EA, the regulations require a “brief discussion of the need for the proposal.” 40 C.F.R. §
25 1508.9(b). The purpose and need for the proposed action cannot be defined so narrowly as to avoid
26 assessing a wider range of alternatives, and it cannot be defined in a manner that can only be
27 accomplished one way.

1 103. The EA defines the purpose and need as responding to Ormat's application for
2 exploration of geothermal resources, including construction of geothermal power exploration wells
3 and associated facilities, under the BLM's authority. EA at 1.3. This circular definition of the
4 purpose and need does not describe how the project purpose and need affects the size, location, or
5 scope of the Project. In addition, this is a transparent attempt to avoid disclosing the impacts of the
6 full scope of Ormat's entire geothermal project in Gerlach, which, based on Ormat's previously
7 submitted plans, will include two geothermal power plants and at least one power line. Ormat would
8 not be drilling up to 21 wells if they did not believe there are viable geothermal resources in the
9 area, and clearly the 2.1 acre well pads, new access roads, and fencing were not proposed with the
10 expectation that all of this infrastructure be removed after exploration is complete. In fact, the NEPA
11 Decision Documents do not state that the well pads will be deconstructed and removed upon
12 completion of resource confirmation, likely because Ormat intends to transition the same well pads
13 into permanent geothermal wells in the second phase of the Project. Thus, the two phases of the
14 entire Project lack independent utility. The EA must be vacated and the matter sent back to BLM to
15 undertake a full EIS that analyzes the full scope of impacts from geothermal exploration,
16 development, and power transmission and operation.

17 ***The Project will have a direct impact on the Black Rock NCA and the Gerlach Community.***

18 104. BLM did not account for the full scope of relevant environmental effects and failed
19 to require the necessary protections for the environmental, cultural, and recreational attributes of the
20 Gerlach/Empire region.

21 105. In 2000, the Black Rock Desert-High Rock Canyon Emigrant Trails National
22 Conservation Area Act was signed in order to protect the unique and nationally important historical,
23 cultural, paleontological, scenic, scientific, biological, educational, wildlife, riparian, wilderness,
24 endangered species, and recreational values and resources associated with the area. This nationally
25 important area, the Black Rock NCA, provides essential habitat, natural and cultural resources, high
26 value recreation protection and economic stability to the local community of Gerlach. Congress
27 recognized that this area contains the last nationally significant, untouched segments of the historic
28 California emigrant trails, including wagon ruts, historic inscriptions, and a wilderness landscape

1 largely unchanged since the days of the pioneers. Moreover, the relative absence of development
2 in the Black Rock Desert and High Rock Canyon areas from emigrant times to the present day offers
3 a unique opportunity to capture the terrain, sights, and conditions of the overland trails as they were
4 experienced by the emigrants and to make available to both present and future generations of
5 Americans the opportunity of experiencing emigrant conditions in an unaltered setting. Gerlach is
6 the gateway to the Black Rock NCA, and any additional development would significantly diminish
7 the values for which Congress designated the area.

8 106. While the Black Rock RMP and Winnemucca District RMP generally allow for
9 geothermal leasing subject to compliance with certain stipulations, this Project is incompatible with
10 the resource values of the area where proposed. Objective D-MR 4 (BLM 2015a, p. 2-172), states,
11 in part, that “[l]ands within the WD would be open to geothermal and oil and gas leasing and
12 development except where *incompatible with important resource values*” (emphasis added).

13 107. The Friends of Nevada Wilderness undertook a careful review of the ongoing
14 geothermal projects across Nevada and identified this Project as a high concern due to its significant
15 impacts to natural and cultural resources and the local economy of Gerlach. Geothermal plants are
16 major developments that significantly affect the area surrounding them, and exploration cannot be
17 separated from production nor can the development and its associated impacts be ignored. In
18 particular, wilderness areas are affected by development, noise and light. The EA concedes that
19 wilderness areas will be impacted, but fails to recognize the significance of this impact. Hence, a
20 complete review of all reasonably foreseeable impacts was not undertaken by BLM.

21 108. Section 3.3.7 of the EA purports to address cumulative effects, which, based on the
22 EA, CEQ defines to include “past, present, and reasonably foreseeable future actions regardless of
23 what agency (federal and non-federal) or person undertakes such other actions (40 CFR 1508.7;
24 CEQ 1997.” EA at 3-54. Yet, BLM fails to analyze the most likely future action to occur after the
25 Proposed Action is completed, *i.e.*, development of a permanent industrial scale geothermal
26 generation plant and related distribution and transmission facilities in the Gerlach region. Indeed,
27 even the FONSI concedes that such a plant would have significant effects.

