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16 **UNITED STATES DISTRICT COURT**
17 **DISTRICT OF NEVADA**

19 The FALLON PAIUTE-SHOSHONE TRIBE
20 and the CENTER FOR BIOLOGICAL
DIVERSITY;

21 Plaintiffs,

22 vs.

23 U.S. DEPARTMENT OF THE INTERIOR,
24 BUREAU OF LAND MANAGEMENT, and
25 JAKE VIALPANDO in his official capacity as
Field Manager of the Bureau of Land
Management Stillwater Field Office;

26 Defendants.
27

Case No.:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 Plaintiffs, the FALLON PAIUTE-SHOSHONE TRIBE (the “Tribe”) and the CENTER FOR
2 BIOLOGICAL DIVERSITY (the “Center”) and by and through their attorneys of record, hereby
3 complain and allege as follows:

4 **INTRODUCTION**

5 1. The Tribe and the Center challenge Defendants’ failure to comply with the National
6 Environmental Policy Act (“NEPA”), the Federal Land Policy and Management Act (“FLPMA”), the
7 Religious Freedom Restoration Act (“RFRA”), the Administrative Procedure Act (“APA”), and
8 Defendants’ trust responsibilities to the Tribe in issuing a Final Environmental Assessment, Finding
9 of No Significant Impact, and Decision Record authorizing the Dixie Meadows Geothermal Utilization
10 Project (“Project”).

11 2. The Project is a proposal to build two geothermal powerplants, 18 or more geothermal
12 wells, access roads, and 48 miles of transmission line on approximately 2,000 acres of public land in
13 Dixie Valley in north-central Nevada. The Project would extract underground geothermal fluid, use
14 its heat to generate electricity, and reinject the same fluid underground at a cooler temperature.
15 Because the Project would use federal geothermal resources and construct facilities on federal public
16 land, the Project can only proceed if authorized by Defendant Bureau of Land Management (“BLM”).

17 3. Construction and operation of the Project would occur directly adjacent to Dixie
18 Meadows Hot Springs and utilize the same geothermal fluid that heats the springs. The Hot Springs
19 are a sacred healing site for the Tribe, with immense spiritual meaning and value to the Tribe’s culture,
20 religion, history, and way of life. The Tribe’s members and ancestors have resided in the Dixie Valley
21 region for more than 10,000 years, as documented in the Tribe’s oral histories and through genetic
22 evaluation of the Spirit Cave human remains. The Tribe’s longstanding use of the Dixie Meadows Hot
23 Springs as a sacred site and landscape is well-documented in oral histories and ethnographies. In the
24 Tribe’s belief system, the Hot Springs, together with the associated ecosystem and landscape,
25 comprise an animate, living entity entitled to reverence and respect

26 4. The Hot Springs create a rare and unique wetland spring environment that, in addition
27 to holding immense cultural, religious, historical, and spiritual significance to the Tribe, provides the
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1 only known habitat for the Dixie Valley toad (*Anaxyrus williamsi*). The U.S. Fish and Wildlife Service
2 (“FWS”) has concluded that “substantial scientific or commercial information” may support listing
3 the Dixie Valley toad under the Endangered Species Act (“ESA”), in part due to the threat posed by
4 geothermal development, which could reduce or eliminate the toad’s habitat.

5 5. The Project’s proposed use of geothermal fluids is likely to permanently degrade the
6 Hot Springs and their associated ecosystem. Geothermal energy developments like the Project have
7 significantly altered or even eliminated nearby thermal springs because the geothermal resources used
8 for power generation often flow from the same underground reservoir that feeds springs on the surface.
9 A similar geothermal power facility authorized by BLM, constructed and operated by the Project
10 developer, and located approximately 40 miles away from the Project site likely caused nearby hot
11 springs in Jersey Valley, Nevada to stop flowing entirely.

12 6. By significantly altering the water quantity, temperature, and quality in the Hot Springs,
13 operation of the Project risks extinction of the Dixie Valley toad and permanent impairment of the
14 Tribe’s exercise of its cultural, religious, and spiritual practices. Construction of the Project will also
15 eliminate much of the toad’s terrestrial habitat. Despite these risks—and despite numerous detailed
16 comment letters from the Tribe, the Center, the U.S. Fish and Wildlife Service, the Nevada Department
17 of Wildlife, and the U.S. Navy warning Defendants of the grave threat that the Project poses to the
18 Hot Springs and associated ecosystem—Defendants unlawfully approved the Project without adequate
19 environmental analysis and planning, as required under NEPA, and without ensuring that any impacts
20 to the Hot Springs and the wildlife species that depend on them will be adequately avoided or
21 mitigated, as required under BLM’s own policies and FLPMA.