1 109. According to the EA, resource confirmation alone will occur at approximately 20
2 well sites for 45 days per well. In total, this is 900 days, or two and one-half years, of 24-hour seven
3 days-a-week drilling adjacent to the town of Gerlach and within the Black Rock NCA. There is
4 nothing preventing Ormat from drilling all wells at once or requiring any type of sequential order.
5 Hence, at the very minimum, the town's residents could be subjected to light, noise and pollution
6 and certain areas of the Black Rock NCA would lose their unique character of quiet solitude, all for
7 an undetermined amount of time. Yet, BLM ignored comments submitted as early as the scoping
8 period (including those submitted by a coalition of concerned groups) regarding these potential
9 impacts of this Project on the rural economy of Gerlach and the recreational values of the Black
10 Rock NCA.

11 110. In 2021, the Nevada Legislature passed and the Governor signed Senate Bill 52
12 declaring that dark sky areas "serve to specifically promote, preserve, protect and enhance Nevada's
13 dark sky resources for their intrinsic value and their ecological, astronomical, cultural and economic
14 importance." Further, the Legislature determined that "[d]esignation of dark sky places in Nevada
15 under the program will also attract tourists and other visitors to rural communities near Nevada's
16 dark sky assets, thereby generating increased economic activity for surrounding communities and
17 their small businesses." Light pollution from both phases of this project will permanently impact
18 the unique dark skies of this region.

19 111. The EA's assessment of impacts to cultural resources and effects on the setting were
20 based on the theory that the impacts would be temporary and limited to the duration of the temporary
21 operations. Yet, even the first phase of the Project will substantially affect the viewshed of Gerlach,
22 a gateway to the Black Rock NCA with extensive designated Wilderness, as well as the proposed
23 Granite Banjo Wilderness Area. This area has extremely high recreation value and is one of the
24 darkest night sky locations in the nation. Gerlach's economy significantly benefits from the tens of
25 thousands of visitors from around the world who travel to this region year-round to experience the
26 solitude of the vast open spaces and undeveloped vistas present in the Black Rock Desert, as well
27 as attend numerous events and pursue a variety of recreation experiences, including events held by
28 Plaintiffs BMP, Friends of Black Rock/High Rock, and Friends of Nevada Wilderness. The area is

1 one of the few places left in the country that offers primitive solitude, which is a unique and
2 irreplaceable characteristic that is highly valued by Gerlach residents and visitors alike. Indeed, as
3 noted in the EA, Gerlach is a known astrotourism destination, attracting visitors from outside the
4 region. The potential dark sky impacts of this Project could impact the single most precious natural
5 resource of this portion of Nevada, the deepest and darkest skies in the contiguous United States.

6 112. While acknowledging the potential significant impacts caused by increased light
7 from the Project, the EA includes some Best Management Practices, but does not commit to
8 following or analyzing them. The FONSI concludes that “[w]hile temporary changes in the visual
9 and noise baseline conditions of the area would occur, these would be resolved upon completion of
10 the exploration drilling and reclamation of the well pad.” FONSI at 4. Resolving an impact upon
11 completion is antithetical to NEPA’s goals and process. Furthermore, as discussed above, it is
12 reasonably foreseeable that the well pads will be permanent once the Project shifts into geothermal
13 energy production given that they are not required to be fully restored. With the wells already in
14 place, there will be no meaningful NEPA review of the well, plant, and transmission line need and
15 location, and certainly no consideration of alternatives. Ormat will have vested in those locations
16 and BLM’s hands will be tied.

17 113. Similarly, as mentioned in public comments submitted to BLM on the EA, the AOI
18 includes treasured viewpoints of the grand, undeveloped vistas that are invaluable to Gerlach
19 community members and for tourism. Ormat’s Project could not only permanently impair the
20 viewshed with industrial infrastructure, but it also could limit or cut off access to these viewpoints
21 when Project infrastructure proposed in that area is installed. Yet, BLM failed to mention these
22 cherished viewpoints of the Black Rock Desert in its EA; and, like much of its EA, BLM simply
23 concluded that any visual effects would be “minor”.

24 114. Likewise, the noise impacts to such a uniquely quiet and remote area of the country
25 were inadequately evaluated in the EA. BLM’s characterization of the Project’s noise impacts as
26 temporary construction noise of minor effect is implausible. A geothermal operation can emit
27 decibels of noise within a 0.5-mile radius, which is comparable to a congested urban area in the
28

1 daytime. This will inevitably and permanently change the unique, primitive solitude that Gerlach
2 residents, the Summit Lake Paiute Tribe, and visitors to the area value so highly.

3 115. There are many other cultural, historical, and recreational resources that are likely to
4 be impacted by this Exploration Project, but yet received hardly any consideration in the EA. For
5 example, cultural resources such as the Nobles Trail and Guru Road, which are expressly referenced
6 in the Black Rock RMP and Winnemucca District RMP, were given nothing more than passing
7 attention in the EA. Guru Road is recognized as a site of Americana Art that is located entirely
8 within the Project AOI, as is approximately 2.5 miles of the Nobles Trail. Without conducting any
9 meaningful analysis of impacts to these particular resources, BLM concluded that Project impacts
10 would be minor and temporary. These are just some examples of many irreplaceable resources that
11 were inadequately analyzed in the EA, and for which a full EIS is necessary to adequately complete
12 NEPA review.

13 ***The Project will cause irreversible impacts to unique springs and associated ecosystems.***

14 116. As indicated in the EA, there are numerous natural hot springs within the Project
15 AOI, including the Great Boiling Springs, Ditch Spring, Horse (Corral) Spring, Mud Spring, and
16 three unnamed springs. *See* EA at 3-10. In the larger study area, there are approximately 50 mapped
17 springs, including springs on the 360 Property owned by Plaintiff BMP. These springs are what
18 create the significant wetland habitat in and adjacent to the AOI, and it is their discharge levels that
19 are most essential to maintain the value of these habitats. Wetlands in the desert are biodiversity
20 hotspots, providing habitat for invertebrates, fish, resident and migratory birds, and a vital water
21 source for larger terrestrial wildlife. Further analysis of the impacts on protected species and their
22 habitats is therefore warranted.

23 117. Section 2.1.4 of the EA indicates that 35,000 gallons of water per day will be needed
24 for well drilling. Additionally, 6,000 gallons per day would be required for grading, construction,
25 and dust control. EA at 3-41. Section 3.3.5 indicates that as much as 1.845 million gallons of water
26 could be consumed per well drilled, or 6.8-acre feet. With the EA authorizing as many as 20 wells,
27 this yields a total water consumption potential of 36.9 million gallons or 136 acre-feet. Yet, the EA
28 fails to adequately disclose and analyze the plan for procuring 136 acre-feet of water for drilling.

1 Instead, the EA offers an inadequate analysis of baseline conditions that would allow Ormat to self-
2 monitor for potential effects.

3 118. The approved plan allows each well to be drilled at depths between 1,500 and 7,000
4 feet and may include directional drilling to intercept geothermal targets under private property. EA
5 at 2-2. “During drilling, the potential exists for geothermal fluids to mix with the shallow
6 groundwater aquifer, potentially affecting the water quality, including temperature, of spring
7 discharges and the associated surface water features.” EA at 3-141. The EA states that, in
8 compliance with DOI’s Geothermal Resources Operational Order No. 2, the well casing depth will
9 be no less than 200 feet below ground to prevent commingling of geothermal fluids and underground
10 aquifers. EA at 2-2. However, there is nothing to indicate that Ormat has sufficiently studied the
11 unique geothermal springs and aquifer in this region to understand connectivity between them, and
12 ensure that such a measure will actually prevent commingling.

13 119. The EA concedes that spring discharge rates for other groundwater users in the area
14 could be impacted by the Project, but the EA characterizes this impact as “temporary”. According
15 to the EA, “[i]f sourcing construction water from shallow water wells in the AOI, there is the
16 potential to temporarily reduce spring discharge rates or lower groundwater well levels and
17 productivity for other groundwater users in the local hydrologic basins.” EA at 3-41. However, the
18 unique characteristics of groundwater and the geothermal springs in this area could be irreversibly
19 impacted by the Project, and it could affect water rights for individuals such as Mr. Jamieson. There
20 have been instances of other geothermal energy developments that have resulted in significant,
21 irreversible harm to nearby hot springs. An underground reservoir that feeds springs on the surface
22 could be permanently damaged when the water quantity, temperature or quality is altered. The EA
23 further states that “wetlands that are hydrologically fed by spring discharge could be adversely
24 affected.” EA at 3-41. While the EA notes that “purchasing water from outside the local
25 hydrographic basins and transporting it to the Project site would have no effects on spring discharge
26 rates, wetland conditions, or water rights in the local hydrologic basins,” Ormat is not required to
27 explore this option further. Instead, the EA and FONSI permit Ormat to potentially harm the local
28 hydrologic basin with its Project and simply monitor to identify when such harm has occurred.