22 7. In addition to posing significant risk of permanent irreparable harm to the Hot Springs
23 and associated ecosystem, the Project would turn a pristine and unique location of ecological value
24 and spiritual significance into an industrial site. The Tribe’s cultural, religious, and spiritual practices
25 involve quiet contemplation at the undisturbed Hot Springs. Construction and operation of the Project
26 would damage the Tribe by creating significant noise, light, and visual obstruction at their sacred site.
27 Powerplant construction and operation in and around the Hot Springs would substantially burden
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1 Tribal members' religious exercise without compelling justification, and violate Defendants' trust
2 responsibilities to the Tribe.

3 8. The Tribe and the Center specifically challenge: (1) Defendant BLM's August 2021
4 Final Environmental Assessment ("EA") for the Dixie Meadows Geothermal Utilization Project as
5 unlawful under NEPA and FLPMA and arbitrary and capricious under the APA; (2) Defendant BLM's
6 November 23, 2021 Finding of No Significant Impact ("FONSI") concerning the Dixie Meadows
7 Geothermal Utilization Project as unlawful under NEPA and FLPMA and arbitrary and capricious
8 under the APA; and (3) Defendant BLM's November 23, 2021 Decision Record authorizing the Dixie
9 Meadows Geothermal Utilization Project as unlawful under NEPA, FLPMA, and RFRA, arbitrary and
10 capricious under the APA, and (4) Defendants' statutory violations as contrary to their trust
11 responsibilities to the Tribe.

12 9. The Tribe and the Center seek a declaration that Defendants violated NEPA, FLPMA
13 and APA in issuing and approving the August 2021 Final EA; that Defendants violated NEPA,
14 FLPMA and the APA in issuing the November 23, 2021 FONSI; that Defendants violated NEPA,
15 FLPMA, RFRA, and the APA in unlawfully issuing and approving the November 23, 2021 Decision
16 Record based on the Final EA and FONSI; that Defendants' approval of the Project was arbitrary,
17 capricious, and an abuse of discretion under the APA; and that these violations represent a breach of
18 Defendants' trust responsibilities to the Tribe. The Tribe and the Center further seek vacatur of the
19 Final EA, FONSI, and Decision Record, as well as preliminary and permanent injunctive relief to
20 enjoin any implementation of the Decision Record.

21 **JURISDICTION**

22 10. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 (federal question), 28 U.S.C.
23 § 1346 (United States as defendant), 42 U.S.C. § 2000bb-1 (Religious Freedom Restoration Act), and
24 5 U.S.C. §§ 551-706 (Administrative Procedure Act), because this action involves the United States
25 as a defendant, concerns a government-imposed substantial burden on religious exercise, and arises
26 under the laws of the United States, including NEPA, 42 U.S.C. § 4332, FLPMA, 43 U.S.C. §§ 1701-
27 1736, 1737-1782, RFRA, 42 U.S.C. §§ 2000bb-2000bb-4 and the APA, 5 U.S.C. §§ 551-706. An
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1 actual justiciable controversy exists between Plaintiffs and Defendants. The requested relief is proper
2 under 28 U.S.C. §§ 2201 and 2202 (Declaratory Judgment Act); 42 U.S.C. § 2000bb-1 (RFRA); and
3 5 U.S.C. §§ 705 and 706 (Administrative Procedure Act). The challenged agency actions are final and
4 subject to this Court’s review under 5 U.S.C. §§ 702, 704, and 706 (Administrative Procedure Act).

5 VENUE

6 11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because Defendants have
7 offices in this judicial district, a substantial part of the events or omissions giving rise to the claims in
8 this Complaint occurred in this judicial district, and the lands involved in this case are located in this
9 judicial district.

10 12. Venue is proper in the Northern Division of this District, as the challenge involves
11 federal lands and resources in Churchill County, Nevada. L.R. 1A 8-1.

12 PARTIES

13 13. The Fallon Paiute-Shoshone Tribe is a sovereign, federally recognized Indian Tribe
14 whose members have lived upon and used the lands affected by the Project since time immemorial.
15 *See* 86 Fed. Reg. 7554, 7556 (January 29, 2021). The Tribe refers to itself as the *Toi-Ticutta*, or “Cattail
16 eaters,” because Tribal members have long subsisted on native plants including cattails from marshes
17 such as those in Dixie Meadows. The Tribe has used marsh plants to create housing, clothing, hunting
18 decoys, and other material objects such as baskets and hats. The Tribe is currently based on a small
19 Reservation in Churchill County, near the City of Fallon, Nevada. The Tribe has approximately 1,500
20 members, most of whom reside on the Reservation. Because the Tribe was placed on a small
21 Reservation by the United States, Tribal members rely on federal public lands, including BLM-
22 managed lands in Dixie Valley, to continue their way of life and maintain connection to their cultural
23 and spiritual values.

24 14. Many Tribal members, including enrolled Tribal member and Tribal Historic
25 Preservation Officer Rochanne Downs, derive enjoyment and health, spiritual, and religious benefits
26 from their activities in and around Dixie Meadows. Use of Dixie Meadows Hot Springs and the
27 surrounding area connects Tribal members to their history, culture, and way of life.
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