1 Given the permanence of such harm, this approach is woefully insufficient to preventing impacts to
2 these significant resources.

3 120. Mr. Jamieson and BMP in particular have raised significant concerns, given such
4 repeated, severe, and possibly permanent impacts to the springs caused by existing geothermal
5 generation facilities in the western United States, that impacts are likely to occur from the resource
6 confirmation activities and inevitable power generation activities. The EA allows for significant
7 withdrawals from the deeper geothermal reservoir. The Great Boiling Springs are so named because
8 it is a thermal feature, almost certainly discharging water from the same aquifer that Ormat is
9 proposed to tap into for this geothermal Project. The idea that significant pumping and reinjection
10 could happen in this aquifer and *not* affect springs discharging from the same aquifer strains
11 credulity. Indeed, there is evidence of such temperature and water level impacts to hot springs near
12 the Dixie Meadows geothermal facility in Fallon, Nevada.

13 121. Moreover, commenters raised significant concerns regarding potentially dangerous
14 and irreversible impacts of groundwater removal beneath the town of Gerlach and private lands and
15 residences. Subsidence is recognized as a potential impact of geothermal development. Fluid
16 withdrawal can cause land subsidence, lowering of the groundwater table, and alteration of an area's
17 hydrogeology. The town of Gerlach is underpinned by groundwater that is connected to the very
18 same groundwater system that Ormat proposes to pump millions of gallons of water from during
19 the Exploration Project. Yet, BLM's EA did not analyze any land settlement or subsidence impacts
20 that could result from pumping water out of the aquifer that underpins the town of Gerlach, and that
21 its residents rely on to support their infrastructure. Subsidence poses an imminent and irreversible
22 threat to human life and property. Indeed, despite the fact that the Gerlach area has previously
23 experienced subsidence issues, and that impacts to land stability were raised in public comments on
24 the EA, BLM's EA does not even mention subsidence or land settlement. In response to public
25 comments regarding land settlement and stability concerns, BLM simply concludes that this is not
26 a concern in the exploration phase of the Project. However, given that Ormat is proposing to pump
27 millions of gallons of water in the exploration phase, this conclusion without any further analysis or
28 consideration does not amount to the requisite "hard look" required under NEPA. Moreover, as

1 emphasized throughout this Complaint, BLM’s review of the Project should have considered both
2 the exploration and production phases, given that the production phase is an inevitable outcome with
3 permanent ramifications.

4 122. Likewise, commenters raised concerns regarding water availability, water usage, and
5 water rights. The Gerlach General Improvement District (“GGID”) is responsible for providing
6 water to the Gerlach community that is supplied from springs outside of the AOI; but, as the
7 alternative to pumping thousands of gallons of water per day from local shallow water wells within
8 the AOI, Ormat has proposed potentially sourcing water for the Project from GGID. Not only could
9 this impact the amount of water available for the local community, Ormat also assumes in the EA
10 that GGID *will* contract with Ormat to meet the Project’s significant water needs. This is a mere
11 assumption that is, as admitted in the EA, “pending contract and availability”, and therefore a wholly
12 insufficient alternative that should not have been relied upon to assuage concerns about overall
13 impacts to water resources.

14 123. The FONSI concedes that “[i]nterested parties have expressed concerns related to
15 the potential impacts on nearby hydrologic resources, especially hot springs and groundwater.” The
16 determination in the FONSI that the impacts are not significant is based on the notion that the
17 impacts are temporary and can be mitigated. Yet, Ormat is not required to do anything until after
18 the fact. The EA fails to adequately describe any planned mitigation measures for impacts to surface
19 and groundwater features. The draft mitigation plan prepared by Ormat’s consultant is inadequate,
20 as is conceded in the EA itself. EA at 3-41. BMP and others have pointed this out numerous times
21 in comments to BLM, and have made specific requests for more detail and certain parameters, all
22 of which have been ignored.

23 124. For example, the monitoring plan does not detail what the response would be if
24 monitoring detects changes to surface water features. “Within six months of the signing this
25 Decision Record and before drilling any new wells, Ormat must prepare a final hydrologic
26 monitoring plan in coordination with the BLM. . . . Ormat will develop a water resource monitoring
27 plan in accordance with BLM and Nevada State regulations.” Decision Record at 25. This is a plan
28 to make a plan, with no enforceable mitigation measures. While the Record Decision provides that

1 the plan meets certain minimum criteria, there are no details such as thresholds for significance,
2 adaptive management terms, standards to prevent and mitigate harm, monitoring procedures, and
3 no requirement to share the results with the public. Given the concessions made on lag time of
4 impacts and the likely significance of impacts, the mitigation plan should have been further
5 developed with assessable measures and subject to comment by those parties that may be impacted
6 by Ormat's activities.

7 ***The proposed Project alternative were unreasonable and lacking.***

8 125. BLM did not address legitimate alternatives to the Project consistent with NEPA's
9 requirements. NEPA requires agencies preparing an EA to study, develop, and describe appropriate
10 alternatives to recommended courses of action in any proposal that involves unresolved conflicts
11 concerning alternative uses of available resources. 40 C.F.R. 1508.9(b). The identification and
12 evaluation of alternative ways of meeting the purpose and need of the proposed action is the heart
13 of NEPA analysis.

14 126. The lead agency or agencies must "objectively evaluate all reasonable alternatives,
15 and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their
16 having been eliminated." A Citizen's Guide to NEPA (2007) at 16, citing 40 C.F.R. § 1502.14.

17 127. The EA considered three alternatives (A, B, C) and one no-action alternative (D).
18 However, the only differences between the three action alternatives are slight deviations in access
19 points of +/- 1 mile and proposed surface disturbance of +/- 3 acres. The alternatives do not
20 contemplate meaningful differences with regard to the crux of the action—the wells—by
21 contemplating different geographic locations, layouts, sizes, or number of wells within the 2,724-
22 acre AOI in order to address sensitive resources such as the Great Boiling Springs and the Black
23 Rock NCA or viewshed impacts. Rather, it seems Ormat attempted to satisfy the alternatives
24 requirement by simply making insignificant changes to an ancillary feature (*i.e.*, access points) of
25 the proposed action. This is contrary to the intent of NEPA's alternatives analysis and is insufficient
26 to satisfy the requirement for a reasonable alternatives analysis. Moreover, BLM completely ignored
27 all public comments concerning alternative locations.

1 128. The EA does not look at alternative locations owned by or otherwise accessible to
2 Ormat with less environmental impacts. As pointed out in comments to BLM, all other sites in
3 which Ormat has developed a geothermal plant do not include as similarly high resource values as
4 the Gerlach site; and other geothermal development has not occurred in such close proximity to a
5 community center as this Exploration Project. Alternative locations to avoid harm to such highly
6 valued resources and the local community should have been considered in the EA.

7 ***The BLM Ignored the Requirement to Engage in Meaningful Consultation with the Tribes***

8 129. BLM did not make a reasonable and good faith effort to consult with the Summit
9 Lake Paiute Tribe. According to the Decision Record and EA, BLM notified several tribes of the
10 proposed action in writing on November 9, 2021, and again on February 7, 2022. (Decision Record
11 at 8; EA at 4-1). The BLM sent form letters to the Fallon Paiute-Shoshone Tribe, the Pyramid Lake
12 Paiute Tribe, the Reno-Sparks Indian Colony, the Summit Lake Paiute Tribe, and the Susanville
13 Rancheria. The BLM also notified the Fort McDermitt Paiute and Shoshone Tribe about the Project,
14 though the BLM did not send an outreach letter to this tribe. On February 18, 2022, the BLM shared
15 the Project's existing cultural documentation with the Reno-Sparks Indian Colony, at the request of
16 the tribe.

17 130. According to the Final EA, “[o]n September 17, 2022, the BLM held a government-
18 to-government consultation meeting with the Summit Lake Paiute tribe. Their concerns focused on
19 traffic on CR-34, potential impacts to springs in the area, and if there is a geothermal plant, its size
20 and scope.” (EA at 4-1; Decision Record at 9). The Final EA recognizes that the 2006 Final
21 Ethnographic Assessment determined that Great Boiling Spring is a potential ritual site for Northern
22 Paiutes but concludes that “no tribes have offered any further information on Great Boiling Spring
23 as part of the consultation process.” (EA at 3-37; 4-1). According to the Final EA, the State Historic
24 Preservation Officer (“SHPO”) raised concerns with the scope of the Project and potential impacts
25 on tribal resources, including visual impacts and impacts from transmission lines. The SHPO
26 expressed frustration with the lack of response by BLM to comments related to cultural and religious
27 resources. The EA attempts to justify the limited analysis of cultural resources (presented in Final
28 EA Sections 3.3.3, and 3.3.5, and Appendix C, Cultural Resources) under the theory that the Project

1 “includes geothermal exploration only.” (EA at F-67). Yet, BLM is well aware of the negative
2 impacts of transmission lines and tall structures on the western landscape from renewable energy
3 development. There are historic trails and other historic resources within the AOI and the area of
4 effect that will be impacted by the Project.

5 131. BLM made little effort to understand the effects of the Project on tribal interests of
6 the Summit Lake Paiute Tribe. The Decision Record states that BLM conducted “a government-to-
7 government consultation meeting with the Summit Lake Paiute tribe.” Decision Record at 8. While
8 BLM did make a presentation to the Tribal Council of the Summit Lake Paiute Tribe in September
9 2022, this was presented as an update on the proposed project (described as an “information sharing
10 meeting” for other tribes), not a government-to-government consultation. Indeed, during that
11 meeting BLM immediately cut off the conversation when the Tribe’s lawyer attempted to discuss
12 tribal concerns. But as indicated in the EA, the Tribe raised concerns with multiple aspects of the
13 Project. These concerns fell on deaf ears. The Decision Record states that “[c]ontinued
14 communication and coordination will help to ensure that management actions are consistent with
15 rights retained by tribes and that the concerns of tribal groups are considered.” (Decision Record at
16 9). However, BLM failed to undertake any other effort to assess the eligibility of properties of
17 religious and cultural significance identified by the Tribe and the manner in which such properties
18 could potentially be affected by the undertaking. This is completely inconsistent with Joint
19 Secretarial Order No. 3403’s requirement to engage with Tribes to ensure that they can shape the
20 direction of management, and with the tribal consultation goals and objectives within the
21 Winnemucca District RMP.

22 **FIRST CLAIM FOR RELIEF**

23 ***BLM’s Final EA, FONSI, and Decision Record Violate NEPA and the APA.***

24 132. Plaintiffs re-allege, as if fully set forth herein, the allegations contained in the
25 preceding paragraphs.

26 133. BLM’s compliance with NEPA is subject to judicial review under the APA. The
27 APA provides that courts must “hold unlawful and set aside agency action, findings, and conclusions
28

1 found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with
2 law.” 5 U.S.C. § 706(2)(A).

3 134. NEPA requires that an agency’s environmental analysis must “provide full and fair
4 discussion of significant environmental impacts.” 40 C.F.R. § 1502.1. Whether the agency prepares
5 an EA or an EIS, the agency must take a “hard look” at all direct, indirect, and cumulative
6 environmental impacts of the proposed action and its alternatives. 40 C.F.R. §§ 1502.14, 1502.16.
7 To fulfill its purpose, the agency’s environmental analysis must “provide full and fair discussion of
8 significant environmental impacts.” 40 C.F.R. § 1502.1. In order to objectively analyze effects, the
9 agency must establish a baseline against which the effects are measured.

10 135. Defendants have failed to adequately and accurately analyze the Project’s direct,
11 indirect, and cumulative impacts to water resources, the landscape, the local economy, and other
12 aspects of the environment. In particular, BLM has failed to adequately analyze the impacts of the
13 Project on local springs, wetlands and groundwater, land stability, hydrogeology, and subsidence
14 impacts, as well as aesthetic impacts and changes to this unique desert environment and character
15 of the Gerlach community, and BLM has failed to consider cumulative effects of the inevitable
16 future plant and power transmission.

17 136. The agency must rigorously explore and objectively evaluate reasonable alternatives
18 to the proposed action, including a baseline alternative of taking “no action.” 40 C.F.R. § 1502.14.
19 The agency must “study, develop, and describe appropriate alternatives to recommend courses of
20 action in any proposal which involves unresolved conflicts concerning alternative uses of available
21 resources.” 42 U.S.C. § 4332(2)(E).

22 137. Defendants have failed to consider and analyze a range of reasonable alternatives to
23 the proposed action, as required by NEPA and the NEPA implementing regulations applicable to
24 the Project. Defendants’ Final EA analyzed alternatives based solely on access points. No attempt
25 was made to look at alternative well locations or fewer wells to accomplish the Project purpose and
26 need, including off-site locations.

27 138. NEPA and its implementing regulations require federal agencies to prepare an EIS
28 for all “major Federal actions significantly affecting the quality of the human environment.” 42

1 U.S.C. § 4332(C)(i); 40 C.F.R. § 1501.4. An action cannot be segmented into smaller parts in order
2 to avoid a finding of significance.

3 139. The project as originally proposed by Ormat included a geothermal plant and
4 transmission power lines. During the scoping period, however, BLM allowed Ormat to redefine the
5 Project purpose and need to include only *confirmation* of geothermic resources, not ultimate
6 production of those resources. However, geothermal development inevitably follows resource
7 confirmation. These are connected actions. The FONSI makes clear that permitting the Exploration
8 Project may establish a precedent for future actions with significant effects given the inevitable
9 development of commercial power production facilities and a transmission line right-of-way. Ormat
10 is confirming where geothermal resources are located within this region for the purpose of
11 developing a geothermal plant. Indeed, Ormat is not required to decommission or remove the wells
12 that it installs during resource confirmation; and it follows that these confirmation well pads will be
13 transitioned into permanent wells during the inevitable development of a geothermal plant following
14 resource confirmation.

15 140. Thus, Defendants have illegally segmented this Project and failed to consider the
16 entirety of Ormat's reasonably foreseeable plans, *i.e.*, resource confirmation *and* geothermal plant
17 development and operation.

18 141. BLM's NEPA review must also consider all relevant regulations that affect public
19 lands, including but not limited to FLPMA land use plans and resource management planning under
20 43 C.F.R. Part 1610.

21 142. BLM's NEPA review of the Project failed to address the fact that the Project is
22 inconsistent with the Black Rock RMP and Winnemucca District RMP, and will therefore result in
23 degradation of the Black Rock NCA and other areas within the Winnemucca District.

24 143. Moreover, BLM failed to actively engage in good faith consultation with the Summit
25 Lake Paiute Tribe, a federally recognized tribe, which is inconsistent with the goals and objectives
26 of the Winnemucca District RMP.

27 144. NEPA and its implementing regulations require federal agencies to prepare an EIS
28 for all "major Federal actions significantly affecting the quality of the human environment." 42

1 U.S.C. § 4332(C)(i); 40 C.F.R. § 1501.4. Where an agency attempts to avoid the EIS requirement
2 by relying on mitigation measures, its discussion of the proposed mitigation measures must be
3 carefully considered, based on scientific studies, and effective to avoid significant impacts.

4 145. BLM failed to adequately and accurately define or analyze necessary mitigation
5 measures, and the effectiveness of those measures, as required by NEPA and the NEPA
6 implementing regulations. The EA requires that, within six months of the signing the Decision
7 Record and before drilling any new wells, Ormat must prepare a final hydrologic monitoring plan
8 in coordination with the BLM. This deferred mitigation plan lacks sufficient details such as
9 justifying the monitoring locations, describing what the response would be if monitoring detects
10 changes to surface water features, and has no criteria for approval or thresholds for determining
11 significance.

12 146. For all of these reasons, BLM's actions and omissions regarding the Project violate
13 NEPA and are arbitrary, capricious, an abuse of discretion, not in accordance with law, without
14 observance of procedure required by law, and in excess of statutory jurisdiction, authority, or
15 limitations, within the meaning of the judicial review provisions of the APA. 5 U.S.C. §§ 701-706.

16 **SECOND CLAIM FOR RELIEF**

17 ***BLM's NEPA Documents and Approval of the Operations Plan Violate FLPMA.***

18 147. Plaintiffs re-allege, as if fully set forth herein, the allegations contained in the
19 preceding paragraphs.

20 148. FLPMA is intended to ensure that all federal public land administered by BLM is
21 "managed in a manner that will protect the quality of scientific, scenic, historic, ecological,
22 environmental, air and atmospheric, water resource, and archeological values." 43 U.S.C. §
23 1701(a)(8). FLPMA requires BLM to "take any action necessary to prevent unnecessary or undue
24 degradation of the lands." 43 U.S.C. § 1732(b).

25 149. FLPMA requires that the public lands be managed "in accordance with" land use
26 plans. 43 U.S.C. § 1732(a). "All . . . resource management authorizations and actions" must
27 "conform to the approved plan." 43 C.F.R. § 1610.5-3(a). If a proposed action is not consistent with
28

1 the applicable land use plan, BLM must rescind the proposed action or amend the plan. 43 C.F.R.
2 §§ 1610.5-3, 1610.5-5.

3 150. BLM's approval of the Project is inconsistent with the Black Rock RMP and
4 Winnemucca District RMP because it is incompatible with important resource values, which will
5 result in degradation of the Black Rock NCA and other areas within the Winnemucca District.

6 151. BLM's approval is therefore in violation of the agency's responsibility under
7 FLPMA to "take any action necessary to prevent unnecessary or undue degradation of the lands."
8 43 U.S.C. § 1732(b).

9 152. Moreover, BLM failed to impose appropriate stipulations for the Project under the
10 Black Rock RMP or Winnemucca District RMP in order to adequately protect the resources
11 identified within those land use plans.

12 **THIRD CLAIM FOR RELIEF**

13 ***BLM's Consultation Violates the NHPA.***

14 153. Plaintiffs re-allege, as if fully set forth herein, the allegations contained in the
15 preceding paragraphs.

16 154. The approval of the Project is an "undertaking" of BLM pursuant to the NHPA.

17 155. BLM violated the NHPA when it approved the Project and issued the Decision
18 Record and FONSI without adequately taking into account, adequately evaluating, or attempting to
19 mitigate the effects of these approvals on the tribal cultural and tribal sacred landscapes, sites, burial
20 grounds, and viewscapes, which have cultural and religious significance to tribes as Traditional
21 Cultural Properties. 54 U.S.C. § 306108; 36 C.F.R. 800.4-800.6. BLM narrowly defined the area
22 of potential effects and the undertaking so as to exclude potentially relevant impacts such as visual
23 effects and the long-term impact on the landscape.

24 156. BLM's approval of the Project and issuance of the Decision Record and FONSI
25 without consideration of tribal cultural and tribal sacred landscapes, sites, burial grounds, and
26 viewscapes, which have cultural and religious function and significance to tribes as Traditional
27 Cultural Properties, was arbitrary, capricious, and not in accordance with law as required by the
28 NHPA.

1 157. BLM's decision to define the undertaking as only "temporary" in nature improperly
2 ignored effects of the undertaking on the Nobles Trail section of the California National Historic
3 Trail, the Gerlach Cemetery, Great Boiling Springs and other potential historic and cultural
4 resources. This is despite the fact that BLM recognized these resources in its own land use plans
5 for the Black Rock NCA and Winnemucca District, that several miles of the historic trail are within
6 the AOI, and that the EA discloses the potential for effects on other historic resources.

7 158. BLM misrepresented the "government-to-government" consultation that took place
8 by suggesting that it met the NHPA's procedural requirements through an informational meeting
9 with the Tribe. BLM failed to adequately analyze the eligibility of properties of religious and
10 cultural significance to the tribes and the manner that such properties could potentially be affected
11 by the undertaking. BLM ignored Joint Secretarial Order No. 3403 by failing to engage in
12 meaningful consultation with the Tribes concerning this undertaking.

13 159. For each of the above reasons, and others, BLM's approval of the Project and
14 issuance of the Decision Record and FONSI is arbitrary, capricious, and not in accordance with law
15 as required by NHPA, its implementing regulations, and the APA, and is subject to judicial review
16 thereunder. 5 U.S.C. §§ 701-706.

17
18 **REQUEST FOR RELIEF**

19 WHEREFORE, Plaintiffs respectfully request that this Court:

- 20 1. Issue a declaratory judgment that BLM violated the law as described in this
21 Complaint;
- 22 2. Vacate and set aside the EA, FONSI and Decision Record;
- 23 3. Enjoin BLM from authorizing or otherwise allowing Ormat to undertake any
24 activities within the leasing area at issue;
- 25 4. Award Plaintiffs their costs of litigation, including reasonable attorneys' fees;
- 26 5. Grant Plaintiffs such additional relief as the Court may deem proper; and
- 27 6. Retain continuing jurisdiction of this matter until BLM fully remedies the
28 violations of law complained of herein.

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Respectfully submitted this 3rd day of April, 2023.

/s/ Rafe Petersen
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